



**Shire of Derby /  
West Kimberley**

# **MINUTES**

## **Ordinary Council Meeting Thursday, 9 December 2021**

**Date: Thursday, 9 December 2021**

**Time: 5:30pm**

**Location: Council Chambers  
Clarendon Street  
Derby**



**Order Of Business**

<b>1</b>	<b>Declaration of Opening, Announcements of Visitors .....</b>	<b>4</b>
<b>2</b>	<b>Attendance via Telephone/Instantaneous Communications.....</b>	<b>4</b>
<b>3</b>	<b>Disclosure of Interests .....</b>	<b>4</b>
3.1	Declaration of Financial Interests .....	5
3.2	Declaration of Proximity Interests .....	5
3.3	Declaration of Impartiality Interests.....	5
<b>4</b>	<b>Applications for Leave of Absence .....</b>	<b>5</b>
<b>5</b>	<b>Responses to Previous Public Questions taken on Notice .....</b>	<b>5</b>
<b>6</b>	<b>Public Time.....</b>	<b>5</b>
6.1	Public Question Time .....	5
6.2	Public Statements .....	6
<b>7</b>	<b>Petitions, Deputations, Presentations and Submissions .....</b>	<b>6</b>
<b>8</b>	<b>Announcements by Presiding Person without Discussion .....</b>	<b>6</b>
<b>9</b>	<b>Confirmation of Minutes of Previous Meetings .....</b>	<b>6</b>
<b>10</b>	<b>Recommendations and Reports of Committees .....</b>	<b>6</b>
	Nil	
	<b>Reports .....</b>	<b>7</b>
<b>11</b>	<b>Executive Services .....</b>	<b>7</b>
11.1	Fitzroy Crossing Airport - Proposal for State Government Funding Plan .....	7
11.2	Insurance - Community Leased Areas.....	28
11.3	Chief Executive Officer Annual Leave/ Acting Chief Executive Officer Arrangements.....	36
11.4	Minutes of the Joint Meeting of the Kimberley Zone and Kimberley Regional Group Held 22 November 2021 .....	39
11.5	Review of Audit Committee Meeting Schedule for 2022 .....	244
11.6	Proposed Lease to Derby Visitor Centre (Inc) .....	253
<b>12</b>	<b>Corporate Services .....</b>	<b>305</b>
	Nil	
<b>13</b>	<b>Technical Services.....</b>	<b>306</b>
13.1	Shire controlled Aerodromes - Accountable Manager .....	306
<b>14</b>	<b>Development Services .....</b>	<b>309</b>
14.1	Proposed new Parking Local Law .....	309
14.2	Finalised Request to Close a Portion Of Balanijangarri Road, Fitzroy Crossing (MRWA Ref. No 30223) .....	337



14.3	Mowanjum Aboriginal Community Wastewater Treatment Plant - Request Excise Part Lot 501 from Reserve 1326 to Water Corporation .....	348
14.4	Draft Shire of Derby/West Kimberley Local Planning Scheme No.9 – Resolution to Advertise .....	353
14.5	Draft Shire of Derby West Kimberley Mosquito Management Plan- Endorsement by Council .....	437
14.6	Request for comment for the revestment of Lot 180 (Freehold) to amalgamate into adjoining Reserve 38789 (Lot 181) Emanuel Way, Fitzroy Crossing along with change of purpose to Reserve 38789 to include "Accommodation" .....	506
<b>15</b>	<b>Community and Recreation Services .....</b>	<b>516</b>
15.1	Kimberley Art Prize - Councillor representation and hanging system fee introduction.....	516
<b>16</b>	<b>Motions of which Previous Notice has been Given .....</b>	<b>520</b>
<b>17</b>	<b>New Business of an Urgent Nature .....</b>	<b>520</b>
<b>18</b>	<b>Matters for which the Meeting may be Closed (Confidential Matters).....</b>	<b>521</b>
18.1	Kimberley Mineral Sands - Lease Modifications .....	521
18.2	Kimberley Mineral Sands - Letter of Support.....	522
<b>19</b>	<b>Closure.....</b>	<b>523</b>
19.1	Date of Next Meeting.....	523
19.2	Closure of Meeting.....	523

**MINUTES OF SHIRE OF DERBY / WEST KIMBERLEY  
ORDINARY COUNCIL MEETING  
HELD AT THE COUNCIL CHAMBERS, CLARENDON STREET, DERBY  
ON THURSDAY, 9 DECEMBER 2021 AT 5:30PM**

**PRESENT:** Cr Geoff Haerewa (Shire President), Cr Peter McCumstie (Deputy Shire President), Cr Paul White, Cr Andrew Twaddle, Cr Rowena Mouda, Cr Linda Evans, Cr Pat Riley (videoconference), Cr Keith Bedford (videoconference).

**IN ATTENDANCE:** Amanda Dexter (Chief Executive Officer), Neil Hartley (Director of Strategic Business)(videoconference), Alan Thornton (Acting Director of Corporate Services), Christie Mildenhall (Acting Director of Community Services), Sarah Smith (Executive Services Coordinator)

**VISITORS:** Nil

**GALLERY:** James Pillsbury (left at 5:45pm).

**APOLOGIES:** Nil

**APPROVED LEAVE OF ABSENCE:** Cr Geoff Davis

**ABSENT:** Nil

### **1 DECLARATION OF OPENING, ANNOUNCEMENTS OF VISITORS**

The meeting was opened at 5:35pm by Geoff Haerewa (Shire President).

### **2 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS**

In accordance with regulation 14A of the Local Government (Administration) Regulations 1996 Council must approve (by Absolute Majority) the attendance of a person, not physically present at a meeting of Council, by audio contact. The person must be in a 'suitable place' as approved (by absolute majority) by Council. A 'suitable place' means a place that is located in a townsite or other residential area and 150km or further from the place at which the meeting is to be held.

- Cr Keith Bedford
- Cr Pat Riley (arrived 5:42pm);
- Neil Hartley

### **3 DISCLOSURE OF INTERESTS**

Section 5.65 and 5.70 of the *Local Government Act 1995* requires an Elected Member or officer who has an interest in any matter to be discussed at a Committee/Council Meeting that will be attended by the Elected Member or officer must disclose the nature of the interest in a written notice given to the Chief Executive Officer before the meeting; or at the meeting before the matter is discussed.

An Elected Member who makes a disclosure under section 5.65 or 5.70 must not preside at the part of the meeting relating to the matter; or participate in; or be present during, any discussion or decision making procedure relating to the matter, unless allowed by the Committee/Council. If

Committee/Council allow an Elected Member to speak, the extent of the interest must also be stated.

### **3.1 Declaration of Financial Interests**

- Christie Mildenhall – 18.1 – Kimberley Mineral Sands – Lease Modifications and 18.2 – Kimberley Mineral Sands – Letter of Support  
**Nature:** Husband has shares in Sheffield.

### **3.2 Declaration of Proximity Interests**

- Nil.

### **3.3 Declaration of Impartiality Interests**

- Cr Rowena Mouda – 18.1 – Kimberley Mineral Sands – Lease Modifications and 18.2 – Kimberley Mineral Sands – Letter of Support  
**Nature:** Director of Joom-barn Buru
- Cr Geoff Haerewa – 11.2 – Insurance - Community Leased Areas  
**Nature:** President of the turf club.

