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## CONFIRMED MINUTES

### Shire of West Arthur Ordinary Council Meeting 21 June 2022

#### MISSION STATEMENT

*To value and enhance our community lifestyle and environment through strong local leadership, community involvement and effective service delivery.*

#### DISCLAIMER

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The purpose of this council meeting is to discuss and, where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on basis of such decision or on any advice or information provided by a member or officer, or on the content of any discussion occurring, during the course of the meeting.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of West Arthur during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of West Arthur. The Shire of West Arthur warns that anyone who has an application lodged with the Shire of West Arthur must obtain and only should rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attaching to the decision made by the Shire of West Arthur in respect of the application.

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These Minutes were confirmed at the ordinary council meeting on: 26 July 2022

Signed: \_\_\_\_\_

Presiding Member at the meeting at which the Minutes were Confirmed.

**SHIRE OF WEST ARTHUR**

Minutes of the Ordinary Meeting of Council held in the Council Chambers on Tuesday 21<sup>st</sup> June 2022  
– commencing at 7.00pm.

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**1. DECLARATION OF OPENING / ANNOUNCEMENTS OF VISITORS**

The Presiding Member declared the meeting open at 7.05pm.

**2. ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE**

COUNCILLORS: Cr Neil Morrell (Shire President)  
Cr Graeme Peirce (Deputy Shire President)  
Cr Neil Manuel  
Cr Robyn Lubcke  
Cr Karen Harrington  
Cr Duncan South

STAFF: Vin Fordham Lamont (Chief Executive Officer)  
Raj Sunner (Manager Corporate Services)  
Kerryn Chia (Projects Officer)

APOLOGIES:

ON LEAVE OF ABSENCE:

ABSENT: Cr Adam Squires

MEMBERS OF THE PUBLIC: Shane Adam In relation to Item 14.2  
Aaron Halton In relation to Item 14.2

**3. ANNOUNCEMENTS BY THE PRESIDING MEMBER**

Nil

**4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**5. PUBLIC QUESTION TIME**

Nil

**6. PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS**

Nil

**7. APPLICATIONS FOR LEAVE OF ABSENCE**

Cr Adam Squires submitted a Leave of Absence request on 9th June 2022 to the CEO for the Ordinary Meeting of Council to be held on 21st June 2022.

**Voting Requirements:**

Absolute Majority

**Recommendation:**

**That Council endorse the Leave of Absence request from Cr Adam Squires for the Ordinary Meeting of Council to be held on 21st June 2022.**

Moved: Cr Lubcke

Seconded: Cr Manuel

**CARRIED BY ABSOLUTE MAJORITY 6/0**

**8. DISCLOSURES OF INTEREST**

Cr Peirce declared a Financial Interest in relation to Item 14.1 Development Application – Lakeside Camping Kiosk as the Director of Lakeside Camping Pty Ltd (the Applicant).

**9. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS HELD****9.1 Ordinary Council Meeting Minutes 17<sup>th</sup> May 2022****Statutory Environment:**

Section 5.22 of the *Local Government Act* provides that minutes of all meetings are to be kept and submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.

**Voting Requirements:**

Simple Majority

**Recommendation:**

**That the Minutes of the Ordinary Meeting of Council held in the Council Chambers on Tuesday 17<sup>th</sup> May 2022 be confirmed as true and correct.**

Moved: Cr Harrington

Seconded: Cr Lubcke

**CARRIED 6/0**



**10. REPORTS OF COMMITTEES OF COUNCIL****10.1 Minutes of Arthur River Development Group Meeting 26 May 2022****Statutory Environment:**

Section 5.22 of the *Local Government Act* provides that minutes of all meetings are to be kept and submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.

**Voting Requirements:**

Simple Majority

**Recommendation:**

**That the Minutes of the Arthur River Development Group Meeting held 26 May 2022 be confirmed as true and correct.**

Moved: Cr Manuel

Seconded: Cr Peirce

**CARRIED 6/0**

**10.2 Minutes of Bush Fire Advisory Committee Meeting 26 April 2022****Statutory Environment:**

Section 5.22 of the *Local Government Act* provides that minutes of all meetings are to be kept and submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.

**Voting Requirements:**

Simple Majority

**Recommendation:**

**That the Minutes of the Bush Fire Advisory Committee Meeting held 26 April 2022 be confirmed as true and correct.**

Moved: Cr South

Seconded: Cr Harrington

**CARRIED 6/0**

**SHIRE OF WEST ARTHUR****MINUTES**

**Arthur River Development Group  
Thursday 26<sup>th</sup> May 2022 in the Arthur River Hall.**

**1. Declaration of Opening/Announcement of Visitors**

Lisa Saunders declared the meeting open at 9am

**2. Record of Attendance and Apologies  
Attendance****Committee Members**

Lisa Saunders  
Cr Neil Manuel  
Heather McDougall  
Peter Manuel

**Shire Staff**

Vin Fordham Lamont  
Kerryn Chia

**Visitors****Apologies**

John Pascoe  
Frances O'Callohan

**3. Confirmation of Minutes – 27<sup>th</sup> May 2021**

That the minutes of the Arthur River Development Committee Meeting held 27<sup>th</sup> May 2021, be confirmed as a true and correct record.

Moved: Peter Manuel

Seconded: Heather McDougall

**4. Status Report**

Item	Topic	Status	Action
<b>Information Bay</b>	Signage and infrastructure in the information bay	Sign only to be installed. Sign is to include a map with directions, north arrow, scale, "you are here" distances to other towns, and key attractions (including brief history of Arthur River). Committee would like to see two or three sentences introducing the area. Size of sign to be approximately 1m x 1.8m.	Shire provided a quote at May 2021 meeting for \$2,882 for Market Creations to design map and an additional \$1,133 to design the sign. This may now need to be updated if this is to go ahead. John unable to provide quote.  Shire to provide committee with costs via email for the following: <ol style="list-style-type: none"> <li>1. Inhouse design (Arthur River not central) - inhouse design to be supplied.</li> <li>2. Design by graphic designer and sign production (Arthur River Central but more expensive)</li> <li>3. No sign</li> </ol> Decision to be made by email.
<b>Halls</b>	Old hall	Geoff has looked at the roof. Needs replacing soon. Would need to get a contractor to do this. Will also need to do through discussions with Heritage Council. Will require a development approval as it is a Category 1 listed building under the Shire Heritage Local Planning Policy  Some cracks present in walls. Possibly as a result of earthquakes.  Investigate window coverings further. (Heather and Lisa)	Shire to organise quotes and investigate funding options. Possibly Lotterywest funding.  Shire to investigate insurance claim for earthquake damage.

Item	Topic	Status	Action
	<u>Newer hall</u>	Gutters may need to be replaced.  Exit door on the new hall in the south corner is difficult to open. Replacement would require it to be custom built. Tony Scardetta from Wagin or Squibb's carpentry in Katanning could build it.	Shire to keep an eye out for funding options  Committee to investigate options of partitioning  Shire to get Geoff to look at the hall door. (Geoff has now inspected on 27/5/22 and made some adjustments which he believes his sufficient.)
<b>Roadside management</b>	Tidy up of roadside	Suggestion of everlasting in the triangle at Wagin turnoff.  Front section of Cemetery fence needs replacing.	Church group to coordinate fence and liaise with Shire in relation to heritage requirements.

			<p>Shire confirmed that the cemetery and church are part of the same freehold property which is owned by DIOCESAN TRUSTEES OF BUNBURY INC.</p> <p>As the church is a category 1 heritage listed place it will require a development application to be submitted to council outlining type of fence to be installed.</p>
<b>Historical Buildings</b>		<p>Lease for craft shop was valid until 19 November 2021.</p> <p>Peter Manuel has a red phone box to potentially be installed near post office. Peter is putting some photos up in the building.</p>	<p>Shire will need to ensure that a new lease is signed.</p> <p>Shire planning consultant confirmed that a development application will be required for the phone box and pad. Shire to contact Heritage Council.</p> <p>Committee to organise community to put down a cement slab for telephone box once approval received.</p>
<b>Old Store Site</b>	Future of Site	Shire to seek management and control of the site for use as a car park.	Shire to continue to liaise with Main Roads and revisit risk issues.
<b>Committee status</b>	Incorporated Committee or Advisory Committee	Committee discussed options of how committee should operate. Most big work has been done so now a good time to consider how the committee operates. Committee requested additional information on how the funding of repairs, and maintenance would be undertaken etc. Queried what would happen if fund raising was required to undertake renovations? Also queried how Hall would be managed, and public liability insurance.	Shire to investigate public liability insurance issues associated with the various committee options. Shire to advise committee of options and committee to make decision on future status over email.

## 5. New Items of Business

### 5.1 Darryl Manual Event

- To be held in September at Arthur River
- Will include live music, food, bird of prey conservation presentation, Aboriginal medicine, digeridoo music, displays of local art, flower and plant show, tour of historical buildings, Devonshire teas, small stalls, best dressed period costume.
- Maree to open craft shop

Darryl requires this event be run under the banner of the Arthur River Development Group (assuming it is still a Committee of Council) to be covered by the ARDG Public Liability insurance. A risk management plan is also likely to be required.

Committee are happy for event to proceed but will be dependent on the status of the committee at the time of event. Sheepfest operates under the banner of the sports complex and is covered by its insurance. Shire will investigate insurance options

### 5.2 Metal detecting around the site.

Request from a visitor to undertake metal detecting around the hall sites. They were prepared to donate significant finds to the Shire. We had to get back to them prior to this meeting.

Committee agreed that metal detecting around the buildings was not appropriate.

### 5.3 Extra tables at the old post office

Request for extra tables to be installed around the old buildings.

Shire to ask Jim to build another table for installation.

### 5.4 Heritage Local Planning Policy

Update - Shire has recently reviewed its Municipal Heritage Inventory. It is now updated to Heritage Survey and List which has been used to inform the Heritage Local Planning Policy. This policy is currently out for public review - <https://www.westarthur.wa.gov.au/news/heritage-list-and-local-planning-policy-no3/242> Once endorsed at the June Council meeting it will mean that any development on the hall or Arthur River buildings will require the submission of a Development Application through Council.

### 5.5 Local Community Roads and Infrastructure Funding update

A new round of funding has been announced. Shire doesn't currently have the guidelines. Inclusion will be dependent on Council's decision. Current suggestions for the Arthur River area (these need to be over \$2000):

- Sign for the information bay
- Development of the car parking area if we get the land transferred
- Playground at the hall somewhere
- Storage shed at the back of hall

## 6. Financial Report at 24<sup>th</sup> May 2022

### Arthur River Development – Trust

27/05/2021	Opening Balance	\$4,026
30/06/2021	Interest	\$ 21

Current funds available at 24/5/22		<b>\$4,047</b>
<b>Arthur River Hall – donations</b>		
27/05/2021	Opening Balance	\$2,399
30/06/2021	Interest	\$ 12
Current funds available	24/05/22	\$2,411

#### **6.1 Haier Fridge - \$1,361.82**

Is this to come from Trust Account (approved by John Pascoe, Lisa Saunders or Heather MacDougall) or from Donations account (approved by John Pascoe and Peter Manual). Note two signatories required. At this stage Lisa and John have approved. However, Shire would prefer it came out of donations fund to simplify accounts.

Shire to contact John and find out which account money should come out of.

#### **7. Tabling of Items for Next Meeting**

#### **8. Closure and Date for Next Meeting**

Meeting closed at 10.25am

## Shire of West Arthur

**MINUTES:** For the Bushfire Advisory Committee Meeting.

A meeting of the Bush fire Advisory Committee was held Tuesday 26<sup>th</sup> April 2022 in the Hawthorn Room of the West Arthur Health and Resources Centre commencing at 6.00pm.

### 1.0. Declaration of Opening/Announcements of Visitors:

The Chairperson of the meeting, Ben Robinson welcomed all present and declared the meeting open at 6.10pm

### 2.0. Record of Attendance and Apologies:

#### Attendance

Ben Robinson	Chief Bush Fire Control Officer, Arthur River BFB
Graeme Peirce	Deputy Chief Bush Fire Control Officer, Duranillin BFB & Shire of West Arthur Deputy President
Nikki Morrell	Admin Officer, Shire of West Arthur
Neil Morrell	Fire Control Officer, Arthur River BFB & Shire of West Arthur President
Duncan South	Fire Control Officer, Darkan BFB & Shire Councillor
Adrian South	Fire Control Officer, Duranillin BFB
Robert Jefferies	Fire Control Officer, Duranillin BFB
Aaron Kain	Acting District Officer, DFES Upper Great Southern
Vin Fordham Lamont	CEO, Shire of West Arthur
Matt Cooper	District Fire Coordinator, DBCA
Kohdy Flynn	Community Emergency Services Manager
Peter Metcalf	Member of the Public

#### Apologies:

Greg Hodgson	Manager Fire Protection, Forrest Products Commission
Paul Saunders	Fire Control Officer, Arthur River BFB

### 3.0. Presentations:

#### 3.1. Community Emergency Services Manager, Kohdy Flynn:

Brief overview of the CESM role being a joint venture between Shires of Collie, West Arthur and DFES, allocated 3 days per fortnight for the Shire of West Arthur. Happy to assist in any way and to whatever capacity as allows. Will be looking into training opportunities for Brigade members, mitigation options, supporting the Shire in emergency management and the co-ordination of the Brigades. Once seeding is completed will attempt to meet with CBFCO/DCBFCO and FCOs to discuss the needs and requirements of the Brigades and their members and how the CESM can assist moving forward into the future.

#### 3.2. DFES A/District Officer, Aaron Kain:

Filling in for Simon Vogel who is on leave / working out of the region. Aaron advised he will be leaving region next week. Delivered new Tatra 4.4 for the Arthur River Brigade. Some new WAERN radios available for region - please send through details if any are requested in the Shire of West Arthur.



**3.3. Forrest Product Commission:**

Not present.

**3.4 Department of Water & Environment Regulations:**

Not present.

**3.5 Williams Volunteer Fire and Rescue Service:**

Not present.

**3.6 Department of Biodiversity Conservation and Attractions, Matt Cooper:**

Relatively new team in the Wellington office. Brief overview of DBCA spring/autumn burn program for the region, FPC/DBCA planning post-harvest burns in Bennelaking, Bowelling and Muja Blocks, Wellington Complex lighting fires contributing to a total of 71 fires in the region to date.

**4.0. Confirmation of Minutes – 9<sup>th</sup> November 2021:**

**Moved:** Duncan South

**Seconded:** Neil Morrell

That the Minutes of the Bush Fire Advisory Committee Meeting held 9<sup>th</sup> November 2021 be confirmed.

**4.1 Business Arising:**

Nil

**5.0. Appointment of Officers for the 2022-2023 Fire Season:**

Ben Robinson declared all positions vacant.

**5.1. Appointment of Chief Bush Fire Control Officer, Deputy Chief Bush Fire Control Officer and Fire Weather Committee.**

**Moved:** Neil Morrell

**Seconded:** Graeme Peirce

That the Shire appoint the following officers as recommended below for the 2022-2023 Fire Season.

<b>Officer</b>	<b>Person Nominated</b>	<b>Nominated by</b>
Chief BFCO	Ben Robinson	Neil Morrell
Deputy CBFCO	Graeme Peirce	Adrian South
Fire Weather Officer	Adrian South	Duncan South
Deputy Fire Weather Officer	Robert Jefferies	Graeme Peirce
Fire Weather Committee	Rob Jefferies, John Pascoe, Adrian South, Duncan South, James Campbell, Paul Saunders	Adrian South

**5.2. Appointment of Fire Control Officers:****Moved:** Neil Morrell**Seconded:** Graham Pierce

That the Shire appoint the following as Fire Control Officers for the 2022-2023 Fire Season.

<b>Arthur River BFB</b>	Ben Robinson, Neil Morrell, Paul Saunders, Andrew Putland, Alan Manual, Brad Wooldridge.
<b>Duranillin BFB</b>	Robert Jefferies, Kim Hales, Adrian South, Jamie Park, Matthew Telfer, Graeme Peirce, Ben Murphy, Gary Abbott
<b>Darkan BFB</b>	Duncan South, Peter Lubcke, James Campbell
<b>Weather Officers</b>	Robert Jefferies, Adrian South, James Campbell, Duncan South, John Pascoe, Paul Saunders.

**5.3. Appointment of Dual Fire Control Officers:****Moved:** Ben Robinson**Seconded:** Adrian South

That the request will be made for the below Fire control Officers to be appointed as dual FCO's with neighbouring Shires as stated for the 2022-2023 Fire Season.

<b>Shire of Kojonup</b>	Neil Morrell
<b>Shire of Wagin</b>	Ben Robinson
<b>Shire of Williams</b>	Duncan South
<b>Shire of Boyup Brook</b>	Kim Hales
<b>Shire of Collie</b>	Peter Lubcke

**5.4. Brigade Positions:****Moved:** Adrian South**Seconded:** Neil Morrell

That the below brigade roles be endorsed by the Shire.

<b>Brigade</b>	<b>Position</b>	<b>Member</b>
<b>Arthur River BFB</b>	<b>Chairperson/Captain</b>	Paul Saunders
	<b>Secretary</b>	Tracy Wooldridge
	<b>First Lieutenant</b>	Alan Manual
	<b>Second Lieutenant</b>	Paul Saunders

<b>Darkan BFB</b>	<b>Chairperson/Captain</b>	Duncan South
	<b>Secretary</b>	David Gooding
	<b>Equipment Officer</b>	Vacant

<b>Duranillin BFB</b>	<b>Chairperson/Captain</b>	Craig Horley
	<b>Secretary</b>	Jason Earnshaw
	<b>President</b>	John Rutherford

**6.0. Officer Reports:****6.1. Chief Report.**

- Arrival of new Arthur River 4.4, after seeding Tatra have offered to conduct a training day. Of note the truck requires Ad Blue and is not to be ran dry.
- Issuing of permits system has worked well.
- Good turnout of members to the major Peirce fire.
- Implementation of Harvest Bans working ok.

- Attended Brigade AGMs with the consensus for fast fill trailers and re-design of current and any new trailers to be made more user friendly.

**5.2. Arthur River Bush Fire Brigade:**

- Ben can train people on the new 4.4 so they can be drivers of it.

**5.3. Darkan Bush Fire Brigade:**

- Quiet meeting, Trevor is no longer FCO  
- 3 New Members to be trained up.  
- Possible FPC grant to purchase Turret Shallow Water Pump.

**5.4. Duranillin Bush Fire Brigade:**

- Good turnout at meeting.  
- Questions raised of timing of the year AGM is held.

**5.5. Season Fire list:**

Date	Type	Area	Property	Brigade	Comments
22/07/2021	Residence	Bowelling Duranillin	Chia	Duranillin	
19/10/2021	Residence	Coalfields Road	Dunleath Sth	Darkan	
11/12/2021	Paddock	Coalfields Road	Graeme Prowse	Darkan	
17/12/2021	Paddock	Darkan Sth, Agg Rd	Peirce, Murray Prk	Duranillin	
18/12/2021	Paddock	Darkan Sth, Agg Rd	Peirce, Murray Prk	Duranillin	
29/12/2021	Paddock	Dellyanine Road	Scott	Arthur River	
16/01/2022	Stubble	Albany Hwy	Saunders	Arthur River	
27/01/2022	Road Res	Bowelling Duranillin	Road Reserve	Duranillin	
6/02/2022	Pole Top	Coalfields Road	Hulses	Darkan	
12/02/2022	Red Gum	Arthur River		Arthur River	
17/02/2022	Pole Top	Arthur River	Manuel	Arthur River	
12/03/2022	Red Gum	Bowelling	Lubcke	Duranillin	
12/03/2022	Bush		Ewens	Darkan	Waiting report
12/03/2022	Paddock	Bowelling	Warrens	Duranillin	
12/03/2022	Stubble	Arthur River	Tatchbrook	Arthur River	
12/03/2022	Tree & Pasture	Darkan	South	Darkan	Waiting Report

**6.0. Financial Report:**

Nikki Morrell gave an overview of the current ELS expenditure. No PPE has been purchased. Insurance for the new truck may need to come out of funds left.

2021/2022 ESL Allocation \$43,126.

Expended to Date:

Insurance – Vehicles	\$5249.84
– Other	\$16,135.45
Vehicle Licensing	\$461.76
Vehicle Servicing	\$4836.27
Freight	\$140.32
Fuel	\$795.55
Repairs	\$993.05
Foam	\$3168.00
Equipment (pumps & Hoses)	\$1836.76
Food (Saunders Fire)	\$174.33
Total Expended	\$33,792.35
Difference	\$9,333.65

**7.0. General Business:****7.1. Equipment Fast Fill Trailer design:**

An open discussion was held regarding the re-design of the current and any new fast fill trailers to make them more user friendly. There may be some funding available via FPC to fund or partly fund the purchase of and implementation of a design that would suite.

It was raised by Mr Perter Metcalf that FPC were going to provide funding for him to design and build a trailer. Mr Metcalf stated that he received no positive feedback by the Shire or other Brigade members and that he was not included in any consultation. It was noted by the Chairman that Mr Metcalf was invited via the Brigades WhatsApp messaging group regarding meetings that this topic was being discussed, however he didn't show up.

It was decided that a working group be established to brainstorm ideas in an attempt to produce a design so it can be implemented and built. Neil Morrell offered to build the modifications once designs were established and agreed upon.

Funding options are to be investigated, any funding options that may be available will be applied for via written correspondence and no verbal or otherwise agreements to be made.

**7.2. Volunteer Training, Vaccinations:**

- Reminder for all members to send or show proof of COVID vaccination certificates as required by DFES.
- Brief discussion around new industrial man slaughter laws and how it will affect Volunteers and their training.
- Rural fire awareness training is being held in August in the Shire.
- Basic WAERN radio training is needed.

**7.3 Weekly Call ups:**

- Group discussion was held around the weekly group call ups and their effectiveness. Only the same group of people are calling up regularly. Agreed it was important to continue with the call ups to identify any issues with the radios. It was raised to put a comment on the Brigades WhatsApp group prior to a group call being done to remind members to call up.

**7.4. WhatsApp/Signal:**

The maximum number of group members on WhatsApp has been reached and no new members can be added. FCOs have been trialling Signal and seems to be working well. Signal has no maximum user numbers and multiple admins can be set up. It was agreed the transition over to Signal will occur with an end date on WhatsApp to be announced.

**7.5. Bush Fire Volunteers driving to incidents:**

A discussion was held around volunteers driving to incidents in their personal vehicles and the road rules when approaching road works. It was reminded that all volunteers must adhere to normal road rules and directions given by traffic controllers, no exemption is given to responding personal vehicles. It was recommended to call up traffic control on CB channel 40 to advise of the situation in the hopeful event that traffic control can prioritise and allow the volunteer access through the works.

ID stickers for personal and Shire vehicles are available to allow vehicles access into controlled road closures. Each vehicle's sticker ID number, vehicle rego, make and model must be recorded in a register. Stickers are valid for a period of two years. It was noted that the current expiry date will be followed up and stickers provided when available.

**7.6 Fire Pit at Carberdine Pool and signage:**

A request was made to the Shire to install a fire ring and signage stating the Prohibited and Restricted burning times at the Carberdine Pool recreation area, to advise campers/day users of the regulations and to reduce the risk of campfires escaping.

**7.7 Burning on Sundays and Public Holiday:**

A group discussion was held regarding the issuing of permits during the Easter break. It was decided that no permits were to be issued on Good Friday or on Easter Sunday.

**8.0 Closure:**

The Chairperson declared the meeting closed at 8.00pm

## 11. REPORTS FROM COUNCILLORS

### Cr Neil Morrell (President)

Attended the Lake Towerrinning Advisory Group Meeting

### Cr Graeme Peirce (Deputy President)

Nil

### Cr Neil Manuel

Attended the Arthur River Development Committee Meeting.

### Cr Adam Squires

Nil

### Cr Robyn Lubcke

Was absent from the recent West Arthur CRC committee meeting. Discussed Business Plan and recent fundraising events.

### Cr Karen Harrington

Nil

### Cr Duncan South

Nil

**12. CHIEF EXECUTIVE OFFICER****12.1 2022 Audit Entrance Meeting**

<b>File Reference:</b>	<b>1.2</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Date:</b>	<b>31 May 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>2022 Audit Planning Summary</b>

**Summary:**

Council is requested to note that the 2022 Audit Entrance meeting was held on Wednesday 20 April via Microsoft Teams.

**Background:**

Attendees were representatives of the Office of the Auditor General (OAG) and AMD Chartered Accountants (the auditor), together with the Shire's CEO and Manager Financial Reporting. Members of the Audit and Risk Committee were invited but all had prior engagements.

**Comment:**

During the meeting, the OAG representative recommended that Council be made aware that the meeting had occurred without any members of the Audit and Risk Committee attending.

**Consultation:**

Nil

**Statutory Environment:**

Nil

**Policy Implications:**

Policy G1.9 Audit & Risk Committee Terms of Reference

**Financial Implications:**

Nil

**Strategic Implications:**

Nil

**Risk Implications:**

***Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.*** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. ***Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.*** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.



**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence Likelihood		Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Audit and Risk Committee members not meeting with OAG and auditor.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	(5) Medium
Risk Likelihood (based on history and with existing controls)	(5)
Risk Consequence	(1)
Principal Risk Theme	Compliance Failure
Risk Action Plan (Controls or Treatment Proposed)	Advise Council that audit entrance meeting was held with OAG and auditor.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

That Council note that the 2022 Audit Entrance meeting was held on Wednesday 20 April via Microsoft Teams, that the Shire's auditors (AMD), the Office of the Auditor General, and Shire Officers were in attendance, and that members of the Shire's Audit and Risk Committee had been invited but no members were able to attend.

Moved: Cr LubckeSeconded: Cr Harrington**CARRIED 6/0****ATTACHMENT**

2022 Audit Planning Summary



# AUDIT PLANNING SUMMARY

## SHIRE OF WEST ARTHUR

Year ended 30 June 2022

April 2022

AMD Chartered Accountants on behalf of  
Office of the Auditor General for Western  
Australia



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## 1. Purpose of the Audit Planning Summary

The purpose of this Audit Planning Summary is to provide the Shire of West Arthur Audit Committee and Executive Management our proposed approach to the audit of the financial report of the Shire of West Arthur for the year ending 30 June 2022.

This Audit Planning Summary will be discussed during the meeting scheduled for 20 April 2022 and ensures our responsibility to communicate with those charged with governance are satisfied.

Specifically, this Audit Planning Summary includes:

- Introduction
- Terms of Engagement and Appointment
- Our Audit Approach
- Significant Risks and Other Audit Issues
- Audit Emphasis and Significant Account Balances
- Management Representation Letter
- Related Entities
- Reporting Protocols
- Proposed Audit Schedule
- Audit Evidence - Specific Audit Requirements
- Your Audit Team

If there are any matters in the Summary that you would like clarified, please do not hesitate to contact us.

There may be areas where you would like us to increase the audit focus. We would be pleased to discuss these to determine the most efficient and effective approach to performing the Shire of West Arthur's audit requirements.

## 2. Introduction

### 2.1 Background and General Information

The Shire of West Arthur, located in the State's 'Central South' Region, is 2,850 square kilometres and encompasses the townsites of Darkan, Duranillin and Arthur River. Darkan is the administrative centre for the Shire of West Arthur.

Darkan is a quiet country town situated in a prosperous mixed farming area with a local population of approximately 250 people. Local industries include wool, sheep, timber, grain, forestry, beef, engineering and earthmoving.

Individual Councillors, including the President, cannot make decisions as individuals. The Council itself does not have any delivery or executive functions, but rather relies on the decisions of the majority of the group which provide direction for the Chief Executive Officer to implement.

The Local Government Act defines the roles of Council and the Councilor's as follows:

#### Role of Council

1. direct and control the Local Government's affairs and functions;
2. oversee the allocation of the Local Government's finances and resources;
3. determine the Local Government's policies; and
4. ensure that there is an appropriate structure for administering the Local Government.

### 2.2 Shire Council and Executive Management

The Shire of West Arthur Council consists of:

President	Neil Morrell
Deputy President	Graeme Pierce
Councillor	Adam Squires
Councillor	Karen Harrington
Councillor	Duncan South
Councillor	Neil Manuel
Councillor	Robyn Lubcke

The Shire Executive Management consists of:

Chief Executive Office ("CEO")	Vin-Fordham Lamont
Acting Manager Corporate Services	Darren Friend
Manager Financial Reporting	Melinda King
Manager Works	Jamie Muir
Manager Community Services	Kym Gibbs

### 2.3 Governance and Roles and Responsibilities

As one of Australia's three spheres of government (Federal, State, Local), Local Government is the sphere that most closely affects the daily lives of members of the local community.

The roles and responsibilities of Local Government generally include:

- infrastructure and property services, including local roads, bridges, footpaths, drainage, waste collection and management;
- provision of recreation facilities, such as parks, sports fields and stadiums, golf courses, swimming pools, sport centres, halls, camping grounds and caravan parks;
- health services such as water and food inspection, toilet facilities, noise control and meat inspection and animal control;
- community services, such as child-care, aged care and accommodation, community care and welfare services;
- building services, including inspections, licensing, certification and enforcement;
- planning and development approval;
- administration of facilities, such as airports and aerodromes, ports and marinas, cemeteries, parking facilities and street parking;
- cultural facilities and services, such as libraries, art galleries and museums; and
- water and sewerage services in some states.

Local Government revenue comes from three main sources:

- rates;
- fees and charges; and
- grants from Federal and State/Territory Governments.

The Shire of West Arthur is governed by an independent Council. Councillors are elected by the ratepayers.

The Shire of West Arthur Council appoints a CEO to ensure resources are effectively and efficiently managed. Council may delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under the Local Government Act 1995.

### 2.4 Financial Report and Regulation

Applicable financial reporting regulations the Shire of West Arthur must comply with includes:

- Local Government Act 1995 ("the Act");
- Local Government (Financial Management) Regulations 1996 ("the Regulations"); and
- Local Government (Audit) Regulations 1996.

The Shire of West Arthur's annual financial report is comprised of general purpose financial statements prepared in accordance with the Act and, to the extent that they are not inconsistent with the Act, the Australian Accounting Standards.

The Auditor General's audit report will be prepared in accordance with the Act, Regulations and Australian Auditing Standards and include the audit opinion on the annual financial report. The Auditor General's audit report will also report:

- Any significant adverse trends in the financial position of the Shire of West Arthur;
- Any instances of non-compliance with the Act, the regulations or applicable financial controls of any other written law identified during the course of the audit;
- Whether all required information and explanations are obtained during the audit;



- Whether all audit procedures are satisfactorily completed; and
- Whether, in the Auditor General's opinion, the asset consumption ratio and asset renewal funding ratio included in the annual financial report are supported by verifiable information and reasonable assumptions.

The Shire of West Arthur is required to publish the auditor's report with the annual financial report on its website. If the Auditor General reports other significant matters to the Shire of West Arthur, then the Shire will be required to report to the Minister action taken with respect to those matters.

### 3. Terms of Engagement and Appointment

#### 3.1 Auditor General

Following proclamation of the Local Government Amendment (Auditing) Act 2017, the Auditor General becomes responsible for the annual financial report audit of Western Australian Local Governments.

The annual financial report audit of the Shire of West Arthur was completed by the Auditor General for the first time for the year ended 30 June 2018.

#### 3.2 Contractor Appointment – AMD Chartered Accountants (“AMD”)

AMD has been contracted by the Auditor General to perform the Shire of West Arthur financial report audit on the Auditor General's behalf for the year ending 30 June 2022. The OAG and AMD have signed a contractor agreement which outlines the relationships between the OAG, Shire and AMD.

Our audit procedures will be conducted under the direction of the Auditor General, who will retain responsibility for forming the audit opinion and issuing the audit report to the Shire of West Arthur. The 30 June 2022 audit approach and methodology is outlined within section 4.0 below.

AMD is required to report any matter to the Auditor General which may affect the Auditor General's responsibilities under the Auditor General Act 2006. AMD's reporting requirements as outlined within the contractor agreement are outlined within section 9 of this Audit Planning Summary, Reporting Protocols.

#### 3.3 Conflicts of Interest

We confirm we have completed our independence evaluation and are satisfied we do not have any actual or perceived conflicts of interest in completing the annual audit of the Shire of West Arthur on behalf of the Auditor General.

## 4. Our Audit Approach

### 4.1 Audit Approach Steps

Our audit approach comprises five steps:



### 4.2 Audit Approach and Methodology

Our audit approach is designed to specifically focus audit attention on the key areas of risk faced by the Shire of West Arthur in reporting on finances and performance.

As part of our audit approach, we have conducted an initial financial report risk assessment to determine whether any of the risks identified are, in our judgement, high risks. A high risk is an assessed risk of material misstatement in the annual financial report that in our judgement is a key audit area and therefore requires special audit consideration.

Our assessment of key audit areas is based on:

- Discussions held with the Executive Management team;
- The complexity of transactions within each audit area;
- The degree of subjectivity in the measurement of financial information related to the risk, in particular those requiring significant accounting estimates and assumptions; and
- The degree of susceptibility to fraud risk.

Testing of high risk material balances follows a hierarchy approach commencing with tests of controls, substantive analytical review procedures and finally tests of details.

Our audit will be separated into two components, the interim audit and the final audit.

The interim audit includes:

- understanding the Shire of West Arthur's current business practices;
- assessment and response to engagement risk, entity risk and system risk;
- understanding the control environment and evaluating the design and implementation of key controls and, where appropriate, whether they are operating effectively;
- testing transactions to confirm the accuracy and completeness of processing accounting transactions;
- clarifying significant accounting issues, including accounting estimates and fair value considerations before the annual financial report is prepared for audit;
- review and assess legislative compliance;
- review and assess contingent liabilities;
- review and assess progress with respect to the introduction of applicable new Accounting Standards; and
- follow up prior year management letter comments and recommendations.

The final audit focuses on verifying the annual financial report and associated notes, and includes:

- verifying material account balances using a combination of substantive analytical procedures, tests of details, substantiation to subsidiary records and confirmation with external parties; and
- reviewing the annual financial report and notes for compliance with the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and to the extent that they are not inconsistent with the Act, the Australian Accounting Standards.

It is important to note that:

- The Council and the CEO are responsible for keeping proper accounts and records, maintaining effective internal controls, preparing the annual financial report, and complying with the Local Government Act and Regulations, and other legislative requirements.
- An audit does not guarantee that every amount and disclosure in the annual financial report is free from error. Also, an audit does not examine all evidence and every transaction. However, our audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the annual financial report.
- The Council and CEO are responsible for ensuring the accuracy and fair presentation of all information in its annual report, and that it is consistent with the audited annual financial report. The OAG does not provide assurance over your annual report.
- The Council and the CEO have responsibility for maintaining internal controls that prevent or detect fraud or error and to ensure regulatory compliance. The Audit Committee and AMD/the OAG should be informed by management of any fraud or material errors. During the audit we will make inquiries with management about their process for identifying and responding to the risks of fraud, including management override. It should be noted that our audit is not designed to detect fraud, however should instances of fraud come to our attention, and we will report them to you.

### 4.3 Australian Auditing Standards

Our audit is conducted in accordance with Australian Auditing Standards. Our aim is to provide reasonable assurance whether the annual financial report is free of material misstatement, whether due to fraud or error. We perform audit procedures to assess whether, in all material respects, the annual financial report is presented fairly in accordance with the Local Government Act 1995, Local Government (Financial Management) Regulations 1996 and, to the extent that they are not inconsistent with the Act, the Australian Accounting Standards.

The nature of the audit is influenced by factors such as:

- the use of professional judgement;
- selective testing;
- the inherent limitations of internal controls; and
- the availability of persuasive rather than conclusive evidence.

As a result, an audit cannot guarantee that all material misstatements will be detected. We examine, on a test basis, information to provide evidence supporting the amounts and disclosures in the annual financial report, and assess the appropriateness of the accounting policies and disclosures used and the reasonableness of significant accounting estimates made by management.

### 4.4 Materiality

The scope of our audit also applies materiality. The planning materiality level will be calculated and determined using AMD's audit methodology. The amount of materiality may be adjusted during the audit, depending on the results of our audit procedures.

### 4.5 Fraud Risk

In accordance with *ASA240 The Auditor's Responsibility Relating to Fraud in the Audit of a Financial Report*, when planning and performing audit procedures and evaluating the results, the auditor must consider the risk of material misstatement in the annual financial report as a result of fraud or error.

Council and management of the Shire of West Arthur is responsible for the prevention and detection of fraud and error. The Shire is responsible for maintaining accounting records and controls designed to prevent and detect fraud and error, and for the accounting policies and estimates inherent in the annual financial report.

We will request management complete a self assessment fraud control questionnaire. This allows us to make inquiries of management, to obtain an understanding of the risk of fraud within the Shire and to determine whether management have knowledge of fraud activities. We will review the fraud control questionnaire assessment.

In addition we will review the Shire's fraud prevention control procedures, review significant or unusual transactions, review accounting estimates and key assumptions and review year end accounting adjustments.

## **4.6 Meetings**

### **4.6.1 Entrance Meeting**

The entrance meeting will discuss this Audit Planning Summary and be held with the Audit Committee (or where impractical for the Audit Committee, a representative from Council), CEO, Manager Financial Reporting, OAG Director and AMD.

### **4.6.2 Interim Audit Findings**

The interim audit findings will be discussed with management by the audit team at the completion of the interim audit. Draft management letters will be provided to the Shire's CEO for coordination of comments from appropriate members of your management.

### **4.6.3 Final audit close out meeting**

The final audit findings will be discussed with management by the audit team at the completion of the final audit.

### **4.6.4 Exit meeting**

The exit meeting will discuss the annual financial report, proposed audit report to be issued and the management letter. This meeting will be held with the Audit Committee (or where impractical for the Audit Committee, a representative from Council), CEO, Manager Financial Reporting, OAG Director and AMD.

## 5. Significant Risks and Other Audit Issues

Through discussions with the Executive Management team and based on the 2020/2021 audit, we have identified the following issues and key areas of risk affecting the audit.

Details of Risk / Issue	Audit Approach
Audit findings reported in the previous audit	We will follow-up the issues reported during the 2020/21 audit.
<p>We have identified the following areas that we consider require additional focus during 2021/2022 Local Government Audits:</p> <ul style="list-style-type: none"> <li>• Fair value of land, buildings and infrastructure (now revalued on a 5 year cycle unless fair value is materially different from the carrying amount). Note land and buildings class of asset last revalued June 2017 and must be revalued for the year ended 30 June 2022. The road and other classes of infrastructure assets were last revalued in June 2017 and therefore must be revalued for the year ended 30 June 2022. The bridges class of infrastructure asset was last revalued in June 2018.</li> <li>• Plant and equipment recorded at depreciated replacement cost.</li> <li>• Revenue recognition including the application of <i>AASB 15 Revenue from Contracts with Customers</i> and <i>AASB 1058 Income of Not-for-profit Entities</i>.</li> <li>• Identification and recording of leases in accordance with <i>AASB 16 Leases</i>, including commercial leases recognising ROU asset and corresponding liability and concessionary leases recorded at zero.</li> <li>• Ensure vested improvements correctly recorded as ROU asset.</li> <li>• Assessment of Long Service Leave for casual employees.</li> <li>• Key reconciliations being performed timeously and independently reviewed to reduce the risk of fraud and error.</li> <li>• Risk general accounting journals are not adequately supported or independently reviewed which can represent significant adjustments to previously approved accounting transactions.</li> <li>• Risk trust account balances not reported in accordance with legislative requirements and risk classification between municipal and trust funds is incorrect.</li> <li>• Planning and Development Act 2005 requires cash-in-lieu funds received to be in separate reserve account.</li> <li>• Ensure financial ratios are correctly calculated in accordance with Departmental Guidelines. Assess any financial ratios which indicate an adverse trend which is required to be disclosed within the audit report. Ensure the asset consumption ratio and asset renewal funding ratio are supported by verifiable information and reasonable assumptions.</li> <li>• Risk related party disclosures do not satisfy legislative and accounting standard requirements.</li> <li>• Review and assessment of contingent Liabilities, including waste facility and contaminated sites to ensure compliant with accounting standard reporting and disclosure requirements.</li> </ul>	<p>We will review management's assessment to determine whether, to the extent necessary, your entity has applied the accounting treatment correctly, and ensure the annual financial report complies with the relevant accounting standards and regulations.</p>

Details of Risk / Issue	Audit Approach
<ul style="list-style-type: none"> <li>• Risk joint arrangements (joint operations, joint ventures) have not been identified and correctly reported and disclosed.</li> <li>• Purchasing processes and documented evidence relating to obtaining quotations and tenders.</li> <li>• Current and approved Long Term Financial Plan and Asset Management Plan, with sufficient data.</li> </ul>	
<p>The following annual financial report items are derived from accounting estimates and hence will receive specific audit attention:</p> <ul style="list-style-type: none"> <li>• Provision for annual and long service leave</li> <li>• Fair value of assets</li> <li>• Impairment of assets</li> </ul>	<p>We will review the method and underlying data that management and where applicable third parties use when determining critical accounting estimates. This will include considering the reasonableness of assumptions and corroborating representations. Audit procedures will address potential management bias in accounting estimates, the assessment of inherent risk factors and applying professional scepticism to estimates included within balances.</p>
<p>COVID-19</p>	<p>We will continue to monitor the ongoing COVID-19 pandemic and associated impact to the audit process. We will work with your management to minimise the risk for your staff and councillors, and our staff and contractors, and to your operations, while completing audits in the best timeframe possible under the applicable circumstances at the time.</p> <p>Should the need arise, this may involve more audit work being performed remotely rather than at your premises, and/or delaying audit work if unforeseen circumstances arise.</p> <p>We will also review your Shire's implementation of any COVID-19 relief measures and ensure they have been implemented appropriately.</p>



## 6. Audit Emphasis and Significant Account Balances

Our audit approach involves assessing the Shire of West Arthur's overall control environment and understanding key business processes/cycles and internal controls relevant to the audit.

We will test key controls for all significant business cycles. The level of testing will be dependent on our assessment of the risk in each business cycle. We plan to address the following cycles:

- Revenue and Receivables cycle;
- Expenditure and Payable cycle;
- Payroll and Employee Entitlements cycle;
- Cash and Financing cycle;
- Inventory cycle;
- Property, Plant, Equipment; and
- Infrastructure.

The extent of our reliance on controls, together with the materiality level, determines the nature and extent of our audit procedures to verify individual account balances.

The table below lists those items in the Statement of Financial Position and the Statement of Comprehensive Income that are significant account balances, and our planned audit approach for these balances. When selecting significant account balances, we consider materiality, the nature of the balance, inherent risk and the sensitivity of disclosures.

Significant Account	2021 Audited Balance \$'000	Audit Approach
<b>Statement of Financial Position</b>		
Cash and cash equivalents	4,450	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Perform walkthroughs of the cash cycle.</li> <li>• Review bank reconciliations.</li> <li>• Review transfers between bank accounts.</li> <li>• Verify large or unusual reconciling items.</li> <li>• Verify year end bank balance through bank confirmations.</li> <li>• Verify classifications including restricted / unrestricted; trust vs municipal and financial assets.</li> <li>• Analytical review.</li> </ul>
Financial Assets, including Self Supporting Loans	420	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Perform walkthroughs of the financial assets cycle.</li> <li>• Review investment reconciliations.</li> <li>• Verify year end investment balances, including Local Government House investment through external confirmations (where applicable).</li> <li>• Review internal controls, self-supporting loan debtor invoicing and reconciliations.</li> </ul>
Receivables including rates	387	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Perform walkthroughs of the revenue and receivable cycle.</li> <li>• Perform cut-off testing and review credit notes.</li> </ul>

Significant Account	2021 Audited Balance \$'000	Audit Approach
		<ul style="list-style-type: none"> <li>Review subsequent receipts.</li> <li>Review expected credit loss assessment ensuring compliant with AASB9.</li> <li>Analytical review.</li> </ul>
Inventories	23	<ul style="list-style-type: none"> <li>Review and assess effectiveness of internal controls.</li> <li>Perform walkthroughs of the inventory cycle.</li> <li>Review of stock listings.</li> <li>Verification of units costs.</li> <li>Consider obsolete and slow moving inventories.</li> </ul>
Property, plant, equipment and infrastructure	100,295	<ul style="list-style-type: none"> <li>Review and assess effectiveness of internal controls, including internal control testing with respect to the Shire's processes for determining inputs into fair value.</li> <li>Perform walkthroughs of the fixed assets cycle.</li> <li>Analyse year end balances for each major class of asset comparing to last year.</li> <li>Perform sample testing on asset additions and disposals.</li> <li>Review management's impairment assessment at year end.</li> <li>Test items posted to construction in progress to assess appropriateness of expenses being capitalised.</li> <li>Review accounting treatment for repairs and maintenance costs to determine correct classification.</li> <li>Ensure assets less than \$5,000 are expensed as required.</li> <li>Assess and perform tests to determine whether carrying amounts approximate fair value.</li> <li>Where relevant, confirm balances to independent valuation reports and test key assumptions in determining fair value.</li> <li>Ensure revaluation increments / decrements are correctly applied.</li> <li>Ensure vested land and restricted use assets recorded in accordance with AASB13 take into account externally imposed restrictions.</li> <li>Review developer contributions to ensure correctly recorded and disclosed.</li> </ul>
Payables	531	<ul style="list-style-type: none"> <li>Review and assess effectiveness of internal controls.</li> <li>Perform walkthroughs of the purchasing and payables cycle.</li> <li>Test for unrecorded liabilities and review subsequent payments post year end.</li> <li>Test and review material accrual balances.</li> <li>Verification of accrued expenses.</li> <li>Perform cut-off testing.</li> <li>Ensure prepaid rates are correctly classified as a liability in accordance with AASB1058.</li> <li>Analytical review.</li> </ul>
Contract Liabilities	308	<ul style="list-style-type: none"> <li>Review and assess effectiveness of internal controls.</li> <li>Verification of contract liability calculation, ensuring requirements of AASB15 are met.</li> <li>Review of evidence to support when a payment is due or already</li> </ul>

Significant Account	2021 Audited Balance \$'000	Audit Approach
		received before the related performance obligation has been satisfied in accordance with the applicable Contract / Agreement.
Borrowings	620	<ul style="list-style-type: none"> <li>Review and assess effectiveness of internal controls.</li> <li>Agree amounts to WATC confirmation.</li> <li>Verification of classification between current and non-current.</li> <li>Agree bank facilities to confirmation.</li> </ul>
Provisions	437	<ul style="list-style-type: none"> <li>Review internal controls and employee provision reconciliations.</li> <li>Review the reasonableness of assumptions and calculations. Ensure calculations in accordance with AASB119.</li> <li>Test a sample of leave balances to ensure correct.</li> <li>Analytical review.</li> </ul>
Equity (Total)	103,680	<ul style="list-style-type: none"> <li>Review internal controls.</li> <li>Sample test reserve movements to supporting documentation including cash reserves and asset revaluation reserves.</li> <li>Analytical review.</li> </ul>
<b>Statement of Comprehensive Income</b>		
Operating and non-operating grants, subsidies and contributions	2,214	<ul style="list-style-type: none"> <li>Review of key processes and controls.</li> <li>Perform walkthroughs of the revenue cycle relating to grants, subsidies and contributions.</li> <li>Sample testing of transactions, including grant agreements.</li> <li>Perform cut-off testing.</li> <li>Review and test disclosures relating to unspent grants at year end, ensuring treated correctly in accordance with relevant Australian Accounting Standard.</li> <li>Sample testing of non-cash contributions.</li> <li>Analytical review.</li> </ul>
Rates	1,727	<ul style="list-style-type: none"> <li>Review of key processes and controls.</li> <li>Perform walkthroughs of the revenue cycle relating to rates.</li> <li>Sample testing of transactions.</li> <li>Perform cut-off testing.</li> <li>Analytical review.</li> </ul>
Fees and charges	288	<ul style="list-style-type: none"> <li>Review of key processes and controls.</li> <li>Perform walkthroughs of the revenue cycle relating to fees and charges.</li> <li>Sample testing of transactions.</li> <li>Perform cut-off testing and review credit notes.</li> <li>Assessment of requirements to conduct site visits to facilities operated where fees and charges are applied.</li> <li>Analytical review.</li> </ul>

Significant Account	2021 Audited Balance \$'000	Audit Approach
Other revenue, including interest earnings	266	<ul style="list-style-type: none"> <li>• Review of key processes/controls.</li> <li>• Perform walkthroughs of the revenue cycle relating to other revenue.</li> <li>• Sample testing of transactions.</li> <li>• Perform cut-off testing.</li> <li>• Review credit notes.</li> <li>• Analytical review.</li> </ul>
Employee related expenses	1,492	<ul style="list-style-type: none"> <li>• Review of key processes and controls.</li> <li>• Perform walkthroughs of the payroll cycle.</li> <li>• Sample testing of transactions.</li> <li>• Verify wages reconciliation.</li> <li>• Analytical review.</li> </ul>
Materials and contracts Utilities Insurance	950	<ul style="list-style-type: none"> <li>• Review of key processes and controls.</li> <li>• Perform walkthroughs of the purchasing and payments cycle.</li> <li>• Sample resting of transactions.</li> <li>• Analytical review.</li> </ul>
Depreciation and Amortisation	2,128	<ul style="list-style-type: none"> <li>• Review of management's assessment of the useful lives of assets and assess reasonableness.</li> <li>• Verify depreciation expenses to valuation reports (where applicable).</li> <li>• Perform re-calculation tests.</li> <li>• Analytical review.</li> </ul>
Other expenses, including interest expense	67	<ul style="list-style-type: none"> <li>• Review of key processes/controls</li> <li>• Perform walkthroughs of the purchasing and payments cycle.</li> <li>• Sample testing of transactions.</li> <li>• Agree interest expense to WATC confirmation.</li> <li>• Review listing of other expenses to identify large or unusual accounts and test accordingly.</li> <li>• Analytical review.</li> </ul>

The table below lists those significant financial statement disclosures or other auditable areas and our planned audit approach for these disclosures. When selecting significant disclosures, we consider materiality, the nature of the item, inherent risk and the sensitivity of disclosures.

Statement, Auditable Area and / or Disclosures	Audit Approach
Statement of Cash Flows and Cash Flow Reconciliation Note	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Review Statement of Cash Flows and reconciliation note calculations.</li> <li>• Ensure disclosures comply with the Local Government Act 1995 and Local Government (Financial Management) Regulations 1996.</li> </ul>
Legislative Compliance	<ul style="list-style-type: none"> <li>• Review of the December 2021 Local Government Compliance Audit Return and assess reporting impact of any items of non-compliance</li> <li>• Ensure Shire of West Arthur's financial management policies and procedures are compliant with the Local Government Act 1995, Local Government (Financial Management) Regulations 1996 and Accounting Standards.</li> <li>• Assess Shire of West Arthur's compliance with internal policy and procedures throughout the year, identify any instances of non-compliance which also resulted in legislative requirements not being met.</li> <li>• Review draft annual financial statements to ensure compliance with Local Government Act 1995, Local Government (Financial Management) Regulations 1996 and Australian Accounting Standards.</li> </ul>
Contingent Liabilities	<ul style="list-style-type: none"> <li>• Review of internal controls.</li> <li>• Enquiries of management.</li> <li>• Assess Council's disclosures of obligations under the Contaminated Sites Act 2003.</li> <li>• Ensure disclosures comply with the Local Government Act 1995 and Local Government (Financial Management) Regulations 1996.</li> <li>• Determine if any contingent liabilities relating to waste facilities, contaminated sites or aluminium composite panelling.</li> </ul>
Capital and Leasing Commitments	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Enquiries of management.</li> <li>• Verify disclosures to supporting calculations and documentation.</li> <li>• Ensure disclosures comply with the Local Government Act 1995 and Local Government (Financial Management) Regulations 1996.</li> </ul>
Related Party Transactions, including elected member remuneration, key management personnel compensation and transactions with related parties	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Enquiries of management.</li> <li>• Obtain an understanding of the means utilised to identify related parties and record related party transactions.</li> <li>• Verify elected members remuneration calculations and test on a sample basis. Analytical review.</li> <li>• Verify key management personnel compensation calculations and test on a sample basis. Ensure KMP classifications correct.</li> <li>• Assess related party transactions terms and associated fraud risks.</li> <li>• Ensure completeness of disclosures.</li> <li>• Identify any related parties with dominant influence.</li> <li>• Ensure related party disclosures comply with AASB124.</li> </ul>
Financial Risk Management	<ul style="list-style-type: none"> <li>• Review and assess effectiveness of internal controls.</li> <li>• Review financial risk management note and reconciliation calculations.</li> </ul>

Statement, Auditable Area and / or Disclosures	Audit Approach
	<ul style="list-style-type: none"> <li>Ensure disclosures comply with the Local Government Act 1995 and Local Government (Financial Management) Regulations 1996.</li> </ul>
Internal Control and Risk Management	<ul style="list-style-type: none"> <li>Assess control environment including segregation of duties and level of independent review / checks in place.</li> <li>Ensure Council have established and maintained a risk management framework that is appropriate.</li> <li>Assess how management place a strong emphasis on the design, implementation and maintenance of internal control to prevent and detect fraud.</li> <li>Assess classes of transactions and account balances which are more susceptible to fraud and test accordingly.</li> </ul>
Fraud	<ul style="list-style-type: none"> <li>Assess control environment including segregation of duties and level of independent review / checks in place.</li> <li>Assess how management place a strong emphasis on fraud prevention and deterrence. Review reporting mechanisms to those charged with governance.</li> <li>Assess classes of transactions and account balances which are more susceptible to fraud and test accordingly.</li> <li>Review of unusual transactions, in particular near balance date which may have a significant effect on the result.</li> </ul>
Information Technology	<ul style="list-style-type: none"> <li>Obtain an understanding of the IT general control environment.</li> <li>Perform tests to assess the effectiveness of IT general controls over the IT system, including both physical and logical access of the users, change management process and audit trail / transaction log.</li> </ul>
Accounting General Journals	<ul style="list-style-type: none"> <li>Assess control environment in respect to accounting general journal entry and level of independent review / checks in place.</li> <li>Sample testing of accounting general journals.</li> <li>Assess classes of transactions and account balances which are more susceptible to fraud and test any large or unusual accounting general journals accordingly.</li> <li>Review of unusual accounting general journals, in particular near balance date which may manipulate the result.</li> </ul>
Accounting Estimates	<ul style="list-style-type: none"> <li>Assess control environment in respect to accounting estimates and level of consultation / independent review / checks in place.</li> <li>Sample testing of application accounting estimates, ensuring significant assumptions used in making accounting estimates are reasonable.</li> <li>Assess classes of transactions and account balances which are more susceptible to fraud and test any large or unusual accounting estimates accordingly.</li> <li>Review of unusual accounting estimates, in particular those recorded or changed near balance date which may manipulate the result.</li> <li>Ensure accounting estimates disclosures comply with the Local Government Act 1995, Local Government (Financial Management) Regulations 1996 and Australian Accounting Standards.</li> </ul>
Financial Ratios	<ul style="list-style-type: none"> <li>Determine basis of calculating individual financial ratios and annual reporting requirements.</li> <li>Establish Local Government's internal controls to capture financial ratio source data, including Long Term Financial Plan, Asset Management</li> </ul>



Statement, Auditable Area and / or Disclosures	Audit Approach
	Plan, valuation reports etc. <ul style="list-style-type: none"> <li>• Ensure Long Term Financial Plan and Asset Management Plan(s) are current, approved by Council and include ten years of data.</li> <li>• Determine ratio's which require adverse trend reporting accordingly.</li> <li>• Ensure financial ratio calculations and disclosures comply with the Local Government Act 1995 and section 50 of the Local Government (Financial Management) Regulations 1996.</li> </ul>
New Accounting Standards application	<ul style="list-style-type: none"> <li>• Ensure the Shire's accounting policies and procedures are consistent with the requirements of AASB1059 (where applicable).</li> <li>• Test management's assessment of service concession assets and where applicable, a service concession liability to supporting documentation, balances and disclosures.</li> </ul>

## 7. Management Representation Letter

The above audit procedures assume that management expects to be in a position to sign a management representation letter. The proposed letter for this purpose is attached. This letter should be reviewed and tailored to meet your local government's particular circumstances, and be signed and dated by the CEO and Manager Financial Reporting as close as practicable to the date of the proposed auditor's report. Ordinarily, this would be no longer than five working days prior to the issue of the auditor's report.

Please bring to the attention of the President that we will also be relying on the signed Statement by CEO in the annual financial report as evidence that they confirm:

- they have fulfilled their responsibility for the preparation of the annual financial report in accordance with the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and Australian Accounting Standards
- they have provided us with all relevant information necessary or requested for the purpose of the audit
- all transactions have been recorded and are reflected in the annual financial report.

## 8. Related Entities

Section 7.12AL of the *Local Government Act 1995* applies section 17 of the *Auditor General Act 2006* to a local government. Section 17 requires a local government to advise the Auditor General in writing of details of all related entities that are in existence.

## 9. Reporting Protocols

### 9.1 AMD Reporting Requirements

AMD is to provide a report to the Auditor General to enable the Audit General to:

- form the audit opinion with respect to the Shire of West Arthur's annual financial report;
- report any findings, significant control weaknesses and any other relevant matters arising from our audit procedures; and
- report any significant non-compliance with relevant legislation.

AMD will be required to form an opinion and report to the Auditor General whether the Shire of West Arthur's annual financial report:

- is based on proper accounts and records; and
- fairly represents, in all material respects, the results of the operations of the Shire of West Arthur and its financial position for the years covered by the contract in accordance with the Act and, to the extent that they are not inconsistent with the Act, the Australian Accounting Standards.

## **9.2 Management Letter**

Significant issues identified during the course of our audit procedures will be discussed with relevant staff and management as soon as possible after being identified. Draft management letters will be provided to the CEO (or other nominated representative) for coordination of comments from appropriate members of your management. We request that these be returned promptly, preferably within 5 working days.

At the conclusion of the audit, the abovementioned management letter will accompany the auditor's report and the audited annual financial report forwarded to the President, the CEO and the Minister for Local Government. The management letter is intended to communicate issues arising from the audit that may impact on internal control, compliance, and financial reporting.

Where considered appropriate, and to ensure timely reporting of audit findings and action by management, interim management letters may be issued to the CEO and the President. A copy will also be forwarded to the Minister when we forward our auditor's report on the annual financial report to the Minister on completion of the audit.

Specific matters resulting from issues identified during the audit may be reported in an Auditor General's Report to Parliament. Should this occur, you will be consulted in advance to assure the context and facts of the issue are adequately represented.

## **9.3 OAG Contract Reporting Requirements**

As OAG contractors we are required to report to the OAG as follows:

1. Complete Interim planning audit;
2. Prepare and provide OAG representative with interim audit findings and prepare interim management letter (if required);
3. Complete post 30 June year end audit;
4. Obtain signed Management Representation Letter from Shire of West Arthur;
5. Prepare and provide OAG Representative with Signing Review Memo (SRM), Draft Management Letter, Draft Annual Financial Report and Signed Management Representation Letter; and
6. Provide OAG Representative with access to audit workpapers.