## **4 APPLICATIONS FOR LEAVE OF ABSENCE**

- Nil.

## **5 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

- Nil.

*Cr Pat Riley entered the meeting at 5:42pm*

## **6 PUBLIC TIME**

### **6.1 Public Question Time**

Question from James Pillsbury – Derby Landcare Group – Cane Toad Management Plan

- Derby Landcare Group would like to see a Cane Toad Management Plan for Derby town and environs, to be in place before the cane toads get here.  
The State Cane Toad Strategy Coordinator has seen our proposal and thinks it is worth a try. She has said she will help us develop and fund it.  
We are not looking for any financial or operational commitment from the Shire, but a statement of support from Council would be helpful to obtain funding.

Response from Shire of Derby/West Kimberley – Geoff Haerewa

- The Shire is very concerned, like everyone is, about the negative consequences of cane toads entering our district and disrupting our environment and the economics of our community. The Shire is keen to work with Derby Landcare Group on the development of

an effective Cane Toad Management Plan, with the view to finding workable solutions for controlling and if possible, eliminating these pests.

*The gallery left the meeting at 5:45pm.*

## **6.2 Public Statements**

- Nil.

## **7 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS**

- NIL.

## **8 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION**

- Merry Christmas and Happy New Year from the Shire President, Geoff Haerewa.

## **9 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **RESOLUTION 159/21**

**Moved: Cr Peter McCumstie**

**Seconded: Cr Paul White**

**That the Minutes of the Ordinary Meeting of the Shire of Derby/West Kimberley held at the Fitzroy Crossing, on 25 November 2021 be CONFIRMED.**

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**

## **10 RECOMMENDATIONS AND REPORTS OF COMMITTEES**

Nil

**REPORTS****11 EXECUTIVE SERVICES****11.1 FITZROY CROSSING AIRPORT - PROPOSAL FOR STATE GOVERNMENT FUNDING PLAN****File Number: 9030****Author: Neil Hartley, Director - Strategic Business****Responsible Officer: Amanda Dexter, Chief Executive Officer****Authority/Discretion: Advocacy****SUMMARY**

This report proposes that the WA State Government takes over the financial responsibility for the asset management of the Fitzroy Crossing Airport (FX Airport) through a reimbursement mechanism to the Shire of Derby/West Kimberley, and that the Shire continues to provide the airport's operational and management services.

A draft of a Contribution Plan (Plan) has been developed to facilitate discussions along these lines (see attached). The application of this Plan will ensure that the WA State Government can continue to provide a safe and effective health service to the remote community of Fitzroy Crossing and for other emergency aircraft to use the facility for accidents and health emergencies in the nearby areas. Also, to provide an emergency access facility for air supply of services during the annual wet season rain events, where road access to Fitzroy Crossing and communities further north is temporarily inaccessible.

This report recommends that Council support the lobbying of the WA State and the Australian Federal Government in order to achieve a sustainable financial arrangement for the Fitzroy Crossing Airport.

**DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

**BACKGROUND**

The Fitzroy Crossing Airport has a 1,300m × 30m all-weather sealed airstrip, lit for 24hour emergency usage. It has basic amenities including an undercover waiting area, water fountain and toilet facility for passengers. The airport also supports two private helicopter hangars and helipads to provide stock management helicopter services for pastoral stations in close proximity to the Fitzroy Crossing. There is a limited scale low frequency passenger service provided by Skippers that services Fitzroy Crossing (from Broome).

The FX Airport's prime responsibility is to provide a critical health lifeline to the remote community of Fitzroy Crossing, and in particular, its aboriginal community members who suffer from a range of health ailments.

The attached Plan outlines in more detail, the justification for seeking a specific state government contribution. For example, the Plan provides details of a specific table which displays the Royal Flying Doctor flight numbers. The two year monthly average for RFDS aircraft movements is 43

(1,032 in total) or almost 1½ arrivals every day. The average for the 12 months to August 2021 was just over 50 arrivals per month (604 in total). Other flight providers (in the main Skippers and Aviair) are generally providing a service for government use, like hospital and police/justice needs.

The Shire’s financial capacity, or lack thereof, has been highlighted to Council at numerous previous Workshops. The Shire has a significant back-log of asset maintenance/refurbishment, which it has almost no capacity to rectify in the near future. Reducing the number of assets the Shire is responsible for is one mechanism of addressing that backlog.

**STATUTORY ENVIRONMENT**

**Local Government Act S 2.7 (Role of council)** outlines that the Council governs the local government’s affairs, and is responsible for the performance of the local government’s functions. It is also charged with overseeing the allocation of the local government’s finances and resources; and determine the local government’s policies.

The airport management is governed by standards set by the Civil Aviation Safety Authority (CASA). This requires the Shire to appoint an Aircraft Reporting Officer, who is legally responsible for the safety of airport operations. The ARO is required to close the airstrip if it is deemed unsafe to utilise.

**POLICY IMPLICATIONS**

There are numerous accounting policies that reflect on long term sustainability, including Policy AF3 – Asset Management which states that *“Council is responsible for adopting the policy and ensuring that sufficient resources are applied to manage the assets.”*

The policy condition is not being met for the FX Airport (or in fact for most of the Shire’s assets).

**FINANCIAL IMPLICATIONS**

The FX Airport raises revenue through aircraft landing fees and lease fees. The average for the last 12 months was \$7,270/month (\$87,225pa). In addition, the airport also gains a modest return (approximately \$10,000pa) from land leases of small portions of the site through sub-leases to commercial helicopter operations servicing the pastoral industry. It is hoped this lease revenue will increase shortly, but only by several thousands of dollars. Total revenue is therefore almost \$100,000pa presently, with the likelihood of it being just over \$100,000pa into the near future.

The Shire’s costs for operating the FX Airport for the last three years are outlined below. The average net deficit of the FX Airport for that period was a significant sum for the shire to accommodate (\$460,000pa). Of this approximately \$40,000pa on average was spent on capital refurbishments, leaving an operational deficit of about \$420,000pa.

The Shire’s costs for operating the FX Airport for the last three years are outlined below:

Row Labels	TYPE	DESCRIPTION	Sum of FY 2018	Sum of FY 2019	Sum of YR 2020
<b>INCOME</b>	<b>GRANT</b>	Capital Grants - State Government	- 194,974.80		- 136.50
	<b>INCOME</b>	Reimbursement Income - Operating	- 84.00		- 8,000.00
		Fees & Charges - Rental/Lease/Hire Income	- 20,175.38	- 6,628.63	5,743.27
		Fees & Charges - Other	- 58,099.19	- 63,400.77	- 86,573.99