## 10. Proposed Audit Schedule

	Date
Planning and issue of Interim Audit Checklist by AMD	11 March 2022
Entrance Meeting (Shire, OAG & AMD)	20 April 2022
Onsite Interim Audit by AMD	26 to 27 April 2022
AMD provide OAG clearance for Interim Audit Review including draft Interim Management Letter (week ending)	16 May 2022
OAG complete Interim Audit Review	27 May 2022
Interim Management Letter to be issued by OAG (if required)	3 June 2022
Issue of Year End Audit Checklist by AMD (week ending)	17 June 2022
Final Trial Balance to be provided to AMD by the Shire	12 September 2022
Draft Annual Financial Report to be provided to AMD by the Shire	12 September 2022
Onsite Final Audit by AMD	22 & 23 September 2022
AMD provide OAG clearance for Audit File Review including all applicable Contractor deliverables / reports (week ending)	14 October 2022
OAG complete Final Audit Review	28 October 2022
AMD issue exit meeting agenda and associated reports (Management Representation Letter, draft Management Letter and draft Audit Report)	4 November 2022
Exit Meeting (week ending)	To be scheduled dependent on above
AMD to provide the signed AMD Audit Report, stamped FS, signed SRM, final Management Letter and signed Representation Letter to OAG	Within 2 days of Exit Meeting
OAG to issue signed audit report and Management Letter to the Shire.	Within 5 days of Exit Meeting
<b><u>Roads to Recovery and LRCI Certifications</u></b>	
Draft reports and supporting workpapers to be provided by the Shire	23 September 2022
AMD provide OAG clearance for Certification workpaper review	21 October 2022
OAG to review and issue opinion	31 October 2022

The above proposed audit schedule is subject to change depending on individual circumstances.

## 11. Audit Evidence – Specific Audit Requirements

We will discuss our requirements with your staff to facilitate a timely, efficient and effective audit. We will formally agree our information requirements and timeframes for the final audit with the CEO using our Audit Checklists.

We will issue an Interim Audit Checklist and Year-End Audit Checklist in advance of each audit visit. The checklists are intended to help Shire of West Arthur staff to have various documents readily available when we perform our audit.

As the information requests contained within the Audit Checklists will form an important component of our audit working papers, the information must be made available to AMD on the dates specified. This will assist us in delivering an efficient audit and minimising interruptions to Shire staff.

Where information has not been made available to us one week prior to the interim visit or one week prior to our final visit (including draft annual financial report), we anticipate additional audit time may be incurred resulting in additional fees being charged.

## 12. Your Audit Team

	<b>Name</b>	<b>Contact</b>
<b>Contractor – AMD Chartered Accountants</b>		
Director	Maria Cavallo	(08) 9780 7555 maria.cavallo@amdonline.com.au
Alternate Director	Tim Partridge	(08) 9780 7555 tim.partridge@amdonline.com.au
Audit Manager/Team Leader	Judy Old	(08) 9780 7555 judy.old@amdonline.com.au
Auditor	Rebekkah Jacks	(08) 9780 7555 Rebekkah.jacks@amdonline.com.au
Auditor	Linda Denison	(08) 9780 7555 linda.denison@amdonline.com.au
Audit Co-ordinator	Sian Manning	(08) 9780 7555 sian.manning@amdonline.com.au
<b>Office of the Auditor General</b>		
Auditor General	Caroline Spencer	(08) 6557 7500
Assistant Auditor General – Financial Audit	Grant Robinson	(08) 6557 7500
Acting Director: Financial Audit	Indika Dias	(08) 6557 7543 Indika.dias@audit.wa.gov.au

<b>12.2 Electoral Period Caretaker Policy</b>
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<b>File Reference:</b>	<b>2.30.1</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Date:</b>	<b>31 May 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>1. WALGA Electoral Period Caretaker Policy Template 2. Draft Electoral Period Caretaker Policy</b>

**Summary:**

Council is requested to consider adopting the attached draft Electoral Period Caretaker Policy.

**Background:**

At the Annual Electors Meeting of 24 March 2022, it was proposed that Council consider adopting an Electoral Period Caretaker Policy, similar to those provided for in other tiers of government, to ensure that no major decisions are made by an outgoing Council in the period leading up to a local government election.

**Comment:**

The Author sourced a template policy from WALGA (attachment 1) and customised it into a draft for the Shire of West Arthur (attachment 2). Council should note that there are some legislative functions that Council must continue to perform, regardless of impending elections. These primarily relate to statutory time limits for dealing with certain matters, for example, determining development applications.

**Consultation:**

WALGA

**Statutory Environment:**

Local Government Act 1995  
Local Government (Elections) Regulations 1997  
Local Government (Rules of Conduct) Regulations 2007

**Policy Implications:**

The new Electoral Period Caretaker Policy will be included in Council's Policy Manual.

**Financial Implications:**

Nil

**Strategic Implications:**

Nil

**Risk Implications:**

***Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.*** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. ***Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.*** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence Likelihood		Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Outgoing Council makes important decisions that are not in the best interests of the community and/or that may not be supported by an incoming Council.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	(12) High
Risk Likelihood (based on history and with existing controls)	(3)
Risk Consequence	(4)
Principal Risk Theme	Community Disruption
Risk Action Plan (Controls or Treatment Proposed)	Adopt and implement this policy.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

That Council adopt the attached draft Electoral Period Caretaker Policy and authorise its inclusion in the Policy Manual.

**Amendment:**

***That Council amend the Electoral Period Caretaker Policy to show that “Significant Expenditure” is defined as expenditure over and above budgeted expenditure.***

Moved: Cr Lubcke Seconded: Cr Manuel

**CARRIED 6/0**

Amendment made to better reflect Council’s intention with this policy.

***New Substantive motion.***

*That Council adopt the attached draft Electoral Period Caretaker Policy as amended and authorise its inclusion in the Policy Manual.*

Moved: Cr Harrington Seconded: Cr Lubcke

**CARRIED 6/0**

**ATTACHMENTS**

1. WALGA Electoral Period Caretaker Policy Template
2. Draft Electoral Period Caretaker Policy

# TEMPLATE

## Electoral Caretaker Period Policy

This WALGA template is a **guide only** for the purpose of assisting Local Governments and the templates may or may not be suitable in all circumstances. Local Governments should consider, develop and modify content to suit their individual requirements.

**Remember** - Policy implementation is given effect through induction, ongoing training and operational procedures that ensure Council Members and Employees are sufficiently informed of their obligations, responsibilities and accountabilities.

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### Policy Objective

This Policy establishes protocols for the purpose of avoiding actual and perceived advantage or disadvantage to a candidate in a Local Government Election, through the use of public resources or decisions made by the Council or administration on behalf of the <<Shire/ Town / City of XXX>> during the period immediately prior to an election.

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### Policy Scope

This policy applies to Council Members and Employees during a 'Caretaker Period' relevant to:

- (a) Decisions made by the Council;
- (b) Decisions made under delegated authority;
- (c) Decisions made administratively;
- (d) Promotional materials published by the <<Shire/ Town / City of XXX>>;
- (e) Discretionary community consultation;
- (f) Events and functions, held by the <<Shire/ Town / City of XXX>> or other organisations;
- (g) Use of the <<Shire/ Town / City of XXX>>'s resources;
- (h) Access to information held by the <<Shire/ Town / City of XXX>>.

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### Policy Statement

#### 1 Definitions

'**Caretaker Period**' means the period of time prior to an Election Day, specifically being the period from the close of nominations (37 days prior to the Election Day in accordance with s.4.49(a) of the *Local Government Act 1995*) until 6.00pm on Election Day.

'**CEO**' means the Chief Executive Officer of the <<Shire/ Town / City of XXX>>.

'**Election Day**' means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election, <<including an extraordinary election to elect a new Mayor/President>>. For the purposes of this Policy, 'Election Day' meaning generally excludes an Extraordinary Election Day unless otherwise specified in this Policy.

**WALGA NOTE** – 'extraordinary election of Mayor / President', only applies to Local Governments where the Mayor / President is elected by the electors of the District in accordance with s.2.11(1)(a) (i.e. not elected from among the Councillors).

**‘Electoral Material’** includes any advertisement, handbill, pamphlet, notice, letter, email, social media post or article that is intended or calculated to affect an Election Day result, but does not include:

- (a) An advertisement in a newspaper announcing the holding of a meeting (s.4.87(3) of the *Local Government Act 1995*); or
- (b) Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; or
- (c) Any materials produced by the <<Shire/ Town / City of XXX>> relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the Returning Officer for the purposes of conducting an election.

**‘Events and Functions’** including gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the <<Shire/ Town / City of XXX>> and / or its stakeholders and may take the form of workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including; gatherings coordinated or facilitated by the <<Shire/ Town / City of XXX>> or an external entity.

**‘Extraordinary Circumstances’** including a circumstance that requires the Council to make or announce a Significant Local Government Decision during the Caretaker Period because, in the CEO’s opinion, delaying the decision or announcement to occur after the Caretaker Period has reasonable potential to:

- (a) incur or increase legal, financial and/or reputational risk; or
- (b) cause detriment to the strategic objectives of the <<Shire/ Town / City of XXX>>.

**‘Significant Local Government Decision’** includes any decision:

- (a) Relating to the employment, remuneration or termination of the CEO or any other designated Senior Employee [s.5.37], other than a decision to appoint an Acting CEO, or suspend the current CEO (in accordance with the terms of their Contract of Employment), pending the Election Day result;
- (b) Relating to the <<Shire/ Town / City of XXX>> entering into a sponsorship arrangement with a total <<Shire/ Town / City of XXX>> contribution that would constitute Significant Expenditure, unless the Council resolved “in principle” support for the sponsorship prior to the Caretaker Period taking effect and sufficient funds are allocated in the Annual Budget;
- (c) Relating to the <<Shire/ Town / City of XXX>> entering into a commercial enterprise as defined by Section 3.59 of the *Local Government Act 1995*;
- (d) That would commit the <<Shire/ Town / City of XXX>> to Significant Expenditure or actions that, in the CEO’s opinion, are significant to the Local Government operations, strategic objectives and / or will have significant impact on the community,
- (e) To prepare a report, initiated by the Administration, a Council Member, candidate or member of the public that, in the CEO’s opinion, may be perceived as or is actually an election campaign issue;



## TEMPLATE Caretaker (Electoral Period) Policy

- (f) Initiated through a Notice of Motion by a Council Member, where the effect of that motion will change the status quo or, in the CEO's opinion, may be relevant to the circumstances described in sub-clauses (a) to (e) above.
- (g) That adopts a new, or significantly changes an existing, policy, service or service level that incurs Significant Expenditure, unless the decision is necessary to comply with legislation.
- (h) That initiates or adopts a new Local Planning Scheme, amendment to a Local Planning Scheme or Planning Policy.
- (i) Significant Local Government Decision does NOT include any decision necessary in response to an Emergency, either declared by the State or Federal Government or by the <<Shire President / Mayor>> in accordance with s.6.8(1)(c) of the *Local Government Act 1995*.

**'Caretaker Protocol'** means the practices or procedures prescribed in this Policy.

**'Public Consultation'** includes a process which involves an invitation to individuals, groups, organisations or the wider community to provide comment on a matter, proposed action or proposed policy which may be perceived as or is actually an electoral / campaign issue, but does not include statutory consultation / submission periods prescribed in a written law.

**'Significant Expenditure'** means expenditure that exceeds <<XX>>% of the City's annual budgeted operating revenue (exclusive of GST) in the relevant financial year or \$<<XX,XXX>>, whichever is the greater value. (As at 20<<YY>>/20<<YY>> the estimated threshold is \$<<XX,XXX>>).

## 2 Caretaker Period Protocols - Decision Making

The CEO will ensure that:

- (a) At least 30-days prior to a Caretaker Period, the CEO will advise Council Members and employees in writing of the dates that the Caretaker Period commences and concludes.
- (b) Candidates are provided with a copy of this Policy at the time of their nomination for election, to ensure their awareness of the protocols and equitable access requirements.

### 2.1 Scheduling Significant Local Government Decisions

1. During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:
  - (a) Council or Committee Agenda, do not include reports and / or recommendations that constitute Significant Local Government Decisions; and
  - (b) Council Forums, Workshops or Briefings, do not list for discussions matters that relate to Significant Local Government Decisions.
2. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Significant Local Government Decisions are either:

- (a) Considered by the Council prior to the Caretaker Period; or
  - (b) Scheduled for determination by the incoming Council.
3. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Delegated Authority from the Council to the CEO or a Committee is not exercised where the exercise of that delegated authority relates to a Significant Local Government Decision or an election campaign issue.

## 2.2 Council Reports Electoral Caretaker Period Policy Statement

### 2.2.1 Extraordinary Circumstances

#### 1. Council Reports

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may submit a report on a Significant Local Government Decision for Council's consideration, subject to the report including:

- (a) Details, if applicable, of options for what aspects of the decision are necessary to be made within the Caretaker Period and what aspects may be deferred until after the Caretaker Period.
- (b) An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.

#### 2. Council Forums, Workshops or Briefings

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may include matters relating to a Significant Local Government Decision for Council Member discussion at Council Forums, Workshops or Briefings.

The CEO is required to provide Council with advice as to why Exceptional Circumstance apply. Details of this advice is to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.

## 2.3 Managing CEO Employment

This Policy, prohibits Significant Local Government Decisions relating to the employment, remuneration or termination of the CEO during a Caretaker Period.

The Council is however required to fulfil its obligations as the CEO's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period:

1. The Council may consider and determine:
  - (a) CEO's leave applications;
  - (b) appoint an Acting CEO, where necessary;
  - (c) suspend the current CEO, where appropriate and in accordance with the terms of their contract.
2. The Council may not initiate a new CEO recruitment process or initiate or undertake a CEO performance review process, during a Caretaker Period.

## 2.4 Delegated Authority Decision Making in Extraordinary Circumstances

During a Caretaker Period, Employees who have Delegated Authority are required to consider if a proposed delegated authority decision may relate, or be subsidiary, to a Significant Local Government Decision or election campaign issue and if so, refer the matter to the CEO for review and consideration in accordance with clause 2.1(3) above.

## 3 Caretaker Period Protocols - Candidates

Candidates, including Council Members who have nominated for re-election, relevant to an Election Day or Extraordinary Election Day, shall be provided with equitable access to the <<Shire/ Town / City>>'s public information in accordance with s.5.94 of the *Local Government Act 1995*.

The CEO shall ensure that assistance and advice provided to candidates as part of the conduct of the election is provided equally to all candidates.

Council Members nominating for re-election, may access information and assistance regarding the <<Shire/ Town / City>>'s operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as a Councillor and limited to matters currently relevant to the <<Shire/ Town / City>> [refer s.5.92 of the *Local Government Act 1995*].

All election process enquiries from Candidates, including Council Members who have nominated for re-election, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the CEO.

### 3.1 Candidate Requests on behalf of Electors, Residents or Ratepayers

Where a Candidate, including Council Members who have nominated for re-election, requires the assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, then the Administration will provide the response directly to the requesting Elector, Resident or Ratepayer and will also advise the candidate of the outcome.

### 3.2 Candidate Campaign Electoral Materials

Candidates, including Council Members who have nominated for re-election, should note that the <<Shire/ Town / City>>'s official crest or logo may not be used in campaign Electoral Materials without the express permission of the <<Shire/ Town / City>>.

### 3.3 Candidate attendance at Meetings

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO shall ensure that Candidates, who are not sitting Council Members, are advised of Ordinary and Special Council Meetings (if open to the public) called and convened during a Caretaker Period; providing each Candidate with a copy of the meeting agenda at the time it is distributed to Council Members.

For the purposes of transparency and the benefit of the public gallery, Candidates are requested to identify themselves as an election candidate prior to asking a question or making a statement at a Council or Committee meeting.

## 4 Council Member Caretaker Period Protocols

### 4.1 Access to Information and Advice

During a Caretaker Period all Council Members will scrupulously avoid using or accessing <<Shire/ Town / City>> information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy [refer s.5.93 of the Local Government Act 1995].

During a Caretaker Period, all Council Member requests for information and advice from the <<Shire/ Town / City>> will be reviewed by the CEO and where the subject of the information or advice is considered as relating to an election campaign issue, the CEO will either make a determination, or refer the request for Council's determination, as to if the information or advice is / is not to be provided, including if information is provided to one candidate, or if that information is also to be provided to all candidates (i.e. including candidates who are not current Council Members).

### 4.2 Media and Publicity

During a Caretaker Period, all Council Member requests for media advice or assistance, including Council Members who have nominated for re-election, will be referred to the CEO for review.

The CEO will only authorise Council Member access to media advice or assistance where, in the CEO's opinion, the subject matter is relevant to the <<Shire/ Town / City>>'s objectives or operations and is not related to an election campaign purpose or issue or to the Council Member's candidacy or the candidacy of another person.

### 4.3 Council Member Business Cards, <<Shire/ Town / City>> Printed Materials

Council Members must ensure that <<Shire/ Town / City>> business cards and Local Government printed materials are only used for purposes associated with their role as a Councillor, in accordance with section 2.10 of the *Local Government Act 1995*.

Council Members are prohibited from using <<Shire/ Town / City>> business cards or printed materials at any time, including times outside a Caretaker Period, for any election campaign purpose, either in support of their own candidacy or the candidacy of another person.

### 4.4 Council Member Participation in Events and Functions

During a Caretaker Period Council Members may continue to fulfil their role through attendance at events and functions hosted by external bodies.

#### 4.5 Council Member Delegates to External Organisations

At any time, including times outside of a Caretaker Period, Council Members who are the Council's appointed delegate to an external organisation, must not use their attendance at an external organisation's meeting, event or function for any purpose associated with an election campaign purpose, including; recruiting campaign assistance or to promote their own candidacy or the candidacy of another person.

#### 4.6 Council Member Addresses / Speeches

Excluding the <<Shire President / Mayor>> and <<Deputy Shire President / Mayor>>, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the *Local Government Act 1995*, Council Members who have nominated for re-election, shall not be permitted to make speeches or addresses during a Caretaker Period at events or functions organised or sponsored by the <<Shire/ Town / City>>, unless expressly authorised by the CEO.

In any case, the <<Shire President / Mayor>>, <<Deputy Shire President / Mayor>> and Council Members are prohibited from using an official speech or address during a Caretaker Period to promote an election campaign purpose.

#### 4.7 Council Member Misuse of Local Government Resources

A Council Member who uses <<Shire/ Town / City>> resources for the purpose of persuading electors to vote in a particular way is a "misuse of Local Government resources" breach in accordance with Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007*.

This prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

For clarity, Local Government resources includes, but is not limited to: employee time or expertise, <<Shire/ Town / City>> provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the <<Shire/ Town / City>>.

### 5 <<Shire/ Town / City>> Publicity, Promotional and Civic Activities

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

- (a) Promoting <<Shire/ Town / City>> services and activities, where such promotion do not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations; and,
- (b) Conducting the Election and promoting Elector participation in the Election.

All other, publicity and promotional activities of <<Shire/ Town / City>> initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Significant Local Government Decisions, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.

The CEO may determine if Exceptional Circumstances apply and if a Significant Local Government Decision announcement is necessary during a Caretaker Period.

## 5.1 Civic Events and Functions

The <<Shire/ Town / City>> will avoid the scheduling of Civic Events and Functions during a Caretaker Period, which may give rise to any actual or perceived electoral advantage to Council Members who have nominated for re-election.

Where the <<Shire/ Town / City>> is required to schedule a Civic Event or Function during a Caretaker Period at which Council Members would usually be invited, then all Candidates will also be invited to attend and will be acknowledged as candidates immediately following any acknowledgement provided to Council Members. For example; Candidates will be introduced at the function immediately following the introduction of Council Members.

## 5.2 <<Shire/ Town / City>> Publications and Communications

All <<Shire/ Town / City>> publications and communications distributed during a Caretaker Period must not include content that:

- (a) may actually, or be perceived to, persuade voting in an election; or
- (b) is specific to a candidate or candidates, to the exclusion of other candidates;
- (c) draws focus to or promotes a matter which is a Significant Local Government Decision or which is an electoral campaign issue.

All <<Shire/ Town / City>> publications and communications proposed to occur immediately prior to, throughout or during, a Caretaker Period must be reviewed and approved by the CEO prior to publication or distribution.

## 5.3 <<Shire/ Town / City>> Website and Social Media Content

1. During the Caretaker Period, this Policy applies to content proposed for publication on the <<Shire/ Town / City>>'s website and social media channels.

Website and social media content regarding Council Members will be limited to: Council Member names, contact details, membership of committees and Council appointments as <<Shire/ Town / City>> Delegates on external committees and organisations however, all other biographical information related to a sitting Council Member who is also a candidate will be removed from public access for the duration of the Caretaker Period.

The Candidate Election Profiles prescribed in s.4.49(b) of the Local Government Act 1995, may also be published on the <<Shire/ Town / City>>'s website and social media.

2. Website and social media content, published prior to a Caretaker Period, will not be subject to this Policy.
3. New website or social media content which relates to Significant Local Government Decisions or election campaign issues will not be published during a Caretaker Period, unless Exceptional Circumstances apply.



4. Content posted by the public, candidates or Council Members on the <<Shire/ Town / City>>'s social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

## 5.4 Community Consultation

The <<Shire/ Town / City>> will undertake planned community consultation (discretionary and legislative) during a Caretaker Period, unless the consultation relates to a Significant Local Government Decision or potentially contentious election campaign issue.

Document Control Box							
<b>Document Responsibilities:</b>							
<b>Owner:</b>	[insert Position Title]			<b>Owner Business Unit:</b>	[insert Unit Title]		
<b>Reviewer:</b>	[insert Position Title]			<b>Decision Maker:</b>	Council		
<b>Compliance Requirements:</b>							
<b>Legislation:</b>	Sections 4.87, 5.93 and 5.103 of the <i>Local Government Act 1996</i> Regulation 8 of the <i>Local Government (Rules of Conduct) Regulations 1996</i>						
<b>Industry:</b>							
<b>Organisational:</b>	Policy <b>XX</b> Code of Conduct						
<b>Document Management:</b>							
<b>Risk Rating:</b>	[low / med / high]	<b>Review Frequency:</b>	[annual / biennial / triennial]	<b>Next Due:</b>	[20##]	<b>Records Ref:</b>	[CP####]
<b>Version #</b>	<b>Decision Reference:</b>		<b>Synopsis:</b>				
1.	[decision date / TRIM Ref]		[brief description of the adoption / changes approved]				
2.							



## Electoral Caretaker Period Policy

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### Policy Objective

This Policy establishes protocols for the purpose of avoiding actual and perceived advantage or disadvantage to a candidate in a Local Government Election, through the use of public resources or decisions made by the Council or administration on behalf of the Shire of West Arthur during the period immediately prior to an election.

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### Policy Scope

This policy applies to Council Members and Employees during a 'Caretaker Period' relevant to:

- (a) Decisions made by the Council;
- (b) Decisions made under delegated authority;
- (c) Decisions made administratively;
- (d) Promotional materials published by the Shire of West Arthur;
- (e) Discretionary community consultation;
- (f) Events and functions, held by the Shire of West Arthur or other organisations;
- (g) Use of the Shire of West Arthur's resources;
- (h) Access to information held by the Shire of West Arthur.

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### Policy Statement

#### 1 Definitions

**'Caretaker Period'** means the period of time prior to an Election Day, specifically being the period from the close of nominations (37 days prior to the Election Day in accordance with s.4.49(a) of the *Local Government Act 1995*) until 6.00pm on Election Day.

**'CEO'** means the Chief Executive Officer of the Shire of West Arthur.

**'Election Day'** means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election. For the purposes of this Policy, 'Election Day' meaning generally excludes an Extraordinary Election Day unless otherwise specified in this Policy.

**'Electoral Material'** includes any advertisement, handbill, pamphlet, notice, letter, email, social media post or article that is intended or calculated to affect an Election Day result, but does not include:

- (a) An advertisement in a newspaper announcing the holding of a meeting (s.4.87(3) of the *Local Government Act 1995*); or
- (b) Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; or
- (c) Any materials produced by the Shire of West Arthur relating to the election process by way of information, education or publicity, or materials produced





## Electoral Caretaker Period Policy

by or on behalf of the Returning Officer for the purposes of conducting an election.

**‘Events and Functions’** including gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the Shire of West Arthur and / or its stakeholders and may take the form of workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including; gatherings coordinated or facilitated by the Shire of West Arthur or an external entity.

**‘Extraordinary Circumstances’** including a circumstance that requires the Council to make or announce a Significant Local Government Decision during the Caretaker Period because, in the CEO’s opinion, delaying the decision or announcement to occur after the Caretaker Period has reasonable potential to:

- (a) incur or increase legal, financial and/or reputational risk; or
- (b) cause detriment to the strategic objectives of the Shire of West Arthur.

**‘Significant Local Government Decision’** includes any decision:

- (a) Relating to the employment, remuneration or termination of the CEO or any other designated Senior Employee [s.5.37], other than a decision to appoint an Acting CEO, or suspend the current CEO (in accordance with the terms of their Contract of Employment), pending the Election Day result;
- (b) Relating to the Shire of West Arthur entering into a sponsorship arrangement with a total Shire of West Arthur contribution that would constitute Significant Expenditure, unless the Council resolved “in principle” support for the sponsorship prior to the Caretaker Period taking effect and sufficient funds are allocated in the Annual Budget;
- (c) Relating to the Shire of West Arthur entering into a commercial enterprise as defined by Section 3.59 of the *Local Government Act 1995*;
- (d) That would commit the Shire of West Arthur to Significant Expenditure or actions that, in the CEO’s opinion, are significant to the Local Government operations, strategic objectives and / or will have significant impact on the community,
- (e) To prepare a report, initiated by the Administration, a Council Member, candidate or member of the public that, in the CEO’s opinion, may be perceived as or is actually an election campaign issue;
- (f) Initiated through a Notice of Motion by a Council Member, where the effect of that motion will change the status quo or, in the CEO’s opinion, may be relevant to the circumstances described in sub-clauses (a) to (e) above.
- (g) That adopts a new, or significantly changes an existing, policy, service or service level that incurs Significant Expenditure, unless the decision is necessary to comply with legislation.



## Electoral Caretaker Period Policy

- (h) That initiates or adopts a new Local Planning Scheme, amendment to a Local Planning Scheme or Planning Policy.
- (i) Significant Local Government Decision does NOT include any decision necessary in response to an Emergency, either declared by the State or Federal Government or by the Shire President in accordance with s.6.8(1)(c) of the *Local Government Act 1995*.

**'Caretaker Protocol'** means the practices or procedures prescribed in this Policy.

**'Public Consultation'** includes a process which involves an invitation to individuals, groups, organisations or the wider community to provide comment on a matter, proposed action or proposed policy which may be perceived as or is actually an electoral / campaign issue, but does not include statutory consultation / submission periods prescribed in a written law.

**'Significant Expenditure'** means expenditure that exceeds <<XX>>% of the City's annual budgeted operating revenue (exclusive of GST) in the relevant financial year or \$<<XX,XXX>>, whichever is the greater value. (As at 20<<YY>>/20<<YY>> the estimated threshold is \$<<XX,XXX>>).

## 2 Caretaker Period Protocols - Decision Making

The CEO will ensure that:

- (a) At least 30-days prior to a Caretaker Period, the CEO will advise Council Members and employees in writing of the dates that the Caretaker Period commences and concludes.
- (b) Candidates are provided with a copy of this Policy at the time of their nomination for election, to ensure their awareness of the protocols and equitable access requirements.

### 2.1 Scheduling Significant Local Government Decisions

1. During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:
  - (a) Council or Committee Agendas, do not include reports and / or recommendations that constitute Significant Local Government Decisions; and
  - (b) Council Forums, Workshops or Briefings, do not list for discussions matters that relate to Significant Local Government Decisions.
2. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Significant Local Government Decisions are either:



## Electoral Caretaker Period Policy

- (a) Considered by the Council prior to the Caretaker Period; or
  - (b) Scheduled for determination by the incoming Council.
3. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Delegated Authority from the Council to the CEO or a Committee is not exercised where the exercise of that delegated authority relates to a Significant Local Government Decision or an election campaign issue.

## 2.2 Council Reports Electoral Caretaker Period Policy Statement

### 2.2.1 Extraordinary Circumstances

#### 1. Council Reports

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may submit a report on a Significant Local Government Decision for Council's consideration, subject to the report including:

- (a) Details, if applicable, of options for what aspects of the decision are necessary to be made within the Caretaker Period and what aspects may be deferred until after the Caretaker Period.
- (b) An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.

#### 2. Council Forums, Workshops or Briefings

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may include matters relating to a Significant Local Government Decision for Council Member discussion at Council Forums, Workshops or Briefings.

The CEO is required to provide Council with advice as to why Exceptional Circumstance apply. Details of this advice is to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.

## 2.3 Managing CEO Employment

This Policy prohibits Significant Local Government Decisions relating to the employment, remuneration or termination of the CEO during a Caretaker Period.

The Council is however required to fulfil its obligations as the CEO's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period:

1. The Council may consider and determine:
  - (a) CEO's leave applications;
  - (b) appoint an Acting CEO, where necessary;



## Electoral Caretaker Period Policy

- (c) suspend the current CEO, where appropriate and in accordance with the terms of their contract.
2. The Council may not initiate a new CEO recruitment process or initiate or undertake a CEO performance review process, during a Caretaker Period.

### 2.4 Delegated Authority Decision Making in Extraordinary Circumstances

During a Caretaker Period, Employees who have Delegated Authority are required to consider if a proposed delegated authority decision may relate, or be subsidiary, to a Significant Local Government Decision or election campaign issue and if so, refer the matter to the CEO for review and consideration in accordance with clause 2.1(3) above.

## 3 Caretaker Period Protocols - Candidates

Candidates, including Council Members who have nominated for re-election, relevant to an Election Day or Extraordinary Election Day, shall be provided with equitable access to the Shire of West Arthur's public information in accordance with s.5.94 of the *Local Government Act 1995*.

The CEO shall ensure that assistance and advice provided to candidates as part of the conduct of the election is provided equally to all candidates.

Council Members nominating for re-election, may access information and assistance regarding the Shire of West Arthur's operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as a Councillor and limited to matters currently relevant to the Shire of West Arthur [refer s.5.92 of the *Local Government Act 1995*].

All election process enquiries from Candidates, including Council Members who have nominated for re-election, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the CEO.

### 3.1 Candidate Requests on behalf of Electors, Residents or Ratepayers

Where a Candidate, including Council Members who have nominated for re-election, requires the assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, then the Administration will provide the response directly to the requesting Elector, Resident or Ratepayer and will also advise the candidate of the outcome.



## Electoral Caretaker Period Policy

### 3.2 Candidate Campaign Electoral Materials

Candidates, including Council Members who have nominated for re-election, should note that the Shire of West Arthur's official crest or logo may not be used in campaign Electoral Materials without the express permission of the Shire of West Arthur.

### 3.3 Candidate attendance at Meetings

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO shall ensure that Candidates, who are not sitting Council Members, are advised of Ordinary and Special Council Meetings (if open to the public) called and convened during a Caretaker Period; providing each Candidate with a copy of the meeting agenda at the time it is distributed to Council Members.

For the purposes of transparency and the benefit of the public gallery, Candidates are requested to identify themselves as an election candidate prior to asking a question or making a statement at a Council or Committee meeting.

## 4 Council Member Caretaker Period Protocols

### 4.1 Access to Information and Advice

During a Caretaker Period all Council Members will scrupulously avoid using or accessing Shire of West Arthur information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy [refer s.5.93 of the Local Government Act 1995].

During a Caretaker Period, all Council Member requests for information and advice from the Shire of West Arthur will be reviewed by the CEO and where the subject of the information or advice is considered as relating to an election campaign issue, the CEO will either make a determination, or refer the request for Council's determination, as to if the information or advice is / is not to be provided, including if information is provided to one candidate, or if that information is also to be provided to all candidates (i.e. including candidates who are not current Council Members).

### 4.2 Media and Publicity

During a Caretaker Period, all Council Member requests for media advice or assistance, including Council Members who have nominated for re-election, will be referred to the CEO for review.

The CEO will only authorise Council Member access to media advice or assistance where, in the CEO's opinion, the subject matter is relevant to the Shire of West Arthur's objectives or operations and is not related to an election campaign purpose or issue or to the Council Member's candidacy or the candidacy of another person.



## Electoral Caretaker Period Policy

### 4.3 Council Member Business Cards, Shire Printed Materials

Council Members must ensure that Shire business cards and Local Government printed materials are only used for purposes associated with their role as a Councillor, in accordance with section 2.10 of the *Local Government Act 1995*.

Council Members are prohibited from using Shire business cards or printed materials at any time, including times outside a Caretaker Period, for any election campaign purpose, either in support of their own candidacy or the candidacy of another person.

### 4.4 Council Member Participation in Events and Functions

During a Caretaker Period Council Members may continue to fulfil their role through attendance at events and functions hosted by external bodies.

### 4.5 Council Member Delegates to External Organisations

At any time, including times outside of a Caretaker Period, Council Members who are the Council's appointed delegate to an external organisation, must not use their attendance at an external organisation's meeting, event or function for any purpose associated with an election campaign purpose, including; recruiting campaign assistance or to promote their own candidacy or the candidacy of another person.

### 4.6 Council Member Addresses / Speeches

Excluding the Shire President and Deputy Shire President, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the *Local Government Act 1995*, Council Members who have nominated for re-election, shall not be permitted to make speeches or addresses during a Caretaker Period at events or functions organised or sponsored by the Shire, unless expressly authorised by the CEO.

In any case, the Shire President, Deputy Shire President and Council Members are prohibited from using an official speech or address during a Caretaker Period to promote an election campaign purpose.

### 4.7 Council Member Misuse of Local Government Resources

A Council Member who uses Shire resources for the purpose of persuading electors to vote in a particular way is a "misuse of Local Government resources" breach in accordance with Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007*.

This prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

For clarity, Local Government resources includes, but is not limited to: employee time or expertise, Shire provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the Shire.





## Electoral Caretaker Period Policy

### 5 Shire Publicity, Promotional and Civic Activities

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

- (a) Promoting Shire services and activities, where such promotion do not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations; and,
- (b) Conducting the Election and promoting Elector participation in the Election.

All other, publicity and promotional activities of Shire initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Significant Local Government Decisions, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.

The CEO may determine if Exceptional Circumstances apply and if a Significant Local Government Decision announcement is necessary during a Caretaker Period.

#### 5.1 Civic Events and Functions

The Shire will avoid the scheduling of Civic Events and Functions during a Caretaker Period, which may give rise to any actual or perceived electoral advantage to Council Members who have nominated for re-election.

Where the Shire is required to schedule a Civic Event or Function during a Caretaker Period at which Council Members would usually be invited, then all Candidates will also be invited to attend and will be acknowledged as candidates immediately following any acknowledgement provided to Council Members. For example; Candidates will be introduced at the function immediately following the introduction of Council Members.

#### 5.2 Shire Publications and Communications

All Shire publications and communications distributed during a Caretaker Period must not include content that:

- (a) may actually, or be perceived to, persuade voting in an election; or
- (b) is specific to a candidate or candidates, to the exclusion of other candidates;
- (c) draws focus to or promotes a matter which is a Significant Local Government Decision, or which is an electoral campaign issue.

All Shire publications and communications proposed to occur immediately prior to, throughout or during, a Caretaker Period must be reviewed and approved by the CEO prior to publication or distribution.



## Electoral Caretaker Period Policy

### 5.3 Shire Website and Social Media Content

1. During the Caretaker Period, this Policy applies to content proposed for publication on the Shire's website and social media channels.

Website and social media content regarding Council Members will be limited to: Council Member names, contact details, membership of committees and Council appointments as Shire Delegates on external committees and organisations however, all other biographical information related to a sitting Council Member who is also a candidate will be removed from public access for the duration of the Caretaker Period.

The Candidate Election Profiles prescribed in s.4.49(b) of the Local Government Act 1995, may also be published on the Shire's website and social media.

2. Website and social media content, published prior to a Caretaker Period, will not be subject to this Policy.
3. New website or social media content which relates to Significant Local Government Decisions or election campaign issues will not be published during a Caretaker Period, unless Exceptional Circumstances apply.
4. Content posted by the public, candidates or Council Members on the Shire's social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

### 5.4 Community Consultation

The Shire will undertake planned community consultation (discretionary and legislative) during a Caretaker Period, unless the consultation relates to a Significant Local Government Decision or potentially contentious election campaign issue.



### 12.3 Proposed Advocacy Position on Arrangements for Management of Volunteer Bush Fire Brigades

<b>File Reference:</b>	<b>3.16.1</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Date:</b>	<b>1 June 2022</b>
<b>Disclosure of Interest:</b>	<b>The Author, in his role of CEO, is potentially affected by the introduction of the WHS Act 2020.</b>
<b>Attachments:</b>	<ol style="list-style-type: none"> <li><b>1. WALGA Proposed Advocacy Position</b></li> <li><b>2. Overview of Work Health and Safety Act 2020</b></li> <li><b>3. Report from Shire of Waroona CEO</b></li> </ol>

#### **Summary:**

Council is requested to consider the information provided and determine a position so as to enable a submission to be forwarded to WALGA on the matter of its proposed advocacy position on arrangements for management of volunteer bush fire brigades.

#### **Background:**

Western Australian Local Governments have extensive roles and responsibilities embedded in the State Emergency Management Framework across the emergency management spectrum of prevention, preparedness, response, and recovery. Under the *Bush Fires Act 1954*, Local Governments have responsibility for bushfire and the management of volunteer Bush Fire Brigades (BFBs). 111 Local Governments manage 563 BFBs involving approximately 20,000 volunteers.

As part of WALGA's 2021 Emergency Management Survey, Local Governments were asked about their level of satisfaction with current arrangements for managing BFBs. 92 Local Governments (69 of which manage BFBs) provided the following feedback:

- 93% were not wholly satisfied with the current arrangements for the management of BFBs; and
- 51% expressed that their Local Government does not support the requirements for Local Governments to manage BFBs.

The State Government is currently drafting the *Consolidated Emergency Services Act (CES Act)*, which consolidates the *Fire Brigades Act 1942*, *Bush Fires Act 1954* and *Fire and Emergency Services Act 1998* into a single piece of legislation, anticipated to be released as a Green Bill for consultation in early 2023.

The introduction of the *Work Health and Safety Act 2020* has also shone a spotlight on Local Government responsibilities for managing volunteer BFBs.

The development of the CES Act represents an important and timely opportunity for the sector to determine its position on the management of volunteer BFBs. An endorsed advocacy position will guide WALGA in its engagement with the State Government on this issue.

WALGA has prepared the attached proposed Advocacy Position for the sector's consideration (attachment 1). A six week period for sector consultation is designed to enable Local Governments to engage with relevant stakeholders, including volunteers, and for Councils to consider their position. Feedback on the proposed position will be reviewed and inform a final position to be considered by WALGA State Council in September 2022.

**Comment:**

WALGA's position statement on the Management of Bush Fire Brigades is:

1. The Association advocates that the State Government must provide for:
  - a) A clear pathway for Local Governments to transfer responsibility for the management of Bush Fire Brigades to the State Government when ongoing management is beyond the capacity, capability and resources of the Local Government;
  - b) The co-design of a suite of relevant guidelines and materials to assist those Local Governments that manage Bush Fire Brigades;
  - c) Mandatory and minimum training requirements for Bush Fire Brigade volunteers supported by a universally accessible training program managed by the Department of Fire and Emergency Services (DFES); and
  - d) The recognition of prior learning, experience and competency of Bush Fire Brigade volunteers.
2. That a Working Group comprising representatives of WALGA and DFES be established to develop a process and timeline for the transfer of responsibility for Bush Fire Brigades in accordance with 1(a).
3. Where management of Bush Fire Brigades is transferred to DFES in accordance with 1(a), DFES should be resourced to undertake the additional responsibility.

In response to WALGA's request for feedback on this matter, the Shire of Waroona passed the following resolution at its May 2022 Ordinary Meeting of Council:

*That Council requests:*

1. *WA Local Government Association (WALGA) to advocate for the:*
  - a) *Modernisation of Western Australian emergency services legislation, including alignment of the WA Bush Fires Act 1954 with the rest of Australia by removing the legislative requirement for WA Local Governments to manage Volunteer Bush Fire Brigades (VBFB); and*
  - b) *Provision of a legislated State Government department or agency to do so, fully implementing recommendation 15 of the "Reframing Rural Fire Management" Report of the Special Inquiry Into the January 2016 Waroona Fire (Ferguson Report), which states; "The State Government to create a Rural Fire Service to enhance the capability for rural fire management and bushfire risk management at a State, regional and local level. The proposed Rural Fire Service will:*
    - *be established as a separate entity from the Department of Fire and Emergency Services or, alternatively, be established as a subdepartment of the Department of Fire and Emergency Services;*
    - *have an independent budget;*
    - *be able to employ staff;*
    - *have a leadership structure which, to the greatest degree possible, is regionally based and runs the entity;*
    - *be led by a Chief Officer who reports to the responsible Minister on policy and administrative matters; and to the Commissioner for Fire and Emergency Services during operational and emergency response;*
    - *have responsibilities and powers relating to bushfire prevention, preparedness and response; and*
    - *operate collaboratively with the Department of Fire and Emergency Services, the Department of Parks and Wildlife, Local Government and volunteer Bush Fire Brigades.*

*"In creating the Rural Fire Service, the State Government to consider whether back office and corporate support services could be effectively provided by an existing Department, such as the Department of Fire and Emergency Services or the Department of Parks and Wildlife. "The State Government to review the creation of the Rural Fire Service two years after its establishment, to assess whether its structure and operations are achieving the intended outcome.*

2. *WALGA to support, in the review of the emergency services legislation, a comprehensive plan by the Department of Fire and Emergency Services and the State Government for;*
  - a) *Full engagement with the VBFs, local governments and WALGA to understand their successes, challenges, ideas and hopes for this service;*
  - b) *Inclusion of a review of the history and past performance of the volunteer bush fire brigades in Western Australia, including all previous studies and findings, with volunteer safety as a key theme;*
  - c) *A best practice assessment of volunteer bush fire brigades departmental/agency structures and legislative underpinnings across Australia; and*
  - d) *A legislative outcome goal that ensures that organisational structures, expertise, strategy, management and control, best meet the health and safety mandates of the WHS Act 2020; and*
3. *The Shire of Waroona Chief Executive Officer to undertake to introduce a new Bush Fire Brigades Local Law, with a view to ensuring DFES rules and requirements are complied with, and in doing so seek a legal opinion on the adequacy of the current model Bush Fire Brigades Local Law, by a local government and its officers in meeting their Work Health and Safety Act 2020 obligations.*
4. *Requests the Shire of Waroona Chief Executive Officer to engage with the Volunteer Bush Fire Brigades as soon as possible.*

WALGA's position statement allows for the flexibility for individual local governments to make their own decision, in consultation with their BFBs, on whether they continue to manage the BFBs or not. This is important as some LGs have well-run, capable BFBs, and the resources to manage them, whereas others do not.

The Shire of Waroona's position is based very much on its experiences during the 2016 Waroona Bush Fire event, and the introduction of the Work Health and Safety Act 2020. It goes much further and pushes for a new Rural Fire Service, separate to DFES, to manage all local governments.

From the small amount of feedback, I have received on this matter, the local view is that the Shire has successfully managed our brigades for many years and there is little appetite for change. Council may, therefore, wish to consider providing its support of WALGA's position statement.

From the Author's perspective, it is worth noting that if BFB volunteers suffer injury or death whilst engaged in firefighting activities, there is the potential for severe fines and prison sentences for the CEO and Council. Negligence, of course, needs to be proven but failure to provide suitable training or to ensure it is completed is an example of possible negligence. In the same way, if a volunteer goes to a fire without the appropriate PPE, and is not sent home, it may constitute negligence on the part of the Captain, CBFCO or Incident Controller. There would be no risk to Council if the Shire did not manage the BFBs.

Council should also consider the inefficient process of funding the brigades. The Shire is required to obtain funds from DFES, and the brigades are required to obtain funds from the Shire to spend on required items. It would be simpler for the brigades to get the funds direct from DFES.

A copy of the Ferguson Report on the 2016 Waroona Bush Fire can be downloaded from <https://apo.org.au/node/65078>.

**Consultation:**  
WALGA  
Shire of Waroona

**Statutory Environment:**

Bush Fires Act 1954  
Fire Brigades Act 1942  
Fire and Emergency Services Act 1998  
Work Health and Safety Act 2020

**Policy Implications:**

Nil

**Financial Implications:**

Nil, at this stage.

**Strategic Implications:**

Community Strategic Plan West Arthur Towards 2031  
Theme: Community – A safe place to work, live and visit  
Outcome: Establish and maintain sound business and governance structures  
Strategy: Support for the provision of emergency services and volunteers

**Risk Implications:**

***Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.*** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. ***Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.*** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Prosecution under the WHS Act 2020 for industrial manslaughter / injury.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	(15) High
Risk Likelihood (based on history and with existing controls)	(3)
Risk Consequence	(5)
Principal Risk Theme	Inadequate safety or security practices
Risk Action Plan (Controls or Treatment Proposed)	Adopt and implement this policy.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

That Council:

1. Supports WALGA's position statement on the Management of Bush Fire Brigades as described in this report;
2. Authorises the CEO to forward a submission confirming this support to WALGA.

**Council Resolution:***That Council:*

1. *Supports WALGA's position statement on the Management of Bush Fire Brigades as described in this report;*
2. *Authorises the CEO to forward a submission confirming this support to WALGA.*

Moved: Cr SouthSeconded: Cr Peirce**CARRIED 6/0****ATTACHMENTS**

1. WALGA Proposed Advocacy Position
2. Overview of Work Health and Safety Act 2020
3. Report from Shire of Waroona CEO

# Arrangements for Management of Volunteer Bush Fire Brigades: Proposed Advocacy Position

May 2022

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## Acknowledgement

*The WA Local Government Association (WALGA) acknowledges the Traditional Owners of the land and pays respects to Elder's past, and present. WALGA acknowledges the continuing knowledge and cultural practices that they bring to the Local Government and Emergency Management sectors to support resilient and sustainable land management on WA landscapes.*

## Executive Summary

Western Australian Local Governments have extensive roles and responsibilities prescribed in the State Emergency Management Framework (State Framework) across the emergency management activities of prevention, preparedness, response, and recovery. Relevantly, pursuant to the *Bush Fires Act 1954*, Local Governments have responsibility for bushfire and the management of volunteer Bush Fire Brigades (BFBs).

This Paper proposes a new Advocacy Position on the management of BFBs to guide the Association's emergency management advocacy on behalf of Local Government, and in particular its engagement with the State Government on the development of the *Consolidated Emergency Services Act* which is expected to be released for stakeholder consultation in early 2023.

## How to Comment on This Paper

Local Governments are encouraged to provide a written response to this Paper or to complete the [survey](#). Formal Council resolutions will assist the Association understand the sentiment of the sector on this important issue.

The Paper outlines the proposed Advocacy Position, followed by the background and rationale for the new position.

Questions are provided at the end of the Paper to guide feedback.

For further information please contact WALGA's Resilient Communities Policy Manager, Susie Moir via 9213 2058 or [smoir@walga.asn.au](mailto:smoir@walga.asn.au)

Feedback should be provided in response to the questions via email to [em@walga.asn.au](mailto:em@walga.asn.au) by **5pm Friday 8 July 2022**.



## Introduction

This Paper seeks Local Government's views on a new WALGA Advocacy Position on the management of volunteer bush fire brigades (BFBs).

WALGA Advocacy Positions guide WALGA's policy, advocacy and capacity building activities and support a consistent and whole-of-sector approach.

The introduction of the *Work Health and Safety Act 2020* has shone a spotlight on Local Government responsibilities for managing BFBs. In addition, the State Government is currently drafting the *Consolidated Emergency Services Act*, which consolidates the *Fire Brigades Act 1942*, *Bush Fires Act 1954* and *Fire and Emergency Services Act 1998* into a single piece of legislation, anticipated to be released as a Green Bill in early 2023. Therefore consultation on a new Advocacy Position with respect to management of BFBs is timely.

In 2012, 2019 and 2021, WALGA undertook comprehensive consultation with Local Government in relation to emergency management matters.

In 2021 WALGA undertook a comprehensive [Local Government Emergency Management Survey](#) to ascertain the sector's sentiment with respect to their emergency management responsibilities. 104 Local Governments responded to the Survey. Responses were provided by:

- 36 Chief Executive Officers
- 18 Community Emergency Services Managers
- 50 Local Government officers

As part of the survey Local Governments were asked about their level of satisfaction with current arrangements for managing BFBs. 92 Local Governments (69 of which manage BFBs) provided the following feedback:

- 93% were not wholly satisfied with the current arrangements for the management of BFBs; and
- 51% expressed that their Local Government does not support the requirements for Local Governments to manage BFBs.

These Survey responses reinforce that it is timely to engage with the sector on this issue.

WALGA has been undertaking a process to update our Advocacy Positions, and as a result has prepared eight new Advocacy Position Statements relating to Emergency Management, which will be considered at the July 2022 State Council meeting, as listed in Appendix 1. These new Advocacy Positions are based on previous State Council endorsed submissions, recommendations from significant reviews and inquiries, and information and priorities captured in sector-wide consultations.

A comprehensive Advocacy Position regarding the *Consolidated Emergency Services Act*, is outlined in Appendix 1, Advocacy Position 8.4.

## Background

FESA (now the Department of Fire and Emergency Services (DFES)) was established in 1999 for the purpose of improving coordination of the State's emergency services, replacing the Fire Brigades and Bush Fires Boards<sup>1</sup>. DFES provides strategic leadership for emergency services across WA. DFES manages the career fire and rescue service, as well as a number of volunteer emergency services: Volunteer Fire and Emergency Services (VFES); Volunteer Fire and Rescue Service (VFRS); State Emergency Services (SES); and Marine Rescue Western Australia.

Around Australia:

- WA is the only State in Australia in which Local Governments manage bushfire volunteers (pursuant to the *Bush Fire Act 1954*).
- In New South Wales, the NSW Rural Fire Service, which makes up the world's largest firefighting volunteer services, is managed by the NSW Government<sup>2</sup>.
- Similarly, the Victorian Government manages the Country Fire Authority which manages regional fire services in Victoria<sup>3</sup>.
- In South Australia, the *Fire and Emergency Services Act 2005* (SA) provides for the South Australian Country Fire Service (SACFS) being established as a body corporate, currently managing 14,000 volunteers. The SACFS is responsible to the Minister for Emergency Services<sup>4</sup>.
- In Queensland, the *Fire and Emergency Services Act 1990* (Qld) provides for the establishment of rural fire brigades, with the Commissioner responsible for the efficiency of rural fire brigades<sup>5</sup>.
- The Tasmanian Fire Service sits under the State Fire Commission, established under the *Fire Service Act 1979*<sup>6</sup>, with more than 200 fire brigades across Tasmania, 350 career firefighters and 5000 volunteers.
- The ACT Rural Fire Service sits under the ACT Emergency Services Agency<sup>7</sup> and is responsible for all bush and grass fires in rural ACT areas, through 450 volunteers in eight brigades.
- Bushfires NT is a division of the Department of Environment, Parks and Water Security, which is responsible for administration of the *Bushfires Management Act 2016*<sup>8</sup>. The Minister appoints members of the Bushfires Council and regional bushfires committees.

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<sup>1</sup> <https://www.dfes.wa.gov.au/site/about-us/corporate-information/corporate-history/corporate-history.html>

<sup>2</sup> <https://www.rfs.nsw.gov.au/about-us/history>

<sup>3</sup> <https://www.cfa.vic.gov.au/about-us/who-we-are>

<sup>4</sup> [Part B 2015 South Australian Country Fire Service.pdf \(audit.sa.gov.au\)](#)

<sup>5</sup> [Fire and Emergency Services Act 1990 \(legislation.qld.gov.au\)](#)

<sup>6</sup> [TFSAAnnualReport2021.pdf \(fire.tas.gov.au\)](#)

<sup>7</sup> [Emergencies Act 2004 | Acts](#)

<sup>8</sup> [Legislation Database \(nt.gov.au\)](#)

## Current Arrangements in WA

In Western Australia 111 Local Governments manage 563 BFBs involving approximately 20,000 volunteers. The Bush Fire Service is the largest volunteer emergency service by a significant margin:

- Bush Fire Service: 19,639 volunteers
- Fire and Rescue Service: 2,486 volunteers
- State Emergency Services: 2001 volunteers
- Volunteer Fire and Emergency Services: 926 volunteers
- Emergency Services Cadet Corps: 2,261 volunteers
- Marine Rescue Service: 1,559 volunteers<sup>9</sup>.

The number of BFBs managed by Local Governments varies from one up to 20. For example, the Shire of Cranbrook, which has a population of 1000 people, annual revenue of \$8 million and 29 employees manages 11 BFBs. The City of Mandurah, population 88,000, annual revenue of \$116 million and 678 employees, manages one BFB.

DFES also manages some BFBs. This includes seven bushfire brigades within the Kimberley and seven bushfire brigades within the Pilbara regions, under Memorandums of Understanding (MOU) with relevant Local Governments which make DFES responsible for the day-to-day management of the BFB and all response activities, excluding in relation to land tenure managed by the Department of Biodiversity, Conservation and Attractions.

Under this arrangement, Local Governments maintain responsibility for administering the *Bushfires Act* and carry out activities such as inspecting fire breaks and issuing burning permits.

The Local Government Grants Scheme (LGGS) Manual ([Appendix 1](#)) outlines five different 'profiles' for Bush Fire Brigades, as follows:

- Farmer Response Rural Brigades
- Pastoral Emergency Management
- Rural Brigades
- Settlement Brigades (Rural/Semi Rural)
- Urban Brigades (Defensive/Structural/Breathing Apparatus).

## Considerations for Future Bush Fire Brigade Management Arrangements

### Local Government Views

As part of WALGA's 2021 Emergency Management Survey, Local Governments were asked about their level of satisfaction with current arrangements for managing BFBs. 92 Local Governments (69 of which manage BFBs) provided the following feedback:

- 93% were not wholly satisfied with the current arrangements for the management of BFBs; and
- 51% expressed that their Local Government does not support the requirements for Local Governments to manage BFBs.

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<sup>9</sup> DFES Volunteering, April 2022

Detailed comments provided in the WALGA survey indicated a strong preference for the State Government to be responsible for all emergency management matters in Western Australia, including the management of BFBs.

## **Recommendations of Previous Reviews**

Over the years there have been many calls for transformational change to the State Emergency Management Framework, in particular rural fire management.

The [Ferguson Report](#) on the 2016 Waroona Bushfire recommended that the State Government establish a rural fire service to address perceived issues in rural fire management, including insufficient capacity and unsuitable governance to deliver rural fire services. In 2017 the State Government hosted a bushfire mitigation summit at which a number of options were considered by stakeholders: a rural fire service operated within DFES; a rural fire service operated within DFES with autonomy; and a dedicated rural fire service that operated independently. Options to transfer the management of all BFBs under one umbrella – DFES or other – were also explored.

The 2017 [Economic Regulation Authority Review of the Emergency Services Levy \(ESL\)](#) considered the extent to which the ESL should be available to fund the administrative and/ or operational costs of a rural fire service, although it was outside the terms of reference for the ERA to examine the merits of a rural fire service or form a view on the best model of a rural fire service<sup>10</sup>. A number of Local Governments provided submissions to the ERA Review that supported the creation of a rural fire service<sup>11</sup>.

## **Work Health and Safety Act 2020**

The requirements of the *Work Health and Safety Act 2020*, enacted in March 2022, have heightened concerns in the sector regarding risk and liability in the management of BFBs, resourcing requirements and training and competency.

The shared responsibility for the health and safety of BFB volunteers adds further complexity to the management of BFBs and responsibilities. Local Governments, DFES, and in some cases the Department of Biodiversity, Conservation and Attractions (DBCA), have a shared duty of care to BFB volunteers due to Controlling Agency activities at incidents, and funding mechanisms (LGGs) for BFB operations and capital equipment.

DFES has a role as the lead fire and emergency services agency in WA for preparing training resources and standard operating procedures. DFES is currently developing additional resources suited to each of the above BFB 'profiles', specifically the management and training of BFBs. These additional resources will be discussed further with the sector in the coming months.

Whether the management structure for BFBs could be aligned to reflect the current operations of different brigade 'profiles', as provided in the LGGs Manual and outlined on Page 5 of this Paper, would require further discussion between DFES and the Local Government sector. This could allow for scalability of BFBs depending on location, resources and capabilities.

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<sup>10</sup> [ERA Review of the ESL, 2017, pg 185](#)

<sup>11</sup> [ERA ESL Review – summary of submissions to issues paper and draft report](#)

## Volunteer Insurance

Local Governments are responsible for providing compensation for injury caused to present and former BFB volunteers as a result of their duties. The commercial insurance market ceased writing injury insurance for volunteers in 2012, therefore a self-insurance mutual scheme was implemented to ensure that Local Governments continue to meet this obligation.

Since 2012, due to the high cost of claims, the aggregate limit of liability has increased from \$250,000 to \$750,000. In addition, the annual cost of insurance has nearly doubled (92%) from \$47.50 to \$91.20 per volunteer, and it is expected that this trend will continue<sup>12</sup>.

## Sector Capacity, Capability and Resourcing

Local Governments vary in their capability, capacity, and resources to manage BFBs, as well as their other extensive legislative responsibilities and requirements<sup>13</sup>.

By way of overview, Local Governments in Western Australia:

- vary in size from less than 1.5 to over 370,000 square kilometres;
- have populations of just over 100 to more than 220,000 people;
- employ fewer than 10 to over 1000 staff; and
- have revenue (2019-20) ranging from just over \$2 million to just over \$225 million<sup>14</sup>.

## Bush Fire Service and Volunteerism

The localised culture and history of BFBs in WA has had a large influence on the way that Local Governments engage with and manage BFBs. Many BFBs operate in an independent and self-sufficient way, which Local Governments encourage and support, as this contributes to expansion of the volunteer network in the local community, while also building community networks and resilience.

Communities, and therefore many Local Governments, have a significant interest in volunteering and BFBs, with some Local Governments very involved in the establishment, management and operation of their local BFBs. Therefore it is essential that any future management arrangements, including the transfer of responsibility for management of BFBs to the State Government, should be a voluntary process available to Local Governments that do not have the capacity, capability or resources to manage BFBs. It is also essential that the integrity of the Bush Fire Service is maintained, whatever the arrangements for the management of BFBs.