		Other Miscellaneous Revenue		- 381.27	
			<b>-\$273,333.37</b>	<b>-\$70,410.67</b>	<b>-\$88,967.22</b>
<b>EXPENSE</b>	<b>EMPLOYEE</b>	Employee Costs - Salaries & Wages	15,084.32	16,948.31	28,350.24
		Labour Overheads Allocated	19,043.61	19,784.83	36,855.77
		Plant Operating Costs Allocated	7,431.72	7,359.58	14,134.06
	<b>INSURANCE</b>	Insurance - Premiums	23,426.55	20,149.20	21,042.64
	<b>LOAN</b>	Interest Expense - Loans		5,192.83	9,570.92
		Interest Expense - Other	11,760.52	5,399.36	
		Other Expenditure		508.64	
	<b>MAINTENANCE</b>	Service Contracts	11,955.43	8,503.19	3,558.02
		Materials	4,052.90	2,702.22	5,365.10
		Other Expenditure	425.26		
		Labour Overheads Allocated	566.04	2,248.41	
	<b>OPERATION</b>	Service Contracts	9,036.80	3,355.75	14,040.65
		Materials	3,142.68	272.15	5,652.70
		Other Expenditure			144.11
	<b>UTILITY</b>	Communication Expenses			158.85
		Electricity	16,868.01	12,648.37	12,333.53
		Water		5,641.80	
			<b>\$122,793.84</b>	<b>\$110,714.64</b>	<b>\$151,206.58</b>
<b>DEPREC'N</b>	<b>ASSETS</b>	Depreciation Land And Buildings	315,990.42	280,951.51	265,230.18
		Depreciation Plant and Equipment		4,212.13	
		Depreciation Infrastructure Airports		2,616.96	31,839.74
			<b>\$315,990.42</b>	<b>\$287,780.60</b>	<b>\$297,069.92</b>
<b>LOAN</b>	<b>LOAN (Lighting)</b>	Non Operating Expenses	17,108.46	52,891.07	
		Loan Principal Repayments			36,605.20
			<b>\$17,108.46</b>	<b>\$52,891.07</b>	<b>\$36,605.20</b>
<b>CAPITAL</b>	<b>CAPITAL</b>	Service Contracts			25,500.00
		Non Operating Expenses	9,738.23	312,820.50	
			<b>\$9,738.23</b>	<b>\$312,820.50</b>	<b>\$25,500.00</b>
<b>ALLOCATED</b>	<b>EMPLOYEE</b>	Admin Costs Allocated/Recovered	71,399.98		
			<b>\$71,399.98</b>		
<b>TOTAL</b>			<b>\$263,697.55</b>	<b>\$693,796.14</b>	<b>\$421,414.48</b>

The Shire operates three airports (Derby, Curtin, and Fitzroy Crossing). The combined net cost of these three airports is \$2.7m per annum (\$1.3m direct costs and \$1.4m depreciation), or almost 30% of the Shire’s rates revenue.

Part of the Shire’s financial restriction in raising revenue is that the Fitzroy Crossing Townsite has significant numbers of non-rateable properties (33%) but also has a high rating level, with an average rate charge of \$7,148/property. There are numerous government, aboriginal, and charitable institutes that own properties at this location, all of which have legislative or Local Government Act claimable exemptions from paying municipal rates to the Shire of Derby/West Kimberley. The extent of this non-rateability of properties results in a loss of revenue raising capacity in the order of \$600,000pa (which would otherwise provide an ample financial contribution to maintain the FX Airport).

A recent grant application for upgrading the airstrip was unsuccessful.

**STRATEGIC IMPLICATIONS**

<b>GOAL</b>	<b>OUR PRIORITIES</b>	<b>WE WILL</b>
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<b>Financial:</b> FX Airport assets not refurbished at the optimum time for works to occur will result in higher than necessary costs over the long term.	Almost Certain	Major	Extreme	Bring asset management requirements into balance with the Shire’s financial capacities. Seeking government support for the Asset Management of the FX Airport is one option that will assist with that.
<b>Community:</b> That if the airstrip is declared unsafe, local winged aircraft will not be able to access Fitzroy Crossing to service its health requirements.	Likely	Major	High	Locate a capacity to suitably maintain the airstrip to a standard that can enable aircraft to safely utilise.
<b>People Health &amp; Safety:</b> Deaths occurring due to an inability to access an emergency medical transfer service.	Unlikely	Severe	High	Locate a capacity to suitably maintain the airstrip to a standard that can enable aircraft to safely utilise.

**CONSULTATION**

There has been no community consultation thus far, albeit this issue significantly affects the community. Community consultation is expected to reflect a strong desire to maintain the FX Airstrip in a serviceable condition, which is consistent with the Shire’s historic position. Community consultation is not a legal requirement in this instance, but it might be warranted, dependent on the response from the WA State/Australian Federal Governments.

**COMMENT**

The majority of airplane usage of FX Airport is for health and other government services, with agriculture utilising the facility (but not necessarily the air-strip itself) for helicopter contractors providing mustering and other services. This heavy reliance by various state government services



on the Shire provided FX Airstrip justifies seeking a direct contribution for its maintenance from the state government.

Whilst the Shire of Derby/West Kimberley can continue to manage the operations of the Fitzroy Crossing Airport, it has no financial capacity to fund the facility's asset management needs. It is suggested that the Shire therefore seeks the support of the state government to provide ongoing:

1. Civil structural and grant application support to seek suitable capital grants to undertake asset maintenance and refurbishments; and
2. Direct financial support to ensure that the Fitzroy Crossing Airport can remain safely open and operational to service the emergency and health requirements of the Fitzroy Crossing community.

If financial support from other levels of government cannot be achieved, the Shire will need to explore alternative options, or otherwise find itself with no other choice left than to close the airport when it becomes unsafe for aircraft to operate from. The funding option outlined in an earlier Financial Sustainability Workshop of an "Airports Levy/Specified Area Rate" on the Shire's ratepayers can be pursued, but this will result in a considerable direct burden on the Shire's ratepayers, and particularly those Gross Rental Valuation ratepayers within the Fitzroy Crossing Town-site, who already pay an average rate of \$7,148/property.

In regard to the Shire's other two airports (Curtin – leased from the Federal Government) and Derby (owned freehold by the Shire of Derby/West Kimberley) and the need to find more financially viable long term solutions for the Shire's assets, a future report will be presented to Council in regard to asset management and operational costs at Curtin and Derby airports. A "first stage" report is planned for February 2022.

#### VOTING REQUIREMENT

Simple majority

#### ATTACHMENTS

1. **Fitzroy Crossing Financial Assistance Plan (Draft)**  

#### RESOLUTION 160/21

**Moved:** Cr Peter McCumstie

**Seconded:** Cr Keith Bedford

**That Council:**

1. **Endorse the principle and thrust of the Fitzroy Crossing Airport Funding Plan and request the CEO to coordinate its finalisation at the earliest opportunity;**
2. **Authorise the President and the Chief Executive Officer to facilitate discussions with the State Government for a contribution towards the long term asset management funding of the Fitzroy Crossing Airport; and**
3. **Notes that a separate report on Curtin and Derby airports, including asset and operational cost considerations at those sites, will be forthcoming.**

**In Favour:** Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

**Against:** Nil

**CARRIED 8/0**



**DRAFT**

# **Fitzroy Crossing Airport - Funding Plan**

**16 November 2020**

## CONTENTS

<b>1. Introduction</b>	<b>3</b>
1.1. Executive Summary	3
1.2. Background	3
1.3. Purpose of Contribution Plan and Report	6
<b>2. Asset Management Contribution Plan</b>	<b>7</b>
2.1. Period of the Plan	7
2.2. Operation and Geographic Area of the Plan	7
2.3. Outcomes	7
<b>3. Infrastructure Items</b>	<b>7</b>
3.1. Fitzroy Crossing Air-Strip	8
3.2. Roadways	8
3.3. Security Fencing and Lighting	9
3.4. Emergency Services/Passenger/Airport Facilities	9
<b>4. Contribution Methodology</b>	<b>10</b>
<b>5. Contribution Justification</b>	<b>10</b>
<b>6. Capital Expenditure Plan</b>	<b>12</b>
<b>7. Appendices</b>	
7.1. Appendix #1 - Plan Area	13
7.2. Appendix #2 – Fitzroy Crossing Costs	14

## 1. Introduction

### 1.1. Executive Summary

This report proposes that the WA State Government takes over the financial responsibility for the operations and asset management of the Fitzroy Crossing Airport (FX Airport) through a reimbursement mechanism to the Shire of Derby/West Kimberley, and that the Shire continues to provide the airport's operational and management services.

Whilst the Shire of Derby/West Kimberley can continue to manage the operations of the Fitzroy Crossing Airport, it has no financial capacity to fund the facility's asset management needs. The Shire therefore seeks the WA State Government's support to provide *ongoing direct financial support to ensure that the Fitzroy Crossing Airport can remain safely open and operational to service the emergency and health requirements of the Fitzroy Crossing community.*

The application of this Contribution Plan (Plan) will ensure that the WA State Government can continue to provide a safe and effective health service to the remote community of Fitzroy Crossing and for other emergency aircraft to use the facility for accidents and health emergencies in the nearby areas. Also, to provide an emergency access facility for air supply of services during the annual wet season rain events, where road access to Fitzroy Crossing and communities further north is temporarily inaccessible.

The Shire of Derby/West Kimberley can continue to manage and operate this critical service if provision for specific funding for the asset management needs of the Fitzroy Crossing Airport is provided.

### 1.2. Purpose of Report and Background

**Report Purpose:** This report proposes that the WA State Government takes over the financial responsibility for the asset management of the FX Airport through a reimbursement mechanism to the Shire of Derby/West Kimberley, and that the Shire continues to provide the airport's operational and management services.

**Shire of Derby/West Kimberley:** The Shire of Derby/West Kimberley is a mid-sized remote Western Australian local government. The Shire has since 1994, taken responsibility for the Fitzroy Crossing Airport's operations and maintenance as an "essential service" for the Fitzroy Valley precinct of the Shire of Derby/West Kimberley, and for travellers along the Great Northern Highway in that remote area.

**Land:** The land on which the airport sits is Crown Land (Reserve 20668) vested in the Shire through a Management Order (H909437) from the Western Australian State Government. The original airport reserve was created in 1931 and was leased to the Commonwealth of Australia in 1961. This reserve was vested in the Shire of Derby/West Kimberley on 14 September 1993. A transfer agreement was subsequently made between the Commonwealth and the Shire of Derby/West Kimberley on 22 August 1994, which transferred the aerodrome and its operating licence.

**Fitzroy Crossing Airstrip:** The Fitzroy Crossing Airport (FX Airport) was understood to be first constructed in about the 1930's. It was subsequently all weather sealed in 1996, and was re-sealed in 2006. In 2012/13 the airstrip required a full reconstruction, and reinstatement of its runway lighting and line marking. Regional Airports Development Scheme (RADS) grants totaling over \$1.9m formed part of the required funding to undertake those improvements/reinstatements, with the Shire providing the remainder of the required.

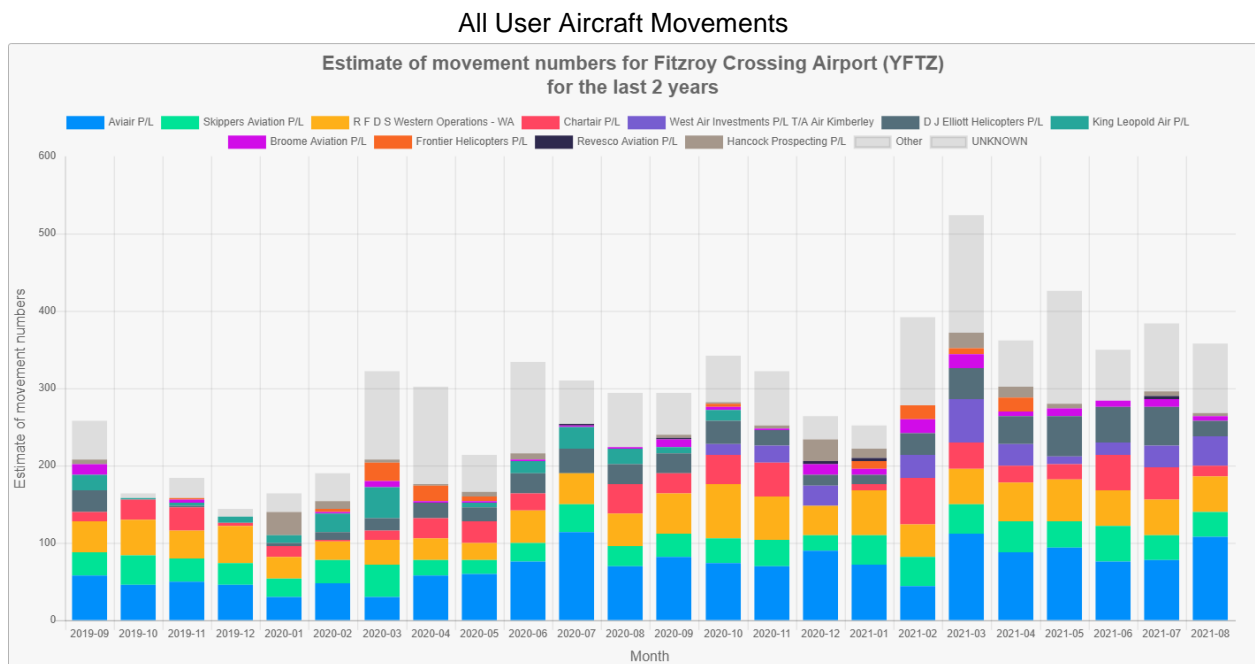
The Airport has a 1,300m x 30m all-weather sealed airstrip, lit for 24hour emergency usage. It has basic amenities including an undercover waiting area, water fountain and toilet facility for passengers.

**Core Purpose of Fitzroy Crossing Airport:** The FX Airport's prime responsibility is to provide a critical health lifeline to the remote community of Fitzroy Crossing, and in particular, its aboriginal community members who suffer from a range of health ailments. Being one of only two towns along the over 1000 km stretch of highway between Derby and Kununurra, means its airport is also often the only form of transportation connection through the wet season. The nearest alternative airports are Derby (250km) and Halls Creek (300km).

**Airstrip Usage:** The Royal Flying Doctor Service has a long history in the Kimberley, commencing in 1934 as the Australian Aerial Medical Service. It changed its name in 1955 to the Royal Flying Doctor Service and in the same year opened a Kimberley base at Derby Airport (subsequently transferred to Broome in 2018). The service is essential in order to maintain a timely and safe emergency medical transfer capacity.

RFDS usage of the FX Airport occurs daily, but aircraft movement numbers are relatively small, which reflects the remote location and the population numbers in the airport catchment.