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<sup>12</sup> Data provided by LGIS, 17 May 2022

<sup>13</sup> 2021 Local Government Emergency Management Capability report - SEMC

<sup>14</sup> [Department of Local Government, Sport and Cultural Industries](#)

## Options for future management of BFBs

Four options are identified for the future management of BFBs:

1. Status quo - continue with the current arrangements for management of BFBs whereby the majority are managed by Local Government and transfer arrangements are negotiated on an ad hoc basis between DFES and Local Governments (or their BFBs).
2. Improvements - continue with the current arrangements for Local Government management of BFBs with additional support provided by the State Government with respect to increased funding and better access to training resources and other support.
3. Hybrid Model - Local Government continues to manage BFBs where they have the capacity, capability and resources to do so; however where they do not have the capacity, capability and resources, responsibility for management of BFBs is transferred to DFES.
4. Transfer - Responsibility for management of all BFBs is transferred to the State Government, consistent with the arrangements in other States and Territories.

## Proposed Position

Based on the feedback received from Local Governments in the WALGA Emergency Management Survey and the other considerations outlined above, it is considered appropriate for the Association to **support a hybrid model** for the management of BFBs.

A hybrid model would enable the continued management of BFBs by those Local Governments with capacity, capability and resources to do so, while providing a framework for the transfer of the management of BFBs to the State Government where a Local Government does not.

Whatever the arrangements for future management of BFBs, it is apparent that Local Governments with responsibility for management of BFBs require **additional support and resourcing** which should be provided by the State Government, including:

- development of a suite of guidelines and resources to assist Local Governments in their management of BFBs, particularly with respect to the discharge of obligations under the *Work Health and Safety Act 2021*;
- expansion of the Community Emergency Services Manager Program (CESM) so that every Local Government with responsibility for managing BFBs has access to the Program if they wish to participate;
- universal access to DFES training for BFBs; and
- development of mandatory and minimum training requirements including recognition of competency for volunteers.

Based on the previous commentary, the following Advocacy Position is proposed:

### **Management of Bush Fire Brigades**

1. The Association advocates that the State Government must provide for:
  - a) A clear pathway for Local Governments to transfer responsibility for the management of Bush Fire Brigades to the State Government when ongoing management is beyond the capacity, capability and resources of the Local Government;
  - b) The co-design of a suite of relevant guidelines and materials to assist those Local Governments that manage Bush Fire Brigades;
  - c) Mandatory and minimum training requirements for Bush Fire Brigade volunteers supported by a universally accessible training program managed by the Department of Fire and Emergency Services (DFES); and
  - d) The recognition of prior learning, experience and competency of Bush Fire Brigade volunteers.
2. That a Working Group comprising representatives of WALGA and DFES be established to develop a process and timeline for the transfer of responsibility for Bush Fire Brigades in accordance with 1(a).
3. Where management of Bush Fire Brigades is transferred to DFES in accordance with 1(a), DFES should be resourced to undertake the additional responsibility.



## How to Provide a Response to this Paper and Proposed Position

WALGA strongly encourages all Local Governments, and particularly those with responsibility for managing Bush Fire Brigades to provide a response to this Paper and the proposed Advocacy Position. Council endorsed responses are preferred but not essential.

The following questions are provided for Local Governments to consider:

1. Does your Local Government manage BFBs?
2. Does your Local Government support the proposed Advocacy Position on arrangements for the management of Bush Fire Brigades? Why or why not?
3. Does your Local Government have any further suggestions or changes to the proposed Advocacy Position?
4. For Local Governments that manage BFBs, is your Local Government's preference to continue to manage BFBs or to transfer responsibility to the State Government?
5. Is your response endorsed by Council? If so, please include the Council paper and resolution.
6. Do you have any further comments to make?

Responses can be provided by way of written submission or by completion of the online [survey](#).

Please provide written submissions by **5pm Friday 8 July 2022** to [em@walga.asn.au](mailto:em@walga.asn.au) (Subject line: Bush Fire Brigade Advocacy Position).

WALGA will review the feedback received and prepare a report for consideration by WALGA Zones and State Council in September 2022.



## **APPENDIX ONE - Proposed Emergency Management Advocacy Position Statements**

(Positions to be considered at July 2022 State Council Meeting)

### **8 Emergency Management**

Local Governments in Western Australia play a significant role in emergency management. Both Commonwealth and State Government policy identify Local Government as a key player in community disaster resilience, preparedness and response. Local Governments however face a few challenges in addressing their emergency management responsibilities, and these challenges differ greatly across the State.

#### **8.1 Emergency Management Principles**

1. The State Government bears fundamental responsibility for emergency management and has the role of providing strategic guidance, support and services for emergency management activities in Western Australia.
2. The State Government should provide financial and resourcing support as necessary to enable Local Governments to adequately deliver their extensive emergency management roles and responsibilities under the State Emergency Management Framework.
3. The Local Government Sector should be engaged as a partner in policy and legislative reviews that impact Local Government emergency management roles and responsibilities.

#### **8.2 State Emergency Management Framework**

Local Governments are supported to undertake their emergency management responsibilities by a simple and streamlined State Emergency Management Framework with the primary objectives of:

1. Protecting people, the economy, and the natural environment from disasters;
2. Supporting communities in preventing, preparing for, responding to and recovering from emergencies;
3. Clearly outlining roles, responsibilities and accountabilities for Local Government and other emergency management stakeholders;
4. Scalability and adaptability that supports Local Governments of varied capacity and capability; and
5. Supporting agency interoperability through common systems and approaches to key activities including data management, communications, and hazard management.

#### **8.3 Sustainable Grant Funding Model for Emergency Management**

Local Government should be empowered to discharge its emergency management responsibilities through sustainable grant funding models that support a shared responsibility and all hazards approach to prevention, preparedness, response and recovery from natural disasters. A sustainable grant funding model for Local Government emergency management:

1. empowers Local Governments to undertake proactive approaches to preparedness, prevention, response and recovery;

2. supports the resilience of local communities through capacity-building activities and programs;
3. is responsive to the variations in Local Government resourcing and context
4. develops the skills, capacity and capability of the emergency management workforce; and
5. is consistent, flexible, timely, accessible, scalable, strategic and the guidance provided is comprehensive.

#### **8.4 Consolidated Emergency Services Act**

1. The Association advocates for the development of a Consolidated Emergency Services Act to provide a comprehensive and contemporary legislative framework to support the effective delivery of emergency services in Western Australia. The Legislation should clearly define the roles and responsibilities of all emergency management stakeholders including Local Government.
2. The Local Government sector seeks ongoing engagement in the scoping and co-design of the Act and associated Regulations and supporting materials such as Guidelines and fact sheets.
3. The Association advocates for DFES to undertake a full costing analysis of the new Act and to provide to Local Government details of the cost implications prior to the release of any Exposure Draft Bill.
4. Any new or increased responsibilities placed on Local Government by the Consolidated Emergency Services Act must be accompanied by funding and resource support to enable Local Governments to adequately discharge those responsibilities.
5. The Association recognises that in addition to the Consolidated Emergency Services Act, the Regulations and other supporting materials that are developed to support it provide a key resource for Local Governments in understanding and discharging their legislative obligations.
6. The Association advocates for the Act to provide clear guidelines for the process for transferring responsibility for bushfire incident response from Local Government to DFES.

#### **8.5 Resource Sharing**

Local Governments and the Association support resource sharing across the Local Government Sector for the purpose of emergency management, to support Local Governments to undertake effective and timely response and recovery to emergencies as well as conduct business as usual. The Association will endeavour to facilitate support to the sector in undertaking resource sharing arrangements.

#### **8.6 Lessons Learnt Management**

The Association advocates for the implementation of a transparent and contemporary assurance framework for emergency management lessons management overseen by the State Emergency Management Committee. Findings from inquiries and reviews, and progress on implementation of recommendations, should be publicly reported regularly and consistently.

#### **8.7 Emergency Services Levy**

Local Government requests the implementation of the recommendations from the 2017 Economic Regulation Authority (ERA) Review of the Emergency Services Levy, which supported increased transparency and accountability in the administration and distribution of the ESL through:

1. Expansion of the ESL to fund Local Government emergency management activities across prevention, preparedness and response.
2. Administration of the ESL by an independent organisation that is funded through consolidated revenue, with regular independent reviews of expenditure and assessment of the effectiveness of ESL funding expenditure to support prevention, preparedness and response activities.
3. The ESL administration fee should recompense Local Governments for the complete cost of administering the ESL.
4. Public disclosure of the allocation and expenditure of the ESL.
5. Public disclosure by the State Government on the progress of implementation of each of the ERA Review recommendations.
6. A review of the role, responsibilities and reporting arrangements of the Community Emergency Services Manager (CESM) Program.

### **8.8 Local Government Grants Scheme (LGGS)**

Local Government supports:

1. A full, independent review of the LGGS to investigate and analyse how ESL funds are allocated to Local Government via the LGGS;
2. A redesign of the LGGS to remove the ineligible and eligible list and create a sustainable, modern, equitable grants program that funds Local Government emergency management activities across prevention, preparedness and response
3. An audit of existing buildings, facilities, appliances, vehicles, and major items of equipment for both Local Government Volunteer Bushfire Brigades (BFB) and State Emergency Services (SES) to inform the preparation of a Comprehensive Asset Management Plan and to guide future funding requests;
4. in the interim, an immediately increase in the quantum of State Government funding to enable the provision of funding of operating and capital grant applications in full, to provide all resources necessary for the safe and efficient operation of Local Government Bushfire Brigades, in accordance with obligations of the Work Health and Safety 2020 legislation.

### **8.9 Expansion of the Community Emergency Services Manager (CESM) Program**

That the Association advocates for an expansion of the Community Emergency Service Manager (CESM) Program, as follows:

1. All Local Governments should have the option of participating in the CESM Program.
2. The full cost of the CESM Program should be funded through the Emergency Services Levy.

### **8.10 Management of Bush Fire Brigades**

*To be developed.*

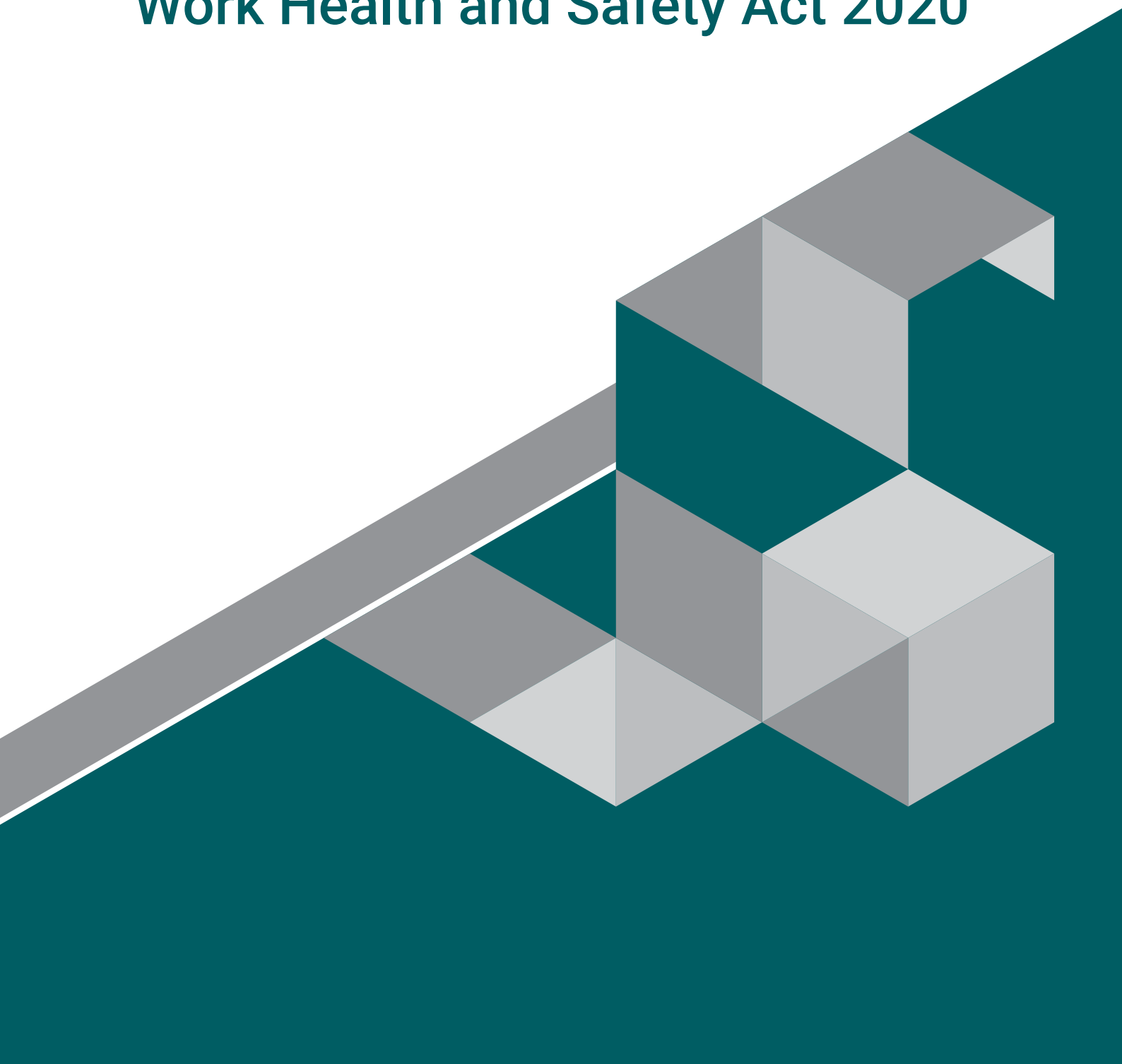


Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**



**WorkSafe**  
Western Australia

Overview of  
**Western Australia's  
Work Health and Safety Act 2020**



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# Introduction

On 12 July 2017, the Premier announced that work would commence to develop modernised work health and safety (WHS) laws for Western Australia.

Western Australia's *Work Health and Safety Act 2020* (WHS Act) was passed by Parliament on 3 November 2020 and assented to by the Governor on 10 November 2020.

When implemented in 2022, all Western Australian workplaces will come under this single Act, which will replace the following legislation:

- *Occupational Safety and Health Act 1984*
- the work health and safety elements of the following Acts, covering mining and petroleum
  - *Mines Safety and Inspection Act 1994*
  - *Petroleum and Geothermal Energy Resources Act 1967*
  - *Petroleum (Submerged Lands) Act 1982*
  - *Petroleum Pipelines Act 1969*.

The new laws are largely based on the national model WHS Act used in other states and territories (except Victoria), so companies will have similar obligations and requirements across Australia.

Transitional arrangements will provide sufficient time for duty holders to adapt their safe systems of work to the new requirements.

*Note: Levies to cover the cost of regulating health and safety will continue to be collected and used for these purposes, under the Mines Safety and Inspection Act 1994 and the Petroleum and Geothermal Energy Safety Levies Act 2011, and supporting regulations.*

## Format of the WHS Act

Some sections of the model WHS Act were tailored for Western Australia following extensive consultation. Where possible, the new laws align with the Part, Division and section numbers of the model WHS Act, with the term 'Not used' replacing any clauses that do not apply in Western Australia.

Other changes include terminology and areas of the model WHS Act that intersect with non-WHS laws, such as industrial relations legislation.

To guide interpretation of some segments of the Act, Parliament has included 'Notes for this section' at various points.

The Act comprises 16 parts with further Divisions and subsections.

## Overview of the WHS legislation

The WHS Act covers all workplaces within the natural jurisdiction of Western Australia, including mines, petroleum and geothermal energy operations. There are a number of exceptions where other legislation applies.



Some of the differences include:

- major hazard facilities and dangerous goods storage and handling will continue to be regulated separately under the *Dangerous Goods Safety Act 2004*
- petroleum and geothermal energy operations are included in the WHS Act, supported by a dedicated set of regulations.

*Note: Commonwealth Government workers and some self-insured licensees are covered by Comcare under the Work Health and Safety Act 2011 (Cth). Comcare is responsible for workplace safety, rehabilitation and compensation in the Commonwealth jurisdiction, and is a federal statutory authority.*

The WHS Act will be supported by three sets of regulations:

- Work Health and Safety (General) Regulations – applies to all workplaces except those covered by the other two sets of regulations [WHS General Regulations]
- Work Health and Safety (Mines) Regulations – applies to mining and mineral exploration operations [WHS Mines Regulations]
- Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations – applies to onshore and offshore petroleum, pipeline and geothermal energy operations [WHS PAGEO Regulations].

The WorkSafe Commissioner, an independent statutory office reporting directly to the Minister for Industrial Relations, will be responsible for performing the functions and exercising the powers of the regulator under the WHS Act.

The Department of Mines, Industry Regulation and Safety will assist the regulator in the administration of the WHS Act, including the provision of inspectors and other staff to secure compliance with the legislation.

## Key features of the WHS Act

- The primary duty holder is the 'person conducting a business or undertaking' (PCBU) which is intended to capture a broader range of contemporary workplace relationships.
- A primary duty of care requiring PCBUs to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work.
- Duties of care for persons who influence the way work is carried out, as well as the integrity of products used for work, including the providers of WHS services.
- A requirement that 'officers' exercise 'due diligence' to ensure compliance.
- The new offence of industrial manslaughter, which provides substantial penalties for PCBUs where a failure to comply with a WHS duty causes the death of an individual, in circumstances where the PCBU knew the conduct could cause death or serious harm.
- The voiding of insurance coverage for WHS penalties, and imposition of penalties for providing or purchasing this insurance.
- The introduction of WHS undertakings, which are enforceable, as an alternative to prosecution.
- Reporting requirements for 'notifiable incidents' such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking.
- A framework to establish a general scheme for authorisations such as licences, permits and registrations (for example, for persons engaged in high risk work or users of certain plant or substances), including provisions for automated authorisations.

- Provision for consultation on WHS matters, participation and representation.
- Provision for the resolution of WHS issues.
- Protection against discrimination for those who exercise or perform or seek to exercise or perform powers, functions or rights under the Act.
- Provision for enforcement and compliance, including a compliance role for WHS inspectors.
- Establishment of Western Australia's peak tripartite consultative bodies:
  - Work Health and Safety Commission (WHSC), replacing the Commission for Occupational Safety and Health (COSH)
  - Mining and Petroleum Advisory Committee (MAPAC), replacing the Mining Industry Advisory Committee (MIAC), which covered mining only.

# The WHS Act and its purpose (sections 1-3)

The formal title of the Act is the *Work Health and Safety Act 2020*.

The WHS Act and accompanying regulations will commence in March 2022.

The WHS Act provides a framework to protect the health, safety and welfare of workers in Western Australian workplaces, and of other people who might be affected by the work.

The WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or minimising risks arising from work or workplaces
- ensure fair and effective representation, consultation and cooperation to address and resolve health and safety issues in the workplace
- encourage unions and employer organisations to take a constructive role in improving work health and safety practices
- assist businesses and workers to achieve a healthier and safer working environment
- promote information, education and training on work health and safety
- provide effective compliance and enforcement measures
- deliver continuous improvement and progressively higher standards of work health and safety.

In furthering these aims, regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.

For these purposes, 'health' includes psychological health as well as physical health.

# WHS regulations, codes of practice and other supporting guidance (sections 274-276)

## WHS regulations

The three sets of WHS Regulations specify the way in which some duties under the WHS Act must be met, and prescribes procedural or administrative requirements to support the WHS Act (for example, requiring licences for specific activities and the keeping of records).

## Codes of practice

Codes of practice provide practical guidance on how to meet the standards set out in the WHS Act and the WHS Regulations. Codes of practice are admissible in proceedings as evidence of whether or not a duty under the WHS laws has been met. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

It is recognised that equivalent or better ways of achieving the required work health and safety outcomes may be possible. For that reason, compliance with codes of practice is not mandatory providing that any other method used provides an equivalent or higher standard of work health and safety than suggested by the code of practice.

## Interpretive guidelines

Interpretive guidelines are a formal statement on how the WHS regulator believes key concepts in the WHS Act will operate and provide an indication of how the laws will be enforced.

# Key terms and definitions

The following terms are used throughout this publication.

## Selected terms (sections 4-8)

**Duty holder** – refers to any person who owes a work health and safety duty under the WHS Act including a PCBU, designer, manufacturer, importer, supplier, installer of products or plant used at work (upstream duty holders), an officer and workers. More than one person can concurrently have the same duty in which case the duty is shared. Duties cannot be transferred.

**Health and safety committee (HSC)** – a group established under the WHS Act that facilitates cooperation between a PCBU and workers to provide a safe place of work. The committee must have at least 50 per cent of members who have not been nominated by the PCBU – that is, workers or health and safety representatives.

**Health and safety representative (HSR)** – a worker who has been elected by a work group under the WHS Act to represent them on health and safety issues.

**Officer** – an officer within the meaning of section 9 of the *Corporations Act 2001* (Cth) other than each partner within a partnership. Broadly, an officer is a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the organisation's activities. This does not include a local government member acting in that capacity or a minister of a state, territory or the Commonwealth.

An officer can also be an officer of the Crown or a public corporation if they are a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown or public corporation.

Each partner within a partnership is not an officer but a PCBU in their own right.

**Person conducting a business or undertaking (PCBU)** – a person conducting a business or undertaking alone or with others, whether or not for profit or gain. A PCBU can be a sole trader (for example, a self-employed person), each partner within a partnership, company, unincorporated association, government department or public corporation (including a local or regional government).

A local government member acting in that capacity is not a PCBU.

A 'volunteer association' that does not employ anyone is not a PCBU. If it becomes an employer it also becomes a PCBU for purposes of the WHS Act.

A 'strata company' responsible for any common areas used only for residential purposes is not a PCBU, unless it engages a worker as an employee.

**Plant** – includes any machinery, equipment, appliance, container, implement or tool, and any component or anything fitted or connected to these things.

**Structure** – anything that is constructed, whether fixed or moveable, temporary or permanent and includes buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels). Includes any component or part of a structure.

**Substance** – any natural or artificial substance in the form of a solid, liquid, gas or vapour.

**Supply** – supply and re-supply of a thing provided by way of sale, exchange, loan, lease, hire or hire-purchase arrangement, whether as principal or agent.

**Volunteer** – a person who acts on a voluntary basis regardless of whether they receive out of pocket expenses.

**Volunteer association** – a group of volunteers working together for one or more community purposes – whether registered or not – that does not employ anyone to carry out work for the association.

**Worker** – any person who carries out work for a PCBU, including work as an employee, contractor, subcontractor, self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a ‘host employer’ and volunteers.

**Work group** – a group of workers represented by an HSR who in many cases share similar work conditions (for example, all the electricians in a factory, all people on night shift, all people who work in the loading bay of a retail storage facility).

**Workplace** – any place where a worker goes or is likely to be while work is carried out for a business or undertaking. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water such as offshore units and platforms (that are not already covered under the Commonwealth’s offshore WHS laws).

## Definition of reasonably practicable (section 18)

A guiding principle of the WHS Act is that all people are provided the highest level of health and safety protection from hazards arising from work, so far as is reasonably practicable.

The term ‘reasonably practicable’ means what could reasonably be done at a particular time to ensure health and safety measures are in place.

In determining what is reasonably practicable, there is a requirement to weigh up all relevant matters including:

- the likelihood of a hazard or risk occurring (the probability of a person being exposed to harm)
- the degree of harm that might result if the hazard or risk occurred (the potential seriousness of injury or harm)
- what the person concerned knows, or ought to reasonably know, about the hazard or risk and ways of eliminating or minimising it
- the availability of suitable ways to eliminate or minimise the hazard or risk
- the cost of eliminating or minimising the hazard or risk.

Costs may only be considered after assessing the extent of the risk and the available ways of eliminating or minimising the risk.

Cost will not ordinarily be the key factor in determining what it is reasonably practicable for a duty holder to do unless it can be shown to be ‘grossly disproportionate’ to the risk.

# Work health and safety duties

## General principles (sections 13-17)

The WHS Act sets out work health and safety duties for PCBUs, officers, unincorporated associations, government departments and public corporations, workers and other people at a workplace.

The WHS Act covers:

- people who carry out work in any capacity for a person conducting a business or undertaking including employees, contractors, subcontractors, self-employed persons, outworkers, apprentices and trainees, work experience students and volunteers who carry out work
- other people at a workplace like visitors and customers at a workplace.

The WHS Act has limited application to 'volunteer associations' who do not employ anyone.

## Multiple and shared duties (sections 14-16)

A person may have more than one duty. For example, the working director of a company has duties as an officer of the company and also as a worker.

More than one person may have the same duty. A duty cannot be transferred to another person.

If more than one person has a duty for the same matter, each person retains responsibility and must discharge their duty to the extent to which the person has the capacity to influence and control the matter – disregarding any attempts to 'contract out' of their responsibility.

### Examples

- A labour hire company hires out its employees to 'host employers' to carry out work for them. Both the labour hire company and the 'host employer' owe a duty of care to those employees. In such cases both are fully responsible for meeting that duty to the extent to which they have capacity to influence and control the matter. It is not possible to 'contract out' work health and safety duties.
- A principal contractor and a subcontractor for construction work must ensure, so far as is reasonably practicable, the provision of adequate facilities for the welfare of the workers carrying out the construction work. This does not mean that two sets of facilities need to be provided by each duty holder. The principal contractor may agree to provide facilities for all workers and visitors to the site as part of their contractual arrangement for the construction work. The subcontractor need only be satisfied the arrangement is in place and the facilities are suitable for their workers.

## Duties of a PCBU

### Primary duty of care (section 19)

The WHS Act requires all PCBUs to ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person
- workers whose activities in carrying out the work are influenced or directed by the person while the workers are at work in the business or undertaking.

This primary duty of care requires duty holders to ensure health and safety, so far as is reasonably practicable, by eliminating risks to health and safety. If this is not reasonably practicable, risks must be minimised so far as is reasonably practicable.

PCBUs owe a similar duty of care to other people who may be at risk from work carried out by the business or undertaking.

Self-employed persons must ensure their own health and safety while at work, so far as is reasonably practicable.

### Primary duty of care, 'upstream' duties and duties of 'officers', workers and other persons (sections 19-28)

Under the primary duty of care, a PCBU must ensure, so far as is reasonably practicable:

- the provision and maintenance of a working environment that is safe and without risks to health, including safe access to and exit from the workplace
- the provision and maintenance of plant, structure and systems of work that are safe and do not pose health risks (for example, providing effective guards on machines and regulating the pace and frequency of work)
- the safe use, handling, storage and transport of plant, structure and substances (for example, toxic chemicals, dusts and fibres)
- the provision of adequate facilities for the welfare of workers at work (for example, access to washrooms, lockers and dining areas)
- the provision of information, instruction, training or supervision to workers needed for them to work without risks to their health and safety and that of others around them
- that the health of workers and the conditions of the workplace are monitored to prevent injury or illness arising out of the conduct of the business or undertaking
- the maintenance of any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

### Duty to consult, cooperate and coordinate (sections 46-49)

The WHS laws require duty holders with shared responsibilities to work together to make sure someone does what is needed. This requires consultation, cooperation and coordination between duty holders.

For example, there may be a number of different duty holders involved in influencing how work is carried out (that is suppliers, contractors and building owners). If more than one person has a health and safety duty in relation to the same matter, they must consult, cooperate and coordinate activities so far as is reasonably practicable in relation to the matter. Each must share health and safety-related information in a timely manner and cooperate to meet their shared health and safety obligations.



The duty to 'consult' does not require agreement, although each duty holder retains responsibility for discharging their health and safety duty.

Each PCBU must, so far as is reasonably practicable, consult with workers and HSRs (if any) about matters that directly affect them. This duty extends to consulting with all kinds of workers not just the PCBU's own employees, including any contractors and their workers, employees of labour hire companies, students on work experience, apprentices and trainees.

### **Duty of PCBUs with management or control of workplaces (section 20)**

A PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace and anything arising from the workplace does not put at risk the health or safety of any person.

### **Duty of PCBUs with management or control of fixtures, fittings or plant at workplaces (section 21)**

A PCBU with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant do not put at risk the health and safety of any person.

A PCBU that installs, erects or commissions plant or structures must ensure all workplace activity relating to the plant or structure including its decommissioning or dismantling is, so far as is reasonably practicable, without risks to health and safety.

### **Duty of PCBUs providing services relating to work health and safety (section 26A)**

A PCBU who provides services relating to work health and safety must ensure, so far as is reasonably practicable, that the services are provided so that any 'relevant use' of them at, or in relation to a 'workplace', will not put at risk the health and safety of persons at the workplace.

The duty applies only to services that could potentially pose a risk in the workplace (for example, measures to eliminate a specific hazard or control a risk), and will most commonly apply to WHS services provided to a specific PCBU and tailored to the circumstances of a particular workplace.

While it will depend on the circumstances, it is unlikely that general advice or training would be considered a WHS service for the purposes of section 26A.

If the WHS service is incorrectly used, or not used for its intended purpose, by the recipient of the service (in other words, the service is not applied to its 'relevant use'), the WHS service provider cannot be held responsible.

*Note: The provision of a WHS service does not relieve a PCBU of their duties under the WHS Act.*

### **Duty of officers (section 27)**

Officers of corporations and other organisations must manage corporate risks – including work health and safety risks.

Under the WHS Act, an officer of a PCBU must exercise due diligence to ensure the PCBU complies with its health and safety duties. This duty relates to the strategic, structural, policy and key resourcing decisions – that is, how the place is run.

Due diligence includes taking reasonable steps to:

- acquire and keep up to date knowledge on work health and safety matters
- understand the nature and operations of the work and associated hazards and risks
- ensure the PCBU has, and uses, appropriate resources and processes to eliminate or minimise risks to work health and safety
- ensure the PCBU has appropriate processes to receive and consider information about work-related incidents, hazards and risks, and to respond in a timely manner
- ensure the PCBU has, and implements, processes for complying with their duties and obligations (for example, reports notifiable incidents, consults with workers, complies with notices, provides appropriate training and instruction and ensures HSRs receive training entitlements)
- verify the provision and use of the relevant resources and processes.

An officer may be charged with an offence under the WHS Act whether or not the PCBU has been convicted or found guilty of an offence under the Act.

### **Duty of workers (section 28)**

While at work, workers must take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also:

- comply, so far as they are reasonably able, with any reasonable instruction given by the PCBU to allow the PCBU to comply with WHS laws
- cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

### **Duties of other persons at the workplace (section 29)**

Similar duties apply to other persons at a workplace. Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with WHS laws.

### **Volunteers (section 34)**

Volunteers that owe duties under the WHS laws cannot be prosecuted except in relation to their worker's duty.

### **Further duties of upstream PCBUs (designers, manufacturers, importers and suppliers)**

Designers, manufacturers, importers and suppliers of plant, structures or substances can influence the safety of these products before they are used in the workplace. These businesses or undertakings have a responsibility to ensure, so far as is reasonably practicable, that their products are without risks to health and safety when used at a workplace – throughout their entire lifecycle.

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
<p><b>Designers</b> of plant, structures or substances (section 22)</p>	<p>A PCBU who is a designer of a plant, structure or substance that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling or construction, storage, dismantling and disposal is designed, so far as is reasonably practicable, to be without risks to health or safety when used for its intended purpose.</p>	<p>Designers of the plant, structure or substance must carry out tests and examinations sufficient to ensure that when used for its intended purpose the plant, structure or substance meets work health and safety requirements.</p>	<p>Adequate information must be given to those for whom the plant, structure or substance was designed about its intended purpose, test results and any conditions necessary to ensure that it is safe and without risks to health or safety, when used for its intended purpose.</p> <p>Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.</p>
<p><b>Manufacturers</b> of plant, structures or substances (section 23)</p>	<p>A PCBU who is a manufacturer of any plant, structure or substance which is manufactured to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is so far as is reasonably practicable without risks to health or safety when used for its intended purpose.</p>	<p>Manufacturers must carry out or arrange tests and examinations sufficient to ensure that the plant, structure or substance is manufactured to meet work health and safety requirements when used for a purpose for which it was manufactured.</p>	<p>Adequate information must be given to any person to whom the product is provided about the purpose for which it was manufactured, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety.</p> <p>Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.</p>

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
<p><b>Importers</b> of plant, substances or structures (section 24)</p>	<p>A PCBU who is an importer of any plant, substance or structure which is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose.</p>	<p>Importers must carry out or arrange tests and examinations sufficient to ensure that the imported plant, structure or substance meets work health and safety requirements when used for its intended purpose.</p> <p>Alternatively, importers must ensure that these tests and examinations have been carried out.</p>	<p>Adequate information must be given to any person who the importer supplies with the plant, structure or substance about its intended purpose, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety.</p> <p>Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.</p>
<p><b>Suppliers</b> of plant, substances or structures (section 25)</p>	<p>A PCBU who is a supplier of any plant, substance or structure that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose.</p>	<p>Suppliers must carry out or arrange tests and examinations sufficient to ensure that the supplied plant, structure or substance meets work health and safety requirements when used for its intended purpose.</p> <p>Alternatively, suppliers must ensure that these tests and examinations have been carried out.</p>	<p>Adequate information must be given to any person who the supplier supplies with the plant, structure or substance about its intended purpose, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety.</p> <p>Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.</p>

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
<p>People <b>installing, constructing or commissioning</b> plant or structures (section 26)</p>	<p>A PCBU who installs, constructs or commissions plant or structures must also ensure, so far as is reasonably practicable, all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risks to health or safety.</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p><b>WHS service providers</b> (section 26A)</p>	<p>A PCBU who provides services relating to work health and safety must ensure, so far as is reasonably practicable, the WHS services are provided so that any 'relevant use' of them at, or in relation to a 'workplace', will not put at risk the health and safety of persons at the workplace.</p>	<p>Not applicable</p>	<p>Not applicable</p>

# Incident notification (sections 35-39)

## Notifiable incident

A PCBU must notify the regulator as soon as they become aware of a death, serious injury or illness or dangerous incident that arises out of the conduct of the business or undertaking.

## Serious injury or illness

Trigger	Examples
Immediate treatment as an in-patient in a hospital	<ul style="list-style-type: none"> <li>Admission into a hospital as an in-patient for any duration, even if the stay is not overnight or longer</li> </ul> <p>It does not include:</p> <ul style="list-style-type: none"> <li>out-patient treatment provided by the emergency section of a hospital (i.e. not requiring admission as an in-patient) and immediate discharge</li> <li>subsequent corrective surgery such as that required to fix a fractured nose</li> </ul>
Immediate treatment for the amputation of any part of the body	<ul style="list-style-type: none"> <li>Amputation of a limb such as arm or leg, body part such as hand, foot or the tip of a finger, toe, nose or ear</li> </ul>
Immediate treatment for a <b>serious</b> head injury	<ul style="list-style-type: none"> <li>Fractured skull</li> <li>Loss of consciousness</li> <li>Blood clot or bleeding in the brain</li> <li>Damage to the skull to the extent that it is likely to affect organ or face function</li> <li>Head injuries resulting in temporary or permanent amnesia</li> </ul>
Immediate treatment for a <b>serious</b> eye injury	<ul style="list-style-type: none"> <li>Injury that results in or is likely to result in the loss of the eye or total or partial loss of vision</li> <li>Injury that involves an object penetrating the eye (for example, metal fragment, wood chip)</li> <li>Exposure of the eye to a substance which poses a risk of serious eye damage</li> </ul> <p>It does not include:</p> <ul style="list-style-type: none"> <li>eye exposure to a substance that merely causes irritation</li> </ul>
Immediate treatment for a serious burn	<ul style="list-style-type: none"> <li>A burn requiring intensive care or critical care which could require compression garment or a skin graft</li> </ul> <p>It does not include:</p> <ul style="list-style-type: none"> <li>a burn that merely requires washing the wound and applying a dressing</li> </ul>
Immediate treatment for the separation of skin from an underlying tissue	<ul style="list-style-type: none"> <li>Separation of skin from an underlying tissue such that tendon, bone or muscles are exposed (de-gloving or scalping)</li> </ul>
Immediate treatment for a spinal injury	<ul style="list-style-type: none"> <li>Injury to the cervical, thoracic, lumbar or sacral vertebrae, including the discs and spinal cord</li> </ul>

Trigger	Examples
Immediate treatment for the loss of a bodily function	<ul style="list-style-type: none"> <li>• Loss of consciousness</li> <li>• Loss of movement of a limb</li> <li>• Loss of the sense of smell, taste, sight or hearing</li> <li>• Loss of function of an internal organ</li> </ul> <p>It does not include:</p> <ul style="list-style-type: none"> <li>• mere fainting</li> <li>• a sprain, strain or fracture</li> </ul>
Immediate treatment for serious lacerations	<ul style="list-style-type: none"> <li>• Serious lacerations that cause muscle, tendon, nerve or blood vessel damage or permanent impairment</li> <li>• Deep or extensive cuts</li> <li>• Tears of wounds to the flesh or tissues – this may include stitching to prevent loss of blood and/or other treatment to prevent loss of bodily function and/or infection</li> </ul>
Medical treatment within 48 hours of exposure to a substance	<ul style="list-style-type: none"> <li>• ‘Medical treatment’ is treatment provided by a registered medical practitioner</li> <li>• ‘Exposure to a substance’ includes exposure to chemicals, airborne contaminants and exposure to human or animal blood and body substances</li> </ul>
Medical treatment following urgent transfer from remote location	<ul style="list-style-type: none"> <li>• Includes any injury or illness not specified previously that cannot be treated at or near the site of the incident</li> <li>• A remote location is any location that is not served by ordinary ambulance services, and may include mines and offshore facilities, rail camps, geological surveys, and isolated holiday facilities</li> <li>• A medical facility includes a hospital and any other facility that provides medical services</li> </ul>
Injury or illness that, in the opinion of a medical practitioner, is likely to prevent the person from being able to do their normal work for at least 10 days	<ul style="list-style-type: none"> <li>• Captures any illness or injury not specified previously that prevents a person from doing their normal work for at least 10 days</li> <li>• This determination may only be made by a medical practitioner and may be in the form of a medical certificate or letter</li> <li>• Notification must be provided even if the worker is capable of light duties (e.g. a warehouse worker who is moved to desk duties for the duration of their recovery)</li> </ul>

*Note: There will be additional notification requirements under the WHS regulations.*

‘Treatment’ means the kind of treatment that would be required for a serious injury or illness and includes ‘medical treatment’ by a registered medical practitioner, treatment by a paramedic or treatment by a registered nurse practitioner.

## Dangerous incident

The regulator must also be notified immediately of any dangerous incident that exposes a person to a serious health or safety risk from immediate or imminent exposure to:

- the uncontrolled escape, spillage or leakage of a substance
- an uncontrolled implosion, explosion or fire
- an uncontrolled escape of gas, steam or a pressurised substance
- an electric shock
- the fall or release from height of any plant, substance or thing
- the collapse, overturning, failure or malfunction of, or damage to, plant that is required to be licensed or registered
- the collapse or partial collapse of a structure, including an excavation or of any shoring supporting an excavation
- the inrush of water, mud or gas into an underground excavation or tunnel
- the interruption of the main system of ventilation to an underground excavation or tunnel
- other incidents as stated in the three sets of WHS regulations.

## Notification process

Notice of an incident must be given by the fastest possible means, by telephone or in writing (including electronic means, where available). If notice is given by telephone, the regulator may request follow-up written notice of the incident. This must be provided within 48 hours of the request.

A record of each notifiable incident must be kept by the PCBU for at least five years.

The person with management or control of a workplace at which a notifiable incident has occurred must ensure the site of the incident is not disturbed until an inspector arrives at the site or directs otherwise. This does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.

There will be additional notification requirements under the mines and PAGEO regulations.



# Consultation with workers and representation of workers

PCBUs are responsible for making decisions regarding health and safety, but may not have a full understanding of the finer detail or subtleties of the work or working conditions. It is important that PCBUs obtain information from their workers before making changes or implementing measures which may adversely affect health and safety. It is also important that the workers are informed of those measures and their significance to health and safety so that they can implement them and also understand the importance of doing so. This requires an ongoing exchange of information between the PCBUs and their workers, directly or through their representatives.

Given the importance of consultation in contributing to work health and safety, the WHS Act prescribes a general duty to consult.

## Consultation with workers (sections 47-49)

PCBUs must, so far as is reasonably practicable consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to health and safety. This includes giving workers a reasonable opportunity to express their views or raise issues about work health and safety at the workplace.

Consultation is a collaborative process between PCBUs and their workers. It involves sharing information about work health and safety and ensuring that views of workers are taken into account when making decisions about health and safety at the workplace. It does not require agreement to be reached.

If there is an agreed consultation procedure then the consultation must be in accordance with those procedures.

If an HSR represents workers, the consultation must involve the HSR so far as is reasonably practicable. The PCBU must make all reasonable efforts to consult at times, places and in ways that are convenient for the workers and the HSR.

A PCBU must consult with workers and take their views into account when:

- identifying hazards and assessing risks arising from work
- proposing changes that may affect the health and safety of workers
- whenever specifically required to do so under particular regulations

and when considering making decisions about:

- ways to eliminate or minimise risks
- the adequacy of facilities for workers' welfare at work
- procedures for consulting with workers
- procedures for resolving health and safety issues
- procedures for monitoring the health of workers or workplace conditions
- how to provide health and safety information and training to workers.

The views of workers must be taken into account when consulting under these provisions but there is no requirement for agreement to be reached.

Workers who have been consulted under these provisions must be advised of the outcome in a timely manner. There is no particular way this advice must be given – for example, it could be given at a ‘toolbox’ meeting or posted as an intranet news item.

## Representation and participation of workers

Workers are entitled to:

- elect a health and safety representative if they wish to be represented by one
- request the formation of a health and safety committee if they wish
- cease unsafe work in certain circumstances (see below for more information)
- have health and safety issues at the workplace resolved in accordance with an agreed issue resolution procedure
- not be discriminated against for raising health and safety issues.

## Health and Safety Representatives (HSRs)

Any worker can ask the PCBU for whom they are carrying out work to facilitate the election of one or more Health and Safety Representatives (HSR) for the workplace.

An HSR is elected by a work group to represent the health and safety interests of the work group (and must be a member of that work group). There can be as many HSRs and deputy HSRs as needed after consultation, negotiation and agreement between workers and the PCBU.

Once determined, the PCBU must keep a current list of all HSRs and deputy HSRs for the workplace(s) and display a copy at the relevant workplace.

### Work groups (sections 50-59)

A work group is a group of workers who share a similar work situation. For example, a work group might consist of all workers in the office part of a manufacturing complex, or it might consist of people of the same trade, or it might consist of all people on the night shift. If agreed, workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers and apprentices.

A work group is set up for the purposes of electing – and being represented by – one or more HSRs.

If a request is made for the election of an HSR, the PCBU must start negotiations with workers within 14 days to determine the:

- number and composition of the work group(s)
- number of HSRs and deputy HSRs
- workplace(s) to which the work group(s) apply.

The PCBU must negotiate about work groups with a worker’s representative (for example, union) if asked by a worker. The PCBU must also notify workers as soon as practicable of the outcome of the negotiations.

The parties to a work group agreement may negotiate to change the size or membership of the work group at any time – for example, if it could be reorganised to provide for more effective representation.

Negotiations for the determination and variation of work groups must be aimed at ensuring workers are grouped in a way that most effectively and conveniently enables their WHS interests to be represented and allows an HSR to be readily accessible to each worker in the work group.

If negotiations fail in establishing or varying a work group any person who is a party to the negotiations can request an inspector to assist in deciding the matter (or if the matter involves multiple businesses, to assist the negotiations).

### **Powers and functions of HSRs (sections 68-69)**

HSRs:

- represent their work group members in matters relating to work health and safety at the workplace
- monitor risk control measures put into place at the workplace to protect their work group members
- investigate complaints from their work group members relating to work health and safety
- inquire into anything that appears to be a risk to the health or safety of work group members.

In limited circumstances, HSRs may represent another work group or work group member for the business or undertaking, or work groups in other PCBUs at the workplace if:

- there is a serious risk to the health or safety of other workers from an immediate hazard, or
- a worker in another work group asks for their assistance and the HSR for that other work group is not available.

Each HSR must be allowed to spend such time as is reasonably necessary to exercise their powers or perform their functions under the WHS Act. This must be paid time based on the rate they would have otherwise been paid at the time.

In exercising their powers or functions, an HSR can:

- inspect the workplace or any area where work is carried out by a worker in the work group
  - at any time after giving relevant notice, or
  - at any time without notice in the event of an incident or any situation involving a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard
- accompany an inspector during an inspection of an area where a work group member works
- be present at an interview with a worker that the HSR represents (with their consent) and the PCBU or an inspector about work health and safety issues – if the interview involves more than one worker, only the consent of one of the HSR's work group members is required
- receive information about work health and safety of work group members— but not any personal or medical information that directly or indirectly identifies a worker without the worker's consent
- request a health and safety committee be established
- issue a provisional improvement notice (PIN) or direct a person to cease unsafe work in certain circumstances, but only if they have completed the approved training.

*Note: Workers may also cease work in certain circumstances without direction from an HSR.*

Whenever necessary, an HSR may request the assistance of any person. The PCBU is not required to meet the associated costs. Where an HSR's assistant requires access to the workplace to provide assistance to the HSR, the HSR is required to give at least 24 hours' notice, but not more than 14 days' notice, of the assistant's proposed access. This information must be given to the PCBU and the person with management or control of the workplace. Access to the workplace by the HSR's assistant may be refused by the PCBU on reasonable grounds, in which case the regulator may be asked to appoint an inspector to resolve the access issue (see sections 70(1)(g), 71(3) and 71(6)).

An HSR is not personally liable for anything done or not done in good faith while carrying out their role.

### **Election and eligibility of HSRs (sections 50, 60-67)**

The members of a work group elect their own HSR. All members are entitled to vote in an election. To be eligible for election as an HSR a person must be a member of the work group and not be disqualified from acting as an HSR.

A deputy HSR may also be elected for a work group to take on the HSR role if the HSR for that work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers or perform the functions of an HSR.

The PCBU must provide any resources, facilities and assistance that are reasonably necessary to carry out the election. Members of a work group decide how the election will be conducted. The election may be conducted with the assistance of a union or other person or organisation, if supported by a majority of work group members.

Elections for a deputy HSR are carried out in the same way as for an HSR.

Elections are not needed when the number of candidates is the same as the number of vacancies.

The term of office for an HSR or deputy HSR is three years. They cease to hold office if:

- they leave the work group
- they are disqualified from being an HSR
- they resign as an HSR by written notice, or
- the majority of members of the group agree the person should no longer represent them and they are removed from office in accordance with the WHS Regulations.

HSRs and deputy HSRs can be re-elected.

Any person adversely affected by a decision or action of an HSR can apply to have them disqualified in circumstances where an HSR has exercised powers or performed functions improperly or where an HSR has used or disclosed information for purposes not related to their role as an HSR.

### **Training (section 72)**

If requested, a PCBU must allow HSRs and deputy HSRs to attend a work health and safety course or training approved by the Work Health and Safety Commission (approved course) and chosen by the HSR or deputy HSR. The PCBU cannot refuse to allow an HSR to attend an approved course.

As soon as practicable and within three months of the request, the PCBU must give the HSR paid time off to attend the course. The PCBU must pay the course costs plus reasonable expenses.

In some circumstances, costs associated with the course selected by the HSR, including course fees, may be significantly higher than other courses that are conveniently available to the HSR (for example, if the HSR chooses to attend a course requiring air travel and accommodation when a similar course is provided locally). The PCBU is only required to pay reasonable costs for the course.

If an agreement cannot be reached on the course timing and costs, either party may ask the regulator to appoint an inspector to decide the matters in dispute. The parties will be bound by the inspector's determination, and non-compliance by the PCBU would constitute an offence.

An obligation to share costs applies if multiple PCBUs are involved. Timely consultation between all relevant PCBUs should be arranged to ensure responsibilities are clear.

HSRs must complete the approved training before they can issue a provisional improvement notice (PIN) or direct a person to cease unsafe work.

Whether or not the HSR has undergone training, the PCBU must provide the HSR with the resources, facilities and assistance that are reasonably necessary to enable them to carry out their functions.

### **Provisional improvement notices (sections 90-102)**

A PIN is a written notice issued by an HSR requiring a contravention against the WHS Act or Regulations to be remedied within a certain period or a likely contravention to be prevented. Only an HSR who has completed the approved training may exercise this power.

Before issuing a PIN, the HSR must first consult with the person who is to receive the proposed notice. This could be the PCBU or a worker, if the PIN is proposed to be issued to a worker.

If consultation is unsuccessful, a PIN may be issued in writing. It must state:

- that the HSR believes that a provision of the WHS Act or Regulations is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated
- the section of the WHS Act or Regulations considered to have been contravened and how the section is being or has been contravened
- the date (at least eight days from the issue date) by which the contravention must be remedied.

A PIN may also include recommendations that may be taken to remedy a contravention. These recommendations may refer to a code of practice and offer the person a choice of solutions. It is not an offence to fail to comply with any recommendations in a PIN as a PIN can be complied with by taking alternative actions to those recommended in the PIN to remedy the contravention.

However, the PIN must be complied with within the time specified in the notice.

A PIN cannot be issued to override an inspector's decision on a matter (subsection 90(5)).

A person issued with a PIN must display it in a prominent place in the workplace, or part of the workplace, at which work is being carried out that is affected by the notice. It is an offence to intentionally remove, destroy, damage or deface the notice, while it is in force.

Within seven days of being issued with a PIN, the affected person (including the PCBU if the person issued with the PIN is a worker) can ask the regulator to have the notice reviewed by an inspector. If no review is sought, the PIN must be complied with – that is, the contravention must be remedied within the time allowed or prevented from occurring in the first place (whichever applies).

If a request is made to review the PIN it ceases to have effect until the inspector makes a decision on the review. The inspector must either confirm the PIN (with or without changes) or cancel it. A review may still occur even if the time specified for compliance with the PIN has expired. A confirmed PIN (with or without changes) must be complied with.

The inspector will give a copy of their decision to the person who applied for the review and the HSR who issued the notice.

A provisional improvement notice that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under the Act.

### **Worker's right to cease unsafe work (sections 84-89A)**

If a worker has a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to a hazard, or the health and safety of any other person, they may cease or refuse to carry out work that would expose them, or any other person, to that hazard.

An exception is provided in section 84(2) for police officers, where the refusal to carry out work could adversely affect a covert or dangerous operation. This exclusion does not relieve WA Police of any other duties under the WHS Act.

A worker who ceases work must notify the PCBU as soon as practicable. Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

An affected person including the PCBU, HSR or worker may request an inspector to attend the workplace to assist in resolving an issue relating to the cessation of work.

A worker cannot be discriminated against in their engagement (for example, have pay deducted) for exercising their right to cease unsafe work under the WHS Act. Issues arising in relation to the continuity of engagement of a worker may be referred to the Work Health and Safety Tribunal for resolution, regardless of whether or not an inspector was appointed to resolve the matter.

### **Direct workers to cease unsafe work (sections 85-89A)**

An HSR who has completed the approved training may direct that unsafe work cease in circumstances where they have a reasonable concern that to continue to carry out the work would expose a work group member to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard.

An HSR cannot direct a police officer to cease unsafe work if the request could adversely affect a covert or dangerous operation.

Before issuing a direction however the HSR must first attempt to resolve the matter with the relevant PCBU. This does not have to happen if the risk is so serious and immediate or imminent that it is not reasonable to consult first. In this case the HSR must consult the PCBU as soon as practicable after giving the direction.

The HSR must inform the relevant PCBU of any direction given by them to workers under the WHS Act. Workers do not need to separately notify the PCBU of the cessation of work in these circumstances. Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

Any affected person may request an inspector to attend the workplace to assist in resolving an issue relating to the cessation of work.

A worker cannot be discriminated against in their engagement (for example, have pay deducted) for exercising their rights to cease unsafe work or direct that unsafe work cease under the WHS Act. Issues arising in relation to the continuity of engagement of a worker may be referred to the Work Health and Safety Tribunal for resolution, regardless of whether or not an inspector was appointed to resolve the matter.

## Health and safety committees (sections 75-79)

A health and safety committee (HSC) is a formal committee established under the WHS Act to facilitate cooperation between a PCBU and workers in developing and carrying out measures to ensure health and safety at work. This includes health and safety standards, rules and procedures for the workplace.

A PCBU at a workplace must set up an HSC for the workplace within two months of being requested to do so by an HSR for the workplace, or by five or more workers at the workplace.

A PCBU can also establish an HSC on their own initiative.

The constitution of the HSC is determined by agreement between the PCBU and workers at the workplace although some minimum requirements apply.

At least half of the members of an HSC must be workers that have not been nominated by the PCBU. An HSR for the workplace can join the committee if they wish and, if a workplace has more than one HSR, they can choose one or more HSRs to join the committee (if they consent).

At least one member of the HSC must be a representative of the PCBU with sufficient authority to ensure compliance with the duties under section 79, including taking action to ensure a decision of the committee is implemented without unreasonable delay. If the PCBU is an individual, that individual must be a member of the HSC.

If agreement cannot be reached on how the HSC should be constituted, any party can ask the regulator to appoint an inspector to decide the matter. An inspector may decide the constitution of the HSC or that the HSC should not be established.

An HSC must meet at least once every three months and at any reasonable time at the request of at least half of the members of the committee.

No formal training requirements apply for committee members.

Each committee member must be allowed to spend such time as is reasonably necessary to attend meetings of the committee or carry out functions as a member of the committee. This must be paid time based on the rate they would have otherwise been paid at the time.

## Issue resolution (sections 80-82A)

Issue resolution procedures apply under the WHS Act if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussions between parties.

If the matter is not resolved, the relevant parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure or the default procedure set out in the WHS Regulations.



Relevant parties are:

- the PCBU or their representative
- each PCBU or their representative if the issue involves more than one PCBU
- the HSR for a work group or their representative – if the worker(s) affected by the issue are in a work group
- the worker(s) or their representative – if the worker(s) affected by the issue are not in a work group.

The PCBU's representative must not be an HSR and must have an appropriate level of seniority and be sufficiently competent to act as the person's representative.

A worker's representative may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

If the issue remains unresolved, any party may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue. The regulator may refuse the request to appoint an inspector, if the parties making the request have not made reasonable efforts to resolve the issue.

While this process is underway, workers may still exercise their right to cease unsafe work and HSRs who have completed the approved training may continue to exercise their powers to issue a PIN or direct that unsafe work cease.

Inspectors will not undertake conciliation or mediation to resolve the issue but may exercise any of their compliance powers under the WHS Act to resolve any underlying work health or safety issues.

No later than two days after the day on which the request is made, an inspector must make a decision resolving the issue. If this time is insufficient, the regulator may apply to the Work Health and Safety Tribunal for an extension of the deadline. The Tribunal will provide any affected parties the opportunity to make submissions before setting a new deadline.

## **Discriminatory, coercive or misleading conduct (sections 104-115)**

Anti-discrimination provisions protect workers, prospective workers and others who perform safety-related functions or activities under the WHS Act, or raise health and safety issues or concerns at the workplace.

It is an offence for a person to engage in discriminatory conduct for a prohibited reason in the course of work. A person only commits an offence if the prohibited reason was the dominant reason for the discriminatory conduct.

Discriminatory conduct includes dismissing or refusing to engage a worker, terminating a contract for services with a worker, detrimentally altering the position of a worker or otherwise injuring them in their engagement (for example, by demoting them, or reducing their overtime or ordinary hours of work) because they:

- are, have been, or propose to be an HSR or member of an HSC
- exercise a right or perform a function as an HSR or HSC member
- undertake, have undertaken or propose to undertake a role under the Act
- exercise, have exercised or propose to exercise (or refrain from exercising) a power under the Act
- assist, have assisted or propose to assist a person to exercise a power or perform a function under the Act



- raise, have raised or propose to raise an issue or concern about work health and safety
- are involved in, have been involved in or propose to be involved in resolving a work health and safety issue, or
- made a complaint or taken other action to get another person to comply with their duties or obligations under the Act.

It is also unlawful to terminate or refuse to enter into a commercial arrangement with another person for any of these reasons.

It is unlawful to engage in, threaten or organise to take any of the above actions, or to ask, authorise, assist or encourage another person to do this.

It is unlawful to organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the person, or a third person to exercise their rights under the WHS Act in a particular way.

It is unlawful for a person to knowingly or recklessly make a false or misleading representation to another person about their:

- rights or obligations under the Act
- ability to initiate, or participate in, a process or proceeding under the Act, or
- ability to make a complaint or inquiry to a person or body empowered under the Act to seek compliance with the Act.

Offences may be prosecuted by the regulator or alternatively an affected person or their representative may apply to the Work Health and Safety Tribunal for a civil remedy.

In civil proceedings a person may be found to have engaged in discriminatory conduct for a prohibited reason only if the reason was a substantial reason for the conduct.

Civil proceedings relating to alleged discriminatory conduct must be lodged within a year after the date on which the applicant knew or ought to have known that the cause of action accrued.

A broad range of remedies is available, including imposing a penalty or reinstatement.

A person may not initiate multiple actions in relation to the same matter under two or more laws of that jurisdiction.

# The regulator

## Role of the regulator (sections 152-154)

The WorkSafe Commissioner is the regulator under the WHS Act.

The WorkSafe Commissioner will be responsible to the Minister for Industrial Relations for the administration of the WHS Act and any other law relating to work health and safety administered by the Minister.

The regulator has a broad range of functions, including:

- monitoring and enforcing compliance with the WHS Act (and regulations)
- investigating and reporting on matters relating to work health and safety, including particular types of hazards and matters relating to particular industries or particular businesses or undertakings
- providing advice and information on work health and safety to duty holders and the community
- collecting, analysing and publishing statistics relating to work health and safety
- fostering a cooperative, consultative relationship between duty holders and the people to whom they owe work health and safety duties, and their representatives
- promoting and supporting education and training on matters relating to work health and safety
- engaging in, promoting and coordinating the sharing of information to achieve the object of the WHS Act, including the sharing of information with other work health and safety regulators
- conducting and defending legal proceedings under the WHS Act.

## Power of the regulator to require documents and information (sections 155-155B)

The regulator has powers to obtain information by written notice if it reasonably believes a person is capable of giving information, providing documents or giving evidence:

- in relation to a possible contravention of the WHS Act, or
- that will assist in monitoring or compliance.

The written notice must be served on the person, requiring them to do one or more of the following:

- provide a signed statement on the required matters within the time and in the manner specified in the notice
- produce the required documents, including to request a copy or reproduction of documents that are stored in an electronic format
- appear before a person appointed by the regulator at a reasonable time and place determined by that person and specified in the notice, and provide the required evidence orally, in writing or provide the documents.

The regulator may only require a person to appear in person after taking all reasonable steps to obtain the required information by other means.

The regulator may also, by written notice, require a PCBU to provide an independent report on WHS matters at a workplace.

It is an offence to refuse or fail to comply with a request without reasonable excuse. However, a person may refuse to produce a document or information that is subject to legal professional privilege.

While the regulator may compel answers, self-incriminating answers to questions or information provided cannot be used as evidence against an individual in proceedings, other than proceedings arising out of the false or misleading nature of the answer, information or document.

### **Powers to copy and retain documents (section 155C)**

Documents provided to, or obtained by the regulator, may be retained for the period considered necessary by the regulator. The regulator may also take extracts, and make copies or reproductions of documents.

# Securing compliance

The Department of Mines, Industry Regulation and Safety is the WHS department that will assist the regulator in the administration of the WHS Act, including the provision of inspectors and other staff to secure compliance with the legislation.

## Functions and powers of inspectors (sections 160-162, 171, 172)

Inspectors have general functions and powers to:

- provide information and advice about how to comply with the WHS Act and regulations
- help resolve work health and safety issues at workplaces
- review disputed PINs
- require compliance with the WHS Act by issuing notices
- investigate contraventions and assist to prosecute offences
- investigate and report on matters relating to WHS, including particular types of hazards and matters relating to particular industries or particular businesses or undertakings.

Inspectors are subject to the regulator's directions in the exercise of their compliance powers.

In performing their functions and exercising powers, an inspector at a workplace may require a person to answer their questions, submit to an interview or produce documents or information. The information must be provided in a form that is capable of being understood by the inspector, particularly in relation to electronically stored documents.

The inspector may make copies of or take extracts from a document given to them or keep the document for the period the inspector considers necessary. While in the inspector's custody it must be made available to the person who produced the document, the document's owner, or a representative of either, at all reasonable times.

It is an offence for a person to refuse or fail to comply with the inspector's request without reasonable excuse. However the person may refuse to produce a document or information that is subject to legal professional privilege.

While inspectors may compel answers, self-incriminating answers to questions or information provided cannot be used as evidence against an individual in proceedings, other than proceedings arising out of the false or misleading nature of the answer, information or document.

## Warning to be given (section 173)

An inspector may obtain and use information voluntarily given to them in their official capacity by any person.

If a person is however required to answer a question or provide information or a document as explained above, the inspector must first:

- identify themselves to the person as an inspector by producing their inspector's identity card or in some other way
- warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence
- warn the person that they are not excused from answering a question or providing information or a document on the ground that they may incriminate themselves
- advise the person that legal professional privilege may be claimed.

It is not an offence for a person to refuse to cooperate on grounds that they may incriminate themselves if the inspector has not first given them the required warning.

## Power to require name and address (section 185)

An inspector may require a person to provide their name and residential address if:

- the inspector finds them committing an offence against the WHS Act
- the inspector finds them in circumstances that leads the inspector to reasonably believe they have committed an offence against the WHS Act, or
- the inspector reasonably believes that the person may be able to assist in the investigation of an offence against the WHS Act.

In making the request the inspector must explain the reasons for the requirement and warn the person that it is an offence to refuse or fail to comply without reasonable excuse.

If the inspector reasonably believes that the name or residential address is false, they may require the person to provide further evidence as to its correctness.

It is an offence for a person to fail to comply with these requirements without reasonable excuse.

## Powers of entry for inspectors (sections 163-166)

In performing their functions and exercising powers, an inspector may enter a workplace or a suspected workplace at any time without prior notice, with or without the consent of the person with management or control. If it is not a workplace, then they must leave immediately unless they are authorised by an entry warrant to be there or the person with management or control consents. They may also pass through places used for residential purposes at a reasonable time if it is the only known way to access a workplace.

An inspector must identify themselves on request, by showing their identity card or by another way, prescribed in the WHS regulations, such as a departmental letter or email, or confirmation with the department by telephone.

An inspector must take all reasonable steps to advise the relevant PCBU, person with management or control of the workplace and any relevant HSRs they have entered the workplace as soon as practicable. This is not needed if it would defeat the purpose of entry or cause unreasonable delay.

An inspector entering a workplace can:

- inspect, examine and make inquiries
- inspect, examine and seize anything, including documents, and may analyse or test a seized thing or arrange for another person to do so
- bring and use any equipment or materials they may need
- take measurements, conduct tests, and make sketches or recordings (for example, photographs, films, audio and video)
- take and remove samples for analysis.

An inspector can require a person at a workplace to give them reasonable help to do these things. A person asked to assist must not, without reasonable excuse, refuse or fail to comply. This may include the supply of transport (for example, flights to/from the workplace being inspected), accommodation and meals.

Inspectors may be accompanied by other persons including an interpreter to assist them, if this is considered to be necessary.

### **Entry warrants (sections 166A-169)**

An inspector may apply to a Justice of the Peace (JP) for an entry warrant. An entry warrant may be issued if:

- there are reasonable grounds for suspecting that there is a thing or activity at the place that may be evidence of an offence against the WHS Act, or may enable access to evidence of an offence against the WHS Act
- the warrant is reasonably necessary to enable an inspector to exercise compliance powers.

An entry warrant may be executed by any inspector, but the inspector must produce the warrant, or a copy of it.

# Enforcement measures

## Improvement notices (sections 191-194)

An improvement notice is a written notice issued by an inspector requiring a contravention against the WHS Act or Regulations to be remedied within a certain period or a likely contravention to be prevented (that is, if there are circumstances that make it likely that a contravention will continue or be repeated).

An inspector may issue an improvement notice requiring a person to remedy the contravention, prevent a likely contravention from happening or remedy the things or operations causing the contravention or likely contravention.

The notice must state the inspector's belief about the contravention or likely contravention, identify the provision the inspector believes is being or has been contravened, how the provision is being or has been contravened and a reasonable date by which to fix the contravention.

An improvement notice may also include directions and/or recommendations about how to fix or prevent a contravention.

A person issued with an improvement notice must comply with the notice.

A person issued with an improvement notice may seek to extend the compliance period for the notice, but only if the period has not ended.

## Prohibition notices (sections 195-197)

A prohibition notice is a notice issued by an inspector prohibiting an activity at a workplace from continuing or being carried out in a specific way.

An inspector may issue a prohibition notice if they reasonably believe the activity involves a serious risk to a person's health or safety from an immediate or imminent exposure to a hazard.

The notice is issued to the person with control over the activity. It may include directions on how to remedy the risk and remains in place until an inspector is satisfied the risk has been fixed.

At first the notice may be given orally but must be confirmed by written notice issued to the person as soon as practicable.

A person issued with a prohibition notice must comply with the notice (including any notice given orally). It remains in force until an inspector is satisfied the underlying risk has been fixed – see also the section on reviews.

An inspector cannot give a direction if compliance with the direction would adversely affect a covert or dangerous operation of the WA Police.

## Non-disturbance notices (sections 198-201)

A non-disturbance notice is a written notice issued by an inspector requiring a person with management or control of a workplace to preserve a 'notifiable incident' site or prevent disturbance of a particular site (including the operation of plant) in certain circumstances. It may only be issued if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of their compliance powers.

A notice may require the person to preserve the site or prevent disturbance for up to seven days, and must include the measures to be taken to do so.

One or more subsequent non-disturbance notices may be issued to a person if an inspector considers this necessary.

A non-disturbance notice does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.

A person issued with a non-disturbance notice must comply with the notice unless they have a reasonable excuse for not doing so.

## Display of notices (section 210)

A person issued with a notice must as soon as possible display a copy of the notice in a prominent place at or near the workplace where work affected by the notice is being carried out.

It is an offence to intentionally remove, destroy, damage or deface a notice that is required to be displayed while the notice is in force.

Note that the operation of the notice may be stayed if the decision to issue the notice is under formal review (see below).

## Remedial action (sections 211-213)

The regulator may take any reasonable remedial action to make a workplace or situation safe if a person fails to take reasonable steps to comply with a prohibition notice. To do so it must give written notice to the person of the regulator's intention and information about the owner's or person's liability for the costs of that action.

The regulator may also take remedial action if a prohibition notice cannot be issued because the person with management or control of the workplace cannot be found.

Costs of remedial action may be charged to the person who was issued with the initial prohibition notice or would have been, had they been found.

## WHS undertakings (sections 216-222)

A person may give the regulator an undertaking about a contravention or alleged contravention by the person, other than industrial manslaughter or a Category 1 offence.

If accepted, no enforcement proceedings may be brought (or continued) against a person in relation to a matter covered in a WHS undertaking, providing the WHS undertaking has been completely discharged.



The giving of a WHS undertaking is not considered to be an admission of guilt. The regulator must consider any undertaking, taking into account guidelines published on the acceptance of WHS undertakings, and provide the person with a written notice of its decision to accept or reject it (including reasons).

A WHS undertaking takes effect and becomes enforceable when the regulator's decision to accept it is given to the person or as specified in the decision.

A person who has made a WHS undertaking may withdraw or vary the undertaking with the written agreement of the regulator.

If a WHS undertaking is contravened, the regulator may apply to the Magistrate's Court for a remedy. In addition to imposing a penalty, the court may make orders directing compliance with the WHS undertaking or discharging the undertaking altogether. Additionally the court may order the person to pay the costs of the proceedings plus the regulator's reasonable costs of monitoring compliance with the WHS undertaking in the future.

If a WHS undertaking is contravened, the regulator may also seek to prosecute the underlying contravention or alleged contravention of the Act to which the WHS undertaking relates.

## Review of decisions (sections 223-229B)

Certain decisions made by inspectors and the regulator can be reviewed. The WHS Act outlines which decisions can be reviewed and who can apply to have them reviewed.

These are decisions that relate to:

- the failure to commence negotiations for work groups
- training of health and safety representatives
- PINs issued by HSRs
- forfeiture and return of goods or things
- issue of improvement, prohibition or non-disturbance notices and subsequent notices
- variation or cancellation of notices
- extension of time to comply with improvement notices.

A union may apply for a review of a decision on behalf of a union member or members, without identifying the union member or members, and without providing evidence of their authority to act on their behalf.

### Internal review

Inspectors' decisions are initially subject to internal review by the regulator. Applications must be brought within the time allowed or a longer period permitted by the regulator.

The time allowed is:

- in relation to a decision to issue an improvement notice – the period specified in the notice for compliance or 14 days, whichever is the lesser, or
- in any other case, 14 days.

The internal reviewer cannot be the person responsible for the initial decision. The internal reviewer must make a decision within 14 days after receiving a valid application, although additional time is allowed if further information is required.

The internal reviewer must confirm the initial decision, vary it, or set it aside in favour of another course of action. A written decision must be sent to the applicant as soon as practicable.

The initial decision is taken to be confirmed if the internal reviewer does not make a review decision in the time allowed, or the applicant fails to provide any additional information required by the reviewer within time.

### **External review**

If a person is dissatisfied with the internal review decision, they may apply to the Work Health and Safety Tribunal for an external review of that decision within the time allowed.

Prescribed decisions made under the WHS Act by the regulator are also externally reviewable.

The application must be made:

- if the decision was to forfeit a thing – within 28 days of the day the decision first came to the applicant's notice
- in any other case – within 14 days after the day the decision first came to the applicant's notice, or
- if the regulator is required by the external review body to give the applicant a statement of reasons – within 14 days after the day the statement is provided.

In general, the Work Health and Safety Tribunal's practices and procedures will apply to the external review.

The Work Health and Safety Tribunal is required to:

- review a decision (unless the application is withdrawn)
- conduct the review with a 'hearing de novo' (approaching the decision afresh), and may consider material not available to the internal review
- confirm, vary or substitute another decision.

### **Stays of reviewable decisions**

If an application for review is made, this generally imposes a stay on the operation of the decision until there is an outcome.

However, there is no automatic stay of a decision to issue a prohibition notice or a non-disturbance notice. In this case, the reviewer may stay the decision on its own initiative or upon application. The reviewer must make the decision on an application for a stay within one working day after receiving the application, otherwise the application is taken to have been granted.

A stay of a decision pending internal review operates until the time allowed for making an external review expires or an application for external review is made, whichever is earlier.

If an application is made for an external review of a decision, the Work Health and Safety Tribunal may stay the operation of a decision, cancel, or vary the stay.

# Offences and penalties

## Health and safety duty offences (sections 30A-33)

The WHS Act provides for the following categories of offences for breach of health and safety duties. The maximum penalties are different depending on the category of the offence and whether the offender is an individual (e.g. a worker, or a PCBU), an officer (as defined) or a body corporate.

**Industrial manslaughter** – applies to those with a WHS duty where their conduct in failing to comply with that duty caused a death. Only PCBUs and their officers can be charged with industrial manslaughter. The prosecution must establish, beyond reasonable doubt, that the person knew their conduct was likely to cause the death of, or serious harm to, an individual and they acted in disregard of that likelihood.

**Category 1** – applies to those with a WHS duty where their conduct in failing to comply with that duty caused the death of, or serious harm to, a person.

**Category 2** – applies to those with a WHS duty where their conduct in failing to comply with that duty exposed a person to the risk of death, injury or harm to health.

**Category 3** – applies to those with a WHS duty who failed to comply with that duty.

## Maximum penalties for breach of health and safety duty offences

Offence	Duty holder		
	Body corporate	Individual as a PCBU or officer	Individual as worker or other
Industrial manslaughter	\$10 000 000	\$5 000 000, 20 years in jail	Not applicable
Category 1	\$3 500 000	\$680 000, 5 years in jail	\$340 000, 5 years in jail
Category 2	\$1 800 000	\$350 000	\$170 000
Category 3	\$570 000	\$120 000	\$55 000

*Note: Where a penalty provides for a fine or term of imprisonment, the Court may impose a sentence that includes either or both penalties.*

## Exceptions (section 34)

Volunteers are not liable for a failure to comply with a health and safety duty except in their capacity as a worker (section 28) or other person at a workplace (section 29).

An unincorporated association is not liable for prosecution although its officers (except volunteers) may be prosecuted for a failure to comply with an officer's duty (section 27). Its members may owe duties in their capacities as workers (section 28) or other persons at a workplace (section 29).

## Alternative penalty options

In addition to imposing a penalty, courts may impose alternative remedies including:

- adverse publicity orders
- restoration orders
- work health and safety project orders
- court-ordered WHS undertakings
- training orders.

## Other offences

There are a number of other offences under the WHS Act that relate to specific requirements and carry their own individual penalties.

### Offences in relation to incident notification (sections 38, 39)

It is an offence to:

- fail to notify the regulator of a 'notifiable incident' (section 38)
- fail to keep a record of a 'notifiable incident' for the prescribed period (section 38)
- fail to preserve an incident site until an inspector arrives (section 39).

### Offences in relation to authorisations (sections 41-45)

It is an offence to:

- carry on a business or undertaking at an unauthorised workplace, if it is required to be authorised (section 41)
- use unauthorised plant, equipment and substances at a workplace, if there is a requirement that it be authorised (section 42)
- carry out work without the required licence, permit or authorisation (section 43)
- carry out work without the required prescribed qualifications or experience, or carry out unsupervised work where supervision by a person with prescribed qualifications or experience is required (section 44)
- not comply with the conditions of any licence, permit or authorisation (section 45).

### Offences in relation to consultation (sections 46, 47)

It is an offence to:

- not consult with other duty holders on work health and safety matters as required (section 46)
- not consult with workers on work health and safety matters as required (section 47).

### Offences in relation to the establishment of work groups (sections 52, 53, 56, 57)

It is an offence to:

- fail to negotiate with workers or their representative regarding the formation of work groups at a workplace (sections 52, 56)
- fail to notify workers of the outcome of negotiations regarding the formation of work groups at a workplace (sections 53, 57).

## **Offences in relation to health and safety representatives (sections 61, 70, 71, 72, 74, 97, 99)**

It is an offence to:

- fail to consult with an HSR on work health and safety matters as required (section 70)
- fail to provide an HSR with access to information the person has relating to hazards affecting their work group members and work health and safety of work group members (section 70)
- fail to allow an HSR to attend interviews that they are entitled to attend as representatives (section 70)
- fail to provide resources, facilities and assistance that are reasonably necessary for the election of HSRs or to allow HSRs to carry out their health and safety duties (sections 61, 70)
- prevent an HSR from accompanying an inspector during an inspection of a place that affects work health and safety of work group members (section 70)
- deny a person assisting an HSR access to the workplace in accordance with entitlements (section 70)
- fail to allow an HSR time off with pay that is reasonably necessary to attend to their health and safety duties (section 70)
- allow an HSR to have access to any personal or medical information concerning a worker without the worker's consent, unless the information does not identify the worker (section 71)
- refuse to allow an HSR to attend an approved training course they are entitled to attend (section 72)
- fail to keep an up-to-date list of HSRs at the workplace and ensure it is readily accessible to all workers (section 74)
- fail to display a PIN (section 97)
- contravene a PIN (section 99).

## **Offences in relation to health and safety committees (sections 75, 79)**

It is an offence to:

- fail to establish an HSC within two months of being requested to do so (section 75)
- fail to allow members of the committee time off with pay that is reasonably necessary to attend committee meetings and carry out functions as a committee member (section 79).
- fail to provide an HSC with access to information the person has relating to hazards affecting their workplace and the work health and safety of workers at the workplace (section 79)
- allow an HSC to have access to any personal or medical information concerning a worker without the worker's consent, unless the information does not identify the worker (section 79)
- fail to or unreasonably delay considering any recommendation or other decision made by the HSC within the scope of the HSC's functions that requires the person's agreement if it is to be implemented (section 79)
- fail to or unreasonably delay providing a response to the HSC stating the extent to which the person agrees to the implementation of the recommendation or other decision (section 79)
- fail to or unreasonably delay taking any agreed action required to be taken for the purposes of the implementation of a recommendation or decision (section 79)
- unreasonably withhold agreement to the implementation of a recommendation or other decision (wholly or partly) (section 79).

## Offences in relation to discriminatory, coercive or misleading conduct (sections 104-108)

It is an offence to:

- engage in discriminatory conduct for a reason prohibited under the WHS Act (section 104)
- request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct (section 107)
- organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce that person, or a third person, to exercise or not exercise a power or perform or not perform a function under the WHS Act (section 108)
- knowingly or recklessly make a false or misleading representation to another person regarding their rights, obligations or abilities under the WHS Act (section 109).

Part 6 of the WHS Act also enables a person affected by discriminatory, coercive or misleading conduct to initiate civil proceedings for a civil remedy.

## Offences in relation to the regulator and inspectors (sections 155-190)

It is an offence to:

- refuse or fail to answer questions and provide information and documentation requested by the regulator without reasonable excuse (section 155)
- refuse or fail to assist an inspector in the performance of their compliance powers without reasonable excuse (section 165)
- refuse or fail to comply with an inspector's request to answer questions, verify those answers by statutory declaration, submit to an interview, record an interview, or produce a document without reasonable excuse (section 171)
- tamper with a thing the access to which has been restricted by an inspector or fail to comply with an inspector's request to take it to a stated place within a stated time or remain in control of it at the stated place (section 177)
- refuse or fail to comply with a direction from an inspector, including refusing to provide one's name and address (section 185)
- intentionally hinder or obstruct an inspector while they are carrying out their duties, or to induce or attempt to induce another person to do so (section 188)
- impersonate an inspector (section 189)
- assault, threaten or intimidate an inspector or a person assisting an inspector (section 190)
- fail to comply with an improvement notice (section 193)
- fail to comply with a prohibition notice (section 197)
- fail to comply with a non-disturbance notice (section 200)
- intentionally remove, destroy, damage or deface a notice required to be displayed (section 210)
- fail to comply with a WHS undertaking (section 219)
- fail to comply with a court order (section 242)
- give false or misleading information in complying or purportedly complying with the WHS Act (section 268)
- disclose confidential information obtained while exercising a power or function under the WHS Act (section 271)

- enter into, or offer to enter into, an insurance policy or indemnify a person that seeks to cover WHS Legislation fines imposed under the WHS Act (section 272A)
- impose a levy or charge on a worker for anything done or provided in relation to work health and safety (section 273).

## Prosecutions (section 229C-232A)

Proceedings for an offence against the WHS Act can only be brought by the regulator or public service officer working in the Department of Mines, Industry Regulation and Safety.

Industrial manslaughter offences under section 30A may only be prosecuted by the Director of Public Prosecutions.

The department will publish on its website general guidelines about the prosecution of offences against the WHS Act and the acceptance of WHS undertakings.

## Procedure if prosecution is not brought (section 231)

If an individual (complainant) considers an industrial manslaughter, Category 1 or Category 2 offence has occurred but no prosecution has been brought in the period six to twelve months after the alleged offence, they can make a written request to the regulator to bring a prosecution.

The regulator must respond to the request within three months after receiving the request. It must advise on the status of the investigation and, if complete, whether a prosecution has been or will be brought, including reasons. The regulator must also notify the alleged offender of these matters.

## Limitation period for prosecutions (section 232)

Proceedings for an offence must be commenced:

- within two years after the offence first came to the regulator's attention
- within one year after a finding in a coronial or other official inquiry that the offence has occurred
- within six months of a WHS undertaking being contravened, or when the regulator becomes aware of a contravention or agrees to withdraw the undertaking.

After the standard limitation period, proceedings may commence for Category 1 offences if fresh evidence is discovered and the court is satisfied the evidence could not reasonably have been discovered within the relevant limitation period.

There is no limitation period for industrial manslaughter. If the Director of Public Prosecutions decides not to bring proceedings for industrial manslaughter, proceedings for another offence may be brought by the regulator within six months of the Director's decision.

## Admission of evidence obtained unlawfully (section 232A)

Under some circumstances, a court may consider admitting evidence into proceedings that was obtained as a result of unlawful conduct. This might occur, for example, where an inspector inadvertently exceeds the parameters of an entry warrant.

# Authorisations

Authorisations (for example, licences, permits, registrations) are required for the use of some plant and substances, and certain types of work.

## Plant and substances (section 42)

A PCBU must not direct or allow a worker to use plant or a substance if the WHS regulations require it, or its design, to be authorised and it is not.

The WHS regulations will list the items of plant requiring registration of their design.

The WHS regulations will list the items of plant and equipment required to be registered.

## Work (section 43)

A PCBU must not direct or allow a worker to carry out work if it is required to be done by an authorised person and the worker is not authorised.

The WHS regulations will list certain high risk work that must only be performed by people who have been authorised (for example, licensed) to carry out that type of work.

## Prescribed qualification and experience (section 44)

The WHS regulations will require certain types of work to be carried out only by, or supervised by, a person with prescribed qualifications or experience.

*Note: Other non-WHS legislation may include licensing, registration or similar requirements for some occupations.*



# Statutory offices and bodies

## **Functions and committees (section 12A)**

The WHS Act makes provision for the establishment of the:

- WorkSafe Commissioner
- Chief Inspector of Mines
- Chief Inspector Petroleum Safety
- Work Health and Safety Commission (WHSC)
- Mining and Petroleum Advisory Committee (MAPAC)
- Work Health and Safety Tribunal.

# Transitional provisions

In general, transitional arrangements will be put in place where duties are new or substantially changed from existing requirements. The approach taken will be broadly consistent with the transition principles agreed by Safe Work Australia.



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Department of **Mines, Industry Regulation and Safety**

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**MATTER FOR DECISION****Legislative Impacts and Opportunities for Volunteer Bush Fire Brigades – Proposed WALGA Advocacy Position**

*By Mark Goodlet, Shire of Waroona Chief Executive Officer, on behalf of the Shire of Waroona Council*

**RECOMMENDATION**

**That Council requests:**

- 1. WA Local Government Association (WALGA) to advocate for the:**
  - a. Modernisation of Western Australian emergency services legislation, including alignment of the WA Bush Fires Act 1954 with the rest of Australia by removing the legislative requirement for WA Local Governments to manage Volunteer Bush Fire Brigades (VBFB); and**
  - b. Provision of a legislated State Government department or agency to do so, fully implementing recommendation 15 of the “Reframing Rural Fire Management” Report of the Special Inquiry Into the January 2016 Waroona Fire (Ferguson Report), which states;**

***“The State Government to create a Rural Fire Service to enhance the capability for rural fire management and bushfire risk management at a State, regional and local level. The proposed Rural Fire Service will:***

- be established as a separate entity from the Department of Fire and Emergency Services or, alternatively, be established as a sub-department of the Department of Fire and Emergency Services;***
- have an independent budget;***
- be able to employ staff;***
- have a leadership structure which, to the greatest degree possible, is regionally based and runs the entity;***
- be led by a Chief Officer who reports to the responsible Minister on policy and administrative matters; and to the Commissioner for Fire and Emergency Services during operational and emergency response;***
- have responsibilities and powers relating to bushfire prevention, preparedness and response; and***
- operate collaboratively with the Department of Fire and Emergency Services, the Department of Parks and Wildlife, Local Government and volunteer Bush Fire Brigades.***

***“In creating the Rural Fire Service, the State Government to consider whether back office and corporate support services could be effectively provided by an existing Department, such as the Department of Fire and Emergency Services or the Department of Parks and Wildlife.***

***“The State Government to review the creation of the Rural Fire Service two years after its establishment, to assess whether its structure and operations are achieving the intended outcome.***

2. **WALGA to support, in the review of the emergency services legislation, a comprehensive plan by the Department of Fire and Emergency Services and the State Government for;**
  - a. Full engagement with the VBFs, local governments and WALGA to understand their successes, challenges, ideas and hopes for this service;
  - b. Inclusion of a review of the history and past performance of the volunteer bush fire brigades in Western Australia, including all previous studies and findings, with volunteer safety as a key theme;
  - c. A best practice assessment of volunteer bush fire brigades departmental/agency structures and legislative underpinnings across Australia; and
  - d. A legislative outcome goal that ensures that organisational structures, expertise, strategy, management and control, best meet the health and safety mandates of the WHS Act 2020;
  
3. **WALGA to support Option 4 of its “Arrangements for Management of Volunteer Bush Fire Brigades: Proposed Advocacy Position” paper, being, “Transfer - Responsibility for management of all BFBs is transferred to the State Government, consistent with the arrangements in other States and Territories”.**

### Executive Summary

- In March 2022 the provisions of the new Work Health and Safety Act 2020 were fully transitioned. They clearly detail the standard of duty of care that entities responsible for volunteers now carry.
- This standard has brought into focus the fact that local government is no longer the right entity to be discharging the duty of care and the duty of provision of extreme risk bush fire management services in Western Australia. Western Australia, while its health and safety legislation is now in alignment with the rest of Australia, is now at odds with the rest of Australia in terms of State Government responsibility for volunteer bush fire brigades.
- Local government is clearly unable to meet the management and duty of care expectations enunciated in the Work, Health and Safety Act 2020 in the extreme risk area of bush firefighting. This new legislation exposes the gap between the extreme risk of bush fires and the capabilities of local governments to meet this risk. It has set up local government for failure if nothing is done to fix the fundamental question - what entity is best able to meet the responsibility for supporting volunteer bush fire brigades. This responsibility must be placed in the hands of a State Government department or agency with appropriate expertise, capabilities and resourcing under the emergency services banner to adequately address and manage the risks associated with bush fires and support volunteers in this endeavour.
- Cabinet has agreed on a review of the three emergency services Acts, the Fire Brigades Act 1942, the Bush Fires Act 1954 and the Fire and Emergency Services Act of 1998, to create a single comprehensive Emergency Services Act which will improve community safety and better support all of our emergency services workers into the future. This work is being undertaken by DFES. (<https://www.dfes.wa.gov.au/site/about-us/corporate-information/legislation/legislation.html>).
- This review represents a once in a generation opportunity have this matter addressed and give volunteer bush fire brigades the level of overarching support they need,

through a State Government agency or department with new legislation designed to take over this role from local governments.

- It is not appropriate that the current hybrid responsibility sharing arrangement continue between Local Government and the State Government, for either historic or power sharing reasons. This will perpetuate the current mixed message and unclear lines of responsibility that comes from a legislative underpinning of volunteer bush fire brigades as local government entities, while management, training, funding and operational support are provided through DFES. This will not ultimately be in the best interests of the volunteers and their ability to be supported in the important role they undertake in managing bush fire risk.
- WALGA has issued a Proposed Advocacy Position and InfoPage which proposes a hybrid model allowing local governments to opt in or out of management of volunteer bush fire brigade models. A 6-week consultation is underway with the matter to be presented to WALGA State Council in September 2022. Option 4 aligns with the position espoused in this report, namely responsibility being transferred to the State Government, albeit with volunteer bush fire brigades being given entity status.

## **Attachments**

A – “Reframing Rural Fire Management” Report of the Special Inquiry Into the January 2016 Waroona Fire, Volume 1, by E. Ferguson (Ferguson Report)

B – Overview of Western Australia’s Work Health and Safety Act 2020, by Department of Mines, Industry Regulation and Safety and Worksafe Western Australia

C - Arrangements for Management of Volunteer Bush Fire Brigades: Proposed Advocacy Position May 2022, WALGA.

D – INFOPAGE, Proposed Advocacy Position on Arrangements for Management of Volunteer Bushfire Brigades, 20 May 2022, WALGA

## **Policy Implications**

The adoption of advocacy positions will inform WALGA policy positions and will be incorporated in WALGA’s Advocacy Positions Manual.

## **Budgetary Implications**

### Insurance

Up to \$10M in uninsurable organisational maximum penalties for the most serious failures to comply with the new WHS Act 2020.

WALGA Local Governments are responsible for providing compensation for injury caused to present and former BFB volunteers as a result of their duties. The commercial insurance market ceased writing injury insurance for volunteers in 2012, therefore a self-insurance mutual scheme was implemented to ensure that Local Governments continue to meet this obligation.

Since 2012, due to the high cost of claims, the aggregate limit of liability has increased from \$250,000 to \$750,000. In addition, the annual cost of insurance has nearly doubled (92%)

from \$47.50 to \$91.20 per volunteer, and it is expected that this trend will continue (Data provided by LGIS, 17 May 2022 in pg. 7, Arrangements for Management of Volunteer Bush Fire Brigades: Proposed Advocacy Position - May 2022).

#### Volunteer Bush Fire Services Funding

The State Government has in place an Emergency Services Levy. This is a pre-existing and suitable funding mechanism for volunteer bush fire brigades services via an entity, under direct management of the State Government.

#### WALGA Advocacy Position

Nil.

### **Background**

#### History

The Volunteer Bush Fire Brigades have been a vital part of the regional Western Australian emergency services fabric since 1954 in a formal legislated system, but before that in heart of the community unsupported volunteer service groups. The continuation of this service by the volunteers, ensuring the continuity of the brigades along with the safety of the members, remain as the key priorities. How this is best achieved given findings of the 2016 Ferguson Report and the new safety mandates of the Work Health & Safety Act 2020 (WHS Act) for volunteers, is a primary issue.

Long gone are the days of a group of farming neighbours fronting up to a fire, with the Shire sending down some crew with machinery to assist. Volunteer bush fire brigades replaced this loose affiliation in 1954 through the commencement of the Bush Fires Act with local governments being given responsibility to establish and run the brigades. Over time the State Government has increasingly mandated duty of care requirements to the members and those charged with their management, to the point where the duty of care now extends to the volunteers themselves.

#### 2016 "Reframing Rural Fire Management" Report of the Special Inquiry Into the January 2016 Waroona Fire (Ferguson Report)

Following the 2016 Waroona Yarloop bush fires the Public Sector Commission tasked a special inquiry led by Mr. Euan Ferguson AFSM into the matter. His report (Pg. 18) summarises the losses of these fires as follows:

"Tragically, during the fire, two residents of Yarloop lost their lives. The fire burned a total area of 69,165 hectares comprising 31,180 hectares of private property and 37,985 hectares of public land. One hundred and eighty one properties were destroyed. At time of writing, it is estimated that the cost of the fire, including the costs of suppression, losses, damage and recovery (including estimated insurance losses) totals approximately \$155 million.

In his report prologue (pg.12) he summarises his findings thus:

“It is my view that there exists a need to effect fundamental changes to the system of rural fire management in Western Australia. My conclusion, which has been very carefully considered, is that the current system for managing bushfire in Western Australia is failing citizens and the government.

The recommendations for change were provided in two categories; Strategic and Agency opportunities for improvement. 17 Recommendations and 23 Opportunity statements were made. Critical to the context of this Council Report, is Recommendation 15, which is about rural fire management and its recommends:

“The State Government to create a Rural Fire Service to enhance the capability for rural fire management and bushfire risk management at a State, regional and local level. The proposed Rural Fire Service will:

- be established as a separate entity from the Department of Fire and Emergency Services or, alternatively, be established as a sub-department of the Department of Fire and Emergency Services;
- have an independent budget;
- be able to employ staff;
- have a leadership structure which, to the greatest degree possible, is regionally based and runs the entity;
- be led by a Chief Officer who reports to the responsible Minister on policy and administrative matters; and to the Commissioner for Fire and Emergency Services during operational and emergency response;
- have responsibilities and powers relating to bushfire prevention, preparedness and response; and
- operate collaboratively with the Department of Fire and Emergency Services, the Department of Parks and Wildlife, Local Government and volunteer Bush Fire Brigades.

“In creating the Rural Fire Service, the State Government to consider whether back office and corporate support services could be effectively provided by an existing Department, such as the Department of Fire and Emergency Services or the Department of Parks and Wildlife.

“The State Government to review the creation of the Rural Fire Service two years after its establishment, to assess whether its structure and operations are achieving the intended outcome.

This recommendation has only been partially implemented and the independent entity with the capabilities and resourcing described in the recommendation is far from realization. This is in part because this requires legislative change, one that removes local government as the head of power body establishing and underpinning this entity. The opportunity for this change is now available with the review of the emergency services legislation.

### Bush Fire Fighting Risk

The prologue to the Ferguson Report provides an excellent description of the complexities of fighting bush fires and making judgment following the event (pg. 11):

“Hindsight is a wonderful thing. But we must act with disciplined caution when exercising this hindsight. It must always be remembered that those who were key players in this fire emergency were not afforded such luxury. Many individuals, be they citizens or members of agencies or in community teams, worked in extreme and challenging



conditions. Many were hot, hungry, dehydrated and sometimes sick with worry and exhaustion. Dangers were ever present. Fast decisions had to be made with information that was incomplete and sometimes conflicting. There were many unknowns. People made decisions. Assumptions changed. Best laid plans failed. Teams used their initiative and adjusted. Even the most straightforward of tasks became complex. Emergency and essential services worked to create order out of chaos. Everyone worked against time and the progression of the fire.

“It would be easy to look at any shortcomings and be tempted to fall into the trap of finding fault and allocating blame. This must be resisted. In striving for excellence in bushfire emergency management, it must be recognised that there are many parts of the system: the fire, the weather, the terrain and the actions and reactions of people that are subject to sudden and unpredictable change. Under these conditions, much is unknown. Almost everything is shrouded by uncertainty. People make judgements and those judgements are not infallible. Errors can and do occur, despite the best intentions and best efforts of people.

While the Ferguson Report wasn't written with the aim of “finding fault and allocating blame”, the new Work Health and Safety Act 2020 is. It is specifically designed and written to provide standards and responsibilities for health and safety, in order to provide a path for finding fault, allocating blame and then punishing those who are at fault.

#### Work Health and Safety Act 2020

Key features of the WHS Act are provided in the following extract from the “Overview of Western Australia's Work Health and Safety Act 2020” put out by the Department of Mines, Industry Regulation and Safety, and Worksafe (pg. 2):

- The primary duty holder is the ‘person conducting a business or undertaking’ (PCBU) which is intended to capture a broader range of contemporary workplace relationships.
- A primary duty of care requiring PCBUs to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work.
- Duties of care for persons who influence the way work is carried out, as well as the integrity of products used for work, including the providers of WHS services.
- A requirement that ‘officers’ exercise ‘due diligence’ to ensure compliance.
- The new offence of industrial manslaughter, which provides substantial penalties for PCBUs where a failure to comply with a WHS duty causes the death of an individual, in circumstances where the PCBU knew the conduct could cause death or serious harm.
- The voiding of insurance coverage for WHS penalties, and imposition of penalties for providing or purchasing this insurance.
- The introduction of WHS undertakings, which are enforceable, as an alternative to prosecution.
- Reporting requirements for ‘notifiable incidents’ such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking.
- A framework to establish a general scheme for authorisations such as licences, permits and registrations (for example, for persons engaged in high-risk work or users of certain plant or substances), including provisions for automated authorisations.

Importantly, the WHS Act captures the duty of care requirements for bush fire brigades and volunteers.

Work Health and Safety Act 2020 Duty of Care Failure and Penalties

Hefty fines now apply to local governments and criminal charges may be imposed on executive staff should they fail in their duty of care under the new Work Health and Safety Act 2020. A sevenfold increase in the maximum fine is now applicable to executives along with a 20 year jail term. The local government body is now subject to an uninsurable fine up to \$10M, up 2.85 times from \$3.5M.

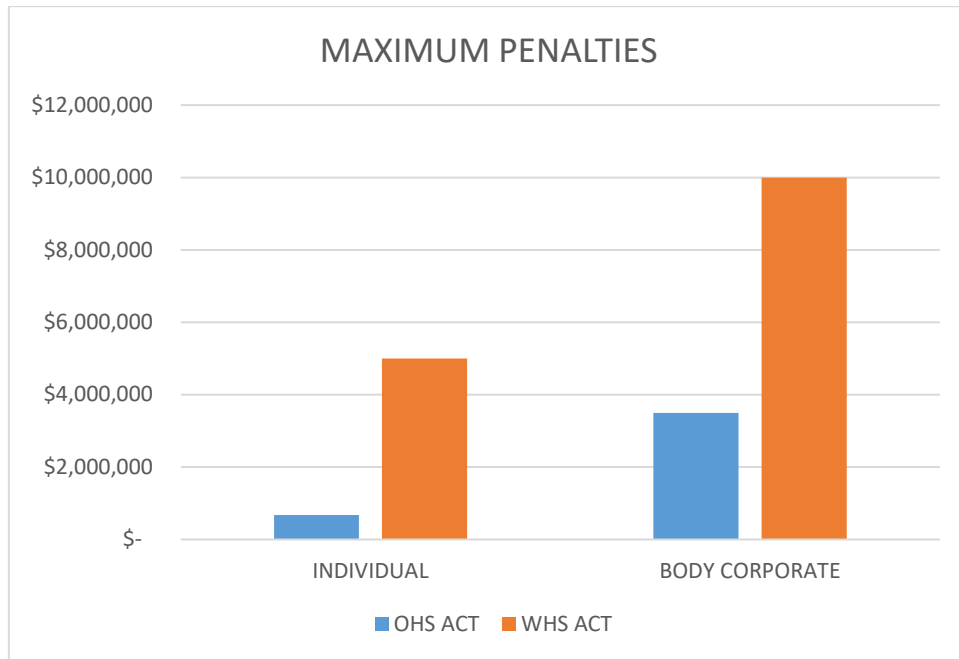


Figure 1. Maximum Individual and Body Corporate Penalties Comparison Between the Previous OHS Act (blue) and the WHS Act (orange)

## Maximum penalties for breach of health and safety duty offences

Offence	Duty holder		
	Body corporate	Individual as a PCBU or officer	Individual as worker or other
Industrial manslaughter	\$10 000 000	\$5 000 000, 20 years in jail	Not applicable
Category 1	\$3 500 000	\$680 000, 5 years in jail	\$340 000, 5 years in jail
Category 2	\$1 800 000	\$350 000	\$170 000
Category 3	\$570 000	\$120 000	\$55 000

*Note: Where a penalty provides for a fine or term of imprisonment, the Court may impose a sentence that includes either or both penalties.*

### Exceptions (section 34)

Volunteers are not liable for a failure to comply with a health and safety duty except in their capacity as a worker (section 28) or other person at a workplace (section 29).

Table 1. Maximum Penalties. Department of Mines, Industry Regulation and Safety, and Worksafe, "Overview of Western Australia's Work Health and Safety Act 2020", pg. 36.

LEVEL	INDIVIDUAL 1ST OFFENCE	INDIVIDUAL SUBSEQUENT OFFENCE	BODY CORPORATE 1ST OFFENCE	BODY CORPORATE SUBSEQUENT OFFENCE
1	\$ 100,000	\$ 120,000	\$ 450,000	\$ 570,000
2	\$ 250,000	\$ 350,000	\$1,500,000	\$1,800,000
3	\$ 400,000	\$ 500,000	\$2,000,000	\$2,500,000
4	\$ 550,000	\$ 680,000	\$2,700,000	\$3,500,000

Table 2. Maximum Penalties Under the Previous Occupational, Health and Safety Act 1984", pg. 36.

The State Government has made crystal clear its overarching expectations regarding duty of care, including to volunteers. In doing so, however, it has raised a fundamental question about the appropriate provision of leadership and support for volunteer bush fire brigades in the extreme risk environment in which they operate.

### Comment

#### Risk and WHS Act Implications

The new WHS Act safety mandate has brought into focus two related questions, and these questions must be rigorously and independently assessed and addressed, ahead of preference and historically affiliation, if a best practice, safe and compliant outcome is to be achieved. **Who is best placed to manage bush fire brigades, given the systems, expertise and control hierarchy needed to operate within the new WHS Act requirements? Secondly, is the current legislation, which provides for local governments to establish and run bush fire brigades, still appropriate, given these mandated safety management requirements?** Recommendation 15 of the Ferguson Report answers these questions.

Local governments, and particularly those in executive level management, see a chasm between their risk management capabilities, expertise, control, financial support and the standards mandated in the new WHS Act for the extremely high-risk and complex activity of fighting bushfires. They also see that the State Government, through the Department of Fire and Emergence Services (DFES), which has the expertise, knowledge, systems, training support and control, is much more capable in fighting fires than local government as an entity will ever be. In fact, in all of these areas DFES currently provides support to the bush fire brigades, with local government effectively simply providing a legacy legislative platform for their existence, along with some administrative support, assets and land for VBFB facilities.

The disparate, disjointed management by individual local governments, may provide some tailored local focus, but it has no strategic, management expertise, operational expertise, coordination or cohesiveness, nor State Government consistent operational budget funding outside of grants; despite now carrying safety expectations well above local government primary expertise and risk management capabilities.

As an alternative way of viewing this issue, local governments would not be expected, or able, to competently manage the emergency services currently within DFES areas of responsibility. Nor would Local government manage ambulance services, and nor should they. These are matters outside of local government core business and expertise. As a risk response, government, agencies and departments must operate within their core business and competencies. With a new focus on health and safety it is no longer appropriate that local government be required to operate in a highly specialized extreme risk area, when suitable alternatives exist, or should exist, as stated in the Ferguson Report.

#### Australian Models for Management of Bush Fire Brigades

The WHS Act was ostensibly enacted, in part, to bring Western Australia in line with the rest of the Australian states, including responsibility for volunteers. Perhaps as an unintended consequence, this has highlighted a significant disparity across Australia, with every other state having their volunteer bushfire brigades run by State Government agencies rather than local governments. Many in local government charged with management oversight of the VBFBs, believe that a handover to the State Government is the necessary next step for Western Australia, if coming into line with the rest of Australia.

#### Bush Fire Brigade Volunteers

The Ferguson Report (pp. 237 – 245) details the public response to the question of DFES involvement in fighting bush fires:

- DFES staff do not have sufficient expertise in rural fire management and don't understand our needs; and
- Inappropriate training is provided.

There is some skepticism and reluctance among some VBFB members regarding leaving the local governments, where they believe there is often more autonomy, local knowledge and a local focus.

A review of the emergency legislation needs to ensure that bush fire brigades are at the table in terms of consultation and that their legitimate concerns are aired and resolved.

## **Statutory Environment**

In light of, *the Local Government Act of 1995: Division 3 — Executive functions of local governments, Subdivision 1 — Performing executive functions, s3.18. Performing executive functions: 3(b)*; as the WA Department of Fire and Emergency Services (DFES), is already providing a rural fire division (ref. 2), it could be considered that the further provision of Local Government controlled Fire & Emergency Services Brigades is an inappropriate duplication of “services or facilities provided by the ... State”.

Work Health and Safety Act 2022, mandates the duty of care to volunteers by the person conducting a business undertaking. Senior Local Government officers with decision making and budget allocation control, have a duty of care to volunteer bush fire brigade members.

Bush Fires Act 1954, s36 and s41. Provides for local governments to establish, maintain and equip bush fire brigades.

### Emergency Services Review of Legislation

The Department of Emergency Services is currently reviewing the three emergency services Acts. This represents a one in a generation opportunity to consider the best and most competent delivery of volunteer bush fire brigade services. Ensuring that WALGA is at the table in this review is critical to good outcomes for local government.

## **Consultation**

### Special Inquiry into the Waroona bush fires

The Special Inquiry into the Waroona bush fires was conducted by Euan Ferguson AFSM. In a letter dated 26 April 2016, to Mr Wauchope, the Public Sector Commissioner, Mr Ferguson described the consultation process as follows:

“The Special Inquiry started in early February, ran for 13 weeks and held formal hearings on 22 days. The Special Inquiry has evoked a significant response. One hundred and sixty five written submissions have been received. One hundred people appeared at formal hearings and five people gave evidence via telephone. We have met and interacted with 42 organisations and interest groups.

The report prologue further describes the consultation and the outcomes sought by the witnesses and submissions:

“All of the people the Special Inquiry met with: citizens, landowners, farmers, business owners, personnel from agencies, essential services and from emergency services, were genuine in their commitment to do the best they could during this crisis. The Special Inquiry noted a strong urge from all the witnesses and submissions to understand the failings in the current systems of work, to learn from this tragic experience, and to change the future.

### WALGA Proposed Advocacy Position

WALGA's proposed advocacy position is as follows.

#### "Management of Bush Fire Brigades

1. The Association advocates that the State Government must provide for:
  - a) A clear pathway for Local Governments to transfer responsibility for the management of Bush Fire Brigades to the State Government when ongoing management is beyond the capacity, capability and resources of the Local Government;
  - b) The co-design of a suite of relevant guidelines and materials to assist those Local Governments that manage Bush Fire Brigades;
  - c) Mandatory and minimum training requirements for Bush Fire Brigade volunteers supported by a universally accessible training program managed by the Department of Fire and Emergency Services (DFES); and
  - d) The recognition of prior learning, experience and competency of Bush Fire Brigade volunteers.
2. That a Working Group comprising representatives of WALGA and DFES be established to develop a process and timeline for the transfer of responsibility for Bush Fire Brigades in accordance with 1(a).
3. Where management of Bush Fire Brigades is transferred to DFES in accordance with 1(a), DFES should be resourced to undertake the additional responsibility.

WALGA's proposed advocacy position does not address the critical risk problem, nor does it examine the best and most appropriate legislative vehicle to ensure the best outcome for the volunteer bush fire brigades is achieved. Without this critical appraisal, the advocacy position simply shifts the responsibility back to local government to determine.

### **Conclusion**

There is an urgent need for Local Governments and the State Government to review the suitability of local governments role in delivery of volunteer bush fire brigades, given the spotlight on volunteer management raised by the new Work Health and Safety Act 2020. The Ferguson Report, in 2016, provides a pathway for a new entity to do this, with a State Government core business emergency services entity tailored to bush firefighting and meeting the needs of volunteers. The current review of the three emergency services Acts represents a one in a generation opportunity to modernise the legislation underpinning volunteer bush firefighting in Western Australia to align under a suitable agency.



**12.4 Lease of Mt Pleasant Inn, Arthur River**

<b>File Reference:</b>	<b>6.8.1</b>
<b>Location:</b>	<b>Arthur River Historical Site, Albany Hwy, Arthur River</b>
<b>Applicant:</b>	<b>Maree O'Connell</b>
<b>Author:</b>	<b>Kerryn Chia – Projects Officer</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Date:</b>	<b>2 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>1. Expired lease of Mt Pleasant Inn</b>

**Summary:**

Council is requested to consider approving a new 1-year lease of Mt Pleasant Inn at Arthur River to the current lessee for the demonstration and sale of crafts and the sale of plants.

**Background:**

The historical buildings are located opposite the Arthur River Hall and owned by the Shire. In accordance with the deed of agreement dated 1 October 1991 with Dakin Nominees Pty Ltd, the Shire agreed that it "would use the Land solely for the purpose of protection of the historical buildings erected on the Land and activities associated with the preservation of historical buildings and for no other purpose." in the event of the land being used for an alternative purpose, Dakin Nominees Pty Ltd have the option to repurchase the land.

The applicant has previously leased the Post office and Kitchen since 2018 and is seeking approval to renew the lease to demonstrate and sell crafts and to sell plants from the old buildings.

Most of the craft items are produced by the applicant, with the potential to sell other local produced items.

**Comment:**

The previously (expired) lease is attached here and it is proposed to simply renew this lease.

**Consultation:**

The Arthur River Development Committee continues to support the proposal and recently inspected the building on the day of its AGM. The committee considers the building to be in an acceptable state.

State Heritage (DPLH) was consulted in the preparation of the original lease and as long as there are no structural changes to the buildings they do not believe that cottage industries, such as being suggested, will be an issue.

Main Roads was consulted in the preparation of the original lease and do not need to be formally approached regarding traffic and access.

**Statutory Environment:**

Nil

**Policy Implications:**

Nil

**Financial Implications:**

It is proposed that the applicant will meet all electricity charges during the use.

**Strategic Implications:**

Nil



**Risk Implications:**

**Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. **Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Lease holder damages heritage listed buildings
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	Medium (9)
Risk Likelihood (based on history and with existing controls)	Possibly (3)
Risk Consequence	Moderate (3)
Principal Risk Theme	Inadequate asset management
Risk Action Plan (Controls or Treatment Proposed)	Ensure that conditions are included in the lease that require lease holder to request permission for changes to building.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

That Council approve a new 1-year lease of Mt Pleasant Inn at Arthur River to the current lessee for the same purpose and with the same conditions as was contained in the previously expired lease.

Moved: Cr Lubcke

Seconded: Cr Manuel

**CARRIED 6/0**

**ATTACHMENT**

1. Expired lease of Mt Pleasant Inn

**AGREEMENT BETWEEN  
SHIRE OF WEST ARTHUR – MS MAREE O’CONNELL  
FOR THE USE OF THE OLD INN KITCHEN AT ARTHUR RIVER;  
AND APPROVAL FOR A COTTAGE INDUSTRY: SALE OF PLANTS AND CRAFTS**

This agreement is made on the 19 November 2020 between the following parties:

**The Shire of West Arthur (the Shire)**, 31 Burrowes Street, DARKAN WA 6392; AND

**Maree O’Connell**, 12067 Coalfields Hwy, ARTHUR RIVER 6315

For a period of 12 months commencing November 2020 with a review in November 2021.

**1. Purpose**

The purpose of this agreement is to give Ms Maree O’Connell non-exclusive use of the Mt Pleasant Inn Kitchen at the Arthur River Historical Site for the storage of plants and craft items, for the demonstration and sale of crafts, and sale of plants to the public.

A map of the Arthur River historical site is attached with the Mt Pleasant Inn Kitchen clearly marked.

**2. Obligation**

The Shire of West Arthur is to:

- Keep and maintain the Arthur River Historical Site in good condition and to carry out maintenance to the buildings as required; and
- Invoice Maree for the reimbursement of all power consumption costs.

Ms Maree O’Connell is to:

- reimburse the Shire the cost of all power consumption on the presentation of the invoice;
- take care of the buildings and keep them in a clean and neat conditions;
- notify the Shire promptly of any loss, damage or defects in the buildings ;
- have currently public liability insurance for a minimum of \$10,000,000;
- have worker’s compensation for all payroll employees, full time, part time or casual (if applicable);
- insurance cover for any property, contents or consumables kept on site;
- personal accident cover for any volunteers assisting (if applicable); and
- minimum third party property damage motor vehicle insurance.

Further more, Ms Maree O’Connell is **not** to:

- make any alterations or additions to the building, including the erection of any sign or antenna without the prior written consent of the Shire;
- do any decorating that involves marking, defacing or painting any part of the building, without prior written consent of the Shire;
- keep any animals or birds onsite without the prior written consent of the Shire;
- store or use any flammables or hazardous substances on the premises;
- allow rubbish to accumulate on the site;
- sleep or permit anyone to sleep on the premises;
- do anything that may prejudice any insurance policy that the Shire has in relation to the buildings;
- have more than one permanent sign, which is attached to the front of the building; and
- have flag signs or temporary signs installed when not present in the building.

**3. Obligation**

To use the premises for the purpose of the sale and demonstration of crafts and sale of plants to the public between the hours of 10am and 4pm daily and the storage of materials.

**Limitation of Shire of West Arthur Liability and Indemnity**

The Shire of West Arthur is not liable for any loss or damage of any property of Ms Maree O’Connell or any other person on the premises or land; or any injury sustained to any of Ms O’Connell’s employees, customers or any other person when any of them is on the premises or land; and Ms O’Connell agrees to release the Shire from any liability in connection with any such event. Ms O’Connell agrees to indemnify the Shire against any liability incurred except to the extent that any liability is caused by the negligent activity of the Shire or any of its agents, employees or contractors.

**4. Variation/termination**

This agreement shall not be altered, varied or modified in any respect except by agreement in writing.

This agreement may be terminated by mutual agreement of both parties at any time or by either party giving three months’ notice in writing to the other party at any time.

In the event that either party fails to meet their obligations, then the agreement may be terminated immediately at the request of the other party.

**5. Signed by the parties**

**Signed by the Shire of West Arthur**

By a duly authorised officer  
in the presence of

  
\_\_\_\_\_

Witness

  
\_\_\_\_\_

Duly authorised officer

Ashleigh Telfer  
\_\_\_\_\_

Name (please print)

Nicole Wasmann  
\_\_\_\_\_

Name (please print)

19/11/2020  
\_\_\_\_\_

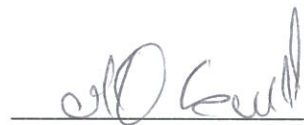
Date

**Signed by Maree O’Connell**

in the presence of

  
\_\_\_\_\_

Witness

  
\_\_\_\_\_

Maree O’Connell

Ashleigh Telfer  
\_\_\_\_\_

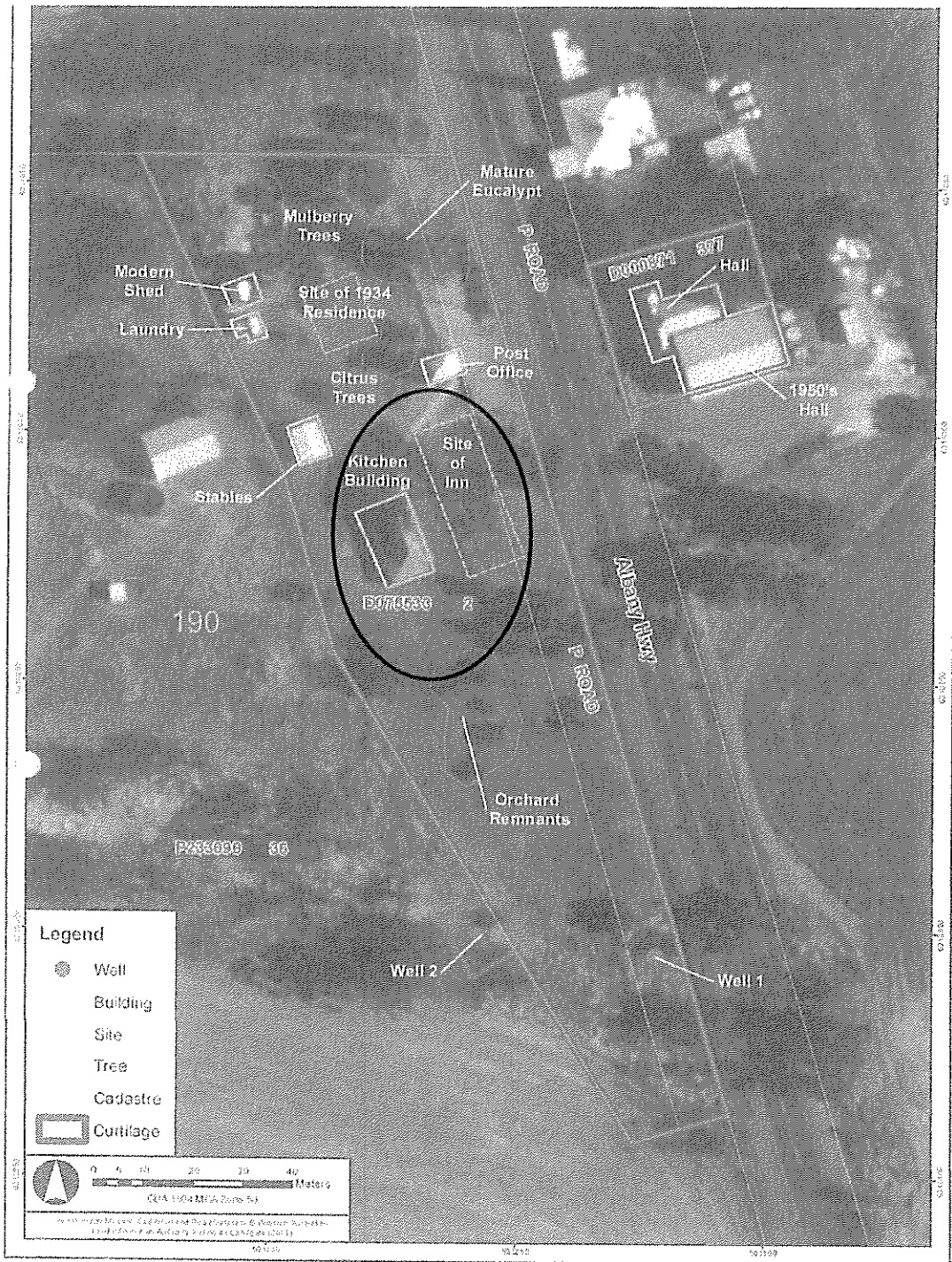
Name (please print)

Maree O’Connell  
\_\_\_\_\_

Name (please print)

19/11/2020  
\_\_\_\_\_

Date



<b>12.5 Committees of Council</b>
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<b>File Reference:</b>	<b>2.1.1</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Date:</b>	<b>2 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>1. Audit and Risk Committee Terms of Reference</b> <b>2. Bushfire Advisory Committee Terms of Reference</b> <b>3. LEMC Terms of Reference</b> <b>4. Behaviour Complaints Committee Terms of Reference</b> <b>5. Betty Brown Historical Centre Management and Collection Policy</b> <b>6. LGIS Liability Policy Schedule</b>

**Summary:**

Council is requested to consider confirming its existing formal Committees of Council as well as its other informal advisory groups/committees.

**Background:**

Council is represented on the following committees and advisory groups:

- Audit and Risk Committee
- Executive Appraisal Committee
- CEO Recruitment and Selection Panel
- Development Assessment Panel
- Darkan Swimming Pool Committee
- Bush Fire Advisory Committee
- Central Country Zone of WALGA
- 4WDL VROC
- West Arthur Community Resource Centre Committee
- West Arthur Cottage Homes Committee
- Narrogin Subgroup of the Regional Road Group
- Lake Towerrinning Strategic Plan Reference Group
- Local Emergency Management Committee
- Museum Reference Group
- Tidy Towns Committee
- Arthur River Development Group
- Westcare Committee
- West Arthur-Collie Senior High School Bus Working Group
- Behaviour Complaints Committee

Of the items in this list, the only ones that are legislatively required formal committees of Council are:

- Audit and Risk Committee
- Bush Fire Advisory Committee
- Local Emergency Management Committee

In addition, the Museum Reference Group is a formal Committee of Council.