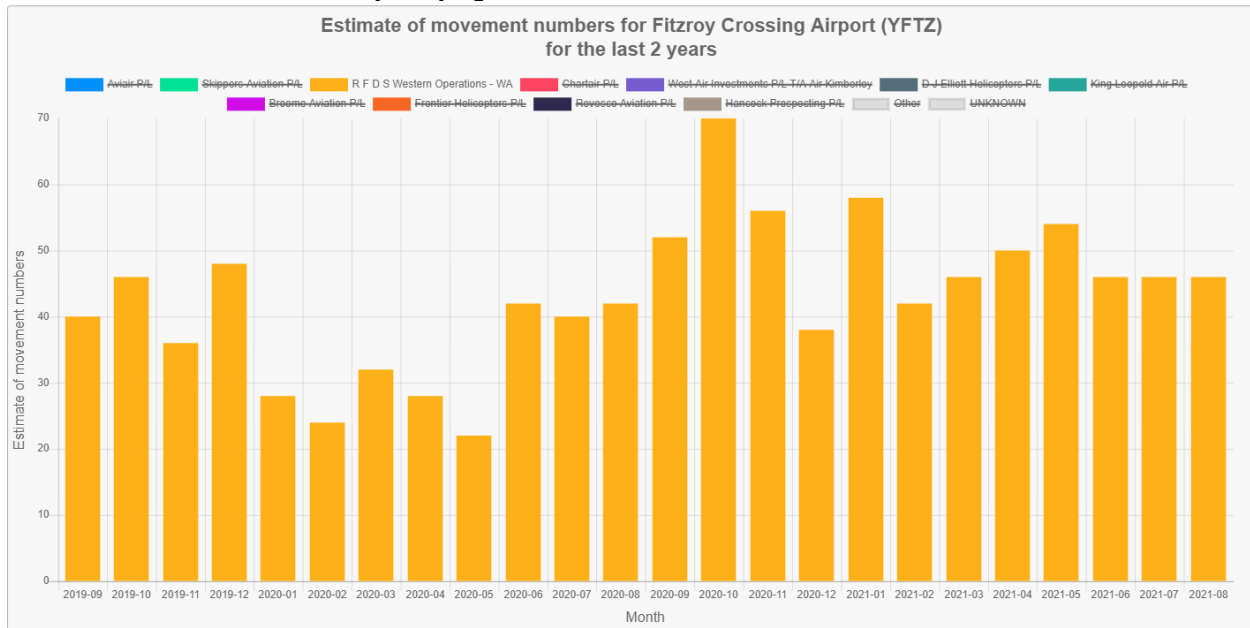
As previously outlined, the majority of airplane usage at FX Airport is for health and other government services, with agriculture utilising a portion of the facility for helicopter contractors providing mustering and other services. This is exhibited through the below aircraft movement tables numbers (measured by arrivals) for the past two years.



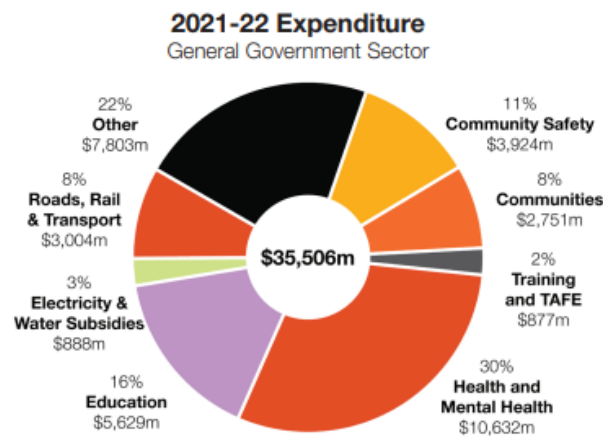
A specific table (extracted from the above “All Users Aircraft Movements” table) is provided to specifically highlight the Royal Flying Doctor flight numbers. The two year monthly average for RFDS aircraft movements is 43 (1,032 in total) or almost 1½ arrivals every day. The average for the 12 months to August 2021 was just over 50 arrivals per month (604 in total). The lowest RFDS flight numbers per month were all in the short period January to May 2020, where the average was 27 flights per month. The trend was not repeated in 2021 when the average for that same five month period was 50, almost double the previous period.

Other flight providers (in the main Skippers and Aviair) are generally providing a service for government, like hospital/health, police/justice, etc. Skippers provides a limited scale and frequency (three days/week) passenger service to Fitzroy Crossing (from Broome/Halls Creek) and Aviair provides a daily pathology service for the Fitzroy Crossing Hospital and also takes passengers like representatives of the Department of Justice or Doctors to/from the hospital, as well as urgent medical supplies/equipment.

### Royal Flying Doctor Service Aircraft Movements



**Derby/West Kimberley Airport Costs:** The Shire operates three airports (Derby, Curtin, and Fitzroy Crossing). The combined net cost of these three airports is some \$2.7m per annum (\$1.3 direct costs and \$1.4depreciation), or almost 30% of the Shire’s rates revenue. By way of comparison, that is a very similar proportion of the State’s budget for Health and Mental Health services (see diagram below of WA State Budget Expenditure for 2021/22).



**Asset Management and Capital Refurbishment:** All licensed airports must have an annual Aerodrome Technical Inspection. The Fitzroy Crossing Airport’s last inspection was undertaken on 20 September 2021 by Aerodrome Management Services Pty Ltd. In regard to the airstrip itself, the inspection revealed the following finding:

*Finding 12.1.1 - The runway pavement is deformed, causing undulations and poor ride quality.*

*Recommendation for Corrective Action: Plan for reconstruction of the runway.*

*Background Information: The runway is rough and undulating in ride quality. This is caused by the very reactive sub grade materials. The runway was reconstructed in 2013 to fix a very bad ride quality. This work resulted in a smooth runway; however the pavement has continued to warp and move above the underlying black soil clays. The ride quality is very poor. Deformation, not necessarily discovered by the profile levels taken and graphed below, is quite bad. This has been the subject of complaint by the RFDS. In the strictest application of the rules, the runway needs reconstruction. The seal is in adequate condition although cracked with stone loss, which has been a concern in previous reports. Longitudinal cracking is very evident, and a considerable amount of crack sealing has been carried out.*