These formal committees of Council must:

- be adopted by an absolute majority of Council;
- have an adopted Terms of Reference document; and
- comprise a minimum of three persons.

It is unclear which of these groups have been formally adopted by Council, and the author proposes that, in the interests of consistency and good recordkeeping, Council makes a resolution in regard to acknowledging the three formal committees of Council and additional resolutions in relation to the remaining committees/groups.

**Comment:**

The Audit and Risk Committee and its Terms of Reference have previously been approved by Council and Council is now requested to ratify these decisions.

The Executive Appraisal Committee is no longer required, and Council is requested to approve its disbanding. There does not appear to be any Terms of Reference in existence for this committee.

The CEO Recruitment and Selection Panel is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.

The Development Assessment Panel is a legislative requirement but is not a formal Committee of Council. Council is requested to ratify it as such.

The Darkan Swimming Pool Committee is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group. It may have been a formal committee in the past but the Shire's LGIS public liability insurance policy (Attachment 6) includes a clause (point 6 of Definitions section) that extends the coverage to any Joint Committee where a "Joint Use" Agreement is in force between The Member and the Minister for Education arising out of School Facilities; also the Minister for Education as principal under the terms of the "Joint Use" Agreement. This makes it unnecessary for the committee to be a formal Committee of Council under the Act.

The Bushfire Advisory Committee is a formal Committee of Council and Council is requested to ratify this decision and adopt the attached Bushfire Advisory Committee Terms of Reference.

The Central Country Zone of WALGA is a representative industry body, not a formal Committee of Council, and Council is requested to ratify it as such.

The 4WDL VROC (Voluntary Regional Organisation of Councils) is not a formal Committee of Council. Member councils can supply two representatives under the relevant MOU.

The West Arthur Community Resource Centre Committee is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.

The West Arthur Cottage Homes Committee is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.

The Regional Road Group and its Narrogin sub-group is a representative industry body, not a formal Committee of Council, and Council is requested to ratify it as such.

The Lake Towerrinning Strategic Plan Reference Group is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.

The Local Emergency Management Committee (LEMC) is a formal Committee of Council and Council is requested to ratify this decision and adopt the attached LEMC Terms of Reference.

The Museum Reference Group is a formal Committee of Council and Council is requested to ratify this decision. Policy C3.4 Betty Brown Historical Centre Management and Collection was adopted in 2020 and contains terms of reference relating to the reference group.

The Tidy Towns Committee is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.



The Arthur River Development Group was previously established as a formal Committee of Council but is currently considering whether to maintain itself as such.

The Westcare Committee is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.

The West Arthur-Collie Senior High School Bus Working Group is not a formal Committee of Council and Council is requested to ratify it as an informal advisory group.

The Behaviour Complaints Committee is a formal Committee of Council and Council is requested to ratify this decision and adopt the attached LEMC Terms of Reference. Council is also requested to appoint all current members of Council to this committee as it failed to do so at the first Ordinary Meeting of Council after last year's election.

**Consultation:**

Arthur River Development Group  
Projects Officer  
Manager Financial Reporting  
LGIS  
Community Emergency Services Manager  
DFES District Emergency Management Advisor

**Statutory Environment:**

Local Government Act 1995  
Part 5 – Administration  
Subdivision 2 - Committees and their meetings  
Subdivision 3 - Matters affecting council and committee meetings

**Policy Implications:**

Policy G1.5 Behaviour Complaints Committee Terms of Reference  
Policy G1.9 Audit and Risk Committee Terms of Reference

**Financial Implications:**

Nil

**Strategic Implications:**

Community Strategic Plan West Arthur Towards 2031  
Theme: Leadership and Management – inspirational, dynamic, transparent  
Outcome: Establish and maintain sound business and governance structures  
Strategy: Comply with regulations and best practice standards to drive good decision making by Council and Staff.

**Risk Implications:**

***Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.*** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. ***Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.*** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:



- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	There is an excessive number of formal Committees of Council and/or the y have not been correctly identified.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	(10) High
Risk Likelihood (based on history and with existing controls)	(5)
Risk Consequence	(2)
Principal Risk Theme	Compliance failure
Risk Action Plan (Controls or Treatment Proposed)	Rationalisation of formal Committees of Council and adoption of Terms of Reference where required.

**Voting Requirements:**

Absolute Majority

**Officer Recommendation:**

That Council, by absolute majority,

1. Acknowledge its existing formal Committees of Council listed below:
  - Audit and Risk Committee
  - Bush Fire Advisory Committee
  - Local Emergency Management Committee;
 and adopt the attached corresponding Terms of Reference for each.
2. Disband its Executive Appraisal Committee.
1. Confirm the following groups as informal advisory groups/committees to Council:
  - CEO Recruitment and Selection Panel
  - Development Assessment Panel
  - Darkan Swimming Pool Committee
  - Central Country Zone of WALGA
  - 4WDL VROC
  - West Arthur Community Resource Centre Committee
  - West Arthur Cottage Homes Committee
  - Narrogin Subgroup of the Regional Road Group
  - Lake Towerrinning Strategic Plan Reference Group
  - Tidy Towns Committee
  - Westcare Committee
  - West Arthur-Collie Senior High School Bus Working Group
2. Acknowledge the Museum Reference group as a formal Committee of Council and confirm that its Terms of Reference are included in previously adopted Policy C3.4 Betty Brown Historical Centre Management and Collection.
3. Acknowledge the Behaviour Complaints Committee as a formal Committee of Council, confirm its attached Terms of Reference, and confirm the current 7 elected members of Council as members of this committee.

Moved: Cr Harrington

Seconded: Cr Peirce

**CARRIED BY ABSOLUTE MAJORITY 6/0**

**ATTACHMENTS**

1. Audit and Risk Committee Terms of Reference
2. Bushfire Advisory Committee Terms of Reference
3. LEMC Terms of Reference
4. Behaviour Complaints Committee Terms of Reference
5. Betty Brown Historical Centre Management and Collection Policy
6. LGIS Liability Policy Schedule



## Shire of West Arthur Council Policy – Audit & Risk Committee Terms of Reference

Policy Number	G1.9 Governance
Policy Title	Audit & Risk Committee Terms of Reference
Related Legislation	Section 7.12A of the Local Government Act
Strategic Outcome Supported	Outcome 5.2: Accountable service delivery by Council and well trained, motivated, customer focused staff.
Adopted by Council	
Review	OCM - 12 April 2022

### Purpose

Section 7.1A of the *Local Government Act 1995* (the Act) requires that all local governments establish an Audit & Risk Committee (“the Committee”). The Committee plays a key role in assisting a local government to fulfil its governance and oversight responsibilities in relation to financial reporting, internal control structure, risk management systems, legislative compliance, ethical accountability and the internal and external audit functions.

This Terms of Reference (“TOR”) sets out the objectives, authority, membership, role, responsibilities and operation of the Committee.

### Objectives

The objectives of the Committee are to oversee:

1. the credibility and objectivity of financial reporting;
2. the effective management of financial and other risks and the protection of Council assets;
3. compliance with laws and regulations as well as use of best practice guidelines relative to audit, risk management, internal control and legislative compliance;
4. the scope of work, objectivity, performance and independence of the external and internal auditors;
5. the process and systems which protect against fraud and improper activities; and
6. the provision of an effective means of communication between the external auditor, internal auditor, the CEO and Council.

### Roles and Responsibilities

The Committee is a formally appointed committee of Council and is responsible to that body. The Committee does not have executive powers or authority to implement actions in areas over which the CEO has legislative responsibility. The Committee does not have any management functions and cannot involve itself in management processes or procedures.

The Committee has the responsibility to:

1. Review the internal (where applicable) and external auditor’s annual audit plans and the outcomes/results of all audits undertaken;
2. Request the CEO to seek information or advice in relation to matters considered by the Committee;
3. Formally meet with internal and external auditors as necessary;
4. Seek resolution on any disagreements between management and the external auditors on financial reporting; and
5. Make recommendations to Council with regards to matters within its scope of responsibility.

## Delegated Authority

The Committee has delegated authority in accordance with Delegation Register Item 1.1.1 – Audit and Risk Committee (as amended from time to time).

## Membership

Section 7.1A of the *Local Government Act 1995* states the members of the Committee are to be appointed\* by the local government and at least 3 of the members, and where the Committee consists of more than 3 members then the majority of those members, are to be Councillors.

*\*Absolute Majority required*

The CEO is not to be a member of the Committee and may not nominate a person to be a member of the Committee, or have a person represent the CEO as a member of the Committee. Similarly, an employee is not to be a member of the Committee.

As a minimum, the Shire's Committee will consist of 3 members, being 3 Councillors including the Shire President. The terms of the appointment should be arranged to ensure an orderly rotation and continuity of membership despite changes to Council's elected members.

All members will have full voting rights. In the event of a tie the Chairperson will have the casting vote.

The appointment of external members (if applicable) shall be based on the following criteria:

1. A suitably experienced professional who can demonstrate a high level of expertise and knowledge in financial management, risk management, governance and audit (internal and external);
2. Have an understanding of the duties and responsibilities of the position, ideally with respect to local government financial reporting and auditing requirements;
3. Have strong communication skills;
4. Have relevant skills and experience in providing independent audit advice; and
5. Be a person with no operating responsibilities with the Shire nor provide paid services to the Shire either directly or indirectly.

The appointment and re-appointment of external members shall be made by Council by way of invitation and be for a period of up to 4 years. External members will not be appointed for more than three consecutive terms.

External members will be required to confirm they will operate in accordance with the Shire's Code of Conduct and will be required to follow Council's policies pertaining to the Committee operations.

Council may, by resolution, terminate the appointment of any external member prior to the expiry of their term if:

1. The Committee, by majority decision, determines the member is not making a positive contribution to the Committee; or
2. The member is found to be in breach of the Shire's Code of Conduct or a serious contravention of the Local Government Act 1995; or
3. A member's conduct, action or comments brings the Shire into disrepute.

The Chairperson of the Committee is to be appointed by majority vote of the Committee. The Chairperson can be a Councillor or an external member.

The members, taken collectively, will have a broad range of skills and experience relevant to the operations of the Shire. Ideally, at least 1 member of the Committee will have accounting or related financial and/or risk management experience.

Reimbursement of approved expenses may be paid to an external member in accordance with Section 5.100 of the Local Government Act 1995.

The CEO, Manager Corporate Services and/or Manager Financial Reporting are to attend meetings to provide advice and guidance to the Committee.

The Shire shall provide secretarial and administrative support to the Committee.

A quorum will be a majority of members.

New members will receive relevant information and briefings on their appointment to assist them meet their Committee responsibilities.

## Meetings

The Committee will meet at least twice per annum, with additional meetings convened as required at the discretion of the Chairperson or at the request of the CEO.

The Committee meetings shall be “Closed” and therefore not open to the public.

Elected members of the Shire may attend each Committee meeting.

Committee members are expected, where possible, to attend each meeting in person. Where attendance in person is not possible, in accordance with Regulation 14A of the *Local Government (Administration) Regulations 1996*, the Committee may, by resolution\*, allow a member to attend the meeting via telephone or other means of instantaneous communication.

*\*Absolute Majority required*

## Notice of Meeting and Agenda

The CEO or their delegate will administratively coordinate the convening of meetings of the Committee and invite members of management, internal and external auditors or others to attend meetings as observers and to provide relevant information as necessary.

Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed shall be provided to each member of the Committee no later than 72 hours prior to the meeting. Associated meeting papers are to be provided at the same time.

## Minutes of Meetings

The CEO will facilitate the administrative support for the meeting, including arranging a minute taker for the meeting.

Minutes will be taken at each meeting and be presented to the subsequent meeting for confirmation. Minutes will include the proceedings and resolutions of the meeting including the names of those in attendance.

The Chairperson shall ascertain, at the beginning of each meeting, the existence of any conflicts of interest and minute them accordingly. Conflicts of Interest will be managed in accordance with the Shire's policies and the *Local Government Act 1995*.

Minutes of Committee meetings shall be circulated promptly to all members of the Committee.

Minutes of Committee meetings shall be presented to the next Ordinary Council Meeting, with any recommendations from the Committee to be considered by Council by way of a separate agenda item.

Other than confidential papers and attachments, agendas and minutes of the Committee will be made publicly available on the Shire's website in accordance with Section 5.96A of the *Local Government Act 1995*.

## Functions

Regulation 16 of the *Local Government (Audit) Regulations 1996* defines the functions of an Audit Committee as:

- a) *to guide and assist the local government in carrying out —*
  - (i) *its functions under Part 6 of the Act; and*
  - (ii) *its functions relating to other audits and other matters related to financial management;*
- b) *to guide and assist the local government in carrying out the local government's functions in relation to audits conducted under Part 7 of the Act;*
- c) *to review a report given to it by the CEO under regulation 17(3) (the CEO's report) and is to —*
  - (i) *report to the council the results of that review; and*
  - (ii) *give a copy of the CEO's report to the council;*
- d) *to monitor and advise the CEO when the CEO is carrying out functions in relation to a review under —*
  - (i) *regulation 17(1); and*
  - (ii) *the Local Government (Financial Management) Regulations 1996 regulation 5(2)(c);*
- e) *to support the auditor of the local government to conduct an audit and carry out the auditor's other duties under the Act in respect of the local government;*
- f) *to oversee the implementation of any action that the local government —*
  - (iii) *is required to take by section 7.12A(3); and*
  - (iv) *has stated it has taken or intends to take in a report prepared under section 7.12A(4)(a); and*
  - (v) *has accepted should be taken following receipt of a report of a review conducted under regulation 17(1); and*
  - (vi) *has accepted should be taken following receipt of a report of a review conducted under the Local Government (Financial Management) Regulations 1996 regulation 5(2)(c);*
- g) *to perform any other function conferred on the audit committee by these regulations or another written law.*

In addition to the above the Committee's other functions include:

### External Audits

1. Provide guidance and assistance to Council as to the carrying out of the functions of the Shire in relation to external audits.
2. Provide an opportunity for the Committee to meet with the external auditors to discuss any matters that the Committee or the external auditors believe should be discussed.
3. Meet with the auditor annually to receive the audit report and make a recommendation to Council with respect to that report.
4. Examine the reports of the auditor after receiving a report from the CEO on the matters to:
  - a. Determine if any matters raised require action to be taken by the Shire; and
  - b. Ensure that appropriate action is taken in respect of those matters.
5. Address issues brought to the attention of the Committee, including responding to requests from Council for advice that is within the parameters of the Committee's TOR.

*Note: The Office of the Auditor General will be responsible for conducting external audits.*

### Internal Audits

1. Provide guidance and assistance to Council as to the carrying out of the functions of the local government in relation to internal audits.
2. Review all internal audit reports and provide advice to Council on significant issues (i.e. high and extreme) identified in audit reports and the action to be taken on issues raised, including identification and dissemination of good practice.
3. Monitor management's implementation of internal audit recommendations.
4. Receive the findings of special internal audit assignments undertaken at the request of Council or CEO.
5. Review the annual Compliance Audit Return and report to Council the results of that review in accordance with Section 7.13(1)(i) of the *Local Government Act 1995*.
6. Consider the CEO's 3-yearly reviews of the appropriateness and effectiveness of the Shire's systems and procedures in regard to risk management, internal control and legislative compliance, required to be provided to the Committee, and report to Council the results of those reviews in accordance with Regulation 17 of the *Local Government (Audit) Regulations 1996*.
7. Consider the financial management systems and procedures in accordance with Regulation 5(2) of the *Local Government (Financial Management) Regulations 1996* within the statutory timeframes.

### Risk Management

1. Ensure that management has in place a current and comprehensive enterprise Risk Management Framework and associated procedures for effective identification and management of Shire's business and financial risks.
2. Determine whether a sound and effective approach has been followed in managing the Shire's major risks including those associated with individual projects, program implementation, and activities.
3. Ensure the Shire identifies, reviews and regularly updates the strategic and operational risk profiles.
4. Understand and endorse the Shire's risk appetite.
5. Oversee the periodic review of the Risk Management Framework.

### Business Continuity

1. Ensure a sound and effective approach has been followed in establishing the Shire's business continuity planning arrangements, including whether business continuity and disaster recovery plans have been periodically updated and tested.
2. Oversee the periodic review of the Business Continuity Framework.

### Financial Reporting

1. Review significant accounting and reporting issues, recent accounting, professional and regulatory pronouncements and legislative changes, and understand their effect on the financial report.
2. Review with management and the external auditors the results of the audit, including any difficulties encountered.
3. Review the Annual Financial Statements forming part of the Shire's Annual Report and consider whether it is complete, consistent with information known to Committee members, and reflects appropriate accounting principles.
4. Review with management and the external auditors all matters required to be communicated to the Committee under the Australian Auditing Standards.
5. Recommend the adoption of the Annual Financial Statements forming part of the Annual Report to Council.

### Legislative Compliance

1. Oversee the effectiveness of the systems for monitoring compliance with relevant laws, regulations and associated government policies.

### Other Responsibilities

1. Monitor the progress of the implementation of external audit recommendations made by the auditor, which have been accepted by the Shire.
2. Receive recommendations arising from reviews of local government systems and procedures.
3. At least once every two years review and assess the adequacy of the Committee's TOR, request Council approval for proposed changes, and ensure appropriate disclosure as required by legislation or regulation.





## Shire of West Arthur Council Policy – Bushfire Advisory Committee Terms of Reference

Policy Number	
Policy Title	Bush Fire Advisory Committee Terms of Reference
Related Legislation	Section 5.8 of the Local Government Act 1995 and Section 67 of the Bush Fires Act 1954
Strategic Outcome Supported	Outcome 5.3: Establish and maintain sound business and governance structures.
Adopted by Council	
Review	

### Name

The name of the Committee shall be the “Bush Fire Advisory Committee”, appointed as a formal Committee to Council in accordance with provisions of Section 5.8 of the Local Government Act 1995 and Section 67 of the Bush Fires Act 1954.

### Aims and Objectives

1. To advise the local government on all matters relating to:
  - (i) the preventing, controlling and extinguishing of bush fires;
  - (ii) the planning of the layout of fire-breaks in the district;
  - (iii) policy regarding prosecutions for breaches of the Bush Fires Act 1954;
  - (iv) the formation of bush fire brigades and the grouping thereof under group brigade officers;
  - (v) the ensuring of co-operation and co-ordination of bush fire brigades in their efforts and activities; and
  - (vi) any other matter relating to bush fire control whether of the same kind, as, or a different kind from, those specified above.
2. To recommend a person or persons for the position(s) of Bush Fire Control Officer for each bush fire brigade in the Shire of West Arthur as required.
3. To make recommendations to Council on motions received by the Bush Fires Advisory Committee from bush fire brigades.

### Membership

1. Council, by Absolute Majority, shall appoint a committee for a two year term, such committee to be appointed at the first full council meeting following biennial council elections.
2. In accordance with provisions of Section 5.9 of the Local Government Act 1995, Council resolves that the Committee is to comprise of council members, employees and other persons.
3. In accordance with provisions of Section 5.10(1)(a) of the Local Government Act 1995, Council resolves that the Committee shall have as its Members;
  - a) At least one appointed Council member (Section 67(2) of the Bush Fires Act 1954);
  - b) The Chief Bush Fire Control Officer appointed under Section 38A of the Bush Fires Act 1954;
  - c) The Fire Control Officer of each volunteer bush fire brigade (Section 3.7 of the Bush Fire Brigades Local Law 2017);
  - d) The Shire of West Arthur CEO and Community Emergency Services Manager and;
4. Other representatives from state government agencies whose responsibility include bushfire and emergency management and should include as a minimum a representative of the Department of Fire and Emergency Services and the Parks and Wildlife Service.

## Management

1. The formation and conduct of the Committee shall be in accordance with the requirements of the *Local Government Act 1995* and any other statutory requirements.
2. The Chief Bush Fire Control Officer shall perform the role of Chairman. In the absence of the Chairman, a member shall be elected to preside.
3. A Shire of West Arthur employee, not necessarily a committee member, may be appointed by the Council CEO to provide administrative support to the Committee. Unconfirmed Minutes will be available for inspection within five (5) working days. The Agenda and the Minutes of the previous meeting shall be circulated to all Committee members not later than seven (7) days before each meeting.
4. The Committee shall meet as often as required to achieve the aims and objectives of the Committee, but shall meet at least annually.
5. The quorum for a meeting of the Committee shall be at least 50% of the brigade members of the Committee.
6. The Committee is an Advisory Committee and as such, all advice and actions that require significant commitment of Shire of West Arthur employee resources shall be presented as recommendations to Council for consideration.
7. The Council may adopt, amend, reject or refer back to the Committee any recommendations arising from the Committee's deliberations.
8. The Committee shall not direct Shire of West Arthur employees.
9. The Committee will not have the authority or power to commit the Shire of West Arthur or any association, organisation, group or individual to expenditure without Council endorsement.
10. Committee members may provide written information and proposals for consideration.
11. The Committee may call upon guests with specific expertise or as the need arises and invite them to attend meetings. Such persons shall not be entitled to vote on any decision arising from such meetings.
12. Members shall act in accordance with Council's Code of Conduct.



## Shire of West Arthur Council Policy – Local Emergency Management Committee Terms of Reference

Policy Number	
Policy Title	Local Emergency Management Committee Terms of Reference
Related Legislation	Local Government Act 1995 and Emergency Management Act 2005
Strategic Outcome Supported	Outcome 5.3: Establish and maintain sound business and governance structures.
Adopted by Council	
Review	

### Name

The name of the Committee shall be the “Local Emergency Management Committee”, appointed in accordance with provisions of the Emergency Management Act 2005 and Section 5.8 of the Local Government Act 1995.

### Functions

The functions of the Local Emergency Management Committee are taken from Sections 36 and 39 of the Emergency Management Act 2005.

The functions of the Local Emergency Management Committee are:

- a) to advise and assist the local government in ensuring that local emergency management arrangements are established for its district (including recovery planning);
- b) to liaise with public authorities and other persons in the development, review and testing of local emergency management arrangements;
- c) to carry out other emergency management activities as directed by the State Emergency Management Committee or prescribed by the regulations;
- d) to advise and assist the local government on how to manage recovery following an emergency affecting the community in the district; and
- e) to advise and assist the local government on other functions relevant to Emergency Management, including but not limited to the following:
  - (i) Preparation of annual reports as recommended by State Emergency Management Policy 2.6;
  - (ii) Providing comment on State Emergency Management Policies;
  - (iii) Providing comment on the adequacy of State government support to achieve efficient, effective and consistent emergency management responses at the local level.

### Membership

If the State Emergency Management Committee chooses it may determine the terms and conditions of appointment of members. In the event of any inconsistency between terms of condition of appointment of members determined by the State Emergency Management Committee and these terms and conditions, the terms and conditions set by the State Emergency Management Committee prevail.

Council, by Absolute Majority, shall appoint a committee for a two-year term, such committee to be appointed at the first full council meeting following biennial council elections.

In accordance with provisions of Section 5.9 of the Local Government Act 1995, Council resolves that the Committee is to comprise of council members, employees and other persons.

Membership of the Local Emergency Management Committee comprises:

- at least one council member
- the Community Emergency Services Manager
- the Chief Bush Fire Control Officer for the Shire of West Arthur
- The Chief Executive Officer of the Shire of West Arthur (or nominee)
- Manager Works and Services, Shire of West Arthur
- The Recovery Co-ordinator, Shire of West Arthur
- Representatives from state government agencies whose responsibility include bushfire and emergency management and should include as minimum a representative of the Department of Fire and Emergency Services, the Officer in Charge of Williams Police, and the Department of Biodiversity, Conservation and Attractions.
- Representatives from local industry, lifeline organisations and health services.

The Council of the Shire of West Arthur appoints the chairperson from the membership. If the Shire does not appoint a chairperson, or in the event that the chairperson is not present at a meeting, then the Local Emergency Coordinator shall be the chairperson.

The Chief Executive Officer may remove a person or organisation from the list of members appointed by Council where that person or organisation is absent without tendering an apology throughout three consecutive meetings of the Local Emergency Management Committee, or if that organisation's attendance is considered essential, the CEO should liaise with a senior representative of that organisation to seek appropriate representation.

## Management

If the State Emergency Management Committee chooses, it may determine the constitution and procedures of a Local Emergency Management Committee. In the event of any inconsistency between the constitution and procedures determined by the State Emergency Management Committee and these management/ procedures, the constitution and procedures set by the State Emergency Management Committee prevail.

1. The formation and conduct of the Committee shall be in accordance with the requirements of the *Local Government Act 1995*, the *Emergency Management Act 2005* any other statutory requirements.
2. The State Emergency Management Committee Policy 2.5 identifies that secretariat and administrative support to the Local Emergency Management Committee "*is to be provided by the local government*". Therefore, a Shire of West Arthur employee, not necessarily a committee member, shall be appointed by the Shire of West Arthur Chief Executive Officer to prepare agendas and minutes on behalf of the Committee. Unconfirmed Minutes will be available for inspection within five (5) working days. The Agenda and the Minutes of the previous meeting shall be circulated to all Committee members not later than seven (7) days before each meeting.
3. The Committee shall meet a minimum of twice a year (preferably quarterly) and as required.
4. The quorum for a meeting of the Committee shall be at least four members of the Committee.
5. Every attending member shall have one vote.
6. The Council may adopt, amend, reject or refer back to the Committee any recommendations arising from the Committee's deliberations.
7. The Committee shall not direct Shire of West Arthur employees.
8. The Committee will not have the authority or power to commit the Shire of West Arthur or any association, organisation, group or individual to expenditure without Council endorsement or, in accordance with section 6.8(1)(c) of the *Local Government Act 1995*, the Shire President's approval.
9. 4.9 Members wishing to address the Committee may do so in writing, providing information and proposals for consideration.
10. The Committee may call upon consultants or guests with specific expertise or as the need arises and invite them to attend meetings. Such persons shall not be entitled to vote on any decision arising from such meetings.

11. Members shall act in accordance with Council's Code of Conduct.
12. As specified by State Emergency Management Committee Policy 2.5 each meeting of the Local Emergency Management Committee should consider, but not be restricted to, the following matters, as appropriate:
  - a) Every meeting:
    - (i) Confirmation of the Local Emergency Management Arrangements contact list currency
    - (ii) Review any of post-incident reports and post exercise reports generated since last meeting;
    - (iii) Progress of emergency risk management process;
    - (iv) Progress of treatment strategies arising from emergency risk management process;
    - (v) Progress of development or review of local emergency management arrangements; and
    - (vi) vi Other matters determined by the local government.
  - b) First calendar quarter:
    - (i) Development and approval of next financial year LEMC exercise schedule (to be forwarded to relevant District Emergency Management Committee);
    - (ii) Begin developing annual business plan.
  - c) Second calendar quarter:
    - (i) Preparation of Local Emergency Management Committee annual report (to be forwarded to relevant District Emergency Management Committee for inclusion in the State Emergency Management Committee annual report);
    - (ii) Finalisation and approval of annual business plan.
  - d) Third calendar quarter:
    - (i) Identify emergency management projects for possible grant funding.
  - e) Fourth calendar quarter:
    - (i) National and State funding nominations.



## Shire of West Arthur Council Policy – Behaviour Complaints Committee Terms of Reference

Policy Number	G1.5 Governance
Policy Title	Behaviour Complaints Committee Terms of Reference
Related Legislation	s.5.8, s.5.9, s.5.10, s.5.11A, s.5.16 of the <i>Local Government Act 1995</i>
Strategic Outcome Supported	Outcome 5.2: Accountable service delivery by Council and well trained, motivated, customer focused staff.
Adopted by Council	27 July 2021
Review	CEO Annually

### 1. Objective

To establish Terms of Reference for the Behaviour Complaints Committee of the Shire of West Arthur.

### 2. Scope

This Policy applies exclusively to the Shire of West Arthur's Behaviour Complaints Committee.

### 3. Definitions

Act: *Local Government Act 1995*.

Behaviour Complaints Committee: means the Committee established by the Council in accordance with s.5.8 of the Act for the purpose of dealing with Complaints.

Behaviour Complaints Officer: means a person authorised in writing [*by Council resolution or by the CEO exercising delegated authority*] under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints.

Breach: means a breach of Division 3 of the Shire of West Arthur Code of Conduct for Council Members, Committee Members and Candidates.

Code of Conduct: means the Shire of West Arthur Code of Conduct for Council Members, Committee Members and Candidates.

Complaint: means a complaint submitted under Clause 11 of the Code of Conduct.

Finding: means a finding made in accordance with clause 12(1) of the Code of Conduct as to whether the alleged Breach has or has not occurred.

Plan: means a Plan that may be prepared and implemented under clause 12(4)(b) of the Code of Conduct, to address the behaviour of the person to whom the complaint relates (the Respondent), if a Finding has been made that a Breach has occurred.

## 4. Policy Statement

### 4.1 Committee Function

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the *Local Government Act 1995* (the Act) for the purpose of dealing with Behaviour Complaints made under Division 3 of the Shire of West Arthur's Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct).

The extent of authority provided to the Behaviour Complaints Committee is specified in the relevant Delegated Authority, and includes:

- Dismissing a behaviour complaint in accordance with clause 13 of the Code of Conduct and providing reasons for any such dismissal.
- Making a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur [*clause 12(3) of the Code of Conduct*].
- Determining reasons for such a Finding.
- Where a Finding is made that a breach has occurred, determining:
  - To take no further action; or
  - Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.

The extent of authority of the Behaviour Complaints Committee is limited by Condition of the Delegated Authority.

### 4.2 Membership

The Complaints Committee is a Committee of Council Members only in accordance with s.5.9(2)(a) of the Act.

Membership of the Behaviour Complaints Committee will comprise of seven (7) Council Members, appointed by Council in accordance with s.5.10 of the Act.

The Delegated Authority Condition prescribes that if an appointed Committee Member is identified in the Complaint as either the Complainant or the Respondent, they are to recuse themselves from the Committee's Function by providing an apology.

### 4.3 Meeting Schedule

Meetings are to be scheduled as required by the CEO as the Behaviour Complaints Officer in consultation with the Committee Presiding Member.

#### 4.4 Delegated Authority

The Behaviour Complaints Committee will act under Delegated Authority in accordance with s.5.16 of the Act. The delegation is recorded in the Shire of West Arthur Register of Delegations.

It is a Condition of Delegated Authority that the Behaviour Complaints Committee will be unable to exercise delegated authority if the Complainant or Respondent attend as a Complaints Committee Member.

#### 4.5 Committee Governance

Complaints Behaviour Committee meetings are required to:

- be called and convened by the CEO, as required, in consultation with the Committee's Presiding Member;
- include public question time *[Admin.r.5]*
- make the Committee Notice Papers and Agenda publicly available *[s.5.94(p), s.5.96A(f)]*, with the exception of agenda content that relates to that part of the meeting which will be closed to members of the public under s.5.23(2) *[Admin.r.14]*; and
- make Committee minutes publicly available *[s.5.94(n), s.5.96A(h)]*, with the exception of Minutes content that relates to that part of the meeting which was closed to the public or was determined as confidential under s.5.23(2).

### **1. Associated Documents**

- Shire of West Arthur Code of Conduct for Council Members, Committee Members and Candidates
- Complaint About Alleged Breach Form
- Delegation Behaviour Complaints Committee
- WALGA Policy Development Framework Code of Conduct Behaviour Complaints Management Policy





Shire of West Arthur Council Delegation –  
Behaviour Complaints Committee

<b>Delegator:</b> <i>Power / Duty assigned in legislation to:</i>	Local Government
<b>Express Power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5.16 Delegation of some powers and duties to certain committees
<b>Express Power or Duty Delegated:</b>	<i>Local Government (Model Code of Conduct) Regulations 2021:</i> Clause 12 Dealing with a complaint Clause 13 Dismissal of complaint
<b>Delegate:</b>	<b>Behaviour Complaints Committee</b>
<b>Function:</b> <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i>	<ol style="list-style-type: none"> <li>1. Authority to make a finding as to whether an alleged breach the subject of a complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur <i>[MCC.cl.12(1) and (3)]</i>.  In making any finding the Committee must also determine reasons for the finding <i>[MCC.cl.12(7)]</i>.</li> <li>2. Where a finding is made that a breach has occurred, authority to: <ol style="list-style-type: none"> <li>a. take no further action <i>[MCC.cl.12(4(a))</i>]; or</li> <li>b. prepare and implement a plan to address the behaviour of the person to whom the complaint relates <i>[MCC.cl.12(4)(b), (5) and (6)]</i>.</li> </ol> </li> <li>3. Authority to dismiss a complaint and if dismissed, the Committee must also determine reasons for the dismissal <i>[MCC.cl.13(1) and (2)]</i>.</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. The Committee will make decisions in accordance with the principles and specified requirements established in Council Policy G1.4 Complaint Handling Division 3 Code of Conduct.</li> <li>b. That part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s.5.23(2)(b) of the Act.</li> <li>c. The Committee is prohibited from exercising this Delegation where a Committee Member in attendance at a Committee meeting is either the Complainant or Respondent to the Complaint subject of a Committee agenda item.</li> <li>d. In the event of (c) above, the Committee may resolve to defer consideration to a future meeting at which the conflicted Committee Member is absent and a Deputy Committee Member is in attendance.</li> </ol>

	<u>NOTE TO CONDITIONS (C) AND (D)</u> : The purpose of this Condition is to require that a Committee Member who is identified as either the Complainant or Respondent is required to recuse themselves by notifying the Presiding Member of their intention to be an apology for the meeting at which the Complaint is an agenda item.
<b>Express Power to Sub-Delegate:</b>	Nil.



## Shire of West Arthur Council Policy – Betty Brown Historical Centre Management and Collection

Policy Number	C3.4 Community
Policy Title	Betty Brown Historical Centre Management and Collection Policy
Related Legislation	Local Government Act 1995 (WA) Aboriginal Heritage Act 1972. Weapons Act 1999 and the Weapons Regulations 1999. National Standards for Australian Museums and Galleries 1.5 First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries Guidelines of Ethical Practice of the Oral History Association of Australia
Strategic Outcome Supported	Outcome 1.4 - pride in our community and a strong sense of identity is forged from our cultural heritage and past and present achievements.
Adopted by Council	20 May 2020
Review	12 April 2022

### 1. Objective

This Management and Collection Policy will be used to guide the funding, establishment and management structure of the Betty Brown Historical Centre. In addition, it will assist with the collection and inclusion of items into the Betty Brown Historical Centre, in accordance with the key theme and sub-themes of the Centre. The procedures developed to implement these policies will be outlined in a separate document, the Collection Procedures Manual.

### 2. Scope

This Policy will apply to the Betty Brown Historical Centre and those involved in the management and operations thereof.

### 3. Definitions

Deaccessioning: the administrative process of removing an item from the collection.

## 4. Policy Statement

The Betty Brown Historical Centre and its collection are owned by the Shire of West Arthur. The Centre is housed in the old Road Board building within the West Arthur Health and Resource Centre. Normal access to the Centre will be during the CRC opening hours of 8.30am to 4.30pm with after hours by prior arrangement.

### 4.1 Centre Management

#### 4.1.1 Museum Reference Group

The Centre will be managed by a Museum Reference Group (MRG) which will consist of a maximum of six members of which, up to three will be Shire of West Arthur Representatives (either staff or elected members) and up to three West Arthur Community Resource Centre (CRC) representatives (staff or nominated representatives). The MRG will be responsible for the operation of the Centre, the collection and cataloguing of items for inclusion in the Centre, and updating of policies and procedures associated with the Centre. The MRG will meet on an “as required” basis.

Specifically the MRG will be responsible for the following:

- recommending to Council procedures and guidelines associated with the management of the Centre;
- adopting and supporting the Collection Procedures Manual for the Centre;
- approving the Centre content (e.g. information for inclusion on panels, items to be included in the Centre);
- considering the annual budget needs and presenting to the Shire for budget consideration through the annual report;
- developing the long term vision for the Centre both financially and strategically through the Centre’s Forward Plan;
- overseeing short term planning and determining how new exhibits or programmes will be funded;
- approving significant changes to displays;
- recommending use of reserve/renewal funds to the Shire;
- approving who can open the Centre after hours/when it can be opened
- maintaining contact with relevant peak bodies and networks, in particular Museums Australia (WA); and
- identifying risks associated with the Centre and implementing strategies to manage these risks.

#### 4.1.2 Role of Organisations in MRG

Each organisation within the MRG will have specifically allocated roles in the management of the Centre. The roles of each organisation are outlined below.

The Shire of West Arthur will be responsible for:

- managing Centre funds;
- meeting day to day operational and maintenance costs (power, cleaning materials, and consumables) excluding wages. All expenses are to be approved in advance by a Shire authorised officer;
- insuring the items contained within the collection and the display cases and panels in the Centre;
- cleaning the Centre a minimum of twice per week;
- payment of remuneration to the CRC for operating the Centre as part of the Memorandum of Understanding between the Shire and the CRC; and
- provision of staff to manage the Centre.

The CRC will be responsible for:

- ensuring the Centre is accessible to the public during opening hours;
- assisting visitors with enquiries;
- having a good understanding of the Centre and assisting patrons with electronic devices associated with the Centre (e.g. iPad and headphones) and managing the upkeep of the software on these devices; and
- ensuring the Centre is kept clean and tidy outside of normal Shire cleaning.

#### 4.1.3 Centre Funding

The ongoing management of the Centre will be funded by the Shire of West Arthur. A portion of the money bequeathed to the Shire by Ms Betty Brown (\$50,000) plus funds remaining from the bequest following establishment has been annexed for future management. In addition to the bequeathed funds, the Shire will endeavour to allocate \$5,000 per annum, where possible, for the future upkeep and development of the Centre.

A donations box will be provided in the Centre and visitors will be encouraged to contribute to the donations box to assist with the Centre upkeep. Money from the donations tin will be managed by the Shire.

## 4.2 Collection Policy

The key theme for the Centre is to communicate the “Changing Role of Women in Agricultural Communities” with specific reference to the Shire of West Arthur. Subthemes of “Providing, Working, and Belonging” have been identified to assist with collection of items.

### 4.2.1 Method of Acquisition

The Centre will acquire objects for the permanent collection by donation, bequest, purchase or transfer. The Centre will consider conditional donations on a case by case basis. Loans will also be considered on a case by case basis. Decisions on items to acquire or loan will be made by the Museum Reference Group (MRG).

### 4.2.2 Acquisition Criteria

The MRG will consider the following criteria before approving acquisition of an object:

- **Relevance** - The Centre only collects objects that relate to the Centre’s purpose and key collecting areas and will not indiscriminately acquire objects that are not related to the themes described here.
- **Significance** - Priority is given to objects which are significant for their historic, aesthetic, scientific/research or social/spiritual value.
- **Provenance and Documentation** - Priority will be given to objects from the Shire of West Arthur and surrounding areas where the history of the object is known and associated documentation and support material can be provided. However, material may be obtained from other areas for comparative purposes where this enhances understanding of the key themes within the collections.
- **Condition, intactness, integrity** - The condition of the object must be taken into consideration when acquiring material. Badly damaged material will not normally be accepted into the collection.
- **Interpretive Potential** - Objects that tell a story that adds to the interpretation of Centre themes will be prioritised.
- **Rarity** - Objects may be prioritised if they are rare examples of a particular kind of object.
- **Representativeness** - Objects may be prioritised if they are an excellent representative example of a particular kind of object
- **Duplications** - Objects that duplicate items already in the collection will not be accepted unless they are of superior condition and/or historic value. In such a case the duplicate may be considered for deaccessioning.
- **Legal Requirements** - The Centre only accept objects where the donor/vendor has legal title to the object.
- **Resource implications** - The Centre will consider its responsibility in relation to items that have highly specialised conservation, storage and display needs and the ability of the personnel to care for these items and the financial resources that maybe required to house such items.

#### 4.3 Deaccessioning and Disposal

An object can be deaccessioned from the Centre's collection if:

- it does not comply with the current collection policy of the Centre;
- it is damaged beyond repair;
- the conservation and storage costs for it are beyond the means of the Centre;
- it is a lesser quality duplicate of an object the Centre already owns;
- it lacks any supporting information to enable proper identification or to establish its relevance to the collection; and
- a substantiated request for the return of the object to its original owner/donor is received. This could be the return of sacred material to Indigenous peoples.

Deaccessioning will be undertaken in accordance with Deaccession Procedures outlined in the Collection Procedures Manual.

In the event that the Centre needs to be closed, a resolution of council will be required.

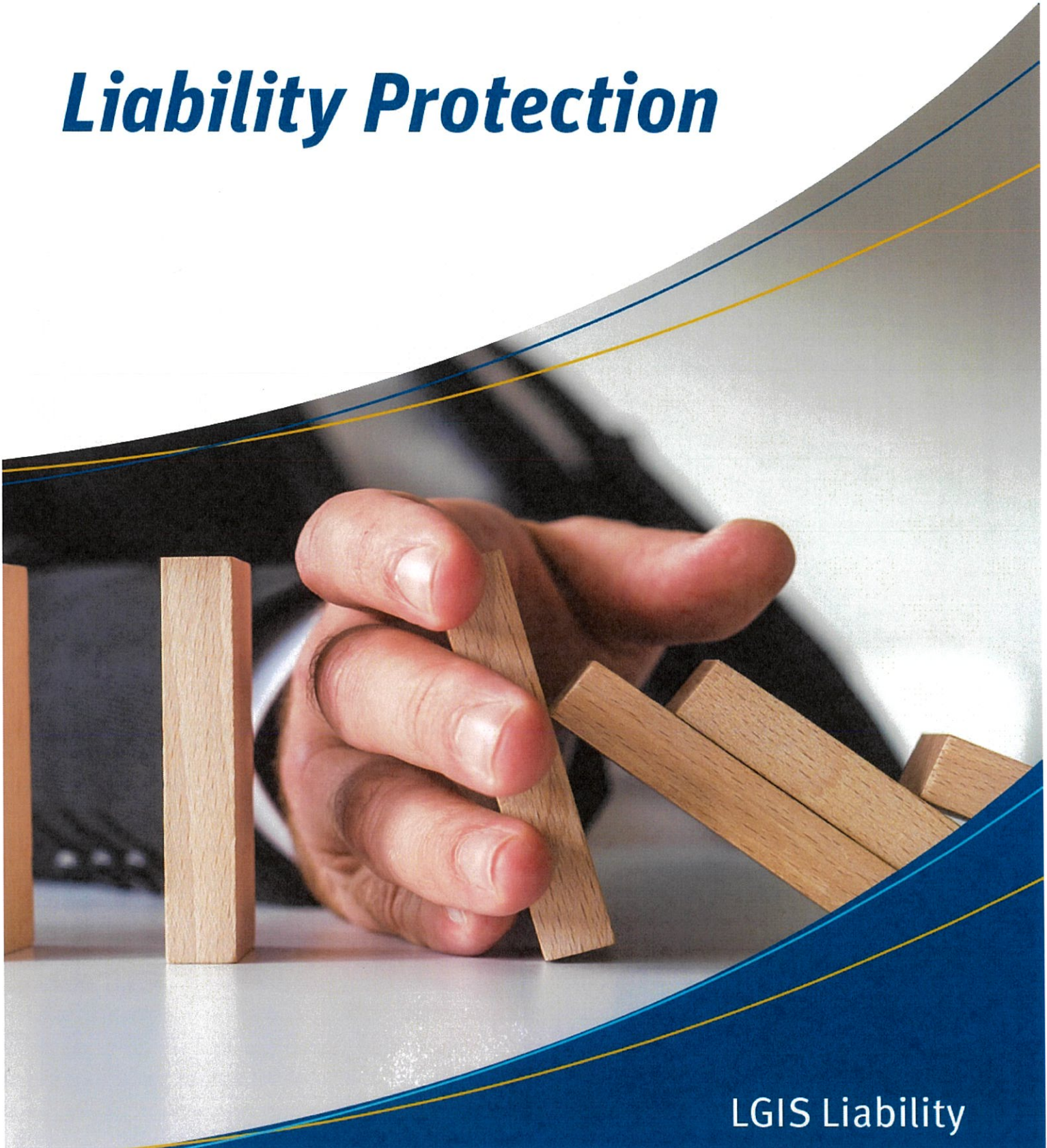
### **5. Associated Documents**

- Betty Brown Historical Centre Procedures Manual Rev 2 (draft)
- Betty Brown Historical Centre Annual Report (draft)
- Betty Brown Historical Centre Forward Plan (draft)





# *Liability Protection*



LGIS Liability



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# YOUR MUTUAL

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LGISWA is the local government mutual indemnity scheme owned by its local government members.

LGISWA (the Scheme) exists through a Trust Deed arrangement between WALGA and the members and is managed by JLT Public Sector.

The Scheme is not-for-profit with surpluses being returned to members.

The scheme exists to provide financial protection for the benefit of local governments who are members of LGIS. LGIS provides discretionary risk protection solely to our members and claims on LGIS can only be made by members.

As a mutual LGIS uses the combined size and scale of the entire WA local government sector to spread the cost of risk

## What is a Mutual Indemnity Scheme?

A mutual indemnity scheme is a financial vehicle for the management of risk. It is important to note that the Scheme is not insurance -it is an alternative risk financing strategy.

Mutuals are established by organisations with a common purpose (in the case of LGIS, local governments).

Scheme members contribute funds to create a Fund, or a 'pot of money', which is used to manage the primary layer of risk (Pooled Cover). The Scheme buys a variety of 'insurance' (indemnity covers) in excess of these Pooled Covers to provide members with the protection they require

As funds are administered for the benefits of members there is a clear relationship between the successful execution of risk improvement strategies, which lowers risks and losses, and the increased financial strength of the mutual. This leads to greater member benefits – stability in pricing and coverage; risk services to support members, which in turn provides, in the case of LGIS, return of dividend to members since 2007.

## Discretion

The unique feature of a mutual which sets it apart from insurance is discretion.

The power of discretion rests in the hands of the members via the LGIS Board. The Board has sole and absolute discretion over all claims for loss. As a member based organisation, the Board will act in good faith and in the best interest of all members.

## Claims management

LGIS considers all Scheme claims for risks covered under protection policies. The Board of LGISWA will determine with respect to pooled cover claims, in its sole and absolute discretion, whether the Scheme will, in respect of any such claim, either in whole or in part and upon such terms and conditions as the Board may consider appropriate, provide indemnity.

Claims made under the relevant discretionary protection policies will be assessed as follows:

- The matter can be considered as a "claim" under the relevant protection policies.
- All protection policy conditions and Scheme Rules are met by the member.
- The matter / claim does not breach any exclusion as set out in the protection policies.
- The Scheme has adequate capital to respond to the claim(s).

- The discretion of the Scheme is limited to the pooled cover adopted for each fund and protection policy.
- If indemnity cover is required in respect of a claim, indemnity for the claim will only be granted once confirmation of indemnity cover response is received by the Scheme.

The Board will exercise its discretion with respect to claims by reference to the following principles:

- The considerations set out in paragraph one above.
- Whether, in the Board's opinion, it is in the interests of local governments in Western Australia that indemnity be provided in a particular claim.
- Whether the member, in the circumstances of the claim, was acting in respect of:
  - A public function or power
  - A private right or contractual arrangement
  - A commercial or deliberate decision
  - Perceived public interest
- Whether the fund would be materially financially disadvantaged by the grant of indemnity.
- Whether the conduct of the member is such that, in the Board's view, a grant (or denial) of indemnity to the member would offend the conscience of a reasonable local government.
- Whether the grant of indemnity to the member is consistent with the relevant policy wording.
- Whether the grant of indemnity would find protection, or be excluded, under the LGISWA's reinsurance arrangements.

## Working together

The benefit of LGISWA, is that it's owned and run for the benefit of a community of like-minded organisations.

The strength of LGISWA rests in our community or members working together. Our breadth across the membership softens and smooths the variable loss experiences of individual members. Member ownership of LGISWA allows savings from that pooling to be retained by the members.

The success of LGISWA is dependent on our members.

This includes how they manage their own risks and work cooperatively together.

Good, cooperative members of the Scheme are committed to proactive risk management. They work closely with LGISWA and access the Scheme Risk Programs. Typically they make sure that they:

- Provide truthful and accurate information in relation to their protection or claims
- Cooperate with all reasonable requests in the course of processing their claim
- They lodge genuine claims which are the result of a loss event.
- They don't expect their protection to cover them in situations that they can prevent.
- They address problems as soon as they become aware of them.
- They actively try to minimise their risks and chance of loss.

When all members adopt a mindful, proactive approach to risk management then LGISWA will thrive and pooled contributions can be used to protect members when they need it most



# LGIS LIABILITY PROTECTION POLICY

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Subject to payment of the Contribution for the Period of Protection, the Member will be protected by LGISWA ("The Scheme") in accordance with and subject to the terms, exclusions, limitations, extensions and conditions contained in or endorsed on or otherwise expressed in this document and subject to the terms of the Trust Deed and Scheme Rules governing The Scheme. In the event of any inconsistency between the Trust Deed governing The Scheme and this policy, the provisions of the Trust Deed prevail.

## Liability cover

The Scheme will pay to or on behalf of The Member all sums for which The Member shall become legally liable to pay by way of compensation in respect of:

### Section 1 - Public Liability

- a) i. Personal Injury (as defined herein)
- ii. Damage to Property (as defined herein)

(Other than Personal Injury and Damage to Property arising out of Products Liability)

- b) Products Liability (as defined herein) happening during the Period of Protection caused by an Occurrence in connection with the Business of The Member.

### Section 2 - Professional Indemnity

(This a Claims Made Coverage)

Any Claim or Claims first made against The Member and notified to The Scheme during the Period of Protection arising out of any civil liability whenever or wherever the same was or may have been committed or alleged to have been committed by The Member in the conduct of the Member's Professional Activities undertaken in the Business. (Other than any protection provided by this policy under (a) Public Liability and (b) Products Liability).

## Limit of protection

**PROVIDED THAT** the liability of The Scheme for all compensation payable in respect of Public Liability or Professional Indemnity arising directly from one source or original cause shall not exceed the respective Limits of Protection specified in the Schedule.

## Law costs and expenses

Subject to the Limits of Protection stated in the Certificate of Membership the Scheme will pay:

- a) all expenses incurred by The Member, all costs taxed against The Member or accepted by The Scheme in any suit, and all interest on the entire amount of any judgement which accrues after entry of the judgement and before The Scheme has paid or tendered or deposited in Court that part of the judgement which does not exceed the limit of The Scheme's liability thereon;

- b) expenses incurred by The Member for first aid to others at the time of an Occurrence for Personal Injury covered by this policy;
- c) all reasonable expenses, other than The Member's loss of earnings, incurred with the consent of The Scheme.

The Scheme may at its discretion defend in the name of and on behalf of The Member, any actions against The Member alleging such Personal Injury, Damage to Property or Professional Indemnity and seeking damages on account thereof, even if such suit is groundless, false and fraudulent and The Scheme may make such investigation, negotiation and settlement of any claim or suit as it deems expedient, but The Scheme shall not be obligated to pay any Claim or judgement or to defend any action after the applicable Limit of Protection has been exhausted by payment of judgement or settlements.

Further, subject to the Limits of Protection stated in the Certificate of Membership, The Scheme agrees to pay expenses incurred for representation at any Coroner's Inquest or other Fatal Accident Inquiry.

## Members retained risk payment (MRRP)

In respect of each Claim made against the Member the amount of the MRRP specified in the Certificate of Membership shall be borne by The Member and The Scheme will only be liable to protect The Member in excess of such amount. Should any Claim made against The Member involve more than one Occurrence then the MRRP specified shall apply to each Occurrence separately.

The MRRP is costs inclusive.

All expenses incurred by The Scheme considered necessary to adequately determine the liability of The Member, defend any action and to resolve the Claim to the satisfaction of The Scheme including professional and legal advisers engaged by The Scheme, shall be borne by The Member provided that the total amount to be borne by The Member in respect of any one Occurrence shall be limited to the amount of the MRRP specified in the Certificate of Membership.

## Geographic limits

This Protection Policy will apply worldwide except:

- a) In respect of Claims made or actions instituted within the United States of America or the Dominion of Canada or any other territory coming within the jurisdiction of the Courts of the United States of America or the Dominion of Canada.
- b) In respect of Claims made which are governed by the laws of the United States of America or the Dominion of Canada, whether by agreement of the insured or otherwise.
- c) Liability accruing to The Member as a consequence of any indemnity, undertaking or hold harmless agreement provided to any party which indemnifies that party against awards, claims or damages or costs associated with actions in the Courts of Canada and/or the United States of America their protectorates or dependencies.

However, the above clauses (a) and (b) shall not apply to such Claims arising from the presence with the United States of America or the Dominion of Canada of any Member who is normally a resident in the Commonwealth of Australia and who at the time of the occurrence was in the course of the Business and who is neither a manual worker nor a supervisor of such work.



## DEFINITIONS

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In this Protection Policy, unless otherwise stated, words have the same meaning as defined in the Trust Deed.

In this policy the following definitions shall apply:

**“The Scheme”** means the mutual arrangement of LGISWA established under the Trust Deed for the class of civic risk for which this protection policy is issued, known as LGIS Liability.

**“Trust Deed”** means the Deed of Trust executed by WALGA dated 19 September 1996 as amended from time to time.

**“The Member”** means each of the following is deemed to be protected under this policy to the extent set forth below:

1. The Member named in the Schedule
2. The Mayor, President, Chairman, Councillors, Board Members, Chief Executive Officer, Executives, Officers and Employees of The Member, members of any committee established by The Member, Welfare Organisations, Fire, Medical and Emergency Services and Voluntary Workers (including non-remunerated volunteer management committees carrying out delegated functions powers and duties of The Member) established pursuant to the Local Government Act or any other enabling legislation whilst acting within the scope of their duties for and on behalf of The Member.
3. In respect of Professional Indemnity Section 2 of the Liability Coverage:
  - 3.1 The Member’s predecessor in Business;
  - 3.2 Any Mayor, President, Chairman, Councillor, Board Members, Chief Executive Officer and employee of The Member, member of any Committee established by The Member including Welfare Organisation, Fire, Medical and Emergency Services and Voluntary Workers and non-remunerated volunteer management committees carrying out delegated functions powers and duties of The Member established pursuant to the Local Government Act or any other enabling legislation who is no longer with The Member but was with the Member and acting within the scope of his/her or its duties for and on behalf The Member at the time of the negligent act, error or omission.
4. Every office bearer or member of a canteen, or social or sporting club formed by The Member in respect of claims arising from duties of or connected with the activities of any such canteen or club.
5. Any Returning Officer for the time being and any other Poll Officials in respect of claims arising out of the conducting of Civic Elections.
6. Any Joint Committee where a “Joint Use” Agreement is in force between The Member and the Minister for Education arising out of School Facilities; also the Minister for Education as principal under the terms of the “Joint Use” Agreement.
7. Family Day Care Providers (deemed to be Employees of The Member), in respect of claims arising from duties of or connected with the activities of The Member’s Family Day Care Providers Scheme.

8. Every Ratepayer or Resident within the area administered by each individual participating Member arising out of or caused by or in connection with:
  - a) the use of lawn mowers and the like on property owned or under the control of the participating Member, provided such use is not for reward;
  - b) the maintenance and development of road verges provided such use and developments is not for reward and in line with local laws;
  - c) the presence of garbage receptacles (including bulk kerbside collection) left on public roads under the Local Government Act.
9. Every principal of the participating Member in respect of the liability of such principal arising out of the performance by the participating Member of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement.
10. All Donors of property and equipment donated to The Member for the use by the public arising out of such donation.
11. Additional persons who may be named to and accepted by The Scheme (LGISWA)
12. Any subsidiary entity of The Member(s) or entity wholly owned or controlled by The Member(s).

**“Personal Injury”** means:

1. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
2. false arrest, false imprisonment, wrongful conviction, wrongful detention, malicious prosecution, wrongful entry upon or eviction from or other invasion of the right of private occupancy of property, breach of copyright, trademark or patent;
3. assault and battery not committed by or at the direction of The Member unless committed for the purpose of preventing or eliminating danger to persons or property.
4. defamation or invasion of right of privacy
5. loss of consortium

**“Damage to Property”** means:

1. physical injury to or destruction of tangible property (which shall include loss of property) and the loss of use thereof at any time resulting there from; or
2. loss of use of tangible property which has not been physically injured or destroyed, (which shall include loss of property) provided such loss of use is caused by an Occurrence;
3. interference with any right of way, light, air or water.

**“The Business”** means Municipal or other Local Government Authorities, and all incidental and associated functions of The Member (including but not limited to water, sewerage, noxious weeds, gas undertakings, waste management, private works and the hiring of plant, the provision and management of canteens, social or sporting clubs, men’s sheds, commercial enterprise, community housing and aged care and disability schemes [also known as Home and Community Care Schemes], financial counselling services, childcare



services immunisation campaigns, medical and emergency services, welfare organisations, and the like services).

**"Members Retained Risk Payment"** means: the nominated amount of financial risk retained by a Member (As shown in the Certificate of Membership) pursuant to clause 10.2 of the Trust Deed;

**"Products Liability"** means personal Injury or Damage to Property arising out of the Protected Products or reliance upon a representation or warranty made at any time with respect thereto, but only if the Personal Injury or Damage to Property occurs away from premises owned by or leased or rented to The Member and after physical possession of such products by The Member has been relinquished to others.

**"Protected products"** means goods and products after they have ceased to be in the physical possession or under the control of The Member ,manufactured, constructed, erected, installed, altered, repaired, serviced, treated, sold, supplied or distributed by The Member (including any container thereof other than a vehicle)

**"Occurrence"** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Damage to Property neither expected nor intended from the standpoint of The Member.

**"Medical Person"** means a legally qualified medical practitioner, nurse, and dentist and first aid attendants.

**"Car Parks"** means any designated area to be used for parking and shall include caravan parks and defined recreational parking areas.

**"Vehicle"** means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine, whilst attached thereto.

**"Watercraft"** means any vessel, craft or the like exceeding 8 metres in length made or intended to float on or in or travel on or through water.

**"Aircraft"** means any vessel or craft made to float on or in or travel through air or space.

**"Documents"** means electronic and computer records, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents and/or forms of any nature whatsoever (excluding Bearer Bonds, Coupons, Bank or Currency notes or other negotiable instruments).

**"Claim"** means:

- a) any writ, summons, application, third party proceeding or other originating legal or similar process, cross claim or counterclaim issued against The Member;
- b) any originating arbitration process in relation to which the remedies available are consistent with the remedies available at law for breach of duty; and
- c) any written or verbal demand by a third party for compensation or alleging or implying any breach of duty communicated to The Member under any circumstances.