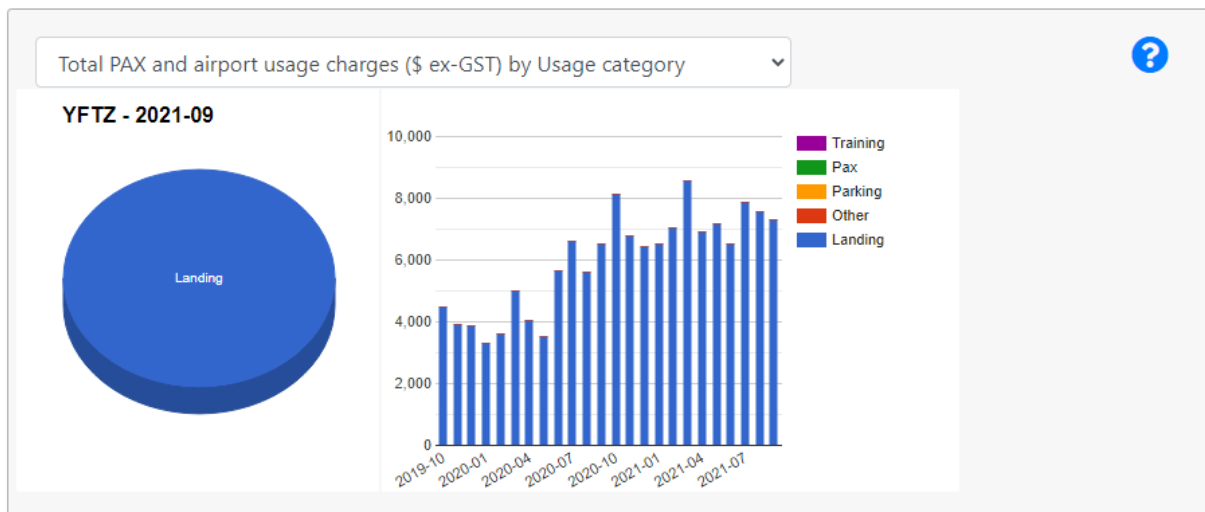
The anticipated future capital refurbishment costs are high (see table below) and Shire’s other financial commitments and lack of ability to raise alternative revenue results in Council not being able to cash-back its depreciation, or to include within the Shire’s long term financial plans, any provisions for capital works refurbishments at the FX Airport, including the currently required airstrip surface refurbishment works. The current state of the airstrip ride quality is “very poor”, and in time will become unsafe for winged aircraft to use. If upgrading costs cannot be located by the Shire the airport will be closed by the Civil Aviation Safety Authority or the Airport Reporting Officer as being un-safe for aircraft to operate from. The Table below outlines the required asset refurbishments for the FX Airport.

[insert table] to be supplied by engineering consultant (example below)

<b>Capital Expenditure Plan</b>				
<b>Item</b>	<b>Total Estimated Cost</b>	<b>WA State Government</b>	<b>Shire of Derby/West Kimberley</b>	<b>Timeline</b>
Air-strip, Taxi-Ways, and Apron Areas	\$1,000,000	\$1,000,000	Nil	Year 1
Roadways	\$250,000	\$250,000	Nil	Year 1
Security Fencing and Lighting	\$250,000	\$250,000	Nil	Year 2
Emergency Services and Passenger/Airport Facilities	\$1,000,000	\$950,000	\$50,000	Year 3
Ongoing Annual Estimated Commitment to Maintain Assets	\$175,000	\$175,000	Nil	Year 3 and ongoing

**Fitzroy Crossing Airport Financials:** The average net deficit of the FX Airport over the last three financial years (see Appendix 2) is a significant sum for the shire to accommodate (\$460,000pa). Of this approximately \$40,000pa on average was spent on capital refurbishments, leaving an operational deficit of about \$420,000pa.

The FX Airport raises revenue through aircraft landing fees and lease fees. Revenue from airport landing fees for the last two years are reflected in the chart below. The average for the last 12 months was \$7,270/month (\$87,225pa). In addition, the airport also gains a modest return (approximately \$10,000pa) from land leases of small portions of the site through sub-leases to commercial helicopter operations servicing the pastoral industry. Total revenue is therefore almost \$100,000pa.





**Unique Financial Aspects of Fitzroy Crossing Townsite's Revenue Raising Capacity:**

Part of the reasoning for the restricted nature of the Shire's financials is a limited revenue raising capacity within the wider Fitzroy Crossing Townsite area, which has significant numbers of non-rateable properties (33%). There are numerous government, aboriginal, and charitable institutes that own properties at this location, all of which have legislative or Local Government Act claimable exemptions from paying municipal rates to the Shire of Derby/West Kimberley. The table below outlines the extent of this non-rateability of properties results in a loss of revenue raising capacity in the order of \$600,000pa:

Fitzroy Crossing Details	Number/Value	\$'s
Number of Property Assessments	254	
Number of non-rateable Assessments	84	
Percentage of Assessment with rates exemptions	33%	
Average Fitzroy Crossing rates payable/assessment	\$7,148	
Valuation of non-rateable Assessments		
Revenue Uncollectible		\$600,432

**1.2. Purpose of Asset Contribution Plan**

This Plan establishes a framework for the coordination, provision, and maintenance of this important piece of infrastructure, which is required to support the continuing health wellbeing of the local and wider community of the Fitzroy Crossing Precinct, particularly the local aboriginal communities that suffer with serious and ongoing health issues, yet have the least financial capacity to manage their complex cultural and health situations.

This Plan is required to ensure the ongoing maintenance of this key enabling infrastructure, sufficient to maintain historic use patterns and also support the future expectations of the service. This Plan will provide the State Government and the Shire with a transparent mechanism to coordinate the continued provision of this essential piece of community health infrastructure.

This Plan will provide clarity to airport users on the required monetary contribution necessary to deliver the infrastructure items documented within Section 3 of this report. The purpose of the Plan is to:

- promote the efficient and effective maintenance of existing, and potentially the provision of new public infrastructure and facilities to meet existing use as well as new demands arising from any growth of health demand;
- provide the means to maintain the airport servicing arrangements with Fitzroy Crossing and other periodic clients;
- ensure that the Shire can sustainably operate its remaining two airports;
- maintain a user pays mechanism through landing fees, that will assist with meeting the operational requirements of the airport; and
- ensure the health, social and economic well-being of existing airport users.

This report sets out in detail:

- 1) The infrastructure and other items for which contributions are required;
- 2) The cost estimates of infrastructure and other items;
- 3) A timetable for the periodic review of the cost estimates;
- 4) The methodology to calculate contributions applicable;
- 5) Principles for the priority and timing of infrastructure provision; and
- 6) The period of operation of the Plan.

## 2. Asset Management Contribution Plan

### 2.1. Period of the Plan

It is proposed that the Plan operates for a period of 20 years. However the Plan will be extended for further periods with or without modification by amendments and will be extensively reviewed when considered appropriate, though not exceeding every five years. The review will have regard to the rate of FX Airport use; the expenditures incurred and the revenue raised from fees/charges; and the asset management requirements of the precinct as assessed at the point in time of the review.

### 2.2. Operation and Geographic Area of the Plan

The Plan has been prepared in accordance with the expected asset management costs required to maintain a safe airport environment.

The Plan relates only to the infrastructure located within the non-leased areas of the FX Airport precinct.

### 2.3. Outcomes

The application of this Plan will ensure that the WA State Government can continue to provide a safe and effective health service to the remote community of Fitzroy Crossing, and also for other emergency use for accidents and health emergencies in the nearby areas. Also, to provide an emergency facility for air supply of services during the annual wet season rain events, where road access to Fitzroy Crossing and communities further north is temporarily inaccessible.

The provision of specific funding for the asset management needs of the Fitzroy Crossing Airport will enable the Shire of Derby/West Kimberley to continue to undertake the operational requirements of this critical service.

## 3. Infrastructure Items

This section of the Plan identifies the infrastructure and other items for which contributions will be required for the Fitzroy Crossing Airport. These items include ongoing asset management/maintenance of:

- a) Air-strip, taxi-ways, and apron/parking areas (including lighting, protective coatings, markings and signage, and security fencing; etc); and
- b) Existing FX Airport precinct built infrastructure (including public and air-side controlled access roads and parking areas; passenger and emergency services waiting area facilities and ablutions, airport administration office; equipment/storage sheds; lighting; water supply; etc. - including modifications and improvements).