**"Tool Of Trade"** means a mechanical implement, machine or device used in the pursuit of an occupation, business or trade for which it is not required to be registered under any road traffic legislation or insured pursuant there to, but not including any vehicle whilst being used as a means of conveyance or transportation.

**"Professional Activity"** means advice given and services performed of a skilful character (but excluding all work of a direct physical or manual nature and/or supervision of such work) normally undertaken by The Member according to an established discipline, whether or not the advice is given or services are performed by a professionally qualified person.



**“Worker”** means any person employed by The Member or deemed to be employed by The Member whether pursuant to any Workers’ Compensation Law or otherwise

**“Workers’ Compensation Law”** means any law relating to compensation for injury to Workers or employees

**“Employment Practices”** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertisement, harassment or discrimination (sexual or otherwise) in respect of employment by The Member.

**“Bush Fire Brigade”** means a Bush Fire Brigade as defined in the *Bush Fire Act 1954 (WA)*

**“Bush Fire Brigade Member”** means a Bush Fire Brigade Volunteer as defined in the *Bush Fire Act 1954 (WA)*

# EXCLUSIONS

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The Scheme shall not be liable for:

## 1. Employer's Liability

Claims:

- a) in respect of Personal Injury to any person arising out of or in the course of employment of such person by The Member where such injury is covered by any Worker's Compensation Legislation or accident compensation legislation, or by any dependent of such person;
- b) for payment under the Workers' Compensation Legislation or any accident compensation legislation by any person in the service of any contractor or sub-contractor to The Member or by any dependant of such person;
- c) in respect of Personal Injury to any person in the service of The Member and which claim arises from a liability imposed by an industrial award or agreement or determination; or
- d) For or in respect of Employment Practices.

## 2. Property In Physical Or Legal Control

Claims in respect of Damage to Property owned by or leased or rented to The Member or property in the physical or legal control of The Member other than:

- a) i. premises leased or rented to The Member (including underground pipes and electricity supply cables); or
  - ii. other property leased or rented to The Member where such damage to property is caused by fire or explosion, water discharged or leaking from any pipe or water system or impact by any vehicle;
- b) vehicles not belonging to or used by or on behalf of The Member but in the physical or legal control of The Member whilst within a Car Park owned or operated by The Member unless part or all of The Member's Business is the provision of a motor vehicle repair or maintenance service for reward;
- c) documents entrusted to the care of The Member that have been destroyed, damaged, lost or mislaid, provided that notice of such loss is given within 30 days of discovery;
- d) employee's property;
- e) i. school premises including contents temporarily acquired by The Member for the purpose of polling places for Local Government elections.
  - ii. other premises, including the contents thereof, not owned by The Member and being used as a polling place;
- f) property impounded by The Member; or
- g) any other property, not owned by The Member, subject to a limit of an amount as specified in the Certificate of Membership

Provided that this Exclusion 2 shall only apply to such damage in excess of the limit specified in The Certificate of Membership (net of the MRRP), other than in respect of property owned by The Member in which case this Exclusion operates in its totality.

### 3. Asbestos

Claims howsoever arising which are directly or indirectly caused by or contributed to by or arising from or related in any way to asbestos or asbestos containing materials.

The Scheme shall have no duty of any kind with respect to any such loss demand claims or suit.

### 4. Product Defect

Claims in respect of Damage to Property to the Protected Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof. Provided that this Exclusion 4 will only apply to the actual defective part and shall not apply to any subsequent property damage.

### 5. Product Recall

Claims arising out of or resulting from the withdrawal, inspection, repair, replacement or loss of use of the Protected Products or of any property of which such products form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

### 6. Faulty Workmanship

Claims in respect of the cost of performing, completing, correcting or improving any work undertaken by The Member.

### 7. Loss Of Use

Claims in respect of loss of use of tangible property which has not been physically injured or destroyed resulting from:

- a) a delay in or lack of performance by or on behalf of The Member of any contract or agreement;
- b) the failure of the Protected Products to meet the level of performance, quality, fitness or durability expressly warranted, represented by The Member or warranted by implication of law but this exclusion does not apply to use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Protected Products after such products have been put to use by any person or organisation other than The Member.

### 8. Aircraft & Watercraft

Claims arising out of the ownership, maintenance or use by The Member of any Aircraft or Watercraft.

### 9. Vehicles

Claims in respect of Personal Injury or Damage to Property (other than property as is effectively covered by this policy under exclusion 2) caused by or arising out of the use of any vehicle owned by or in the physical or legal control of The Member or any attachment to any such vehicle:

- a) which is registered; or
- b) in respect of which, at the time of such occurrence, insurance is required by virtue of any legislation relating to motor vehicles,



- i. except whilst actually being used as a Tool of Trade on any site where The Member is undertaking work.
- c) which is otherwise insured in respect of the same liability, except in respect of any excess over and above such other insurance.
- d) Which is an unregistered vehicle ( to which the name of the bush fire brigade is or should be attached) solely engaged in moving people or equipment to and from work of:
  - i. Bush fire fighting
  - ii. Bush fire prevention
  - iii. Bush fire training exercises
  - iv. Civil defence work and/or
  - v. For any purpose connected with the servicing or repair of such vehicle.

This Exclusion shall not apply to Personal Injury or Damage to Property:

- i. caused by or arising from the delivery or collection of goods to or from any vehicle where such Personal Injury or Damage to Property occurs beyond the limits of any carriage-way or thoroughfare;
- ii. caused by or arising out of the loading or unloading of or the delivery or collection of goods to or from any vehicle used in work undertaken by or on behalf of The Member but not in the physical or legal control of The Member.
- iii. caused by or arising from vehicles not belonging to or used by or on behalf of The Member but in the physical or legal control of The Member whilst within a Car Park owned or operated by The Member unless part or all The Member's Business is the operation of a motor vehicle repair or maintenance service for reward.

## 10. Defamation

Any Claim or Claims arising out of a defamatory publication or utterance:

- a) made prior to the commencement date of this policy;
- b) made by or at the direction of The Member with The Member's knowledge of the falsity thereof

## 11. Radioactivity

Claims in respect of Personal Injury or Damage to Property directly or indirectly caused by contributed to or arising from:

- a) ionising, radiation or contamination by radioactivity from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion only combustion shall include any self-sustaining process of nuclear fission; or
- b) nuclear weapons material.

## 12. War

Claims of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following or directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

War, invasion, acts or foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellions, revolution, insurrection, or civil commotion assuming the proportions or amounting to an uprising, military or usurped power.

## 13. Pollution

Claims arising directly or indirectly out of any activity or inactivity of The Member or person or legal entity for whose action or inaction The Member may be legally liable which activity is or results in the discharge, dispersal, release or escape of:

- a) smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals or gases;
- b) any products, by-products or waste materials of any description whatsoever; or
- c) any substance or energy capable of causing irritation, contamination, pollution, or Personal Injury or Damage to Property into or on to land or any vegetation or building thereon, any water course or body of water, or into the atmosphere or ether, provided that if such discharge, dispersal, release or escape was fortuitous, sudden and accidental and not permitted to continue or recur immediately upon discovery, and provided that The Member satisfies The Scheme, or a court of jurisdiction, that it took all reasonable measures for the prevention of such discharge, dispersal, release or escape and attempted to comply with all relevant statutory obligations, local laws, by-laws and regulations imposed by any public authority for the safety of persons or property, this exclusion shall not apply.
- d) the cost of removing nullifying or cleaning up of pollutants.

## 14. Professional Indemnity

Any Claim or Claims for breach of professional duty under *Public Liability Section 1 of the Liability Coverage*.

## 15. Building Work

Claims arising out of the erection, demolition, alteration of and/or addition to buildings by or on behalf of The Member except such erection, demolition, alteration or addition not exceeding in cost the sum as specified in the Certificate of Membership.

## 16. Tree Root Damage

Claims in respect of Damage to Property arising directly or indirectly out of or caused by tree roots.

## 17. Dishonest and Fraudulent Activities

Claims arising out of any intentional, deliberate, dishonest, fraudulent, criminal or malicious act or omission by The Member.

## 18. Claims Not Notified During The Period Of Protection

In respect of liability for Professional Indemnity under Section 2 of the Liability Coverage, any Claim:-



- a) notified to The Scheme after the Period of Protection has expired;
- b) made against The Member after the Period of Protection has expired;
- c) made or threatened or in any way intimated on or before the commencement of the Period of Protection; or
- d) arising out of circumstances:-
  - i. notified under any previous contract of insurance; or
  - ii. of which The Member became aware, prior to the commencement of the Period of Protection and which a reasonable person in The Member's position would at any time prior to the commencement of the Period of Protection have considered may give rise to a Claim.

## 19. Fines and Penalties

Fines, penalties, exemplary or punitive damages awarded by a Court or in respect of such component in any settlement of a claim.

## 20. Contractual Liability

Claims arising out of any liability assumed by The Member under any contract or agreement except to the extent that such liability would have existed under the law of tort (in Western Australia) in any event.

## 21. Native Title

Any Claim or Claims:

- a) made pursuant to any *Native Title Legislation*; or
- b) arising out of any negligent act error or omission on the part of The Member in respect of a Native Title Claim or land the subject of a Native Title Claim under any Native Titles legislation.

## 22. Terrorism

Claims for loss, injury, damage, cost or expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with an act of terrorism regardless of any other cause or event contributing concurrently or in any other sequences to the loss.

For the purpose of this Exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group (s) of persons, whether acting alone or on behalf of or in connection with any organisation (s) or government (s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Policy also excludes loss, injury, damage, cost or expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If The Scheme alleges that by reason of this Exclusion, any loss, injury, damage, cost of expense is not covered by this policy, the burden of providing the contrary shall be upon The Member.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder all remain in full force and effect.

### 23. Toxic Mould, Mildew or Other Clause

- a) Claim directly or indirectly arising out of, relating to, or in connection with exposure to or the manifestation release, dispersal, seepage, migration, discharge, appearance, presence, reproduction or growth of mould, mildew, spores, mycotoxins, fungi, organic pathogens or other micro-organisms of any type, nature or description. Such claim or claims are excluded regardless of whether they arise in connection with;
1. Personal Injury;
  2. Property damage;
  3. Advertising injury; or
  4. Any injury caused by a medical incident.
- b) There shall be no obligation to defend The Member against any claim or claims excluded by this Exclusion regardless of whether the allegations forming the basis of the claim or claims are groundless, false or fraudulent.
- c) This Policy expressly excludes;
1. any cost, expense or charge to test, monitor, clean up, remediate, remove, contain, treat, detoxify, neutralise, rehabilitate, or in any way respond to or assess the effects of mould, mildew, spores, mycotoxins, fungi, organic pathogens or other microorganisms of any type, nature or description; and
  2. any cost, expenses, charge, fine or penalty, incurred, sustained, or imposed by order, direction, request or agreement of any court, governmental agency, or any civil, public or military authority.
- d) This Exclusion shall not apply to any claim or claims directly or indirectly arising out of, relating to, or in connection with The Member's use of mould, mildew, spores, mycotoxins, fungi, organic pathogens in connection with the rendering of professional health care services.
- e) The following definition is to be applied to this Exclusion.
- 1) the term "organic pathogens" means any organic irritant or containment, including but not limited to mould, fungus, bacteria, virus, or their by-products such as mycotoxins, mildew, or aspergillus, penicillium, stachybotrys, chartarum strachybotrys atra, trichodema and fusarium memnoniella.

This Exclusion 23 shall not apply if the mould, mildew, spores, mycotixins, fungi, organic pathogens or other micro-organisms of any type, nature and description is (are) hidden and results from a sudden, identifiable, unintended and unexpected leak of water or steam from a plumbing, heating or air-conditioning system or appliance in connection with the provision of services within the Business, or from a storm drain or water, steam, or sewer pipes off the premises. Sump pumps and roof drains do not qualify as plumbing systems or appliances in this context.

### 24. Cyber Exclusion (OTHER THAN BODILY INJURY OR PROPERTY DAMAGE)

1. Notwithstanding any provision to the contrary within this Protection Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
  - 1.1 Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident; or



1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

- 2 In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 3 This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a Cyber Act, Cyber Incident or Data, and, if in conflict with such wording, replaces it.
- 4 If the Scheme allege that by reason of this endorsement loss sustained by the Member is not covered by this Policy, the burden of proving the contrary shall be upon the Member.
- 5 However, clause 1.1 of this Exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:
  - 5.1 any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or
  - 5.2 any ensuing physical damage to or destruction of third party property
 

resulting from or arising out of a Cyber Incident or a Cyber Act. Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a Cyber Incident or a Cyber Act.

### Definitions

- 6 **Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Member or any other party.
- 7 **Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
- 8 **Cyber Incident** means:
  - 8.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
  - 8.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 9 **Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

## EXTENSIONS

### 1. Tree Root Extension (this is a CLAIMS MADE Extension)

Notwithstanding anything else contained in this policy, it is understood and agreed that this Policy protects The Member against any Claim first made against The Member and notified to The Scheme during the Period



of Protection arising from Damage to Property caused by the encroachment of Tree Roots for which The Member is legally liable.

The following extensions 2 to 7 inclusive and extensions 9, 10 are extensions to the cover provided under Section 2 of the Liability Coverage (Professional Indemnity), and are, unless expressly stated in extensions 2 to 7, 9 and 10 subject to the terms, conditions and limitations applicable to Section 2 of the Liability Coverage.

## 2. Defamation (this a CLAIMS MADE Extension)

Subject to Exclusion 10 and 17, this policy extends to protect The Member against any Claim or Claims first made against The Member and notified to The Scheme during the Period of Protection for defamation arising out of the conduct of The Member's Business by reason of words written or spoken by:

- The Member
- The Member's predecessor in Business

Any Mayor, President, Chairman, Councillor, Board Member, Chief Executive Officer, Executive, Officer and employee of The Member, member of any Committee established by The Member pursuant to the Local Government Act or any other enabling legislation, who is now or was with The Member and acting within the scope of his or her duties for and on behalf of The Member at the time of the alleged Defamation.

## 3. Loss of Documents

It is understood and agreed that if during the Period of Protection The Member shall discover and within 30 days of the date of discovery give written notice to The Scheme that any Documents entrusted to The Member which now or hereafter are or are by them supposed or believed to be in its possession or in the possession of any other party or parties to or with whom such Documents have been entrusted lodged or deposited by The Member in the ordinary course of Business have been destroyed or damaged or lost or mislaid and after diligent search cannot be found this policy shall protect The Member for:

- a) any liabilities of whatsoever nature which it may incur in consequence of such Documents having been so destroyed, damaged, lost or mislaid; and/or
- b) any liabilities relating to the costs charges and expenses of whatsoever nature incurred by The Member in replacing and/or restoring such Documents

Provided always that the amount of any claim for costs, charges and expenses as above shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by The Scheme with the approval of The Member.

## 4. Fraud and Dishonesty

The policy is extended to Protect The Member against any Claim or Claims first made against them and notified to The Scheme during the Period of Protection by reason of any dishonest, fraudulent, criminal or malicious act or omission of any person at any time employed by The Member, or of any Mayor or Councillor elected to the Council of The Member. This extension will not extend to cover the person who actually committed the dishonest, fraudulent, criminal or malicious act.

#### 5. Delegated Authority Clause

The policy is extended to Protect The Member against any Claim or Claims first made against The Member and notified to The Scheme during the Period of Protection for any negligent act error or omission of The Member whilst carrying out duties under delegation from any government department.

#### 6. Breach of Warranty Clause

The policy is extended to Protect The Member against any Claim or Claims first made against The Member and notified to The Scheme during the Period of Protection for breach of warranty of authority committed in good faith.

#### 7. Competition And Consumer Act (Commonwealth) AND Equivalent Fair Trading Acts (State) Clause.

The Scheme will protect The Member for any Claim or Claims (which would otherwise fall within the coverage available under the Policy's Professional Indemnity coverage) for damages or compensation first made against The Member and notified to The Scheme during the Period of Protection caused or alleged to be caused directly or indirectly by conduct on the part of The Member (not being deliberate or fraudulent conduct), which is misleading or deceptive, or likely to mislead or deceive or be misrepresentative, by or on behalf of The Member, which is contrary or alleged to be contrary to the *Trade Practises Act (Commonwealth)* or equivalent *Fair Trading Acts* enacted in any state of Australia.

#### 8. Aerodrome and Airport Endorsement

It is understood and agreed that the protection by this Wording includes the legal liability (as set forth herein) arising out of any facility owned and/or operated and /or controlled by The Member where aircraft may take off and land, including one equipped with surface runways and facilities for handling passengers and cargo.

#### 9. Consultants

It is understood and agreed that the protection granted by this policy protects The Member for actions against The Member resulting from the engagement or employment of professional consultants.

#### 10. Erroneous Issue of Certificates

The protection by this policy includes Claims made against The Member as a result of erroneous issue of Certificates under Local Government Act and/or Environmental Planning and Assessment Act or the equivalent in other States or Territories of Australia.

#### 11. Bushfire Extension

The Limit of Protection shall apply inclusive of this Extension.

The Policy extends to protect the Property Owner or Occupier other than a Government Department or Instrumentality for claims in respect of Personal Injury or Damage to Property (as set forth herein) arising directly or indirectly out of or caused by or in connection with fire prevention measures authorised by The Member pursuant to Section 33 of the *Bush Fires Act No 53 of 1954*.

#### **PROVIDED THAT**



- a) the fire prevention measures are under the control of The Member, the Member's employees or a registered Bush Fire Brigade;
- b) The Scheme shall not be liable for Claims:
  - i. in connection with the clearing or otherwise improving by burning of land for agricultural or pastoral use;
  - ii. where the Bush Fire Brigade Members are engaged for personal remuneration;
- c) in the event of the Property Owner or Occupier being entitled to indemnity under any other policy of insurance the protection granted herein will apply only in respect of an amount in excess of that provided by such other policy;
- d) the liability of The Scheme under this Extension for all Claims arising out of any one occurrence shall not exceed the Sub Limit if specified in the Certificate of Membership.

## 12. Bush Fire Act Liability

This Extension is operative without additional Contribution, provided that the Limit of Protection shall apply inclusive of this Extension.

The Policy extends to protect:

- i. The Member;
- ii. The registered Bush Fire Brigade;

For Claims in respect of Personal Injury or Damage to Property arising directly or indirectly out of or caused by or in connection with The Member or the registered Bush Fire Brigade exercising the powers of authorities or performing the duties conferred or imposed by the *Bush Fires Act 1954 (WA)*, *Emergency Management Act 2005 (WA)*, *Fire and Emergency Services Act 1998 (WA)*, or other similar legislation and any amendments thereto.

Provided that The Scheme shall not be liable for Claims:

- a) arising directly or indirectly out of or caused by or in connection with the clearing or otherwise improving by burning of land for agricultural or pastoral use; or
- b) where the Bush Fire Brigade Members are engaged for personal remuneration.

## 13. Medical Facilities (this is a CLAIMS MADE Extension)

It is understood and agreed that this policy includes The Member's legal liability (as set forth herein) for claims first made against them during the Period of Protection arising out of negligent, improper or insufficient treatment rendered or the failure to render treatment by any Medical person at facilities which are provided by The Member primarily for the purpose of rendering first aid and/or medical and/or treatment of The Member's employees, excluding any liability arising out of prescribing medication or undertaking surgical procedures.

Also it is understood and agreed that this Extension includes The Member's legal liability (as set forth herein) arising from the immunisation campaigns conducted by the Medical Officer of Health or any qualified Doctor or Nurse working under his/her direct control.

It is further understood and agreed that this extension includes the legal liability (as set forth herein) of any of The Member's employees whose duties include the rendering of first aid and/or the provision of medical

and/or nursing treatment, excluding any liabilities arising out of prescribing medication or undertaking surgical procedures.

#### 14. Unmanned Aerial Vehicle's

Notwithstanding anything else contained in this policy, it is hereby noted and agreed that liability is afforded under this policy for third party property damage and/or third party bodily injury arising out of the operation of Unmanned Aerial Vehicle's (UAV's), subject to all other policy terms, conditions and exclusions, provided that: UAVs are used within the conditions laid down by the Australian Civil Aviation Authority.

#### 15. Continuous Cover

In the absence of fraudulent non-disclosure and subject to clauses (ii) and (iii) of this Extension 15, where:-

- a) a Claim is made against The Member by reason of an act, error or omission of The Member which occurred prior to the Period of Protection stated in the Schedule; and
- b) The Member was a participant in The Scheme at the time when The Member first became aware of the circumstance which subsequently gave rise to the Claim ("**Circumstances**"); and
- c) membership of The Scheme continued without interruption as The Member's professional indemnity provider from the time when The Member first became aware of the Circumstances up until such time as the Claim is made against The Member and notified to The Scheme
  - i. The Scheme agrees to indemnify The Member against the Claim subject to and the terms of The Scheme Wording.
  - ii. The Scheme reserves the right to reduce its liability in respect of the Claim by the amount which fairly represents the extent to which The Scheme's interests are prejudiced as a result of the late notification.
  - iii. Where clauses (i) and (ii) apply, The Scheme agrees that it will not deny indemnity for the Claim as a consequence of any non-disclosure on the part of The Member with respect to the Claim.



# CONDITIONS

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## Joint members

Where more than one party comprises The Member each of the parties shall be considered a separate and distinct party and the words “The Member” shall be considered as applying to each party in the same manner as if separate protection had been issued to each of the said parties provided that nothing in this clause shall result in any increase of The Member’s Limit of Protection in respect of any occurrence or Period of Protection or any claims made under Professional Indemnity Section 2 of the Liability Coverage.

### 1. Notices

Notices in writing shall be given as soon as possible to The Scheme:

- a) of any occurrence/circumstance, Claim, writ, summons or proceedings or of any impending prosecution or inquest, or knowledge of any occurrence/circumstances which may subsequently give rise to a Claim under this policy, irrespective of the quantum of such Claim; or
- b) of any change materially varying any of the facts or circumstances existing at the commencement of this policy that shall come to the knowledge of The Member.

Such notice shall be given by The Member whose knowledge shall be deemed to include the knowledge of any person whose knowledge would in law be that of The Member.

### 2. Deeming Provision

If during the Period of Protection The Member becomes aware of any circumstances which may subsequently give rise to a Claim against The Member for breach of Professional Activity by reason of any act, error or omission or arising from circumstances falling within the terms of extension 2 to 7 and 13 herein and shall give written notice of such circumstance to The Scheme during the period of protection, then any Claim which may subsequently be made against The Member arising out of the act, error or omission shall for the purpose of Professional Indemnity coverage under section 2 be deemed to have been made during the Period of Protection.

### 3. Settlement of Claim

- a) The Member shall not, without the consent in writing of The Scheme, make any admission, offer, promise or payment in connection with any Occurrence or Claim, and if The Scheme so desires, it shall be entitled to take over and conduct in the name of The Member the defence or settlement of any Claim.
- b) The Member shall promptly take at its own expense all reasonable steps to prevent other Personal Injury or Damage to Property from arising out of the same or similar conditions, but such expense shall not be recoverable under this policy.
- c) The Member shall use its best endeavours to preserve any damaged or defective property which might prove necessary or useful by way of evidence in connection with any Claim and except as required in b) above, so far as may be reasonably practicable, no alteration or repair shall be made to any premises, machinery, fittings, appliances or plant without the consent of The Scheme until The Scheme has had an opportunity of inspection.

- d) The Scheme shall be entitled to prosecute in the name of The Member, at its own expense and for its own benefit, any claim for Protection or damages or otherwise.
- e) The Scheme Manager shall have full discretion in the conduct of any proceedings in connection with any Claim and The Member shall give all information and assistance as may be required by the Scheme in the prosecution, defence or settlement of any Claim.
- f) Notwithstanding any of the above clauses a) to e) inclusive, where there is any dispute between The Scheme and The Member as to whether a claim should be settled or defended, a Queen's Counsel or a person of similar authority (to be mutually agreed upon by The Member and The Scheme) shall advise whether the claim should be settled or defended and The Scheme and The Member will follow the advice of the Queen's Counsel. If The Member refuses to follow the advice of the Queen's Counsel that shall be deemed to be a fundamental breach of the conditions of this policy.

#### 4. Relinquish Control

The Scheme may at any time pay to The Member the Limit of Protection applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and shall then be under no further liability in connection with such Claims.

#### 5. Reasonable Care

The Member shall as far as reasonably practicable:

- a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition;
- b) take all reasonable precautions to:
  - i. prevent Personal Injury and Damage to Property;
  - ii. prevent the manufacture, sale or supply of defective products;
  - iii. comply and ensure that its employees, servants and agents comply all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property; and
- c) at its own expense take reasonable action to trace, recall or modify any Protected Products containing any defects or deficiency of which The Member has knowledge or has reason to suspect.

#### 6. Inspection of Property

The Scheme shall be permitted but not obligated to inspect The Member's property and operations at any time. Neither The Scheme's rights to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of The Member or others to determine or warrant that such property or operations are safe. The Board may arrange to have an examination and audit of The Member's books and records at any time during the Period of Protection and at any time after the final termination of this policy, as far as they relate to the subject matter of this policy.

#### 7. Automatic Reinstatement

Upon notification to The Scheme of a Claim made against The Member during the Period of Protection under the Professional Indemnity Cover only, this cover shall be reinstated for such amount as may be ultimately



paid by The Scheme in respect of such Claim, so as to remain in force during the Period of Protection for the Limit of Protection stated in the Schedule of this policy.

Provided that:-

- the aggregate of amounts so reinstated shall not exceed an amount equal to the limit of liability stated in the Certificate of Membership;
- the amount so reinstated shall apply only to subsequent Claims and or occurrence which are not related in any way to the Claim(s), occurrences or the circumstances giving rise to such reinstatement;
- the liability of The Scheme for all Claims in the aggregate during the Period of Protection shall not exceed twice the Limit of Protection stated in the Certificate of Membership; and
- if The Member has other insurance which is stated to apply in excess of this policy, the reinstatement afforded by this clause shall operate only after exhaustion by reason of the payment of any Claim or Claims under such insurance.

## 8. Contribution

When a loss paid under this policy is also recoverable under a separate insurance policy or policies and The Scheme has paid more than its proportionate share, the Scheme reserves its rights to seek contribution from the other insurer or insurers.

## 9. Subrogation

The Scheme shall be subrogated to all The Member's rights of recovery against all persons and organisations and The Member shall execute and deliver instruments and papers and do all that is necessary to assist The Scheme Manager in the exercise of such rights.

## 10. Broad As Expiring Rider

It is hereby understood and agreed that in the event The Member suffers a loss which would have been covered under The Member's policy which expired immediately before protection was granted by this policy and is not specifically protected by this policy then this policy will automatically be extended to be as broad as the expiring policy.

## 11. Insurance Statement

This policy is not an insurance policy or certificate of insurance and is intended to be the policy guidelines underlying the supporting insurance programme.

## 12. Cancellations

This policy may be cancelled at any time, but always subject to the Trust Deed and Scheme Rules, at the request of The Member giving notice in writing to The Scheme and upon cancellation The Member shall forfeit any right to any refund of the unexpired portion of the Contribution.

The Scheme may cancel this policy by giving The Member written notice to that effect, where The Member:

- i. fails to comply with the duty of utmost good faith, or
- ii. fails to comply with the duty of disclosure, or



- iii. made a misrepresentation to The Scheme during negotiations for and before the commencement date of this policy (or any subsequent renewal), or
- iv. fails to comply with any provision of this policy, including non-payment of a Contribution, or
- v. made a fraudulent claim under this policy or any concurrent policy of insurance

### 13. Recovery of Costs

All recoveries from third parties for payments made under this Protection Policy shall be applied (after first deducting from the costs and expenses incurred in obtaining such recovery) in the following order of priority:-

- a) The Scheme shall be reimbursed for the amount of its liability under this policy
- b) Any remaining sum shall be applied towards reimbursement of the MRRP retained by The Member.

### 14. Confidentiality

The existence and terms of this protection wording shall be confidential as between the **Member** and us and shall not be published, disclosed or otherwise communicated except where:

- a. the law requires disclosure in the financial statements or annual reports of the payment of contribution by the **Member**; or
- b. The Scheme consents in writing to the disclosure of the existence and/or terms of this protection wording.

### 15. Headings

The headings throughout this policy are intended for convenience only and shall in no way affect the construction of this policy.





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<b>12.6 Execution of Documents and Use of Common Seal Policy</b>
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<b>File Reference:</b>	<b>2.30.1</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont - CEO</b>
<b>Date:</b>	<b>8 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>1. Draft Execution of Documents and Use of Common Seal Policy</b>

**Summary:**

Council is requested to consider adopting the attached draft Execution of Documents and Use of Common Seal Policy.

**Background:**

In the course of the Author's work, he received a request from the Public Transport Authority (PTA) in relation to the Shire's execution under seal on a license for us to put a tank on the Kylie Siding Reserve. The PTA, through their legal representatives Burgess Rawson, asked for evidence of our delegated authority for executing documents.

This brought to light the fact that the Shire of West Arthur does not appear to have an appropriate policy or delegation of this nature.

**Comment:**

The Author is aware that many local governments do, in fact, have similar policies, and it is considered to be an important decision-making tool for determining how various documents should be executed.

The attached draft policy was based on existing policies from a number of other WA local governments and it is recommended for adoption by Council.

**Consultation:**

Nil

**Statutory Environment:**

Local Government Act 1995  
s2.7.2(b)  
s9.49A

**Policy Implications:**

The new Execution of Documents and Use of Common Seal Policy will be added to Council's Policy Manual.

**Financial Implications:**

Nil

**Strategic Implications:**

Community Strategic Plan West Arthur Towards 2031

Theme: Leadership and Management – inspirational, dynamic, transparent

Outcome: Establish and maintain sound business and governance structures

Strategy: Comply with regulations and best practice standards to drive good decision making by Council and Staff.



**Risk Implications:**

**Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. **Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Entering into agreements with external parties without the proper authority to do so.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	(20) Extreme
Risk Likelihood (based on history and with existing controls)	(5)
Risk Consequence	(4)
Principal Risk Theme	Inadequate Document Management Processes
Risk Action Plan (Controls or Treatment Proposed)	Adopt the new draft policy

**Voting Requirements:**

Simple majority

**Officer Recommendation:**

That Council adopt the attached draft Execution of Documents and Use of Common Seal Policy and approve its inclusion in its policy manual.

Moved: Cr PeirceSeconded: Cr South**CARRIED 6/0****ATTACHMENT**

1. Draft Execution of Documents and Use of Common Seal Policy

## **POLICY 2.3**

### **EXECUTION OF DOCUMENTS AND USE OF COMMON SEAL**

#### **OBJECTIVE**

To establish procedures for:

- a) Affixing the Shire of West Arthur's common seal; and
- b) Determining whether a document is executed by way of common seal or signed by an authorised employee.

#### **DETAILS**

In accordance with section 9.49A of the *Local Government Act 1995* (LGA), a document is duly executed by a local government if the common seal is affixed to it or it is signed by an officer authorised to do so.

The execution requirements, including the making, varying or discharge of documents pursuant to section 9.49B of the Local Government Act, shall be as outlined in Table 1 of this Policy. Document means any paper or electronic document, including communications such as letters and emails, which:

- a) convey a decision; or
- b) establish an obligation on the Shire; or
- c) is ceremonial.

#### **AUTHORISED SIGNATORIES**

The Shire President and Chief Executive Officer are authorised to affix and sign all documents to be executed under a common seal, however, in the absence of the Shire President and/or the Chief Executive Officer as the case may be, the Deputy President and the Acting Chief Executive Officer are authorised to affix the Common Seal.

There is no legal requirement for the common seal to be affixed in order for a document to be executed where Council has resolved to authorise the CEO or any other employee to sign a document pursuant to section 9.49A of the Local Government Act 1995. Employees authorised under section 9.49A of the Local Government Act 1995 may sign the documents identified for that purpose in Table 1 of this Policy.

Despite the authorisation, the common seal may still be affixed in the following circumstances:

- (a) if the authorised officer is of the opinion the document carries a high level of financial risk, legal complexity or political sensitivity that the document should be executed by way of common seal; or
- (b) the other party has reasonably requested the document be executed by way of common seal.

Details of all transactions where the Common Seal has been affixed shall be recorded in a register kept by the Chief Executive Officer, with such register to record each date on which the common seal was affixed to a document, the nature of the said document, and the parties to any agreement to which the common seal was affixed.

#### **DOCUMENT TYPES**

For clarity, Table 1 outlines those documents where the Common Seal should be applied as part of the Execution.

#### **LIMITATION ON SPECIFIC AUTHORITIES**

The specific authorities established in Attachment 1 are limited by the following conditions:

1. Chief Executive Officer
    - a) Unlimited \$value; and/or
    - b) Commitment period is specifically resolved by Council or in any other case, no greater
-

than a 5-year period; and/or

- c) Moderate or lesser financial risk, legal complexity or political sensitivity, unless specifically resolved by Council.

2. Manager

- a) <\$100,000p/a; and/or  
b) Commitment is no greater than a 3-year period; and/or  
c) Minor or lesser level of financial risk, legal complexity or political sensitivity.

**METHOD OF AFFIXING THE COMMON SEAL**

Below are examples of how documents should be executed under the common seal:

**Example A** – Where the Common Seal is affixed by Resolution of Council:

DATED: \_\_\_\_\_ 20\_\_

The Common Seal of the Shire of West Arthur was affixed by authority of a resolution of the Council in the presence of:

\_\_\_\_\_  
[INSERT NAME OF PRESIDENT]  
SHIRE PRESIDENT



\_\_\_\_\_  
[INSERT NAME OF CEO]  
CHIEF EXECUTIVE OFFICER

**Example B:** Where the Common Seal is affixed by other than Resolution of Council:

DATED: \_\_\_\_\_ 20\_\_

The Common Seal of the Shire of West Arthur was affixed in the presence of:

\_\_\_\_\_  
[INSERT NAME OF PRESIDENT]  
SHIRE PRESIDENT



\_\_\_\_\_  
[INSERT NAME OF CEO]  
CHIEF EXECUTIVE OFFICE



**Table 1**

DOCUMENT TYPE * Common Seal only to be applied where specified in a document prepared by an external party.	COMMON SEAL	EXECUTION BY SIGNATURE ONLY	
		Shire President	CEO or Delegated Officer
<b>Local Laws</b> – made and amended	✓	x	x
<b>Planning Schemes</b> – adopted and amended	✓	x	x
<b>Land Transaction documents</b> , including: <ul style="list-style-type: none"> <li>• sale;</li> <li>• purchase;</li> <li>• vesting;</li> <li>• contributed assets;</li> <li>• notifications of factors affecting land under 70A of the Land Transfer Act 1893 – lodge or withdraw;</li> <li>• easements – by land transfer                             <ul style="list-style-type: none"> <li>○ rights of carriage way;</li> <li>○ rights of support to land burdened by buildings;</li> <li>○ rights to erect a party wall;</li> <li>○ rights to light and air (Property Law Act 1969);</li> <li>○ rights to take water from wells or bores;</li> <li>○ rights to install and operate drains and drainage works;</li> <li>○ rights to install, maintain and operate oil, gas or other pipelines;</li> <li>○ rights to install, maintain and operate electric power lines, telephone and other cables and supporting pylons;</li> </ul> </li> <li>• restrictive Covenants – by land transfer; and</li> <li>• deeds – land transfer for public purposes</li> </ul>	x	✓	✓
<b>Land Transaction documents</b> , including: <ul style="list-style-type: none"> <li>• Caveats - registering or removing;</li> <li>• Leases;</li> </ul>	✓	x	x

<ul style="list-style-type: none"> <li>• Easements – by deed, deposited plan or other legal instrument: <ul style="list-style-type: none"> <li>○ rights of carriage way;</li> <li>○ rights of support to land burdened by buildings;</li> <li>○ rights to erect a party wall;</li> <li>○ rights to light and air (Property Law Act 1969);</li> <li>○ rights to take water from wells or bores;</li> <li>○ rights to install and operate drains and drainage works;</li> <li>○ rights to install, maintain and operate oil, gas or other pipelines; and</li> <li>○ rights to install, maintain and operate electric power lines, telephone and other cables and supporting pylons;</li> </ul> </li> <li>• Restrictive Covenants – lodge, modify or withdraw (other than by land transfer);</li> <li>• Deeds; and</li> <li>• Legal agreements.</li> </ul>			
<b>Mortgages, Loans and Debentures</b>	✓	x	x
<b>Power of Attorney</b> to act for the Shire	✓	x	x
<b>State or Commonwealth Government Funding Agreements</b>	x	x	✓
<b>Grants and Funding Agreements</b> with private agencies (incoming and outgoing)	x	x	✓
<b>Memorandum of Understanding</b>	x	✓	✓
<b>Contracts and legal instruments</b> , including contract variations, related to: <ul style="list-style-type: none"> <li>• Procurement Contracts</li> <li>• Service Agreements (incoming or outgoing services)</li> <li>• Heritage Agreements</li> <li>• Acquittal of planning conditions</li> <li>• Maintenance of the public realm</li> </ul>	x	x	✓
<b>Development, subdivision and strata-title approvals</b> for Shire Land	x	x	✓
<b>Memorial</b> <ul style="list-style-type: none"> <li>• <u>Deed Poll Registration</u>: A document lodged under the Registration of Deeds Act 1856, notifying the change of name of a person.</li> <li>• <u>Memorial of Advertisement</u>: A document lodged at the Office of Titles by a Local Authority evidencing that the legal requirements necessary to sell land for the non-payment of rates, have been attended to.</li> <li>• <u>Prohibiting dealings in land</u>: A document lodged at the Office of Titles under one of a number of statutes, which when noted on a Certificate of Title acts as a caveat.</li> </ul>	x	x	✓

Documents that fulfil a <b>statutory local government duty or power</b> , for which there is no power of delegation or authorisation and is a matter which constitutes a potential risk to the Shire.		x	x	✓
<b>Communications on behalf of the Shire</b> , with Commonwealth or State Ministers	<b>Note:</b> <i>Officers are authorised to sign routine day to day operational communications where the recipient is of a similar organisational level as the Shire Officer.</i>	x	✓	✓
<b>Communications on behalf of the Shire</b> , with CEOs of: <ul style="list-style-type: none"> <li>• Commonwealth or State Government Departments</li> <li>• Industry representative bodies</li> </ul>		x	x	✓
<b>Communications on behalf of the Shire</b> , relevant to the day-to-day operations of the Shire and which are subject of a level of political sensitivity or potential risk to the Shire.		x	x	✓
<b>Ceremonial Certificates:</b> <ul style="list-style-type: none"> <li>• Honorary Freeman</li> <li>• Honorary Citizenship</li> </ul>		✓	x	x
<b>Deeds of Settlement</b> – Employee matters		x	x	✓
<b>Enterprise Bargaining Agreements</b>		x	x	✓
<b>Leases/Licences to External Parties (not registered on title)</b>		x	x	✓
<b>Leases/Licences from External Parties</b>		x	x	✓

<b>12.7 New Policy – G1.14 – Caravan Parks and Camping</b>
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**File Reference:** 2.30.1  
**Location:** N/A  
**Applicant:** N/A  
**Author:** Rajinder Sunner – Manager Corporate Services  
**Authorising Officer:** Vin Fordham Lamont – Chief Executive Officer  
**Date:** 15 June 2022  
**Disclosure of Interest:** Nil  
**Attachments:** Policy G1.14 – Caravan parks and Camping

**Summary:**

Council is requested to adopt the attached new Policy G1.14 – Caravan parks and Camping

**Background:**

Staff have drafted Policy G1.14–Caravan parks and Camping and Council is requested to adopt the new policy.

**Comment:**

As per discussion held with the council in May 2022 network session. Staffs was requested to prepare a new policy for Caravan Park in Darkan.

Policy will provide a guidance and clear directions in relations to accommodations at Darkan Caravan Park.

**Consultation:**

Staff  
Council

**Statutory Environment:**

Local Government Act 1995 (WA)  
Caravan Parks and Camping grounds Act 1995  
Caravan Parks and Camping Grounds Regulations 1997

**Policy Implications:**

New Policy G1.14–Caravan parks and Camping

**Financial Implications:**

Nil

**Strategic Implications:**

Nil

**Risk Implications:**

Risk	Low
Risk Likelihood (based on history and with existing controls)	Low
Risk Impact / Consequence	Low
Risk Rating (Prior to Treatment or Control)	Low
Principal Risk Theme	Low
Risk Action Plan (Controls or Treatment Proposed)	Low

**Risk Matrix:**

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating of 2 has been determined for this item. Any items with a risk rating over 10 (considered to be high or extreme risk) will be added to the Risk Register, and any item with a risk rating over 17 will require a specific risk treatment plan to be developed.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

That Council adopts the attached new Policy G1.14–Caravan parks and Camping in accordance with the provisions of the Local Government Act 1995 and Caravan Parks and Camping Grounds Act 1995.

Moved: Cr Manuel

Seconded: Cr Lubcke

**CARRIED 6/0**

**ATTACHMENT**

New Policy G1.14 – Caravan Parks and Camping.



## Shire of West Arthur Council Policy – Caravan Parks

Policy Number	G1.134 Governance
Policy Title	<del>Darkan</del> Caravan Parks
Related Legislation	Local Government Act 1995 <del>(WA)</del> Caravan Parks and Camping Grounds Act 1995
Strategic Outcome Supported	Outcome 2.2 – A growing, diverse business community
Adopted by Council	21 June 2022
Review	CEO Annually

### 1. Objective

The purpose of this policy is to provide guidance for matters relating to caravanning and camping within the Shire.

### 2. Scope

The policy applies to all staff and users of the caravan park and camping areas.

### 3. Policy Statement

#### 1. Dogs in Caravan Park

In accordance with the ~~Caravan and Camping Ground regulations-Regulations~~ 1997, it is Council policy that dogs be allowed in the caravan parks provided that dogs are kept on a leash or enclosed in a caravan at all times.

Should the dog become a nuisance to anyone in the facility the ranger is authorized to ask for them to be removed from the caravan park.

Dogs are not allowed in any on-site accommodation.

#### 2. Ablution Facilities Code

It is the council policy that individual codes are issued to each tenant whilst in occupation at the caravan park.

#### 3. Darkan Caravan Park Occupancy

The following provisions apply in relation to the allowable occupancy tenure at the Shire run facility at Darkan.

- The Chief Executive Officer is to have the authority to allow any stay longer than a month if established that any use longer than this is only temporary with the occupant required to be able to establish accommodation is available elsewhere after this time.
- The maximum allowable time that will be permitted unless extenuating circumstances can be proven (i.e. the need to finish a building project or similar) is limited to three months.
- No caravan is to set up for the purpose of an onsite van to be separately rented

out or sub-let without the written approval of the Chief Executive Officer.

- Any permission to occupy any site at the caravan park for any length of time does not confer that tenancy rights are granted under the provision of the Residential Tenancy Act or any Amendment thereto.



<b>12.8 Policy – W2.3 – Dust Suppression</b>
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<b>File Reference:</b>	<b>2.30.1</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Rajinder Sunner – Manager Corporate Services</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont – Chief Executive Officer</b>
<b>Date:</b>	<b>15 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>Policy W2.3 – Dust Suppression</b>

**Summary:**

Council is requested to adopt the attached Policy W2.3 – Dust Suppression

**Background:**

Staff have re-drafted Policy W2.3 – Dust Suppression and Council is requested to adopt the policy.

**Comment:**

As per discussion held with the council in May 2022 network session. Staffs was requested to re-introduce an existing policy, which was missing from Shire of West Arthur current policy document.

Policy will provide a guidance and clear directions in relations to Dust Suppression in the district.

**Consultation:**

Staff  
Council

**Statutory Environment:**

Local Government Act 1995 (WA)

**Policy Implications:**

New Policy W2.3 - Dust Suppression

**Financial Implications:**

Nil

**Strategic Implications:**

Nil

**Risk Implications:**

Risk	Low
Risk Likelihood (based on history and with existing controls)	Low
Risk Impact / Consequence	Low
Risk Rating (Prior to Treatment or Control)	Low
Principal Risk Theme	Low
Risk Action Plan (Controls or Treatment Proposed)	Low

**Risk Matrix:**

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating of 2 has been determined for this item. Any items with a risk rating over 10 (considered to be high or extreme risk) will be added to the Risk Register, and any item with a risk rating over 17 will require a specific risk treatment plan to be developed.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

That Council adopts the attached the Policy W2.3 – Dust Suppression in accordance with the provisions of the Local Government Act 1995.

Moved: Cr SouthSeconded: Cr Lubcke**CARRIED 6/0****ATTACHMENT**

Policy W2.3 – Dust Suppression.



## Shire of West Arthur Council Policy – Dust Suppression

Policy Number	W2.3 Works
Policy Title	Dust Suppression – Houses Adjacent to Shire Gravel Roads
Related Legislation	Local Government Act 1995 (WA)
Strategic Outcome Supported	Outcome 4.1 – Our road network is well maintained.
Adopted by Council	21 June 2022
Review	CEO-MWS Annually

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### 1. Objective

To improve safety, environmental and health conditions for residential accommodation located close to Shire gravel roads by removing the level of wind borne gravel dust.

### 2. Scope

Applies to all staff with the authority to purchase goods and services.

### 3. Policy Statement

Council will consider as part of the Annual Works program requests to seal road surfaces near residential accommodation generally in accordance with the following:

- Formal request is lodged [with the Shire](#) and the applicant's residence is located within 200m of a Shire road.
- The average daily road count exceeds 15 vehicles per day, excluding residential traffic.
- Priority in determining multiple requests will be based on road count, landowner contribution and time available in the annual works program.
- Council may choose to limit the financial contribution to dust suppression [jobs](#) or the number of jobs in any one year.
- 200m seal will be placed adjacent to the residence where the maximum effect of dust suppression will be achieved, considering summer conditions and prevailing winds.

Council may choose to carry forward jobs in any one year to the next – subject to demand and workload, though Council will endeavour to complete requests in the year following the request being made.

### 13. FINANCE

#### 13.1 Financial Reports – May 2022

<b>File Reference:</b>	<b>N/A</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>M King – Manager Financial Reporting</b>
<b>Authorising Officer</b>	<b>R Sunner – Manager Corporate Services</b>
<b>Date:</b>	<b>9 June 2022</b>
<b>Disclosure of Interest:</b>	<b>N/A</b>
<b>Attachments:</b>	<b>Financial Reports – May 2022</b>

**Summary:**

Consideration of the financial reports for the period ending 31<sup>st</sup> May 2022

**Background:**

The financial reports for the periods ending 31<sup>st</sup> May 2022 are included as attachments.

**Comment:**

If you have any questions regarding details in the financial reports, please contact the office prior to Council meeting so that sufficient time is given to research the request. This will enable the information to be provided at the Council meeting.

**Consultation:**

Not applicable.

**Statutory Environment:**

Section 34 (1) (a) of the Local Government (Financial Management) Regulations 1996 states that a Local Government is to prepare monthly statement of financial activity including annual budget estimates, monthly budget estimates, actual monthly expenditure, revenue and income, material variances between monthly budget and actual figures and net current assets on a monthly basis.

**Policy Implications:**

Not applicable.

**Financial Implications:**

Not applicable.

**Strategic Implications:**

Not applicable.

**Sustainability Implications:**

- **Environmental:** There are no environmental implications.
- **Economic:** There are no economic implications.
- **Social:** There are no social implications.

**Risk Implications:**

Risk	Low (1)
Risk Likelihood (based on history and with existing controls)	Low (1)
Risk Impact / Consequence	Low (1)
Risk Rating (Prior to Treatment or Control)	Low (1)
Principal Risk Theme	Low (1)
Risk Action Plan (Controls or Treatment Proposed)	Low (1)

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating of 2 has been determined for this item. Any items with a risk rating over 10 (considered to be high or extreme risk) will be added to the Risk Register, and any item with a risk rating over 17 will require a specific risk treatment plan to be developed.

**Voting Requirements:**

Simple majority

**Officer Recommendation:**That the financial report for the period ending 31<sup>st</sup> May 2022 as presented be accepted.Moved: Cr HarringtonSeconded: Cr Lubcke**CARRIED 6/0****ATTACHMENT**

Financial Reports – May 2022

**SHIRE OF WEST ARTHUR**  
**STATEMENT OF FINANCIAL ACTIVITY**  
**(By Nature or Type)**  
**For the Period Ended 31 May 2022**

	Note	Annual Budget 2021/2022 \$	YTD Budget (a) \$	YTD Actual (b) \$	Var. \$ (b)-(a) \$	Var. % (b)-(a)/(a) %	Var.
<b>Opening Funding Surplus (Deficit)</b>	2	1,162,486	1,162,486	1,162,486	0	0%	
<b>Revenue from operating activities</b>							
Rates		1,776,244	1,776,244	1,776,845	601	0%	
Operating Grants, Subsidies and Contributions	6	813,807	572,272	1,826,289	1,254,017	219%	▲
Fees and Charges		262,985	249,418	296,848	47,430	19%	▲
Interest Earnings		36,389	22,684	18,487	(4,197)	(19%)	
Other Revenue		71,872	29,478	48,209	18,731	64%	▲
Profit on Disposal of Assets		6,799	0	2,580	2,580		
		<b>2,968,096</b>	<b>2,650,096</b>	<b>3,969,258</b>	1,319,162		
<b>Expenditure from operating activities</b>							
Employee Costs		(1,869,777)	(2,067,754)	(2,122,739)	(54,985)	(3%)	
Less overhead and wage allocations			402,999	410,488	7,489		
Materials and Contracts		(811,033)	(849,346)	(895,364)	(46,018)	(5%)	
less Pdepn and POC allocations			257,546	262,332	4,786		
Utility Charges		(93,534)	(77,945)	(69,101)	8,844	11%	
Depreciation on Non-Current Assets		(2,140,359)	(477,559)	(485,823)	(8,264)	(2%)	
Interest Expenses		(25,232)	(19,430)	(19,430)	0	0%	
Insurance Expenses		(103,791)	(103,791)	(103,527)	264	0%	
Other Expenditure		(36,500)	(26,583)	(28,943)	(2,360)	(9%)	
Loss on Disposal of Assets		(5,350)	0	(2,968)	(2,968)		
		<b>(5,085,576)</b>	<b>(2,961,863)</b>	<b>(3,055,075)</b>	(93,212)		
<b>Operating activities excluded from budget</b>							
Add back Depreciation		2,140,359	477,559	485,823	8,264	2%	
Adjust (Profit)/Loss on Asset Disposal		(1,449)	0	388	388		
Adjust Provisions and Accruals		0	(32,833)	(32,833)	0	0%	
<b>Amount attributable to operating activities</b>		<b>21,430</b>	<b>132,959</b>	<b>1,367,561</b>	1,234,602		
<b>Investing activities</b>							
Grants, Subsidies and Contributions	6	995,128	778,547	1,302,401	523,854	67%	▲
Proceeds from Disposal of Assets		64,228	0	48,118	48,118		▲
Land and Buildings	7	(579,700)	(70,000)	(67,668)	2,332	3%	
Infrastructure Assets - Roads	7	(1,138,717)	(1,075,455)	(1,068,013)	7,442	1%	
Infrastructure Assets - Other	7	(586,188)	(210,000)	(201,657)	8,343	4%	
Plant and Equipment	7	(530,115)	(385,715)	(951,256)	(565,541)	(147%)	▼
Furniture and Equipment	7	(8,500)	(8,500)	(6,437)	2,063	24%	▲
<b>Amount attributable to investing activities</b>		<b>(1,783,864)</b>	<b>(971,123)</b>	<b>(944,512)</b>	26,611		
<b>Financing Activities</b>							
Proceeds from Self Supporting Loan - repayments		28,087	20,978	20,978	0	0%	
Transfer from Reserves	5	1,237,967	0	0	0		
Repayment of Debentures		(96,883)	(75,134)	(75,134)	0	0%	
Transfer to Reserves	5	(569,223)	(4,338)	(3,901)	437	10%	▲
<b>Amount attributable to financing activities</b>		<b>599,948</b>	<b>(58,494)</b>	<b>(58,057)</b>	437		
					0		
<b>Closing Funding Surplus (Deficit)</b>	2	0	265,828	1,527,478	1,261,650	475%	▲

Indicates a variance between Year to Date (YTD) Budget and YTD Actual data as per the adopted materiality threshold.

Refer to Note 1 for an explanation of the reasons for the variance.

This statement is to be read in conjunction with the accompanying Financial Statements and notes.

**SHIRE OF WEST ARTHUR**  
**NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY**  
**For the Period Ended 31 May 2022**

**Note 1: Explanation of Material Variances**

The material variance thresholds are adopted annually by Council as an indicator of whether the actual expenditure or revenue varies from the year to date budget materially.

The material variance adopted by Council for the 2021/22 year is \$10,000 or 10% whichever is the greater.

**Operating Grants, Subsidies and Contributions**

138,146	General Purpose Grant above budget - permanent variance
90,210	WALGGC - Roads Grant above budget - permanent variance
540,114	General Purpose Grant above budget - prepayment of 2022/2023 grant - permanent variance
478,705	WALGGC - Roads Grant above budget - prepayment of 2022/2023 grant permanent variance

**Fees and Charges**

47,007	Caravan Park Income is above budget. Includes \$21,627 employee accommodation (non cash). - permanent variance
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**Other Revenue**

18,731	Several non reportable variances including insurance claim/refund, reimbursements for training, catering reimbursements zone meeting, licensing staff training reimbursements.
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**Employee Costs**

(54,985)	Employee costs greater than budget due to Council decision made 3 November 2021 and payment of entitlements. Permanent variance Recognition of accommodation for staff at caravan park chalet (non cash). Partly offset by vacant positions.
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**Materials and Contracts**

(47,880)	Plant operation costs are above budget. Fuel cost increase and increased plant repairs. Permanent variance
(25,518)	Storm damage expenditure. Council approval November 21. Expected reimbursement to offset. Permanent variance
35,250	Bridge maintenance below budget. Permanent variance
13,565	Refuse collection below budget. Permanent variance
(23,129)	Lake Towerrinning furniture - reallocation of funding (funded by LRCI) - Timing variance
(34,213)	Lake Towerrinning boat ramp - LRCI phase 3 project - LRCI project
(18,455)	IT Audit, Records Management audit and phone upgrade (approved by Council, to be funded from IT Reserve)
54,361	There are several non reportable variances which partly offset the additional expenditure.

**Grants, Subsidies and Contributions**

525,360	Arthur River fire truck supplied - capital grant
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**Proceeds from Disposal of Assets**

9,686	Proceeds from written off vehicle.
37,302	Sale of Toyota Prado - unbudgeted. Council decision Nov 21. Permanent variance.

**Land and Buildings**

See Capital Report

**Infrastructure Assets - Roads**

See Capital Report	
75,000	LRCI grant funded project - reallocation to reseals, partly from white lining

**Infrastructure Assets - Other**

See Capital Report

**Plant and Equipment**

(525,360)	Arthur River fire truck supplied - capital grant
(40,184)	Additional ute purchased to replace written off vehicle

See Capital Report



**SHIRE OF WEST ARTHUR**  
**NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY**  
**For the Period Ended 31 May 2022**

**Note 2: Net Current Funding Position**

Positive=Surplus (Negative=Deficit)

		Last Years Closing	Current
	Note	30 June 2021	31 May 2022
		\$	\$
<b>Current Assets</b>			
Cash Unrestricted	3	1,261,046	1,415,124
Cash Restricted - reserves	5	2,892,467	2,896,368
Cash Restricted - unspent grants		296,748	139,772
Receivables - Rates	4	145,377	131,652
Receivables - Other	4	241,642	126,155
Inventories		23,433	23,433
		4,860,713	4,732,504
<b>Less: Current Liabilities</b>			
Payables		(509,012)	(168,886)
Unspent grants, contributions and reimbursements 20/21		(296,748)	(4,424)
Unspent grants, contributions and reimbursements current 21/22		0	(135,348)
		(805,760)	(308,658)
Less: Cash Reserves	5	(2,892,467)	(2,896,368)
<b>Net Current Funding Position</b>		<b>1,162,486</b>	<b>1,527,478</b>

**SHIRE OF WEST ARTHUR**  
**NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY**  
**For the Period Ended 31 May 2022**

**Note 3: Cash and Investments**

	Unrestricted	Restricted	Trust	Total Amount	Institution	Interest Rate	Maturity Date
	\$	\$	\$	\$			
<b>(a) Cash Deposits</b>							
Municipal Bank Account	115,701			115,701	NAB	0.01%	At Call
Municipal Bank - Bendigo	58,595			58,595	Bendigo	0.01%	At Call
Municipal Cash Maximiser	900,000			900,000	NAB	0.01%	At Call
Trust Bank Account			3,074	3,074	NAB	0.01%	At Call
Trust Cash Maximiser			10,269	10,269	NAB	0.01%	At Call
Reserve Cash Maximiser		4		4	NAB	0.01%	At Call
Bendigo Reserve		9		9	Bendigo	0.10%	At Call
<b>(b) Term Deposits</b>							
Municipal term deposit	480,000			480,000	Bendigo	0.40%	27/06/2022
Reserve term deposit		1,278,005		1,278,005	NAB	0.34%	28/06/2022
Reserve term deposit		1,618,350		1,618,350	Bendigo	0.25%	27/06/2022
Trust term deposit			60,000	60,000	NAB	0.62%	27/06/2022
<b>Total</b>	<b>1,554,296</b>	<b>2,896,368</b>	<b>73,343</b>	<b>4,524,007</b>			

**SHIRE OF WEST ARTHUR**  
**NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY**  
**For the Period Ended 31 May 2022**

**Note 4: Receivables**

<b>Receivables - Rates Receivable</b>	<b>31 May 2022</b>	<b>30 June 2021</b>	<b>Receivables - General</b>	<b>Current</b>	<b>30 Days</b>	<b>60 Days</b>	<b>90+ Days</b>	<b>Total</b>
	\$	\$		\$	\$	\$	\$	\$
Opening Arrears Previous Years	237,534	199,932	Receivables - General	77,028	4,981	4,953	39,193	126,155
Levied this year (incl rubbish & ESL)	1,876,228	1,847,083						
<u>Less Collections to date</u>	(1,895,585)	(1,809,481)	<b>Balance per Trial Balance</b>					
Equals Current Outstanding	<b>218,177</b>	<b>237,534</b>	Sundry Debtors					0
Add paid in advance	5,632		Receivables - Other					0
<b>Net Rates Collectable</b>	<b>223,809</b>	<b>237,534</b>	<b>Total Receivables General Outstanding</b>					<b>126,155</b>
% Collected	89.68%	88.40%						
Less Recognised as doubtful	(92,157)	(92,157)	<b>Amounts shown above include GST (where applicable)</b>					

90+ day amount includes funding including \$36,669 LRCI to be received when annual report/acquittal finalised and accepted.

\$1,757 pensioner rebates to be processed

\$221,967 was outstanding at the 31 May 2021

**SHIRE OF WEST ARTHUR**  
**NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY**  
**For the Period Ended 31 May 2022**

**Note 5: Cash Backed Reserve**

Name	Opening Balance	Budget Interest Earned	Actual Interest Earned	Budget Transfers In (+)	Actual Transfers In (+)	Budget Transfers Out (-)	Actual Transfers Out (-)	Budget Closing Balance	Actual YTD Closing Balance
	\$	\$	\$	\$	\$	\$	\$	\$	\$
Leave Reserve	210,490	842	284	0	0	(25,000)	0	186,332	210,774
Plant Reserve	522,877	2,102	705	310,000	0	(465,887)	0	369,092	523,582
Building Reserve	677,641	2,712	914	85,650	0	(515,000)	0	251,003	678,555
Town Development Reserve	71,305	285	96	0	0	(70,000)	0	1,590	71,401
Recreation Reserve	162,775	651	220	0	0	0	0	163,426	162,995
Heritage Reserve	5,755	23	8	300	0	0	0	6,078	5,763
Community Housing Reserve	153,767	610	207	20,000	0	(25,000)	0	149,377	153,974
Waste Management Reserve	122,370	489	165	0	0	(100,000)	0	22,859	122,535
Darkan Swimming Pool Reserve	44,081	176	59	5,000	0	0	0	49,257	44,140
Information Technology Reserve	50,306	201	68	50,000	0	0	0	100,507	50,374
Darkan Sport and Community Centre Reserve	289,516	1,158	390	30,000	0	0	0	320,674	289,906
Arthur River Country Club Renewal Reserve	34,043	136	46	6,000	0	0	0	40,179	34,089
Museum Reserve	128,155	497	173	0	0	(5,000)	0	123,652	128,328
Moodiarrup Sports Club Reserve	13,539	58	18	5,000	0	0	0	18,597	13,557
Landcare Reserve	37,871	173	51	0	0	(17,080)	0	20,964	37,922
Corporate Planning and Valuation Reserve	34,836	139	47	0	0	(15,000)	0	19,975	34,883
Kids Central Members Reserve	1,607	3	2	5,704	0	0	0	7,314	1,609
The Shed Reserve	12,258	47	17	0	0	0	0	12,305	12,275
Recreation Trails Reserve	1,214	5	2	0	0	0	0	1,219	1,216
Community Gym Reserve	11,026	34	15	0	0	0	0	11,060	11,041
Economic Development Reserve	73,617	294	99	40,000	0	0	0	113,911	73,716
Road Reserve	233,418	934	315	0	0	0	0	234,352	233,733
	<b>2,892,467</b>	<b>11,569</b>	<b>3,901</b>	<b>557,654</b>	<b>0</b>	<b>(1,237,967)</b>	<b>0</b>	<b>2,223,723</b>	<b>2,896,368</b>

Note: Reserve transfers are generally completed at year end unless funds are required sooner.

**SHIRE OF WEST ARTHUR**  
**NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY**  
**For the Period Ended 31 May 2022**

Note 6: Grants and Contributions	Grant Provider	Type	Opening Balance (a)	Budget Operating (b)	Capital (c)	YTD Actual Revenue (f)	(Expended) (g)	Unspent Grant (a)+(f)+(g) \$	Comment
<b>General Purpose Funding</b>									
Grants Commission - General	WALGGC - General Purpose Grant	Operating	0	279,900	0	348,071	0	0	Grant income expected to be \$68,172 above budget
Grants Commission - Roads	WALGGC - Local Roads Grant	Operating	0	237,417	0	268,273	0	0	Grant income expected to be \$30,855 above budget
Grants Commission - General	WALGGC - General Purpose Grant	Operating	0	0	0	540,114	0	0	Prepaid 2022/23 grant
Grants Commission - Roads	WALGGC - Local Roads Grant	Operating	0	0	0	478,705	0	0	Prepaid 2022/23 grant
<b>Law, Order and Public Safety</b>									
FESA Grant - Operating Bush Fire Brigade	Dept. of Fire & Emergency Services	Operating - Tied	0	43,126	0	43,708	(34,268)	9,440	
Federal Road & Community Infrastructure - St Johns Building	Dept. of Infrastructure, Transport, Regional Development and Communications	Operating - Tied	0	75,000	0	0	0	0	Project reallocated
FESA Grant - Operating Bush Fire Brigade	Dept. of Fire & Emergency Services	Non-operating	0	0	0	525,360	(525,360)	0	
<b>Education and Welfare</b>									
Covid-19 Youth Recovery Grants Program	Department of Communities	Operating - Tied	0	0	0	5,000	0	5,000	Youth grant will be carried forward to 22/23
<b>Housing</b>									
Community Housing Repairs	Dept of Communities	Operating - Tied	0	10,495	0	10,495	(10,495)	0	Recognised as income when corresponding expenditure recognised
<b>Community Amenities</b>									
Federal Road & Community Infrastructure - Seat Service WA Assistance Grant	Dept. of Infrastructure, Transport, Regional Development and Communications State Library of WA	Operating - Tied Operating - Tied	0 0	2,000 0	0 0	2,000 1,500	(2,000) (1,500)	0 0	Seat received.
<b>Recreation and Culture</b>									
Federal Road & Community Infrastructure - Railway reserve and cricket wicket	Dept. of Infrastructure, Transport, Regional Development and Communications	Non-operating	0	0	77,000	50,772	(50,772)	0	
Federal Road & Community Infrastructure - Swimming pool	Dept. of Infrastructure, Transport, Regional Development and Communications	Operating - Tied	0	20,000	0	0	0	0	Project reallocated.
Federal Road & Community Infrastructure - Lake Towerrinning shade and landscaping	Dept. of Infrastructure, Transport, Regional Development and Communications	Non-operating	0	0	27,996	47,966	(47,966)	0	Additional LRCI funds allocated to project.
Heritage Inventory	Dept of Planning, Lands & Heritage	Operating - Tied	0	9,198	0	9,198	(4,774)	4,424	
Community event grants	Unknown	Operating - Tied	0	1,000	0	0	0	0	
Betty Brown Museum chart grant	Australian Museum & Galleries Association	Operating - Tied	0	0	0	3,000	(1,186)	1,814	
<b>Transport</b>									
Roads To Recovery Grant - Cap	Roads to Recovery	Non-operating	0	0	320,264	329,877	(212,288)	117,589	
Roads To Recovery Grant - Cap	Roads to Recovery	Non-operating	0	0	102,073	102,073	(102,073)	0	Shown as a liability until spent, then recognised as income
RRG Grants - Capital Projects	Regional Road Group	Non-operating	0	0	350,884	280,708	(280,708)	0	Shown as a liability until spent, then recognised as income
Federal Road & Community Infrastructure Direct Grant	Main Roads - Direct Grant	Non-operating	0	0	38,000	76,607	(75,102)	1,505	Line marking project reallocated. Reseal projects new allocation.
Operating		Operating	0	134,671	0	134,671	0	0	
<b>Economic Development</b>									
Kylie Dam Project	Department of Water	Non-operating	0	0	53,911	0	0	0	
Federal Road & Community Infrastructure - Potable water	Dept. of Infrastructure, Transport, Regional Development and Communications	Non-operating	0	0	25,000	8,132	(8,132)	0	
<b>TOTALS</b>			<b>0</b>	<b>812,807</b>	<b>995,128</b>	<b>3,266,230</b>	<b>(1,356,624)</b>	<b>139,772</b>	
<b>SUMMARY</b>									
Operating	Operating Grants, Subsidies and Contributions		0	651,988	0	1,769,834	0	0	
Operating - Tied	Tied - Operating Grants, Subsidies and Contributions		0	160,819	0	74,901	(54,223)	20,678	
Non-operating	Non-operating Grants, Subsidies and Contributions		0	0	995,128	1,421,495	(1,302,401)	119,094	
<b>TOTALS</b>			<b>0</b>	<b>812,807</b>	<b>995,128</b>	<b>3,266,230</b>	<b>(1,356,624)</b>	<b>139,772</b>	

SHIRE OF WEST ARTHUR  
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY  
For the Period Ended 31 May 2022

## Note 7: Capital Acquisitions

Assets	Account	YTD Actual			Budget			Variance	Comment
		Wages and Plant	Materials and Contractors	Total YTD	Wages and Plant	Materials and Contractors	Total Budget	Total YTD to Budget	
		\$	\$	\$	\$	\$	\$		
<b>Furniture</b>									
<b>Other Property &amp; Services</b>									
	Printer	0	(6,437)	(6,437)	0	(8,500)	(8,500)	2,063	
	<b>Furniture Total</b>	<b>0</b>	<b>(6,437)</b>	<b>(6,437)</b>	<b>0</b>	<b>(8,500)</b>	<b>(8,500)</b>	<b>2,063</b>	
<b>Land and Buildings</b>									
<b>Law, Order and Public Safety</b>									
	Arthur River Fire Shed	0	(27,955)	(27,955)	0	0	0	(27,955)	Funded by ESL Capital Grant - unbudgeted
<b>Housing</b>									
	Renovations to existing joint venture community housing units	0	0	0	0	(25,000)	(25,000)	25,000	
<b>Community Amenities</b>									
	Chalet completion	0	(23,612)	(23,612)	(1,000)	(25,000)	(26,000)	2,388	
	Toilet - Bowelling (grant to be sourced for materials)	0	0	0	(8,700)	0	(8,700)	8,700	
<b>Other Property &amp; Services</b>									
	Staff housing improvements/renovations	0	0	0	(8,300)	(50,000)	(58,300)	58,300	
	New staff house	0	(16,102)	(16,102)	(11,700)	(450,000)	(461,700)	445,598	Land has been purchased.
	<b>Buildings Total</b>	<b>0</b>	<b>(67,669)</b>	<b>(67,669)</b>	<b>(29,700)</b>	<b>(550,000)</b>	<b>(579,700)</b>	<b>512,031</b>	
<b>Infrastructure</b>									
<b>Community Amenities</b>									
	Darkan Refuse Site	0	0	0	(20,000)	(100,000)	(120,000)	120,000	
<b>Recreation And Culture</b>									
	Darkan Railway Reserve - redevelopment of play and youth area	(8,540)	(132,338)	(140,878)	(30,000)	(220,000)	(250,000)	109,122	
	Cricket oval infrastructure - wicket	(707)	(16,323)	(17,030)	0	(17,000)	(17,000)	(30)	
	Lake Towerinning - Shade and landscaping	(7,568)	(25,953)	(33,521)	0	(40,000)	(40,000)	6,479	
<b>Transport</b>									
	Slip lane car park off Burrowes Street	0	0	0	(34,073)	(19,115)	(53,188)	53,188	
<b>Economic Development</b>									
	Kylie Dam Water Project	0	(500)	(500)	(14,000)	(67,000)	(81,000)	80,500	
	Potable water Infrastructure	(1,595)	(8,132)	(9,727)	0	(25,000)	(25,000)	15,273	
	<b>Infrastructure Total</b>	<b>(18,410)</b>	<b>(183,246)</b>	<b>(201,656)</b>	<b>(98,073)</b>	<b>(488,115)</b>	<b>(586,188)</b>	<b>384,532</b>	
<b>Plant , Equip. &amp; Vehicles</b>									
<b>Transport</b>									
	Prime Mover	0	(163,656)	(163,656)	0	(170,000)	(170,000)	6,344	
	Side Tipping Trailer	0	(20,600)	(20,600)	0	(120,000)	(120,000)	99,400	
	Passenger Vehicle	0	(51,725)	(51,725)	0	(52,225)	(52,225)	500	
	Forklift	0	(22,325)	(22,325)	0	(25,000)	(25,000)	2,675	
	Road Broom	0	0	0	0	(45,000)	(45,000)	45,000	Will not be purchased this year.
	Utes	0	(147,307)	(147,307)	0	(104,000)	(104,000)	(43,307)	Additional ute purchased to replace written off ute - Mar 22 decision
	Mower	0	(10,890)	(10,890)	0	(13,890)	(13,890)	3,000	
	Spray unit	0	(9,393)	(9,393)	0	0	0	(9,393)	Council decision Nov 21
	Arthur River Fire Truck	0	(525,360)	(525,360)	0	0	0	(525,360)	Capital asset provided - grant funded
	<b>Plant, Equip &amp; Vehicles Total</b>	<b>0</b>	<b>(951,256)</b>	<b>(951,256)</b>	<b>0</b>	<b>(530,115)</b>	<b>(530,115)</b>	<b>(421,141)</b>	

SHIRE OF WEST ARTHUR  
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY  
For the Period Ended 31 May 2022

## Note 7: Capital Acquisitions

Assets	Account	YTD Actual			Budget			Variance	Comment
		Wages and Plant	Materials and Contractors	Total YTD	Wages and Plant	Materials and Contractors	Total Budget	Total YTD to Budget	
		\$	\$	\$	\$	\$	\$		
<b>Roads</b>									
<b>Regional Road Group</b>									
Boyup Brook Arthur Road		(142,788)	(165,221)	(308,009)	(158,152)	(126,856)	(285,008)	(23,001)	
Bowelling Duranillin Road		(110,991)	(80,161)	(191,152)	(146,055)	(104,307)	(250,362)	59,210	
<b>Regional Road Group Total</b>		<b>(253,779)</b>	<b>(245,382)</b>	<b>(499,161)</b>	<b>(304,207)</b>	<b>(231,163)</b>	<b>(535,370)</b>	<b>36,209</b>	
<b>Roads to Recovery</b>									
Darkan South Road - Slip Lane and Intersection		(26,338)	(23,980)	(50,318)	(28,850)	(29,600)	(58,450)	8,132	
Darkan South Road - Widening Corners		(79,789)	0	(79,789)	(67,652)	(40,220)	(107,872)	28,083	
Sandalwood Road		(86,141)	(9,852)	(95,993)	(83,641)	(26,480)	(110,121)	14,128	
Moodiarrup South Road		(63,790)	0	(63,790)	(46,394)	(12,450)	(58,844)	(4,946) Allocations above budget, materials will be below.	
Darkan South Road		(471)	0	(471)	(47,664)	(51,100)	(98,764)	98,293 Project reallocated.	
Rees Road		0	0	0	0	0	0	0 Project reallocated.	
<b>Roads to Recovery Total</b>		<b>(256,529)</b>	<b>(33,832)</b>	<b>(290,361)</b>	<b>(274,201)</b>	<b>(159,850)</b>	<b>(434,051)</b>	<b>143,690</b>	
<b>Local Road and Community Infrastructure Program</b>									
<b>Darkan South</b>									
Darkan South - Reseal		0	(24,503)	(24,503)	0	0	0	(24,503) LRCI grant funded	
Boyup Brook Arthur Road - Reseal		0	(98,628)	(98,628)	0	0	0	(98,628) LRCI grant funded	
Bowelling Dura, Darkan South, Moodiarrup Changerup Centre line		0	(4,989)	(4,989)	0	(38,000)	(38,000)	33,011 Project reallocated LRCI.	
<b>Shire Funded Total</b>		<b>0</b>	<b>(128,120)</b>	<b>(128,120)</b>	<b>0</b>	<b>(38,000)</b>	<b>(38,000)</b>	<b>(90,120)</b>	
<b>Shire Funded</b>									
Burnett Road		(75,249)	0	(75,249)	(53,011)	(11,031)	(64,042)	(11,207) Allocations above budget	
Cordering North Road		(68,853)	0	(68,853)	(50,019)	(11,690)	(61,709)	(7,144) Allocations above budget	
Collie South East Road		0	(6,269)	(6,269)	(225)	(5,320)	(5,545)	(724)	
<b>Shire Funded Total</b>		<b>(144,102)</b>	<b>(6,269)</b>	<b>(150,371)</b>	<b>(103,255)</b>	<b>(28,041)</b>	<b>(131,296)</b>	<b>(19,075)</b>	
<b>Roads Total</b>		<b>(654,410)</b>	<b>(413,603)</b>	<b>(1,068,013)</b>	<b>(681,663)</b>	<b>(457,054)</b>	<b>(1,138,717)</b>	<b>70,704</b>	
<b>Capital Expenditure Total</b>		<b>(672,820)</b>	<b>(1,622,211)</b>	<b>(2,295,031)</b>	<b>(809,436)</b>	<b>(2,033,784)</b>	<b>(2,843,220)</b>	<b>548,189</b>	



**13.2 Accounts For Payment – May 2022**

<b>File Reference:</b>	<b>N/A</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>R Schinzig – Administration Officer</b>
<b>Authorising Officer</b>	<b>R Sunner – Manager Corporate Services</b>
<b>Date:</b>	<b>9 June 2022</b>
<b>Disclosure of Interest:</b>	<b>N/A</b>
<b>Attachments:</b>	<b>Accounts for Payment Listing – May 2022</b>

**Summary:**

Council to endorse payments of accounts for May 2022 as listed.

**Background:**

The schedule of accounts for payment is included as an attachment for Council information.

**Comment:**

If you have any questions regarding payments in the listing, please contact the office prior to the Council meeting.

**Consultation:**

There has been no consultation.

**Statutory Environment:**

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

12. Payments from municipal fund or trust fund, restrictions on making
- (1) A payment may only be made from the municipal fund or the trust fund —
    - (a) if the local government has delegated to the CEO the exercise of its power to make payments from those funds — by the CEO; or
    - (b) otherwise, if the payment is authorised in advance by a resolution of the council.
  - (2) The council must not authorise a payment from those funds until a list prepared under regulation 13(2) containing details of the accounts to be paid has been presented to the council.
13. Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.
- (1) If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared —
    - (a) the payee's name; and
    - (b) the amount of the payment; and
    - (c) the date of the payment; and
    - (d) sufficient information to identify the transaction.
  - (2) A list of accounts for approval to be paid is to be prepared each month showing —
    - (a) for each account which requires council authorisation in that month —
      - (i) the payee's name; and
      - (ii) the amount of the payment; and
      - (iii) sufficient information to identify the transaction;
 and
    - (b) the date of the meeting of the council to which the list is to be presented.

- (3) A list prepared under sub regulation (1) or (2) is to be —
- (a) presented to the council at the next ordinary meeting of the council after the list is prepared; and
  - (b) recorded in the minutes of that meeting.

**Policy Implications:**

There are no policy implications.

**Financial Implications:**

There are no financial implications.

**Strategic Implications:**

There are no strategic implications.

**Sustainability Implications:**

- **Environmental:** There are no environmental implications.
- **Economic:** There are no economic implications.
- **Social:** There are no social implications.

**Risk Implications:**

Risk	Low (1)
Risk Likelihood (based on history and with existing controls)	Low (1)
Risk Impact / Consequence	Low (1)
Risk Rating (Prior to Treatment or Control)	Low (1)
Principal Risk Theme	Low (1)
Risk Action Plan (Controls or Treatment Proposed)	Low (1)

**Risk Matrix:**

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating of 2 has been determined for this item. Any items with a risk rating over 10 (considered to be high or extreme risk) will be added to the Risk Register, and any item with a risk rating over 17 will require a specific risk treatment plan to be developed.

**Voting Requirements:**

Simple majority

**Officer Recommendation:**

That in accordance with section 13 of the Financial Management Regulations of the Local Government Act 1995 and in accordance with delegation, payment of Municipal Fund vouchers 11052022.1-11052022.37 & 26052022.1-26052022.40, Licensing, Salaries and Wages and EFT Transfers, Direct Debit totalling \$539,483.01 listed (attached) be noted as approved for payment.

Moved: Cr SouthSeconded: Cr Peirce**CARRIED 6/0****ATTACHMENT**

Accounts for Payment Listing – May 2022

**Shire of West Arthur  
Cheque Detail  
May 2022**

MINUTES  
21 JUNE 2022

Date	Num	Name	Original Amount
02/05/2022	DirectDebit	<b>NATIONAL AUSTRALIA BANK</b>	85.93
		MERCHANT FEE 009185958	
02/05/2022	DirectDebit	<b>BENDIGO BANK</b>	81.58
		MERCHANT FEES	
11/05/2022	11052022.1	<b>AIR LIQUIDE</b>	88.96
		FACILITY FEES ON CYLINDERS	
11/05/2022	11052022.2	<b>BODDINGTON MEDICAL CENTRE</b>	1,045.00
		FUEL REIMBURSEMENT FOR DOCTOR - 11 JAN 22 - 29 MAR 22	
11/05/2022	11052022.3	<b>BUNBURY MACHINERY</b>	582.67
		6 BLADES TO SUIT 2G227 AND 1 X DOUBLE MOW DRIVE BELTS	
11/05/2022	11052022.4	<b>BUNBURY TRUCKS</b>	443.99
		CHECK DBF AND PURCHASE MIRROR AND PARK BREAK	
11/05/2022	11052022.5	<b>CHIA, KERRY N</b>	536.08
		REIMBURSE - PANTRY DRAWERS, FOOD FOR SENIORS MEALS, GARMENT BAGS & PHOTO BOX FOR BETTY BROWN	
11/05/2022	11052022.6	<b>COALFIELDS WEARPARTS</b>	2,279.75
		GRADER BLADES	
11/05/2022	11052022.7	<b>COLLIE BETTA HOME LIVING</b>	549.00
		1 x CHIQ 199L HYBRID FREEZER - MUSEUM	
11/05/2022	11052022.8	<b>CORSIGN</b>	1,819.40
		SIGNAGE - SCHOOL, BUS TURNING, REDUCE SPEED, NO TRUCKS, INFO BAY	
11/05/2022	11052022.9	<b>DARDANUP BUTCHERING COMPANY</b>	136.80
		MEAT ORDER FOR SENIORS MEALS	
11/05/2022	11052022.10	<b>DARKAN AGRI SERVICES</b>	2,699.60
		ASPHALT, REPAIRS & MAINTENANCE, CLEANING SUPPLIES, SPRAYING SUPPLIES, GYM DOOR, CEMENT, GAS, CAT FOOD	
11/05/2022	11052022.11	<b>DEPARTMENT OF FIRE AND EMERGENCY SERVICES</b>	2,024.00
		ESL IN ACCORDANCE WITH THE FIRE AND EMERGENCY SERVICES ACT - EMERGENCY SERVICES LEVY YEAR 2021/2022	
11/05/2022	11052022.12	<b>DI SCHINZIG</b>	110.00
		REFUND OF DEMOLITION FEE AS DEMOLITION WAS AT SHIRES REQUEST.	
11/05/2022	11052022.13	<b>DUFF ELECTRICAL CONTRACTING</b>	180.40
		REPLACE FLURO LIGHT FITTING IN KITCHEN AT 15 NANGIP CRES DARKAN	
11/05/2022	11052022.14	<b>EASIFLEET MANAGEMENT- MOUNTSVILLE PTY LTD</b>	1,318.99
		SALARY SACRIFICE PAYMENTS BUNCE - MONTH OF MAY2022	
11/05/2022	11052022.15	<b>ECOEDGE</b>	9,845.00
		TARGETED AND RECONNAISSANCE FLORA AND VEGETATION SURVEY OF BOWELLING-DURANILLIN ROAD	
11/05/2022	11052022.16	<b>FORDHAM LAMONT, V</b>	182.70
		REIMBURSE - HOME INTERNET CHARGE - PLASTIC CONTAINERWARE FOR SENIORS MEALS	
11/05/2022	11052022.17	<b>FUELS WEST PETROLEUM</b>	21,886.92
		12000L DIESEL - DELIVERED 29 APRIL 2022 - QUOTED 27/04/2022	
11/05/2022	11052022.18	<b>GJ &amp; RE ABBOTT</b>	340.40
		SAND FOR WATER TANKS (LRCI) 4 LOADS @ 8M3 LOAD, REIMBURSEMENT FOR FUEL USED BY FIREFIGHTERS DURING FIRE ON 17/18-12-2021	
11/05/2022	11052022.19	<b>INTEGRATED ICT</b>	3,388.44
		SERVICE AND REMOTE MANAGEMENT FEES - MARCH/APRIL 22	
11/05/2022	11052022.20	<b>LUSH FIRE &amp; PLANNING</b>	1,465.75
		5/4 HERITAGE LIST - AGENDA REPORT, CHECKING LOCATIONS, SITE DETAILS GPS, REVISING DRAFT PLANNING	
11/05/2022	11052022.21	<b>MARKETFORCE</b>	606.48
		ADVERTISING - WORKS MANAGER VACANCY	
11/05/2022	11052022.22	<b>MOORE AUSTRALIA (WA) PTY LTD</b>	1,045.00
		BUDGET WORKSHOP AND TEMPLATE 2022/2023	
11/05/2022	11052022.23	<b>PFD FOOD SERVICES PTY LTD</b>	464.65
		SENIORS MEALS 500 X ALFOIL CONTAINERS - 600 X LIDS	
11/05/2022	11052022.24	<b>PUTLAND MOTORS</b>	5,134.60
		GREASE, FUEL HOSE, TYRES, PAJERO SERVICE, PARTS & REPAIRS - LOW LOADER, GRADERS, LOADER, SIDE TIPPER, UTE, ROLLER	
11/05/2022	11052022.25	<b>RAREBITS ON BURROWES 1</b>	450.00
		CATERING - COUNCILLOR TRAINING AND APRIL COUNCIL MEETING	
11/05/2022	11052022.26	<b>REPLAS RECYCLED PLASTIC PRODUCTS</b>	1,262.36
		BOLLARDS AND SIGNAGE - DARKAN RAIL TRAIL	
11/05/2022	11052022.27	<b>SHIRE OF DUMBLEYUNG</b>	3,300.00
		WHEATBELT DEVELOPMENT COMMISSION 4WDL: SHORT TERM ACCOMMODATION CONSULTING PROPOSAL	
11/05/2022	11052022.28	<b>SHIRE OF NARROGIN (SUPPLIER)</b>	798.00
		HEALTH SENIOR HEALTH OFFICER - APR 22 (6 @ \$85PER/HR PLUS VEHICLE 192 @ \$1.50 EACH)	
11/05/2022	11052022.29	<b>SOS OFFICE EQUIPMENT</b>	96.50
		XEROX APEOSPORT C4570 BILLING APRIL 2022	
11/05/2022	11052022.30	<b>STATE WIDE TURF SERVICES</b>	10,725.00
		INSTALLING OF CRICKET COVERS PO 669	
11/05/2022	11052022.31	<b>TG &amp; VM MEDLEN</b>	3,524.40
		SUPPLY CONCRETE FOR NEW SHELTER AT LAKE TOWERINNING	

**Shire of West Arthur**  
**Cheque Detail**  
**May 2022**

MINUTES  
21 JUNE 2022

Date	Num	Name	Original Amount
11/05/2022	11052022.32	TOLL TRANSPORT PTY LTD	21.76
		FREIGHT - WATER EXAMS FOR LAKE & POOL	
11/05/2022	11052022.33	TR HOMES & CO	5,000.00
		PRELIMINARY WORKS CONTRACT - CEO'S NEW HOUSE	
11/05/2022	11052022.34	WALGA BUSINESS SOLUTIONS	5,127.00
		WALGA TRAINER TRAVEL AND MEAL EXPENSES - COUNCILLORS TRAINING - UNDERSTANDING FINANCIAL REPORTS AND BUDGETS COURSE	
11/05/2022	11052022.35	WATER TECHNOLOGY	4,445.98
		WATER STRATEGY PER NW PO 362 DELIVERY OF FINAL REPORT 11 MAR 22	
11/05/2022	11052022.36	WEST ARTHUR COMMUNITY RESOURCE CENTRE	90.00
		AUSTRALIA DAY 2022 VOUCHERS FOR VOLUNTEERS	
11/05/2022	11052022.37	WILLIAMS COMMUNITY RESOURCE CENTRE	25.00
		SHEEPFEST POSTER - A1	
11/05/2022	DEBIT	SYNERGY	5,937.29
		ELECTRICITY USAGE AND SUPPLY CHARGES - VARIOUS - FROM 24/2-27/4	
11/05/2022	DEBIT	TELSTRA	565.72
		VARIOUS - USAGE AND SERVICE CHARGES	
12/05/2022	EFT	SALARIES AND WAGES	53,653.40
		PAYROLL	
12/05/2022	DEBIT	ASGARD SUPER	110.41
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	AUSTRALIAN SUPER	1,336.18
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	AWARE SUPER	5,454.76
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	CBUS	251.17
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	COLONIAL FIRST STATE	250.59
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	D AND K MELBOURNE SUPERANNUATION FUND	253.79
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	PRIME SUPER	255.49
		FORTNIGHTLY SUPERANNUATION PAYMENT	
12/05/2022	DEBIT	TWUSUPER	251.30
		FORTNIGHTLY SUPERANNUATION PAYMENT	
23/05/2022	BPAY	AUSTRALIAN TAXATION OFFICE	13,126.88
		FBT 21/22	
25/05/2022	BPAY	AUSTRALIAN TAXATION OFFICE	31,854.00
		APRIL 22 BAS	
26/05/2022	EFT	SALARIES AND WAGES	54,915.48
		PAYROLL	
26/05/2022	DEBIT	CR ADAM SQUIRES - AUSTRALIANSUPER	555.00
		SITTING FEES & COMMUNICATIONS ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	DEBIT	SYNERGY	1,651.83
		ELECTRICITY USAGE AND SUPPLY CHARGES - VARIOUS	
26/05/2022	DEBIT	TELSTRA	912.18
		VARIOUS - USAGE AND SERVICE CHARGES	
26/05/2022	DEBIT	WATER CORPORATION	44.95
		SERVICE CHARGE FOR 10 KING ST 1/5-30/6 2022	
26/05/2022	26052022.1	ADROIT INFORMATION MANAGEMENT	4,125.00
		MANUAL RECORDS MANAGEMENT SYSTEM 2ND PAYMENT	
26/05/2022	26052022.2	ARCHIVAL SURVIVAL	755.17
		MUSEUM - ARCHIVE SUPPLIES FOR BETTY BROWN MUSEUM	
26/05/2022	26052022.3	ARTHUR RIVER COUNTRY CLUB	350.00
		CONTRIBUTION FROM SHIRE FOR POWER TO FIRE SHED JULY 2021 TO JUNE 2022	
26/05/2022	26052022.4	AUSTRALIA POST	128.53
		BOX OF STAMPS - POSTAGE FOR INVOICES	
26/05/2022	26052022.5	BUNBURY MITSUBISHI	44,202.70
		2022 MR TRITON GLX 2.4L D 6A/T 4X4 DC	
26/05/2022	26052022.6	BUNCE, GEOFF	120.00
		REIMBURSE - 3 X TUBE SPOUT HOB 180MM - HOUSING MAINTENANCE VARIOUS	
26/05/2022	26052022.7	CENTREFIELD HOLDINGS PTY LTD	37,633.75
		BOAT RAMP EXTENSION PROJECT - LAKE TOWERINNING	
26/05/2022	26052022.8	CHIA, KERRY	34.19
		REIMBURSE - STATIONERY FOR SENIORS MEALS	
26/05/2022	26052022.9	CIVIC LEGAL	522.50
		LEGAL ADVICE - CARAVAN PARKS AND CAMPING GROUNDS	

**Shire of West Arthur**  
**Cheque Detail**  
**May 2022**

MINUTES  
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Date	Num	Name	Original Amount
26/05/2022	26052022.10	<b>COHESIS PTY LTD</b>	5,225.00
		INFORMATION TECHNOLOGY AND COMMUNICATIONS - TRAVEL AND ACCOMMODATION	
26/05/2022	26052022.11	<b>CR (PRES) NEIL MORRELL</b>	2,409.20
		TRAVEL & SITTING FEES, COMMUNICATIONS & PRESIDENT ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	26052022.12	<b>CR DUNCAN SOUTH</b>	944.36
		TRAVEL FEES, SITTING FEES & COMMUNICATIONS ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	26052022.13	<b>CR GRAEME PEIRCE - LAKESIDE CAMPING</b>	1,424.30
		TRAVEL & SITTING FEES, COMMUNICATIONS & DEPUTY PRESIDENT ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	26052022.14	<b>CR KAREN HARRINGTON</b>	691.50
		TRAVEL FEES, SITTING FEES & COMMUNICATIONS ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	26052022.15	<b>CR N M MANUEL</b>	769.19
		TRAVEL FEES, SITTING FEES & COMMUNICATIONS ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	26052022.16	<b>CR ROBYN LUBCKE</b>	987.86
		TRAVEL FEES, SITTING FEES & COMMUNICATIONS ALLOWANCE FOR COUNCILLOR MEETINGS - 3RD QTR 21/22	
26/05/2022	26052022.17	<b>DARDANUP BUTCHERING COMPANY</b>	411.80
		MEAT ORDERS FOR SENIORS MEALS	
26/05/2022	26052022.18	<b>DEPARTMENT OF FIRE AND EMERGENCY SERVICES</b>	5,508.80
		ESL QUARTER 4 CONTRIBUTIONS YEAR 21/22	
26/05/2022	26052022.19	<b>EXTERIA STREET AND PARK OUTFITTERS</b>	734.80
		CLAWBOLTS, SHEER NUTS AND DELIVERY OF (QUOTE NUMBER EXTQ11464) 7-APR-2022	
26/05/2022	26052022.20	<b>FLEAYS STORE</b>	826.15
		OFFICE - MILK, SUGAR, TEA & BISCUITS, GROCERIES FOR SENIORS MEALS	
26/05/2022	26052022.21	<b>FORDHAM LAMONT, V</b>	126.05
		REIMBURSE DIESEL FUEL FOR CEO VEHICLE	
26/05/2022	26052022.22	<b>FULTON HOGAN</b>	82,425.67
		RRG BOWELLING DURANILLIN RD RESEAL 15375, COLLIE SOUTH EAST RD RESEAL 1400M	
26/05/2022	26052022.23	<b>KOJONUP COOP HOME TIMBER AND HARDWARE</b>	1,498.00
		HAIER 493L FRENCH DOOR FRIDGE - ARTHUR RIVER HALL	
26/05/2022	26052022.24	<b>LANDGATE</b>	70.40
		MINIMUM CHARGE	
26/05/2022	26052022.25	<b>NARROGIN FREIGHTLINES</b>	108.88
		SIGMA CHEMICALS FREIGHT FOR AD BLUE	
26/05/2022	26052022.26	<b>NG FOX TRANSPORT</b>	2,602.46
		REMOVAL COSTS - RAJ SUNNER - WYALKATCHEM TO DARKAN	
26/05/2022	26052022.27	<b>ORBIT HEALTH &amp; FITNESS SOLUTIONS</b>	654.50
		ON SITE SERVICE/SAFETY AUDIT/ASSESSMENT	
26/05/2022	26052022.28	<b>PROMPT SAFETY SOLUTIONS</b>	2,750.00
		RRG BOYUP BROOK ARTHUR RD - TRAFFIC MANAGEMENT PLAN FOR STABILISATION WORKS	
26/05/2022	26052022.29	<b>PUTLAND MOTORS</b>	1,769.16
		PARTS & REPAIRS - WORKS MANAGER, SP1, HILUX, C22, C5, WORKSHOP CONSUMABLES	
26/05/2022	26052022.30	<b>RAJINDER S SUNNER.</b>	153.79
		REIMBURSE DIESEL FUEL 77.01L	
26/05/2022	26052022.31	<b>RAREBITS ON BURROWES 1</b>	150.00
		CATERING FOR MAY COUNCIL MEETING	
26/05/2022	26052022.32	<b>RESONLINE PTY LTD</b>	220.00
		CARAVAN PARK ROOM MANAGER SERVICE APR 22	
26/05/2022	26052022.33	<b>SHIRE OF COLLIE</b>	563.50
		ANIMAL CONTROL EXPENSES - PROPERTY INSPECTION / KENELLING / TRAVEL/ EST \$570	
26/05/2022	26052022.34	<b>SIGNARAMA</b>	395.25
		SIGNAGE FOR BETTY BROWN MUSEUM AS PER QUOTE 47993	
26/05/2022	26052022.35	<b>THINKWATER BUNBURY</b>	525.14
		BACK PLATE SEAL KIT TO SUIT WEBBS DAM PUMP PER JIM PO 417	
26/05/2022	26052022.36	<b>TOLL TRANSPORT PTY LTD</b>	92.21
		FREIGHT - CORSIGN, BUNBURY TRUCKS, THINKWATER	
26/05/2022	26052022.37	<b>WARREN BLACKWOOD WASTE</b>	2,514.74
		WASTE CHARGES APRIL 22	
26/05/2022	26052022.38	<b>WEBB, JANELLE</b>	141.55
		REIMBURSE - CLEANING SUPPLIES - RESERVE TOILETS, CHALET, NISSEN HUT	
26/05/2022	26052022.39	<b>WEST ARTHUR COMMUNITY RESOURCE CENTRE</b>	2,160.00
		SHIRE CONTRIBUTION TO EVAN AYRES AND THE SWING KINGS, SERVICE WA APP ASSISTANCE GRANT	
26/05/2022	26052022.40	<b>WEST COAST PROFILERS</b>	53,885.08
		BOYUP BROOK ARTHUR CEMENT STABILISATION AT SLK 56-58.6	
26/05/2022	DEBIT	<b>ASGARD SUPER</b>	90.24
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>AUSTRALIAN SUPER</b>	1,403.26
		FORTNIGHTLY SUPERANNUATION PAYMENT	

**Shire of West Arthur**  
**Cheque Detail**  
**May 2022**

MINUTES  
21 JUNE 2022

Date	Num	Name	Original Amount
26/05/2022	DEBIT	<b>AWARE SUPER</b>	6,719.21
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>CBUS</b>	250.47
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>COLONIAL FIRST STATE</b>	251.17
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>D AND K MELBOURNE SUPERANNUATION FUND</b>	56.74
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>PRIME SUPER</b>	287.82
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>SUNSUPER</b>	52.65
		FORTNIGHTLY SUPERANNUATION PAYMENT	
26/05/2022	DEBIT	<b>TWUSUPER</b>	251.17
		FORTNIGHTLY SUPERANNUATION PAYMENT	
31/05/2022	DirectDebit	<b>NATIONAL AUSTRALIA BANK</b>	46.24
		NAB CONNECT FEE 31 MAY 2022	
31/05/2022	DirectDebit	<b>NATIONAL AUSTRALIA BANK</b>	40.90
		FEE ACCOUNT 086724 508314385 FEES	
31/05/2022	DirectDebit	<b>NATIONAL AUSTRALIA BANK</b>	10.00
		FEE ACCOUNT 086852 508314406 FEES	
		<b>VOUCHERS</b>	<b>AMOUNT</b>
MUNICIPAL FUND			
		11052022.1 - 11052022.37	93,040.58
		26052022.1 - 26052022.40	260,610.98
		EFT/DEBIT/BPAY	72,438.92
		SALARIES & WAGES	108,568.88
		LICENSING MAY 2022 TRANSFERS	4,823.65
		TOTAL	<b>539,483.01</b>



**13.3 Adoption of Reportable Material Variance**

<b>File Reference:</b>	<b>1.3</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Melinda King – Manager Financial Reporting</b>
<b>Authorising Officer</b>	<b>Raj Sunner – Manager Corporate Services</b>
<b>Date:</b>	<b>7 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>Nil</b>

**Summary:**

Council is requested to review its reportable material variance figure for the 2022/2023 financial year.

**Background:**

Each financial year Council is required to adopt a percentage and/or value in accordance with AAS 5, to be used in the Statement of Financial Activity for reporting variances.

**Comment:**

The review of the reportable material variance is to be conducted on an annual basis. Currently the variance reported in monthly statements is +/- 10% and +/- \$10,000.

**Consultation:**

There have not been any changes recommended through any financial management reporting workshops.

**Statutory Environment:**

Australian Accounting Standards  
Financial Management Regulations 1996

**Policy Implications:**

Nil

**Financial Implications:**

There are no financial implications associated with adopting the variance percentage and value.

**Strategic Implications:**

Nil

**Risk Implications:**

**Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. **Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Compliance requirement to adopt material variance
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	Low (1)
Risk Likelihood (based on history and with existing controls)	Low (1)
Risk Consequence	Low (1)
Principal Risk Theme	Compliance requirement
Risk Action Plan (Controls or Treatment Proposed)	Adopt reportable material variance and report by way of note to monthly statements.

**Voting Requirements:**

Simple majority

**Officer Recommendation:**

That Council, by Simple majority:

- Report material variances of +/- 10% and +/- \$10,000 from the budget figure and report these variances by way of supporting note to the 'Monthly Statement of Financial Activity'.

Moved: Cr Harrington

Seconded: Cr Lubcke

**CARRIED 6/0**

**13.4 Budget Amendment – Roads to Recovery and Revaluation of Assets**

<b>File Reference:</b>	<b>7.1.5</b>
<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Melinda King – Manager Financial Reporting</b>
<b>Authorising Officer</b>	<b>Raj Sunner – Manager Corporate Services</b>
<b>Date:</b>	<b>7 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>Nil</b>

**Summary:**

Council is requested to consider approving budget amendments to cover the following expenditure items:

1. Revaluation of assets
2. Darkan South reseal

**Background:****Revaluation of assets**

Local governments are required to revalue their assets on a regular basis and a maximum of a five yearly interval. The Shire of West Arthur is due to revalue Land, Buildings, Infrastructure Other and Roads asset at 30 June 2022. The 2021/22 budget has allowed for \$24,000 for the revaluation of all of these asset classes. Quotes received have indicated the Shire will require additional funding of \$14,000 to be allocated to this project.

There are sufficient funds budgeted within the Other Governance/Compliance budget to fund the revaluations. This will, however, require the movement of budgeted expenditure from E043010 Compliance to E043003 Corporate Planning.

**Roads to Recovery**

At the March ordinary meeting of Council, the decision was made to replace a Roads to Recovery project - Darkan South Road super-elevation with the Rees Road project, in addition to funding the works to be completed on Bunce King Bridge under the R2R program. The reseal component of the Darkan South project should have been retained to be funded by Roads to Recovery.

At the March ordinary meeting of Council – *“Rees Road construction project be approved to replace the Darkan South super elevation project and source funding for Bunce King Bridge project to be Roads to Recovery”*;

It is requested that approval be given to reseal a section of Darkan South Road (up to \$29,000) under the Roads to Recovery program as originally budgeted. Any unspent R2R funds may then be allocated to the Bunce King Bridge project (\$24,000) if required as this was originally budgeted to be funded from general revenue.

**Comment:****Consultation:**

Alan Chisholm – Roads to Recovery  
Current staff members

**Statutory Environment:**

The Local Government Act Part 6, Division 4, 6.8 requires any expenditure for an additional purpose that is not included in the annual budget to be authorised in advance by resolution (absolute majority required).

Australian Accounting Standards – AASB 116 (34) requires the revaluation of asset classes with sufficient regularity – maximum 5 years.

**Policy Implications:**

Nil

**Financial Implications:**

An additional \$14,000 will be required to fund the revaluation of assets as at 30 June 2022. There are sufficient funds budgeted under compliance which may be reallocated to fund the project.

The reseal of the section of Darkan South Road will be \$29,000. The material component of the Bunce King Bridge job was \$24,000. The Bunce King Bridge project was originally budgeted to be funded by general revenue and has since been approved under Roads to Recovery – this project may be partly funded by Roads to Recovery if there are funds available. The material component of the Rees Road project was \$39,468 lower than the replaced Darkan South project – employee and plant costs will be funded in place of materials.

**Strategic Implications:**

Nil

**Risk Implications:**

**Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. **Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

**Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management

- Inadequate environmental management

**Risk Matrix:**

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Compliance Failure – requirement to revalue assets. Ability to fund required R2R projects.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	Low (3)
Risk Likelihood (based on history and with existing controls)	Low (3)
Risk Consequence	Medium (6)
Principal Risk Theme	Authorisation required to fund required expenditure.
Risk Action Plan (Controls or Treatment Proposed)	Revalue assets as required and complete road project.

**Voting Requirements:**

Absolute Majority

**Officer Recommendation:**

That Council, by absolute majority:

- approve the funding source of the reseal of a section of Darkan South Road as Roads to Recovery; and
- endorse the expenditure of an additional \$14,000 for the purpose of revaluation of assets, to be funded from the budget allowed for Corporate Planning.

Moved: Cr SouthSeconded: Cr Peirce**CARRIED BY ABSOLUTE MAJORITY 6/0**

**13.5 Adoption of fees and charges 2022/2023****File Reference:**

<b>Location:</b>	<b>N/A</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Melinda King – Manager Financial Reporting</b>
<b>Authorising Officer</b>	<b>Raj Sunner – Manager Corporate Services</b>
<b>Date:</b>	<b>14 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>1. Schedule of fees and charges 2022/2023</b>

**Summary:**

To enable the 2022/23 Fees and Charges to be charged from 1 July 2022, regardless of the status of the adoption of the 2022/23 Budget, it is proposed that Council adopt the 2022/23 Fees and Charges as attached.

**Background:**

A local government has the power to impose and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed. Fees and charges are to be imposed when adopting the Annual Budget but may also be imposed during a financial year or amended from time to time during a financial year.

The 22/23 budget is scheduled to be adopted at the end of July. Adopting the fees from the 1 July, will result in consistent application of all fees through the whole financial year.

**Comment:**

The fees proposed in the 2022/23 Fees and Charges will come into effect from 1 July 2022.

**Consultation:**

Member representatives have been consulted and have determined their own fees for the Shed, Kids Central and the Gym as these activities are self-funded.

**Statutory Environment:**

In accordance with the Local Government Act 1995 S6.16, a local government may impose and recover a fee or charge for any goods or service it provides or proposes to provide.

The adopted Fees and Charges are to be advertised in accordance with Section 6.19 of the Local Government Act 1995.

Penalty interest on rates has remained at 7% due to the COVID response order.

**Policy Implications:**

Nil

**Financial Implications:**

The adoption of fees and charges enables Council to charge appropriate fees from 1 July 2022.

**Strategic Implications:**

Nil

**Risk Implications:**

***Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.*** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. ***Reference to the risk matrix below***

**will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

#### Risk Themes:

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

#### Risk Matrix:

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Inability to charge fees prior to adoption of the budget if not adopted.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	Low (1)
Risk Likelihood (based on history and with existing controls)	Low (1)
Risk Consequence	Low (1)
Principal Risk Theme	Business Disruption
Risk Action Plan (Controls or Treatment Proposed)	Adopt and charge fees in accordance with the fees and charges schedule.

#### Voting Requirements:

Absolute Majority



**Officer Recommendation:**

That Council, by absolute majority, adopt the attached Fees and Charges, to commence on the 1 July 2022.

Moved: Cr Manuel

Seconded: Cr South

**CARRIED BY ABSOLUTE MAJORITY 6/0**

SHIRE OF WEST ARTHUR						
SCHEDULE OF FEES AND CHARGES						
2022/23 - Draft						
		Legislation	Details	GST (excl) \$	GST \$	Fee
<b>GENERAL PURPOSE FUNDING</b>						
	<u>Rates</u>					
I031714	Instalment Fee - per instalment	LG Act 1995 S6.45	instalment > first	5	exempt	5
I031732	Rate enquiry fee (Account enquiry fee for amount)	LG Act 1995 S6.16	per enquiry	50	exempt	50
	Full orders and requisitions -			73	exempt	73
I033020	Surcharge for payment of rates, ESL or rubbish charge by credit card		payment amount * 0.75%	0.682%	0.068%	0.75%
	Penalty Interest		7%			
	Instalment Interest		3%			
<b>GOVERNANCE</b>						
	<u>Photocopying</u>					
I043003	Photocopy (black and white) A4	LG Act 1995 S6.16	per copy	0.45	0.05	0.50
	Photocopy (colour) A4		per copy	0.86	0.09	0.95
	Photocopy (black and white) A3		per copy	0.86	0.09	0.95
	Photocopy (colour) A3		per copy	1.73	0.17	1.90
	(Copy of Shire documents only. General photocopying service available at CRC)					
	<u>Postage</u>		actual cost	various		
	<u>Freedom of Information</u>					
	Application fee for non personal information	WA FOI Act 1992		30	exempt	30
	Application fee for personal information		no fee			
	FOI photocopying		per copy	0.20	exempt	0.20
	Staff time (search and discovery of documents)		per hour	30	exempt	30
<b>LAW, ORDER AND PUBLIC SAFETY</b>						
I051115	Fire Maps	LG Act 1995 S6.16	per map	16.36	1.64	18
	<u>Dogs</u>					
	Kennel license	Dog Regs 2013 R17	per annum	200	exempt	200
I052110	Impounding fee and sustenance					
	Kennel Inspection fee		per annum	90.91	GST	100
	Dog Pound Fee			55.00	Free	55.00
	Dog Sustenance Charge (per day)			22.73	2.27	25.00
	Surrender of Dog			105.00	Free	105.00
I052120	<u>Dog Registration</u>					
	Unsterilised - 1 year	Dog Regs 2013 R17	per dog	50	exempt	50
	Unsterilised - 3 year		per dog	120	exempt	120
	Unsterilised - lifetime		per dog	250	exempt	250
	Sterilised - 1 year		per dog	20	exempt	20
	Sterilised - 3 year		per dog	42.50	exempt	42.50
	Sterilised - lifetime		per dog	100	exempt	100
	(Dogs owned by pensioner - 50% of fee; Droving dogs - 25% of fee)					
	<u>Cats</u>					
I052110	Impounding fee and sustenance					
	Cat Pound Fee			55.00	Free	55.00
	Cat Sustenance Charge (per day)			22.73	2.27	25.00
	Surrender of Cat			105.00	Free	105.00
I052130	<u>Cat Registration</u>	Cat Regs 2012 Sch 3				
	1 year		per cat	20	exempt	20
	3 years		per cat	42.5	exempt	42.5
	Lifetime		per cat	100	exempt	100
	(Cat owned by pensioner 50% of fee)					
I052110	Infringements and Penalties	Cat Act 2011, Dog Act 1976, Local Laws				as per legislation

SHIRE OF WEST ARTHUR						
SCHEDULE OF FEES AND CHARGES						
2022/23 - Draft						
		Legislation	Details	GST (excl) \$	GST \$	Fee
<b>HEALTH</b>						
I071115	Septic tank application	Health Act 1911		118	exempt	118
I071115	Caravan Park Licence	Car and Camp Regs Sech 3 Div 1		200	exempt	200
	Offensive Trade Licences	Refer to Health Dept Scale of Fees				
	<u>Food Business Vendor Licence</u>					
	Commercial in residential kitchen - initial registration			50	exempt	50
	Low Risk			60	exempt	60
	Medium risk			195	exempt	195
	Very low risk or charitable			free	exempt	free
<b>EDUCATION AND WELFARE</b>						
	<u>Kids Central Membership</u>					
I064010	Kid's Central yearly family membership (pro-rata below 6 months)	LG Act 1995 S6.16	per membership	45.45	4.55	50
	Electric Swipe Key (Authorised for Kids Central)		per key	18.18	1.82	20
	<u>Meals Service</u>					
I061011	Main meal			7	exempt	7
	Dessert	LG Act 1995 S6.16		3	exempt	3
I063015	Bus Service to Bunbury	LG Act 1995 S6.16		13.64	1.36	15
<b>HOUSING</b>						
I091110	<u>Community Housing</u>					
	Unit 1/10 Hillman St	LG Act 1995 S6.16	per week	130	exempt	130
	Unit 2/10 Hillman St		per week	145	exempt	145
	Unit 3/12 Hillman St		per week	145	exempt	145
	Unit 4/12 Hillman St		per week	130	exempt	130
	25 Nangip Crescent		per week	150	exempt	150
	18 Gibbs Street		per week	150	exempt	150
I091111	<u>Use of Staff Housing by Non Staff</u>					
	52 Hillman Street	LG Act 1995 S6.16	per week	187	exempt	187
	10 Gibbs Street		per week	187	exempt	187
	31 Arthur Street		per week	153	exempt	153
	7 Hillman Street		per week	128	exempt	128
	8 Hillman Street		per week	163	exempt	163
I091105	<u>GROH Housing</u>					
	11 King Street	LG Act 1995 S6.16	per week	560	exempt	560
	6 Hillman Street	Lease agreement	per week	550	exempt	550
<b>COMMUNITY AMENITIES</b>						
I102160	Asbestos Disposal (plus cost of staff time and equipment)	LG Act 1995 S6.16	cubic metre	50	5	55
	<u>Rubbish Rates</u>					
I101110	Rubbish Collection		per service - refuse and recycle	205	exempt	205
	Recycle bin - non service areas	LG Act 1995 S6.16		64.00	exempt	64.00
I107140	<u>Cemetery Fees</u>	LG Act 1995 S6.16				
	Interments			518	52	570
	Re-opening of grave for exhumation (Where contractors used - cost)			518	52	570
	Re-internment after exhumation ( Where contractors used - cost)			518	52	570
	Permission to erect a headstone, a monument to enclose with, kerb any grave, to erect a nameplate			30	0	30
	Grave Reservation Fee			50	0	50
	Niche Wall - includes reservation fee - single			30	0	30
	Niche Wall - includes reservation fee double (Cost of Niche Wall plaque additional)			60	0	60

SHIRE OF WEST ARTHUR						
SCHEDULE OF FEES AND CHARGES						
2022/23 - Draft						
		Legislation	Details	GST (excl) \$	GST \$	Fee
1106390	<u>Town Planning Application Fees</u>	PD Regs 2009				
	Less than \$50,000			147	exempt	147
	More than \$50,000 but not more than \$500,000		0.32% of estimated development cost	as per schedule	exempt	as per schedule
	More than \$500 000 but not more than \$2.5 million		\$1,700, + 0.257% for every \$1 in excess of \$500,000	as per schedule	exempt	as per schedule
	More than \$2.5 million but not more than \$5 million		\$7,161 + 0.206% for every \$1 in excess of \$2.5 million	as per schedule	exempt	as per schedule
	More than \$5 million but not more than \$21.5 million		\$12,633 + 0.123% for every \$1 in excess of \$5 million	as per schedule	exempt	as per schedule
	More than \$21.5 million			34196	exempt	34196
	Change of Use			295	exempt	295
	Extractive industry			739	exempt	739
	Home business, home occupation, Cottage industry			222	exempt	222
	Advertising		at cost		applicable	
	Development application fees do not apply to not for profit community groups					
	Development Applications in Wellington Catchment that would not otherwise require Development Approval in other areas of the Shire will not be charged a fee.					
	All other planning fees maximum fee allowed by Department of Planning					

SHIRE OF WEST ARTHUR						
SCHEDULE OF FEES AND CHARGES						
2022/23 - Draft						
		Legislation	Details	GST (excl) \$	GST \$	Fee
<b>RECREATION AND CULTURE</b>						
I111110	<u>Darkan Town Hall</u>					
	Functions including kitchen and at least one hall	LG Act 1995 S6.16	per use	100	10	110
	Meetings including use of kitchen		per use	70	7	77
	Meetings not including use of kitchen (using one area of hall)		per use	40	4	44
	Community activities		per use	20	2	22
	Hire of tables - Darkan Town Hall		per item	9.09	0.91	10
	Hire of chairs - Darkan Town Hall		per item	1.82	0.18	2
	A bond of \$200 is applicable on all function bookings and all equipment hire bookings. <i>Local community and not for profit groups have free use of the Darkan Town Hall.</i>					
I111110	<u>Arthur River Hall</u>					
	Functions		per use	100	10	110
	<i>Local community groups have free use of the Darkan Town Hall.</i>					
I112110	<u>Darkan Swimming Pool</u>					
	Single Membership		per annum	73	7	80
	Family Membership		per annum	109	11	120
	Student Membership ( between the age of 18 and 23)		per annum	18	2	20
	Visitors - Adults		per visit	2.73	0.27	3
	Visitors - Children		per visit	1.82	0.18	2
	Group course fees		per person	15	1.50	16.5
	Individual course fees		per person	45	4.50	49.5
	Baby swim classes - Pool Member		per student	7	0.73	8
	Baby swim classes - Non-Pool Member		per student	10	1	11
	Swipe Key (Authorised for Darkan Swimming Pool)		per key	18	1.82	20
	Swim coaching		at cost			
	Swim club - pool member			5	0.45	5
	Swim club - non pool member			6	0.64	7
I113140	<u>Community Gym Membership to 30 June 2022</u>					
	Single			59.09	5.91	65
	Family			90.91	9.09	100
	Concession (pro-rata if below 6 months)			27.27	2.73	30.00
	<u>Equipment Hire</u>					
	Hire of Chairs (only the old orange style hall chairs)			0.30	0.03	0.33
I116110	<u>History Books</u>					
	Hard Cover			25.00	2.50	27.50
	Paperback			17.27	1.73	19.00
	(Postage extra)			At cost		
I147120	<u>The Shed to 30 June 2022</u>					
	Membership - Yearly (pro-rata below 6 months)			54.55	5.45	60.00
	Membership - Pensioner/Seniors Concession			36.36	3.64	40.00
	Locker Hire			9.09	0.91	10.00
	Hourly Rate			27.27	2.73	30.00
	Social membership			4.55	0.45	5.00

SHIRE OF WEST ARTHUR						
SCHEDULE OF FEES AND CHARGES						
2022/23 - Draft						
		Legislation	Details	GST (excl) \$	GST \$	Fee
<b>ECONOMIC SERVES</b>						
	<u>Scheme Standpipe Water</u>					
I134130	Community standpipe water	LG Act S6.16	per kilolitre	2.50	exempt	2.50
	Commercial standpipe water - per kilolitre	LG Act S6.16	per kilolitre	10.00	exempt	10.00
	Deposit Growden Place Standpipe key (held in shire account)			25.00	0.00	25.00
	<u>Duranillin Water Supply</u>					
I136110	Annual service charge		Per annum	120	exempt	120
I134120	Water Usage (first 100kl)		Per kilolitre	3.50	exempt	3.50
	Water Usage (next 300kl)		Per kilolitre	5.00	exempt	5.00
	Water Usage (above 400kl)		Per kilolitre	8.00	exempt	8.00
I133110	<u>Building Permit Fees</u>					
	Building Permit Fees are in accordance with Building Reg 2012					
	<a href="#">Building Act fees   Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au)</a>					
	Uncertified application for a building or demolition permit (minimum fee)		per permit			
	The fee is 0.32% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$110.00					
	Certified application (minimum fee)	Building Regs S16 (1)	per permit			
	For building work for a Class 1 or Class 10 Building or incidental structure the fee is 0.19% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$110.00					
	Certified application for building permit for Class 2 to 9 buildings	Building Reg 2012 Reg 12	Of the estimated value of the building works as determined by the relevant permit authority but not less than \$110.00 Building Regulations 2012			0.09%
	Application for demolition permit Class 1 or 10 buildings	Building Reg 2012 Reg 14	Building Regulations 2012			110.00
	Application for demolition permit Class 2 to 9 buildings	Building Reg 2012 Reg 15	Per storey Building Regulations 2012			110.00
	Application to extend Demolition permit I	Building Reg 2012 Reg 16	Building Regulations 2012			110.00
	Application for occupancy permit	Building Reg 2012 Reg 17	Building Regulations 2012			110.00
	Application for temporary occupancy permit	Building Reg 2012 Reg 18	Building Regulations 2012			110.00
	Application for the modification of an occupancy permit for additional use on a temporary basis	Building Reg 2012 Reg 19	Building Regulations 2012			110.00
	Application for a replacement occupancy permit for permanent change of the buildings use classification	Building Reg 2012 Reg 20	Building Regulations 2012			110.00

SHIRE OF WEST ARTHUR						
SCHEDULE OF FEES AND CHARGES						
2022/23 - Draft						
		Legislation	Details	GST (excl) \$	GST \$	Fee
	Application for occupancy permit for a building in respect of which unauthorised work has been done	Building Reg 2012 Reg 22	Of the estimated value of the building works as determined by the relevant permit authority but not less than \$110.00 Building Regulations 2012			0.18%
	Application for a building approval certificate for a a building in respect of which unauthorised work has been done (s. 51(3))	Building Reg 2012 Reg 23	Of the estimated value of the building works as determined by the relevant permit authority but not less than \$110.00 Building Regulations 2012			0.38%
	Swimming Pool Inspection Fee (one off)	Building Reg 2012 Reg 53	Per year			58.50
I132040	<u>Darkan Caravan Park</u>					
	Site (2 people) - three nights at price of two nights.		Per night	18.18	1.82	20
	Extra person (each)/Use of shower only		Per night	4.55	0.45	5
	Use of shower for non-patrons from groups pre-approved by the Shire		Per night	4.55	0.45	5
	Site (2 people)		Per week	109.09	10.91	120
	Extra person (each)		Per week	27.27	2.73	30
	Chalet (2 people) - staying one night only		Per night	145.45	14.55	160
	Chalet (2 people) - two or more nights		Per night	118.18	11.82	130
	Chalet - extra person per night		Per night	13.64	1.36	15
	Washing Machine		Per cycle	2.73	0.27	3
	Dryer		Per cycle	0.91	0.09	1
	Nissen Hut		Per night	54.55	5.45	60



Cr Peirce left the meeting at 8.10pm.

## 14. PLANNING AND TECHNICAL SERVICES

### 14.1 Development Application - Lakeside Camping Kiosk

<b>File Reference:</b>	<b>A508</b>
<b>Location:</b>	<b>Lot 2334 Lake Towerrinning Road, Moodiarrup</b>
<b>Applicant:</b>	<b>G Peirce</b>
<b>Author:</b>	<b>G Lush – Planning Consultant</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont – Chief Executive Officer</b>
<b>Date:</b>	<b>14 June 2022</b>
<b>Disclosure of Interest:</b>	<b>None</b>
<b>Attachments:</b>	<b>1 Site Plan</b>
	<b>2 Development Plan</b>

#### **Summary:**

To consider a development application to replace the existing kiosk at the Lakeside caravan park and camping ground.

#### **Background:**

The subject land is No 63, Lot 2334 DP128722 Lake Towerrinning Road, Moodiarrup. It has an area of 65 hectares and has been developed as the Lakeside Camping resort. It has been operating since 1992 and has 14 powered campsites, which can accommodate several caravans per site. The property is adjacent to Lake Towerrinning and the camping area is situated on the northern portion of the property. The balance of the property extends for some distance to the south with a frontage to Moodiarrup Road West.

The existing kiosk is 27.625sqm being 4250mm x 6500mm including eaves. It is proposed to replace this with a new kiosk as shown in Attachments 1 and 2. The proposed kiosk will be 45sqm being 12500mm x 3600mm. The current kiosk does not have adequate storage or a merchandise area.

It is a new modular design and the external finishings are weatherboard upper and colourbond cladding, colourbond trimdeck roof. Colourbond roof is surfmist, wall cladding cove and weatherboard surfmist. This is the same as the existing house and shed on the property.

There will be no dine in or food preparation facilities and it will be operated under same Certificate of Food Business licence. The items sold in kiosk are packaged drinks, ice creams, lollies and ice.

#### **Comment:**

While the proposed building is larger than the existing kiosk it is in the same location and providing the same, but improved, services. The application is consistent with the Planning Scheme and strategic objectives.

#### **Consultation:**

None

#### **Statutory Environment:**

##### Local Planning Scheme No 2

The subject land is zoned Rural Local Planning Scheme No 2. The objectives for the Rural zone include:

- to ensure the continuation of broad-hectare agriculture as the principal land use in the district, encouraging where appropriate the retention and expansion of agricultural activities.

- to provide for intensive agricultural uses and diversified farming which retain the rural character and amenity of the locality, and which are consistent with land suitability.
- to consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.
- to allow for facilities for tourists and travellers, and for recreation uses.

A 'caravan park' is a (D) discretionary use in the Rural zone.

#### State Planning Policy 3.7 Planning in Bushfire Prone Areas

The proposed development site, where the kiosk will be located is designated as being bushfire prone land. The bushfire hazard vegetation is fringing the wetland area within Lot 2334 rather than Lake Towerrinning.

A Bushfire Attack Level (BAL) Assessment is required under the Planning Regulations for any "habitable building" in a bushfire prone area. A habitable building is defined as one where people live, work or are entertained. No BAL Assessment has been required as:

- There are no internal sit-down areas; and
- While the size of the kiosk is increasing this is primarily for storage purposes and is not considered to be a significant intensification of the use.

#### **Policy Implications:**

##### Lake Towerrinning Management Plan 2019

Lake Towerrinning is subject to a management plan adopted by Council in 2019. This primarily related to Reserve 24917, being the actual lake and the adjacent public recreation area / foreshore managed by the Shire.

The management plan Vision is to maintain an aquatic environment, that is able to sustain a natural ecosystem as well as human recreational activity.

While the provisions of the management plan do not specifically apply to the subject land, the proposed development does not conflict with the management plan recommendations.

#### **Financial Implications:**

The prescribed planning application fee is \$240.

#### **Strategic Implications:**

The Shire's Strategic Community Plan Towards 2031 and Corporate Business Plan 2021 – 2025 both identify Lake Towerrinning as the Shire's premier iconic natural asset and it generally promotes support for tourist ventures.

#### **Risk Implications:**

**Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. **Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

#### **Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure

- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Environmental impact or loss of amenity
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	Low (2)
Risk Likelihood (based on history and with existing controls)	Low (2)
Risk Consequence	Insignificant (1)
Principal Risk Theme	Compliance Failure
Risk Action Plan (Controls or Treatment Proposed)	Ensure compliance with conditions of approval

**Voting Requirements:**

Simple Majority

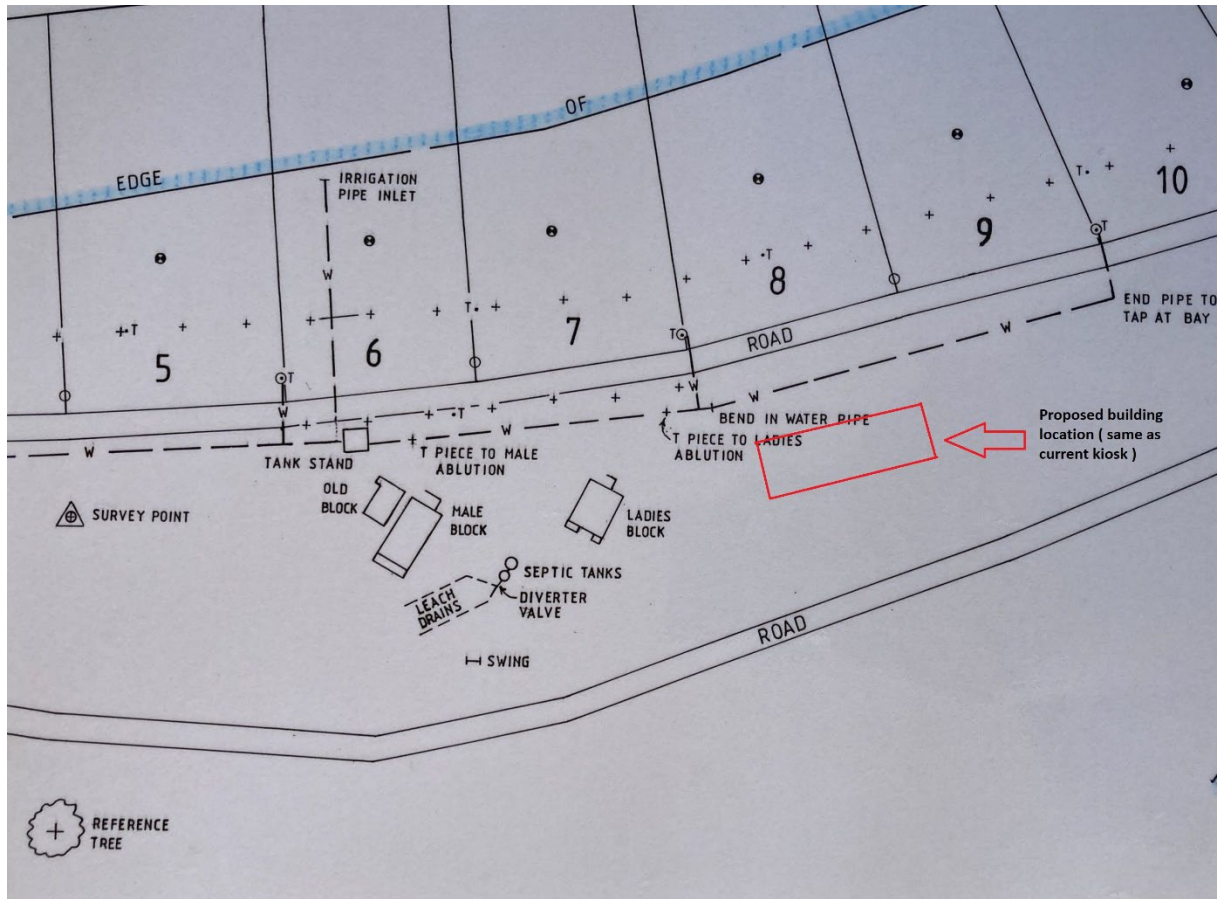
**Officer Recommendation:**

That Council approve the use and development of a kiosk at No 63, Lot 2334 DP128722 Lake Towerrinning Road, Moodiarrup subject to compliance with the following conditions:

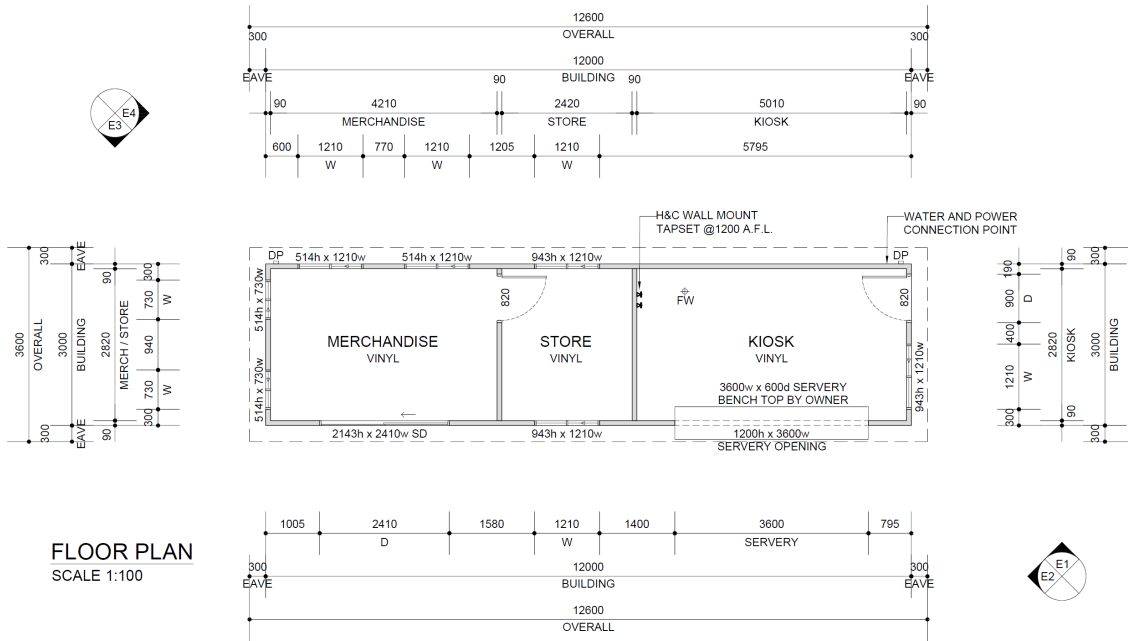
1. The development hereby approved shall occur generally in accordance with the plans and specifications submitted with the application and these shall not be altered or modified without the prior written approval of the Council.
2. Any use, additions to and further intensification of any part of the building or land (not the subject of this consent) shall be subject to a further development application and consent for that use.

Moved: Cr LubckeSeconded: Cr Harrington**CARRIED 5/0**

Attachment 1 – Site Plan



Attachment 2 – Development Plan



Cr Peirce returned to the meeting at 8.14pm.

## 14.2 Development Application - 14 Jarrah Street Bowelling

<b>File Reference:</b>	<b>A871</b>
<b>Location:</b>	<b>Lot 11 (#14) Jarrah Street, Bowelling</b>
<b>Applicant:</b>	<b>C Halton</b>
<b>Author:</b>	<b>G Lush – Planning Consultant</b>
<b>Authorising Officer</b>	<b>V Fordham Lamont – Chief Executive Officer</b>
<b>Date:</b>	<b>14 June 2022</b>
<b>Disclosure of Interest:</b>	<b>None</b>
<b>Attachments:</b>	<b>1 Site Plan</b> <b>2 Development Plan</b>

### Summary:

To consider a development application for a single dwelling. The subject land is zoned Residential – R10. A single dwelling is a (P) permitted use in the Residential zone and does not normally require a planning approval provided that it complies with the Residential Design Codes. The R Codes do not prescribe any minimum size for a dwelling.

In this instance a planning approval is required as the site is within the Wellington Reservoir Catchment Special Control Area. However, Department of Water & Environmental Regulation has no objection to the application.

A planning approval is also required for any transportable building within a townsite. However, Council has resolved that this does not apply to new modular homes which are built in the factory and transported to site.

Consequently, there is no objection to the application.

### Background:

The subject land is No 14, Lot 11 DP129064 Jarrah Street, Bowelling. The subject land has an area of 2,021sqm with a frontage of 30m to Jarrah Street. There are eight allotments in Jarrah Street with four of these being Unallocated Crown Land. The adjacent Lot 10 is owned by the applicant's daughter, while all the other adjacent land is Unallocated Crown Land.

There is an existing shed being a sea container and patio on the site as well as a caravan.

The former Bowelling Station Masters House (Lot 3) is located approximately 90m to the south west of the site and this is a Category 2 Heritage Site.

The application is to develop a single dwelling having an area of 20.12sqm being 8.4m x 2.4m. This will have a 2m wide veranda extending across the front of the building. A site plan is shown in Attachment 1 and the Development Plan in Attachment 2. This will consist of a 6m x 2.4m "office crib room" and an attached 2.4m x 2.4m "ablutions unit." This is a new transportable unit with colourbond 'surfmist' cladding.

The building will be setback 11.8m from the rear boundary, 9m from the side boundary and 52.7m from the front boundary.

Jarrah Street is a narrow unformed gravel access track approximately 3.0m wide.

### Comment:

While the subject land is zoned 'Residential' and is located within a gazetted townsite, the potential issues with the application are:

- a) The proposed size of the dwelling;
- b) The dwelling being a transportable "office crib room";

- c) Site access;
- d) Visibility;
- e) Development within the Wellington Catchment;
- f) Orderly and proper planning for the locality.

#### A) Dwelling Size

The Residential Design Codes (R-Codes) contain provisions for Special purpose dwellings including ancillary dwellings; aged or dependent persons' dwellings; and single bedroom dwellings. The R Codes do not prescribe any minimum size for a dwelling. It stipulates that single bedroom dwellings shall have a maximum plot ratio area of 70sqm and comply with the general siting requirements.

The Design Principles (Objectives) promote that they can be an alternative and affordable housing options for singles or couples that reduces car dependence, i.e. is located in close proximity to public transport and convenience shopping. But this is a typical urban/city perspective that is not applicable in a rural area.

It is noted that Council in 2021 approved a 47.5sqm dwelling (13.2m x 3.6m) in the Darkan townsite. At this time, it was noted that Clause 61 of the Planning Regulations states that the development of a single house on a lot does not require a development approval where it complies with the R Codes.

#### B) The dwelling being a transportable "office crib room"

The classification of the building as a dwelling is strictly a building and health issue relating to the National Construction Code and the Health Act.

In relation to it being transportable Clause 5.10 was intended to address relocated second dwellings which were cut in half and then moved to the site and sometimes creating issues with their appearance or lack of completion.

Council in 2021 accepted that Clause 5.10 of the Scheme does not apply to new modular homes which are built in the factory and transported to site as new dwellings.

#### C) Site access

Clause 5.7 of the Scheme requires planning approval for development of any lots abutting an unconstructed road reserve. Jarrah Street has minimal construction being more of a local access track / driveway rather than a public road. It extends from Hill Street to the subject land (150m) and continues to Lot 9.

As there are only four freehold lots in Jarrah Street, it only requires minimal access. In its present condition, it may be difficult for a semi-trailer to access the site. No vegetation can be removed from the road reserve, without the approval of DWER. The Shire has no obligation to construct the road to a higher standard.

#### F) Visibility

Given the size of the subject land and its location, it is likely that the development will be visible from the surrounding area and especially from Coalfields Highway. The applicant has submitted that

In regards to your concerns about potential impacts to amenity, I have the following comments to make. The building will not negatively impact on the local amenity as it will be sufficiently screened with thick native vegetation from both Jarrah Road and Coalfields Road. There is also vegetation that will screen the building from the closest property which contains a house (Lot 3 Coalfields Rd). 16 Jarrah St is owned by my daughter and she has no objections to the building. She will provide a letter of support if required. The verandah will assist in the appearance of the transportables.



This is unlikely to be possible as the BAL Assessment is based upon the balance of the property being maintained as a low fuel / asset protection zone. Screening with thick native vegetation will not comply with the specifications for the asset protection zone and will potentially result in a higher unacceptable BAL rating for the dwelling. Any screen planting would have to be in the form of a single row of bushes planted along the boundary.

E) Development within the Wellington Catchment.

Given that the Department of Water & Environmental Regulation has advised that it does not object to the application, this is no longer an issue.

F) Orderly and proper planning for the locality.

The term 'orderly and proper planning' is a common planning term and relates to the planning framework including the applicable State Planning Policies and Scheme Objectives and Provisions.

The residential use of the property is consistent with the Scheme. There are no provisions or policies relating to the size and design of the dwelling. Nor are there any policies or reference in the Local Planning Strategy to the development of Bowelling townsite. Unserviced residential lots in a rural townsite such as these not normally appropriate. They would now be likely to have a specific zoning, objectives and provisions. In other similar locations such areas have been included in the Rural zone which effectively prohibits development because of the boundary setback requirements, even on freehold lots.

This issue will need to be further considered in the review of the Town Planning Scheme and Local Planning Strategy.

**Consultation:**

The application has not been advertised.

The Department of Water & Environmental Regulation has advised that it does not object to the application subject to:

- The development being acceptable under the Shire's Local Planning Scheme,
- Normal development standards being met, including the installation of a suitably approved wastewater system.

A complaint has also been received that there is unauthorised development on the site and that camping longer than four consecutive days is occurring. This is being investigated separately to this application.

**Statutory Environment:**

Local Planning Scheme No 2

The subject land is zoned Residential R10 in the Scheme and residential development is subject to the provisions of the Residential Design Codes. A single dwelling is a (P) permitted use in the Residential zone. The boundary setbacks in the R Codes are 7.5m from the front boundary, 6m from the rear and 1m from the side boundary.

The objectives of the Residential zone are:

- to provide for the predominant form of residential development to be single houses.
- to provide for diversity of lifestyle choice with a range of dwelling types.
- to achieve a high standard of residential development.
- to allow for the establishment of non-residential uses which are compatible with the predominant residential use and which will not adversely affect local amenities.

Clause 5.10 of the Scheme relates to transportable buildings and states that:

- A person is not to transport a building and place it on land in a gazetted townsite in the Scheme Area and use it as a dwelling unless planning approval has been granted by the local government.
- The local government must only grant planning approval in accordance with clause 5.10.1 if the transported building:
  - (a) complies with the provisions of the Scheme, the Residential Design Codes, and any Local Laws applicable both to the transported building and the land on which it is to be situated; and
  - (b) is, in the opinion of the local government, in a satisfactory condition and will not detrimentally affect the amenity of the locality.

The subject land is also located within the Wellington Reservoir Catchment Special Control Area. Clause 6.2. of the Scheme stipulates that:

- Planning approval is required for all development including a single house; and
- All applications are to be referred to the Department of Environment (DWER) and the local government is to have due regard to recommendations/advice received from the Department when determining applications.

#### State Planning Policy 3.7 Planning in Bushfire Prone Areas

The subject land is designated as being bushfire prone. The Deemed Provisions stipulate that a Bushfire Attack Level (BAL) Assessment is required for any “habitable building” in a bushfire prone area.

This has been provided and the development site has a BAL-29 rating which complies with the State Planning Policy.

#### **Policy Implications:**

None

#### **Financial Implications:**

The prescribed planning application fee is \$147.

#### **Strategic Implications:**

The Shire’s Strategic Community Plan Towards 2031 and Corporate Business Plan 2021 – 2025 under Built Environment Outcome 4.4 – Appropriate planning and development

- Implement the town planning scheme and policies to ensure any planning and development is appropriate through the Shire

#### **Risk Implications (Policy G1.11 Adopted May 2022)**

**Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it.** The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. **Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other.** The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

#### **Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure

- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management
- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	Environmental impact or loss of amenity
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	Low (4)
Risk Likelihood (based on history and with existing controls)	Major (4) Non-compliance results in termination of services / approval or imposed penalties
Risk Consequence	Rare (1) The event may only occur in exceptional circumstances
Principal Risk Theme	Compliance Failure
Risk Action Plan (Controls or Treatment Proposed)	Ensure compliance with conditions of approval and other applicable Regulations.

**Voting Requirements:**

Simple Majority

**Officer Recommendation:**

- A. That Council approve the use and development of Lot 11 DP129064 Jarrah Street, Bowelling for a single dwelling subject to compliance with the following conditions:
1. The development hereby approved shall occur in accordance with the plans and specifications submitted with the application and these shall not be altered or modified without the prior written approval of the Council.
  2. This approval is for a new single dwelling and no second-hand materials may be used without the prior approval of Council.
  3. Any use, additions to and further intensification of any part of the building or land (not the subject of this consent) shall be subject to a further development application and consent for that use.
  4. No polluted drainage shall be discharged beyond the boundaries of the land from which it emanates or into watercourse or easement drain, but shall be so treated

and/or absorbed on that lot to the satisfaction of the Shire's Environmental Health Officer.

5. The site shall be so ordered and maintained as not to prejudicially affect the amenity of the locality by reason of appearance.
  6. A landscaping screen shall be planted and maintained along the southern boundary of the subject land to the requirements and satisfaction of Council.
  7. The site shall be maintained as a low fuel / asset protection zone in accordance with the Bushfire Attack Level (BAL) Assessment report prepared by Bushfire Prone Planning (Ref 200677 Version 1.0 Dated 25 August 2021).
  8. Effluent disposal system(s) being sensitive to the current environmental concerns associated with nutrient leaching and runoff and being to the satisfaction of the Shire's Environmental Health Officer.
- B. The applicant be advised that there is no proposed upgrading of the access from Jarrah Street and should this be required then it would be at the applicant's expense. No trees may be removed without a clearing permit being issued by the Department of Water & Environmental Regulation.
- C. That the CEO investigate and report to Council on:
- Potential future development of the Unallocated Crown Land; and
  - The need to revise the existing town planning provisions and policies for the townsite as part of the formal review of the Local Planning Scheme and Local Planning Strategy.

**Alternative Motion:**

***That the Officer Recommendation be replaced with "pursuant to Clause 64 of the Deemed Provisions, the application is to be advertised to owners of surrounding private properties for a period of 14 days."***

Moved: Cr Manuel

Seconded: Cr Peirce

**CARRIED 6/0**

**New Substantive Motion:**

***That, pursuant to Clause 64 of the Deemed Provisions, the application is to be advertised to owners of surrounding private properties for a period of 14 days.***

Moved: Cr Manuel

Seconded: Cr Peirce

**CARRIED 6/0**

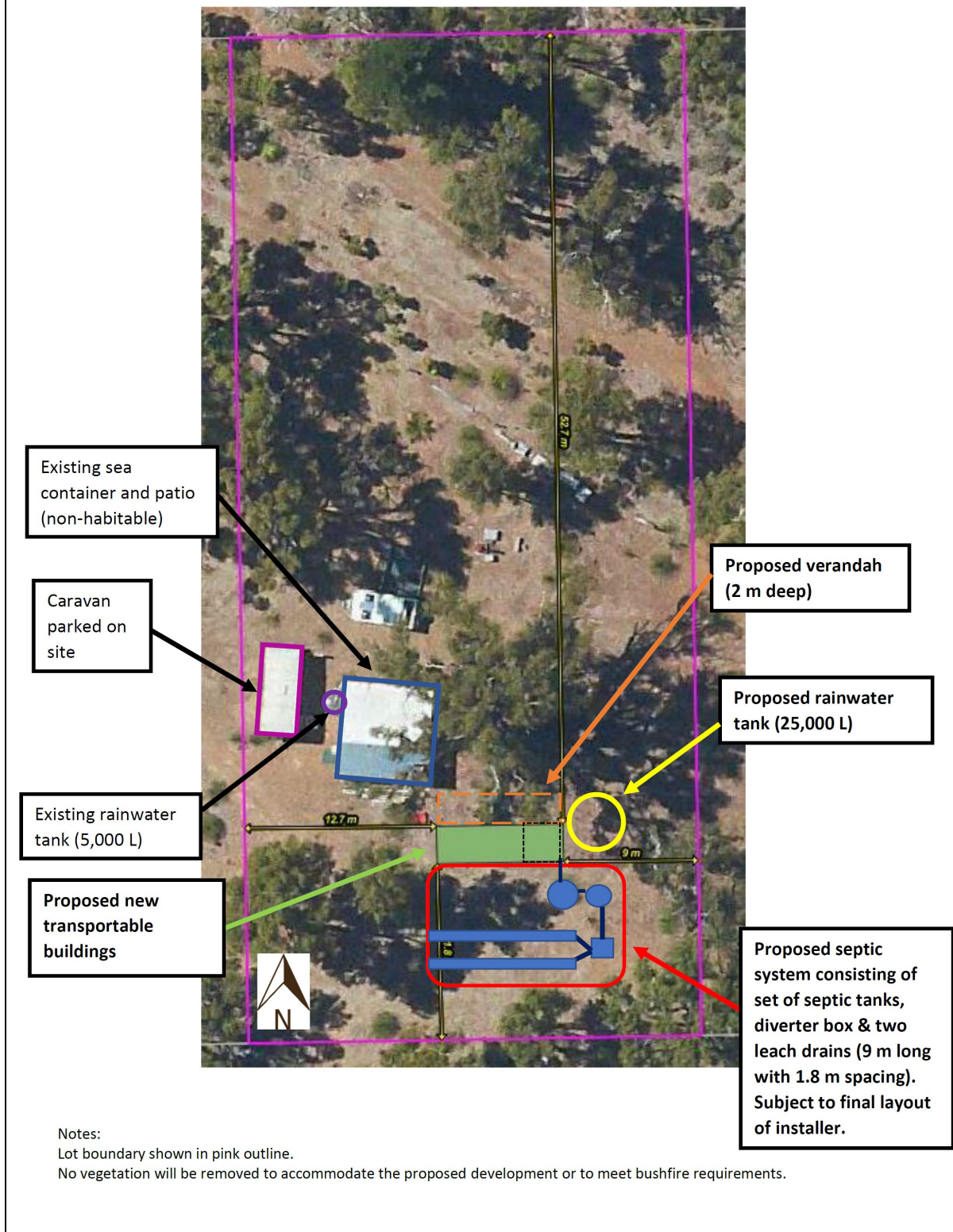
The reason for varying the recommendation is due to concerns expressed by other landowners regarding the potential impact of the development on the amenity of the area.

**ATTACHMENTS**

- 1 Site Plan
- 2 Development Plan

Attachment 1 – Site Plan

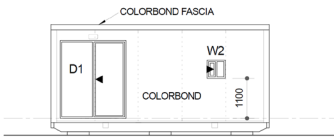
Site Plan: 14 Jarrah Street, Bowelling (7 June 2022)



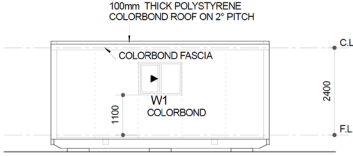
Attachment 2 – Development Plan

**BAL-29** Construction to comply with BCA Volume Two Part 3.10.5 and AS 3959

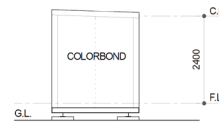
**modus**  
compliance Pty Ltd  
Building Surveying Contractor - BSCJ  
C21-1719 23/02/2022  
Building Surveyor - Natasha Muscat  
Accreditation - Technician Registration No - BPF2496  
This plan has been assessed and approved in conjunction with the certificate of design compliance.



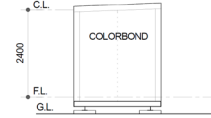
ELEVATION 1 SCALE 1:100



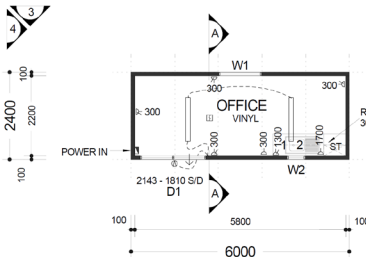
ELEVATION 3 SCALE 1:100



ELEVATION 2 SCALE 1:100



ELEVATION 4 SCALE 1:100



FLOOR & ELECTRICAL PLAN SCALE 1:100

NOTE: MIN. 2400 HIGH CEILING LEVEL

R/HOOD OVER STOVE BUILT INTO 300 DEEP O'HEAD CUPBOARDS

**BondorPanel to be used for external wall construction**

An exhaust system installed in a kitchen, bathroom, sanitary compartment, or laundry must have a minimum flow rate to comply with BCA Vol Two Part 3.8.7.3

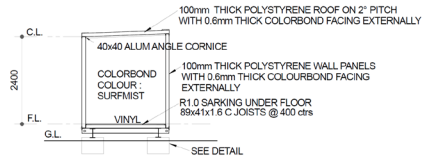
Smoke Alarms to comply with BCA Volume Two, Part 3.7.5.2, AS3786:2014 & be hardwired and interconnected

Subfloor ventilation to comply with BCA Vol Two Part 3.4.1

Gutters and Downpipes to comply with AS/NZS 3500.3 or BCA Volume Two Part 3.5.3

**EQUIPMENT LIST:**

- D1 - 2143 x 1810 METAL SLIDING DOOR
- W1 - 900h x 1175w HORIZONTAL SLIDING WINDOW WITH KEYLOCK AND FLYSCREEN.
- W2 - 500h x 550w HORIZONTAL SLIDING WINDOW WITH KEYLOCK AND FLYSCREEN.
- 1 - 600 DEEP CUPDS & 300 DEEP O'HEAD CUPBOARDS 1400 LONG, LAMINATE
- 2 - STAINLESS STEEL SINK SINGLE BOWL WITH SIDE DRAINER. COLD WATER SUPPLY ONLY.



SECTION A-A SCALE 1:100

**PROJECT SPECIFICATION FOR NEW TRANSPORTABLE UNIT**

- FLOOR STRUCTURE**  
STEEL SKIDS-250LB26  
CHASSIS MECHANICALLY CLEANED CLASS 1, & THE PAINT USED IS STRUCTURAL PRIMER JOTAPRIME 265 BY JOTUN PAINTS, COLOUR BLACK.  
ALL IN ACCORDANCE WITH AS1554.7, AS4100 & AS4600.  
GALV. FLOOR JOISTS-C88x41x1.6 @ 400 MAX CTRS  
FLOORING-22mm AQUATITE FLOORING + 2mm VINYL  
R1.0 SARKING UNDER FLOOR
- WALL STRUCTURE**  
EXTERNAL 100 THICK INSULATED COLORBOND PANELS WITH 0.6mm COLORBOND FACING EXTERNALLY AND 0.4MM FACING INTERNALLY.
- ROOF STRUCTURE**  
100 THICK INSULATED PANEL 0.6MM C'BOND FACING EXTERNALLY AND 0.4MM FACING INTERNALLY.
- WINDOWS**  
POWDERCOATED ALUMINIUM FRAME  
ALL WINDOWS & DOOR FRAMES TO HAVE FIXINGS DOUBLED INTERNALLY AND EXTERNALLY.

ELECTRICAL LEGEND	
○	LIGHT: OYSTER LIGHT FITTING (LED)
⊗	LIGHT: EXTERNAL BULKHEAD: W/PROOF
—	LIGHT: LED BATTEN 38W
▲	GPO: 15 AMP SINGLE: HEIGHT SHOWN
△	GPO: 10 AMP SINGLE: HEIGHT SHOWN
△	GPO: 10 AMP DOUBLE: HEIGHT SHOWN
⊞	EXHAUST FAN: WALL MOUNTED
△	SWITCH ISOLATOR W/PROOF: HT SHOWN
PE	PE AUTO SWITCH FOR EXTERNAL LIGHTS
⊞	SMOKE ALARM 240V, HARD WIRED
EXIT	LIGHT: ILLUMINATED EXIT: MAINTAINED

EMERGENCY EXIT LIGHT COMPLIANT TO AS2293.1

 Email: joondalupdesigns@bigpond.com Phone: 08 9571 4361 Mobile: 0411 913 771	CLIENT NAME:	BUILDING / DWG NAME:	<b>6m x 2.4m OFFICE CRIB</b>  STEVE'S TRANSPORTABLES GROUP PTY LTD ATF SHORTER FAMILY TRUST © COPYRIGHT Steve's Mobile: 0419 955 259 Duke's Mobile: 0498 022 147 Email: sshorter.1@bigpond.com Website: www.stevestransportablesperth.com
	A ISSUED FOR APPROVAL 20 11 20 REV DESCRIPTION DATE	FILE NAME: E:\Documents\JD\2020\Steves Transportables\6x2.4 Office Crib.SIF	

**14.3 Heritage List Local Planning Policy**

<b>File Reference:</b>	<b>6.5.15</b>
<b>Location:</b>	<b>Shire of West Arthur</b>
<b>Applicant:</b>	<b>N/A</b>
<b>Author:</b>	<b>Geoffrey Lush - Planning Consultant</b>
<b>Authorising Officer</b>	<b>Vin Fordham Lamont – Chief Executive Officer</b>
<b>Date:</b>	<b>15 June 2022</b>
<b>Disclosure of Interest:</b>	<b>Nil</b>
<b>Attachments:</b>	<b>1. Local Planning Policy No 3</b>

**Summary:**

To consider final adoption of the Local Planning Policy required to give statutory effect to the Shire's Heritage List. The Heritage Survey is prepared under the Heritage Act 2018 and it identifies and records places that are, or may become, of cultural heritage significance in its district.

The Heritage List is prepared under the Planning and Development (Local Planning Schemes) Regulations 2015. The purpose is to provide for the identification of places and areas of heritage value so that development in the Scheme can, as far as possible, be consistent with the conservation of heritage values.

**Background:**

At its Meeting on the 12<sup>th</sup> April 2022 Council resolved to advertise the draft Local Planning Policy for a period of 21 days.

At its Meeting of the 17<sup>th</sup> May 2022 Council then resolved to adopt the updated 2022 Local Heritage Survey and List. The Heritage List was modified to downgrade the Darkan Sawmill / Mill Houses from Category 2 to Category 3.

All the places on the Heritage List are subject to special development provisions in the Scheme and Regulations which include requiring:

- a) The site to be properly maintained; and
- b) Planning approval for any development.

The purpose of the Local Planning Policy is to assist both Council and residents in clarifying how the local planning scheme will be applied in relation to heritage places.

There are thirty-four (34) Category 1 and 2 sites on the Heritage List. Of these, there are thirteen (13) private properties as shown in the following table.

<b>Ref No</b>	<b>Address</b>	<b>Description</b>
12	9873 (Lot 10) Coalfields Hwy	CWA meeting rooms
16	9889 (Lot 4) Coalfields Hwy	Darkan Hotel
35	182 (Lot 59) Darkan South Road	Nangip Homestead
36	3094 (Lot 1) Darkan-Quindanning Rd	Six Mile Cottage
38	17053 (Lot 13914) Albany Hwy	The Arthur Wool Shed
39	16882 (Lot 803) Albany Hwy	St Paul's Anglican Church
40	Lots 2 and 201 Albany Hwy	Arthur River Precinct
44	17961 (Lot 503) Albany Hwy	Woagin Farm out buildings
71	Lot 3 Coalfields Hwy	Bowelling Station Masters House (fmr)
90	35 (Lot 6) Farrell St	Duranillin Store



91	39 (Lot 8) Farrell St	Duranillin Garage (fmr)
138	Lot 1299 Trigwell Bridge Rd	Haddleton Shearing Shed
140	Lot 1299 Trigwell Bridge Rd	Trigwell Bridge School

**Comment:**

The Regulations stipulate that unless otherwise provided for then a planning approval is required for any development of a Heritage Place. This includes any demolition and minor ancillary works on the heritage site. Day-to-day maintenance and some minor works do not need approval.

The issue is then more in relation to minor development.

The Heritage Council's Guide to Developing Heritage Places nominates that once a site is included on the State Register, the following are examples of works that then need to be referred to the Heritage Council:

- demolition
- relocation
- major and complex development plans
- alterations and additions
- construction of new buildings
- conservation and remedial works impacts on the original fabric of the building
- excavations that may impact on archaeological ruins
- re-roofing in different material
- changes of exterior colour schemes
- interior works
- subdivision/amalgamation
- change of use

An example of this is the proposal to install a "red telephone box" at the Arthur River Post Office. This is Site No 40 and it is a Category 1 site. Its inclusion on the State Heritage Register is still being reviewed by the Heritage Council. The proposed telephone box would be consistent with the heritage values of the site. Conversely a fluorescent green coloured telephone box is more likely to be considered inconsistent with the heritage values of the site.

Consequently, it is still necessary to require a planning application for such matters. Any justification for this would be consistent with the significance of the proposed works and it may not require a detailed Heritage Impact Statement.

Given that there may be a delay and cost in preparing an agenda report for Council, the most appropriate alternative is to delegate approval of minor development of heritage places to the Chief Executive Officer. This can be subject to the CEO being satisfied that there is no substantial impact from the proposal and that it is consistent with the heritage values of the site.

**Consultation:**

The draft Local Planning Policy was advertised for a minimum period of 21 days by:

- A notice in the local community newspaper;
- Notification to all the affected landowners; and
- Publication on the Shire web site.

No submissions have been received.

**Statutory Environment:**

Part 3 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions) relate to Heritage protection and these apply to all local government planning schemes. These require that:

- 1 The local government must establish and maintain a heritage list to identify places within the Scheme area that are of cultural heritage significance and worthy of built heritage conservation.
- 2 The local government must not enter a place in, or remove a place from, the heritage list or modify the entry of a place in the heritage list unless:
  - (a) it notifies in writing each owner and occupier of the place and provides each of them with a description of the place and the reasons for the proposed entry;
  - (b) it invites each owner and occupier to make submissions on the proposal within a period specified in the notice;
  - (c) it carries out any other consultation the local government considers appropriate; and
  - (d) following any consultation and consideration of the submissions made on the proposal, it resolves that the place be entered in the heritage list with or without modification, or that the place be removed from the heritage list.

There is a minimum period of 21 days for the public advertising.

The above also reflects the advertising requirements for a Local Planning Policy.

#### **Policy Implications:**

The Heritage Survey and List are important strategic documents for the municipality.

#### **Financial Implications:**

None

#### **Strategic Implications:**

Shire of West Arthur's Strategic Community Plan Towards 2031 and Corporate Business Plan 2021 – 2025

Outcome 1.3 - A unique identity and a strong connection to our past

Outcome 4.3 – Our cultural heritage is preserved and promoted

#### **Risk Implications:**

Risk management is the removal of uncertainty from business decisions. Risk is expressed in terms of likelihood it may occur and the consequences that may flow from it. The consequences may be positive or negative or simply a deviation from the expected. The risk or consequence may be related to health and safety; financial; business or service interruption; compliance; reputation; or the environment. Reference to the risk matrix below will generate a risk rating by assessing the likelihood and consequence and multiplying these scores by each other. The greater the risk rating, the greater the risk and the higher the need for specific plans to be developed. All items with a risk rating greater than 10 should be added to the Risk Register and specific controls developed.

#### **Risk Themes:**

A risk theme is the categorising of risk. For example, the collection of risks that represent compliance failure. The risk themes in the shire Risk Register include:

- Business Disruption
- Community Disruption
- IT or Communications Failure
- External Threat or Fraud
- Misconduct
- Inadequate safety or security practices
- Inadequate project or change management
- Errors Omissions or Delays
- Inadequate Document Management Processes
- Inadequate supplier / contract management
- Providing inaccurate advice / information
- Ineffective Employment practices
- Compliance failure
- Inadequate asset management

- Inadequate engagement practices
- Ineffective facility or event management
- Inadequate environmental management

**Risk Matrix:**

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

Description of Key Risk	The policy is not progressed to adoption and the Shire does not have a consistent approach to managing its heritage resulting in the loss of significant places.
Risk Rating (Prior to Treatment or Control): Likelihood x Consequence	High (16)
Risk Likelihood (based on history and with existing controls)	Likely (4) as owners generally oppose additional controls and red tape.
Risk Consequence	Major (4)
Principal Risk Theme	Compliance failure Inadequate environmental management
Risk Action Plan (Controls or Treatment Proposed)	Ensure the Council and community are aware of the benefits of establishing a policy to manage its heritage.

**Voting Requirements:**

Absolute Majority

**Officer Recommendation:**

- 1 That pursuant to Schedule 2 Clause 4(3) of the Planning and Development (Local Planning Scheme) Regulations 2015 Council adopt Local Planning Policy No 3 Heritage Places (as contained in Attachment 1).
- 2 That Notice of the adoption be published in the Local Newspaper pursuant to Clause 4(4).
- 3 That Council by absolute majority delegate the approval of minor inconsequential development applications on heritage sites to the CEO provided that he/she is satisfied that:
  - There is no substantial impact from the proposal; and
  - It is consistent with the heritage values of the site.

Moved: Cr HarringtonSeconded: Cr Lubcke**CARRIED BY ABSOLUTE MAJORITY 6/0****ATTACHMENT**

1. Local Planning Policy No 3

## Policy Register Reference



## Local Planning Policy No 3

# *Heritage Places*

Adopted 21<sup>st</sup> June 2022

# 1 Introduction

## 1.1 Statutory Background

This policy is adopted under deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 which enables the Shire of West Arthur to prepare local planning policies for any matter related to the planning and development of the Scheme area. The local planning policy can only have effect where consistent with the deemed provisions and local planning scheme.

## 1.2 Purpose

To provide guidance on the assessment of development proposals which affect heritage protected places.

## 1.3 Objective

The objectives of the policy are:

- To conserve and protect places of cultural heritage significance that are identified on the Heritage List.
- To ensure that developments do not adversely impact the significance of heritage places on the Heritage List.
- To ensure that heritage significance is given due weight in local planning decision making.
- To provide certainty to landowners and community about the planning processes for identification and protection of places identified in the Heritage List.

# 2 Application

- a) This Policy applies to any places of Exceptional Significance (Category 1- the Heritage Council of Western Australia's Register of Heritage Places) and Considerable significance (Category 2) as identified in the Heritage List in the Local Heritage Survey (LHS) as listed in Table 1.
- b) The Deemed Provisions apply to the either property, or to the curtilage around the nominated Heritage object as referenced in Table 1.
- c) The Deemed Provisions do not apply to the interior of any building listed in Table 1. The intention is that no development approval is required for internal building work that does not materially affect the external appearance of the building.

# 3 Definitions and Terms

Unless otherwise noted, terms used in this policy have common meanings and include those defined in the *Planning and Development Act 2005*, *Planning and Development (Local Planning Schemes) Regulations 2015*, and the *Heritage Act 2018*.

## Deemed Provisions

Are the -provisions contained in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

### Curtilage

For the purpose of this Policy the curtilage means a 20m radius around the nominated Heritage object.

### Heritage Area

Means an area designated as a heritage area under Clause 9 of the Deemed Provisions.

### Heritage Agreement

A contract under Part 7 of the Heritage Act 2018 is undertaken on a voluntary basis by the owners of a heritage place. The agreement binds current and successive owners to a set of conservation conditions and may provide compensating benefits in some circumstances. The purpose of a Heritage Agreement is to secure the long-term conservation of a heritage place.

### Heritage Assessment

A systematic assessment that describes a place and its setting and states its significant heritage values in terms of the criteria adopted by the Heritage Council of Western Australia (HCWA). These criteria are the aesthetic, historic, social and scientific values of the place.

### Heritage Impact Statement

A Heritage Impact Statement (HIS) describes and evaluates any potential impact of proposed development on the significance of a heritage place and its setting, or on the heritage area within which it is situated. The report may also outline measures by which any detrimental impact may be minimised. The Heritage Council of Western Australia (HCWA) provides guidelines for the preparation of Heritage Impact Statements.

### Heritage List

A list of heritage places that has been adopted under the Local Planning Scheme are places of the highest levels of cultural heritage significance (Categories 1 and 2) that have been included within the Local Heritage Survey and assessed as being worthy of conservation, by inclusion on the Heritage List.

### Heritage Place

As defined in Section 7(1) of the Heritage Act being:

- (a) archaeological remains;
- (b) buildings, structures, other built forms, and their surrounds;
- (c) equipment, furniture, fittings and other objects (whether fixed or not) that are historically or physically associated or connected with the land;
- (d) gardens and man-made parks or sites;
- (e) a tree or group of trees (whether planted or naturally occurring) in, or adjacent to, a man-made setting.

### R-Codes

Means the Residential Design Codes prepared by the Western Australian Planning Commission under section 26 of the Act, as amended from time to time.

## 4 Policy Statement

The Local Planning Strategy for the Shire of West Arthur highlights the importance of heritage places to the amenity of the Shire's built environment.

The Shire has a significant collection of heritage assets as identified in the Local Heritage Survey. The Heritage List identified in the Local Heritage Survey calls for the conservation and protection of those assets.

This policy:

- Builds on the heritage conservation objectives in the Heritage List.
- Applies the development control principles contained in the State Planning Policy 3.5 Historic Heritage Conservation.
- Provides guidance for the proposed development of places in the Heritage List.
- Details procedures for making applications for approval of heritage-related developments.

## 5 Development control principles

### 5.1 Development Application

In considering any planning applications in relation to a place in the Heritage List, the Shire of West Arthur will apply and have regard to the development control principles set out in sections 6.5 and 6.6 of State Planning Policy 3.5 Historic Heritage Conservation (2007) and in particular:

- a) Whether the proposed development will adversely affect the significance of any heritage place or area, including any adverse effect resulting from the location, bulk, form or appearance of the proposed development.
- b) Measures proposed to conserve the heritage significance of the place and its setting.
- c) The structural condition of a place, and whether a place is reasonably capable of conservation.

### 5.2 Levels of Significance

The level of heritage significance of a place is one of the matters considered in determining an application. The following levels of significance (Categories 1 and 2) have been assessed as the most significant in the Shire of West Arthur's Local Heritage Survey, and therefore form the Heritage List.

This Policy is relevant to places of Exceptional Significance (Category 1- Register of Heritage Places) and Considerable significance (Category 2) as identified in the Heritage List in the Local Heritage Survey (LHS).



LEVEL OF SIGNIFICANCE	DESCRIPTION	DESIRED OUTCOME
<b>Exceptional significance</b> <b>HERITAGE LIST</b> <u>Category 1</u>	Essential to the heritage of the locality Rare or outstanding example.	The place should be retained and conserved unless there is no feasible and prudent alternative to doing otherwise.  Any alterations or extensions should reinforce the significance of the place and be in accordance with a Conservation Plan (if one exists).
<b>Considerable significance</b> <b>HERITAGE LIST</b> <u>Category 2</u>	Very important to the heritage of the locality.  High degree of integrity/authenticity.	Conservation of the place is highly desirable.  Any alterations or extensions should reinforce the significance of the place.

### 5.3 Bush Fire Prone Land

#### 5.3.1 Non Residential Buildings

Development of a Heritage building which is located on bushfire prone land may be required to provide a bushfire assessment and/or bushfire management plan as directed by the Shire.

#### 5.3.2 Residential Buildings

The development of Class 1, 2 or 3 buildings or Class 10a buildings or decks associated with Class 1, 2 or 3 buildings in a bushfire prone area, the bushfire construction requirements of the Building Code of Australia will be applied at the building permit stage irrespective of the planning assessment process. This will require:

- A Bushfire Attack Level (BAL) Assessment to be prepared; and/or
- A bushfire management plan as directed by the Shire.

### 5.4 Applications for development approval – accompanying material

An applicant may be required to provide one or more of the following reports to assist in the determination of a development application. This is additional to the requirement for accompanying material set out in the Local Planning Scheme and the Model Scheme Text.

- a) Where an application relates to a place on the Heritage List, it must be accompanied by a statement identifying existing relevant heritage fabric of the place, and how the proposed development responds to the heritage values of the place.
- b) Works including new development within a heritage area, or that otherwise propose changes that will be substantially visible from the public domain, may be required to provide street elevations.

- c) Minor works will need to demonstrate that the development will not have an adverse effect on the cultural heritage significance of the place, but may not require submission of all accompanying material, at the discretion of the Shire.

### **5.5 Heritage Impact Statement (HIS)**

If a development proposal is substantial, to determine the potential impact on the heritage place a Heritage Impact Statement may be required. A heritage impact statement (HIS) describes and evaluates the likely impact of a proposal. It is a clear and concise account of the proposed work that addresses three basic questions:

- How will the proposed development affect the significance of the place?
- What alternatives have been considered to minimise any adverse impacts?
- Will the proposal result in any heritage conservation benefits that might offset any adverse impacts?

### **5.6 Register of Heritage Places (Category 1)**

If a proposal affects a place that is entered in the Register of Heritage Places, the Shire will refer the development application to the Heritage Council of Western Australia, together with a Heritage Impact at the applicant's expense.

### **5.7 Proposed demolition**

A structural condition assessment is required in the case of proposed demolition if structural failure is cited as a justification for the demolition of a place in the Heritage List. The structural evidence should be provided by a registered structural engineer to substantiate that the structural integrity of the building has failed and cannot be rectified without removal of a majority of its original fabric that would impact the significance of the place.

### **5.8 Archival recording in the case of demolition**

If the proposed demolition application of a place in the Heritage List a condition of approval, may require the applicant to submit an archival record of the place, prior to the commencement of development.

The archival record is to be in accordance with the Heritage Council's standard for archival recording. Completed archival records are to be submitted to the Shire of West Arthur in electronic format and will form part of the local government historical records.

### **5.9 Conditions of approval**

Where a development application for a heritage place is approved with conditions, those conditions may be used to secure positive heritage outcomes, in addition to any standard condition.

Any condition of approval must have planning purpose, and be relevant and reasonable, and may include an archival record or entry into a heritage agreement.

### 5.10 Shire owned/managed property

The Shire of West Arthur will seek to lead by example by conserving and managing its own property in accordance with this policy.

## 6 Review

### 6.1 Amendments to the Heritage List

The procedures for adding, deleting, or amending entries to the Heritage List are set out in the Local Planning Scheme.

The Heritage List should include, as a minimum, all those places identified in the Local Heritage Survey as being of Exceptional Significance: Category 1 (Register of Heritage Places) or Considerable Significance: Category 2.

The Shire may amend the Heritage List in the following situations:

- Consider inclusion of a place in the Heritage List if the findings of a reviewed Local Heritage Survey support it.
- A place is nominated for inclusion by the owner or a member of the public if assessment documentation to the required standard is provided by the nominator.
- If not, consideration will be deferred until a review of the Heritage List is scheduled.
- The inclusion of a place may be considered if a heritage assessment is prepared as part of a Heritage Impact Statement submitted by an applicant.
- Consider removing a place from the Heritage List if it is demolished or is damaged or destroyed, to the extent that its significance is significantly impacted or lost.

The Shire will retain a record of all places destroyed, demolished and/or removed from the Heritage List, to monitor the rate of losses over time.

### 6.2 Review Position and Date

Review to be authorised by the Chief Executive Officer each five years. The next review will be in 2027.

### 6.3 Associated Documents

Burra Charter 2013.

Heritage Act 2018

The Burra Charter 2013

State Planning Policy 3.5 Historic Heritage Conservation

Heritage Council's

Criteria for the assessment of local heritage places and areas

Heritage Impact Statement- a guide 2019

Guide to preparing an Archival record

Adoption Date:

Adoption Reference: Council Meeting Agenda Item

Review Date:

Maintained By: Chief Executive Officer

Document Reference: C:\Users\User\Documents\ 2016 Files\16-002 WEST ARTHUR GENERAL\05 Heritage List\Advertising LPP 3\LPP3 Heritage Places Final.docx

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Local Heritage Survey 2022  
Heritage List 2022

## 7 Adoption

Adopted by the Shire of West Arthur at its Meeting of the 21<sup>st</sup> June 2022.

**Table 1 - Category 1 and 2 Places**

Denotes private land
The curtilage is 20m unless otherwise noted.

No	Cat	Address					Curtilage Or Property	Description
		No	Street	Lot	Plan	Reserve		
2	2	29	Burrowes St	201	410870		Curtilage	Darkan Road Board Office
9	2		Coalfields Hwy	500 502	55441 55441	49175 49176	Curtilage	War Memorial and gates
10	2		Coalfields Hwy					Darkan Railway Station Precinct
a				500	55441	49175	Curtilage	Station office
b				501	55441	49176	Curtilage	Station Master's House
c				502	55441	49176	Curtilage	Railway Crane & Loading Ramp
12	2	9873	Coalfields Hwy	10	11576		Curtilage	CWA meeting rooms
16	2	9889	Coalfields Hwy	4	2560		Curtilage	Darkan Hotel
17	2		Coalfields Hwy	420	77655	37824	Property	Aboriginal Reserve and Nissan Hut (caravan park)
18	2	1	Burrowes St	184	170348	10340	Curtilage	Darkan School 1908 and 1950s sections only.
20	2	76	Moodiarrup Road	147	130048	11741	Property	Darkan Cemetery
22	2	32	Hillman St	25	222360	11299	Property	Darkan Town Hall
23		32	Hillman St	25	222360	11299	Property	Darkan Pioneer Hall
27	2	9994	Coalfields Hwy	1	17669		Property	Darkan Sawmill/Mill Houses
36	2	3094	Darkan-Quindanning Rd	1	9770		Curtilage	Six Mile Cottage
38	1	17053	Albany Hwy	13914	205606		Property	The Arthur Wool Shed group
39	1	16882	Albany Hwy	803	302487		Property	St Paul's Anglican Church, Graveyard & Sandalwood Trees
40	1		Albany Hwy					Arthur River Precinct
a				2	75533		Curtilage	Mount Pleasant Inn Kitchen
b				201	65470	21211	Curtilage	Arthur River Hall
c				2	75533		Curtilage	Arthur River Post Office (fmr)

**Table 1 - Category 1 and 2 Places**

No	Cat	Address					Curtilage Or Property	Description
		No	Street	Lot	Plan	Reserve		
44	2	17961	Albany Hwy	503	72421		Curtilage	Woagin Farm out buildings
70	2		Coalfields Hwy			A Railway	Curtilage	Bowelling Railway Station
71	2		Coalfields Hwy	3	129064		Property	Bowelling Station Masters House (fmr) Phone exchange
89	2		Farrell St			A Railway	Curtilage	Duranillin railway siding & ramp
90	2	35	Farrell St	6	141056		Property	Duranillin Store
91	2	39	Farrell St	7 & 8	141056		Property	Duranillin Garage (fmr)
93	2	27	Horley St	37	403107	21612	Property	Duranillin School
97	2					A Railway	Curtilage	Duranillin Railway Bridge over Arthur River
98	2		Hughes Mill Road			VCL	Curtilage	Duranillin Road Bridge ruins
109	2	139	Glenorchy Rd			21786	Property	Glenorchy School
113	2		Hillman-Dardadine Rd			A Railway	Curtilage	Hillman railway bridge ruins
117	2		Hillman-Dardadine Rd	2594	5741	16904	Curtilage	Hillman Dam, channels and catchment
120	2		Bokal East Arthur Rd			A Railway	Curtilage	Kylie Railway Siding water tower
121	2		Bokal East Arthur Rd				Curtilage	Kylie Dam, 3 kms from the siding.
128			Boyup Brook Arthur Rd				Curtilage	Moodiarrup Hall
133			Lake Towerrinning Rd	50	4750 32648	24917	Curtilage	Lake Towerrinning
138			Trigwell Bridge Rd	1299	106510		Curtilage	Haddleton Shearing Shed
139			Trigwell Bridge Rd				Curtilage	Trigwell Bridge ruin
140			Trigwell Bridge Rd	1299	106510		Curtilage	Trigwell Bridge School

**15. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**16. NEW OR URGENT BUSINESS INTRODUCED BY DECISION OF THE MEETING**

New business of an urgent nature introduced by decision of the meeting. Best practice provides that Council should only consider items that have been included on the Agenda (to allow ample time for Councillors to research prior to the meeting) and which have an Officer Report (to provide the background to the issue and a recommended decision).

**16.1 Elected Members**

Nil

**16.2 Officers**

Nil



**PROCEDURAL MOTION****Officer Recommendation:**

That the meeting be closed to the public, pursuant to section 5.23 (2)(e)(iii) of the *Local Government Act 1995*, as the matter, if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person.

Moved: Cr LubckeSeconded: Cr Peirce**CARRIED 6/0**

Meeting closed to the public at 8.28pm.

**17. MATTERS BEHIND CLOSED DOORS****17.1 Rates Assessment 31 – Write off Outstanding Rates - CONFIDENTIAL****Officer Recommendation:**

That Council, by absolute majority:

- Authorises the CEO to write off the rates outstanding on Assessment 31 to 30 June 2021 of \$29,001.99 and any interest accrued in the 2021/22 financial year.

Moved: Cr LubckeSeconded: Cr Peirce**CARRIED BY ABSOLUTE MAJORITY 6/0****PROCEDURAL MOTION****Officer Recommendation:**

That the meeting be re-opened to the public.

Moved: Cr HarringtonSeconded: Cr Peirce**CARRIED 6/0**

The meeting was re-opened to the public at 8.30pm.

**18. CLOSURE OF MEETING**

The Presiding Member declared the meeting closed at 8.31pm.