<b>3.1 – Air-strip, Taxi-Ways, and Apron Areas</b>	
<b>Heading</b>	<b>Details</b>
<b>Proposal</b>	Refurbish the air-strip, taxi-ways, and apron areas to bring them back to a safe level.
<b>Scope</b>	Reconstruct defined sections of the airstrip that are unsafe or require urgent repair/refurbishment.  Remark pavements with safety markings and resurface re-fueling areas with protective coatings.
<b>Immediate Cost</b>	<b>\$1,000,000</b>
<b>Ongoing Annual Asset Management Allocation Requirement</b>	<b>\$100,000</b>
<b>Source</b>	<b>See Consultancy Report</b>

<b>3.2 – Roadways</b>	
<b>Heading</b>	<b>Details</b>
<b>Proposal</b>	To all-weather seal the internal roadways and car-parking.
<b>Scope</b>	To construct all weather sealed roads and parking areas within the airport precinct to an acceptable and safe standard.  Construct airside roadways to enable security and wandering animal checks to occur.
<b>Immediate Cost</b>	<b>\$250,000</b>
<b>Ongoing Asset Management Allocation Requirement</b>	<b>\$20,000</b>
<b>Source</b>	<b>Consultancy to be sources to prove up estimates</b>

<b>3.3 – Security Fencing and Lighting</b>	
<b>Heading</b>	<b>Details</b>
<b>Proposal</b>	To upgrade perimeter fencing and Air-Side Lighting.
<b>Scope</b>	To undertake a fencing upgrade around the perimeter of the airstrip property to limit as much as possible, access by animals onto the airstrip.  Replace airside lighting with contemporary standard lighting sufficient to provide safe use by aircraft and medical personnel.
<b>Immediate Cost</b>	<b>\$250,000</b>
<b>Ongoing Asset Management Allocation Requirement</b>	<b>\$5,000</b>
<b>Source</b>	<b>Consultancy to be sources to prove up estimates</b>

<b>3.4 – Emergency Services/Passenger/Airport Facilities</b>	
<b>Heading</b>	<b>Details</b>
<b>Proposal</b>	Construct new facilities for emergency services, passengers and aircraft/airport personnel.
<b>Scope</b>	Replace existing out-dated facility with a functional, contemporary, and fit-for-purpose facility.
<b>Immediate Cost</b>	<b>\$1,000,000</b>
<b>Ongoing Asset Management Allocation Requirement</b>	<b>\$50,000</b>
<b>Source</b>	<b>Consultancy to be sources to prove up estimates</b>

## 4. Contribution Methodology

A key objective of the cost apportionment methodology is the need to provide certainty to emergency and health providers of the Fitzroy Crossing area that the airport is functional and safe to use.

Having regard to the above, a significant constraint for the Shire is its inability to adequately resource the FX Airport. To some degree this is a result of the non-rateability of the many properties in the Fitzroy Crossing Townsite and immediate surrounds. A Plan that will guarantee contributions based on immediate and ongoing need will provide the necessary levels of confidence and safety for patients, and medical and aircraft personnel.

In the main, the proposal is for the WA State Government to meet the costs of asset replacement/refurbishment/maintenance of the FX Airport, and the Shire will maintain responsibility for its operational requirements and costs.

## 5. Contribution Justification

The Shire of Derby/West Kimberley has used the following guiding principles for this contribution plan:

### Need and the nexus

Fitzroy Crossing has very high levels of aboriginal occupancy. It also has very high levels of government agencies supporting those aboriginal community members. The Shire of Derby/West Kimberley is not able to fully rate the Fitzroy Crossing properties as many are legislatively exempt (government) or have sought and secured exemptions provided for under the Local Government Act. The need of each item of infrastructure included in the plan and the connection between it and the State's responsibility for health provision is clear.

### Transparency

The Plan ensures transparency by determining the areas and levels of Government contributions at the outset.

### Equity

The State's contribution is to be specifically for asset management. The Shire will continue to remain responsible for operations and staffing of the airport.

### Certainty

This Plan sets out the items to which the State and the Local Government, is making a contribution to.

To provide certainty, the Plan provides estimates for each infrastructure area, to be reviewed at every five years, to reflect changes in funding and revenue sources and indexed based on the Building Cost Index or other appropriate index as approved by an appropriately qualified independent person.

### Efficiency

Contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.

### Consistency

The contribution will be calculated based on a defined list of infrastructure items and estimated by Building Cost Index or other appropriate index as approved by an appropriately qualified independent person.

### Right of consultation and arbitration

The Shire is keen to consult with the State Government on the matter in the first instance. Once in place, any future dispute between the parties, in respect to costs or other matters can be resolved by arbitration.

### Accountable

The costs for each infrastructure item is to be reviewed at least every five years and the Plan updated accordingly.

A Statement of Accounts showing all revenue and expenditure for the Plan is to be prepared for each financial year and audited by the Shire's auditors.

Catchment Area

The Plan applies only to the Fitzroy Crossing Airport Precinct (see plan attached).

Cost of the infrastructure item

The source of the cost is noted on each of the detailed sheets for each infrastructure item contained within the Section 3 of this report. All cost estimates have been based on preliminary concepts and will need to be reviewed when detailed briefs and plans have been prepared.

A Capital Expenditure Plan to be prepared

An overarching framework is provided in the Strategic Community Plan. This feeds into the City's Corporate Business Plan and Annual Budget, where indicative infrastructure timing and general sources of funds are identified.

## 6. Capital Expenditure Plan

Capital Expenditure Plan				
Item	Total Estimated Cost	WA State Government	Shire of Derby/West Kimberley	Timeline
Air-strip, Taxi-Ways, and Apron Areas	\$1,000,000	\$1,000,000	Nil	Year 1
Roadways	\$250,000	\$250,000	Nil	Year 1
Security Fencing and Lighting	\$250,000	\$250,000	Nil	Year 2
Emergency Services and Passenger/Airport Facilities	\$1,000,000	\$950,000	\$50,000	Year 3
Ongoing Annual Estimated Commitment to Maintain Assets	\$175,000	\$175,000	Nil	Year 3 and ongoing







Appendix 2

The Shire's costs for operating the FX Airport for the last three years are outlined below:

Row Labels	TYPE	DESCRIPTION	Sum of FY 2018	Sum of FY 2019	Sum of YR 2020
<b>INCOME</b>	<b>GRANT</b>	Capital Grants - State Government	- 194,974.80		- 136.50
	<b>INCOME</b>	Reimbursement Income - Operating Fees & Charges - Rental/Lease/Hire Income	- 84.00		- 8,000.00
		Fees & Charges - Other	- 20,175.38	- 6,628.63	5,743.27
		Other Miscellaneous Revenue	- 58,099.19	- 63,400.77	- 86,573.99
				- 381.27	
			<b>-\$273,333.37</b>	<b>-\$70,410.67</b>	<b>-\$88,967.22</b>
<b>EXPENSE</b>	<b>EMPLOYEE</b>	Employee Costs - Salaries & Wages	15,084.32	16,948.31	28,350.24
		Labour Overheads Allocated	19,043.61	19,784.83	36,855.77
		Plant Operating Costs Allocated	7,431.72	7,359.58	14,134.06
	<b>INSURANCE</b>	Insurance - Premiums	23,426.55	20,149.20	21,042.64
	<b>LOAN</b>	Interest Expense - Loans		5,192.83	9,570.92
		Interest Expense - Other	11,760.52	5,399.36	
		Other Expenditure		508.64	
	<b>MAINTENANCE</b>	Service Contracts	11,955.43	8,503.19	3,558.02
		Materials	4,052.90	2,702.22	5,365.10
		Other Expenditure	425.26		
		Labour Overheads Allocated	566.04	2,248.41	
	<b>OPERATION</b>	Service Contracts	9,036.80	3,355.75	14,040.65
		Materials	3,142.68	272.15	5,652.70
		Other Expenditure			144.11
	<b>UTILITY</b>	Communication Expenses			158.85
		Electricity	16,868.01	12,648.37	12,333.53
		Water		5,641.80	
			<b>\$122,793.84</b>	<b>\$110,714.64</b>	<b>\$151,206.58</b>
<b>DEPREC'N</b>	<b>ASSETS</b>	Depreciation Land And Buildings	315,990.42	280,951.51	265,230.18
		Depreciation Plant and Equipment		4,212.13	
		Depreciation Infrastructure Airports		2,616.96	31,839.74
			<b>\$315,990.42</b>	<b>\$287,780.60</b>	<b>\$297,069.92</b>
<b>LOAN</b>	<b>LOAN (Lighting)</b>	Non Operating Expenses	17,108.46	52,891.07	
		Loan Principal Repayments			36,605.20
			<b>\$17,108.46</b>	<b>\$52,891.07</b>	<b>\$36,605.20</b>
<b>CAPITAL</b>	<b>CAPITAL</b>	Service Contracts			25,500.00
		Non Operating Expenses	9,738.23	312,820.50	
			<b>\$9,738.23</b>	<b>\$312,820.50</b>	<b>\$25,500.00</b>
<b>ALLOCATED</b>	<b>EMPLOYEE</b>	Admin Costs Allocated/Recovered	71,399.98		
			<b>\$71,399.98</b>		
<b>TOTAL</b>			<b>\$263,697.55</b>	<b>\$693,796.14</b>	<b>\$421,414.48</b>

**11.2 INSURANCE - COMMUNITY LEASED AREAS****File Number: 5465****Author: Neil Hartley, Strategic Business Manager****Responsible Officer: Amanda Dexter, Chief Executive Officer****Authority/Discretion: Review****SUMMARY**

The Shire has numerous community group leases in place across the district. Some leases are for "land only" (with the community group arranging for the construction of, and insurance of, any buildings and structures built by the Lessee) and some leases include buildings already constructed by the Shire (with the Shire holding the insurance policy).

This report proposes that:

1. a review should be undertaken of all Shire insured assets (leased or otherwise);
2. that the Shire's Community Lease document be amended to enable Council to consider for structures on leased land, the option of only requiring the Lessee to take out removal of debris insurance for catastrophic events;
3. that the West Kimberley Turf Club be gifted the old squash courts building (and it take on the maintenance and insurance responsibilities of that building); and
4. that the Old Fire Station lease not be provided with the option of holding removal of debris insurance only.

**DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

**BACKGROUND**

Council at its 29 April 2021 meeting, agreed to the adoption of standardised Community Lease Agreements (to ensure that all community/sporting groups transition into a common community lease/community licence agreement with consistent requirements upon both the Shire, and the community group).

At the Council Meeting of 24 June 2021, a lease was provide to the Red Shed: Derby Women's Collective, over the "Old Fire Station" in Clarendon Street. The lease requires the lessee to reimburse the Shire for building insurance (which is taken out through Local Government Insurance Services at full replacement value). The Red Shed: Derby Women's Collective did ask in regard to the expected annual premium, which is current \$3,588/annum, but has not asked for consideration to only take out Removal of Debris insurance (but the situation the group was in did prompt the preparation of this report).

On 30 September 2021 Council provided West Kimberley Turf Club with a lease over its historically used land. The Turf Club owns its buildings on the leased area, with the exception of the old disused Squash Courts, which are no longer functional as a squash court facility and are now

utilised as a storage facility by the Turf Club (but are currently still on the Shire's records as a Shire owned building). The Shire presently insures that building for full replacement value.

Local Government Insurance Services insures almost every local government in Western Australia. The structure that LGIS operates under does not allow its Property Scheme to offer protection on a "First Loss basis" (vis. where you only protect an asset for a portion of the insurable value against loss or damage). The scheme protects the assets on the basis of either the replacement value or just the Removal of Debris component (ROD) if the building is not going to be reinstated in the event of a loss.

The current Community Lease addresses insurance through the requirement of the Lessee to take out insurance, or to remit the Shire, the cost of insuring Shire assets on the leased area. An improved financial outcome for insurance can be gained for Community Lessees and the Shire if the risk of not insuring for full replacement value in selected circumstances is accepted. The Council must first however, agree that replacement of the building in the event of major damage occurring, is no longer necessary.

The proposal is to provide that option through a modification of the current (standard) Community Lease, by adjusting in the following clause:

- 5.3.5.2 change to *"such insurance will include insurance for the full replacement value of buildings/agreed value/removal of debris/clean-up (at the Lessor's discretion)"*.
- 12.3.1. the ~~full~~ *agreed* insurable value on a replacement or reinstatement basis of the Lessee's fixtures
- 12.3.3. the ~~full~~ *agreed* insurable value on a replacement or reinstatement basis of all plate

Add an additional Other Special Condition – *"a. In regard to clause 5.3.5.2, insurance of buildings will be at full replacement value/agreed value/removal of debris and clean-up\* (\*Lessor's discretion – delete as required)."*

## STATUTORY ENVIRONMENT

**Section 3.58 (Disposing of property) of the Local Government Act** deals with how a local government can lease property. This generally requires a public auction or a public tender, or a local public notice inviting public submissions if a private bid is being considered.

**Regulation 30 (Dispositions of property excluded from Act s. 3.58) of the Local Government (Functions and General) Regulations** provides for exemptions (if the local government wishes to take that option) and one of those exemption is that a disposition of property other than land is an exempt disposition if its market value is less than \$20 000.

Whilst a valuation has not been sought, it is not considered that the old Squash Court building would be worth \$20,000. Council can therefore, treat the disposition as an exempt transfer.

## POLICY IMPLICATIONS

Policy (C3) Community Leases and Licence Agreements of Shire Assets (Facilities, Buildings, and Land). Changes to the (standard) Community Lease will be required to facilitate the change of insurance proposed in this report.

**FINANCIAL IMPLICATIONS**

The Shire takes out policies for a range of insurance types, including insuring its buildings. A review should be undertaken of all Shire insured assets (leased or otherwise) to ascertain if insurance can be lowered in selected circumstances like the instances outlined in this report.

There will be no financial consequences for Shire in regard to the changes suggested as part of the Shire’s current Community Leases, as new lessees using the new Community Lease are already required to meet those insurance premium costs. There will be a financial benefit to lessees should they be permitted by Council to take out lower levels of insurance (and their insurance premiums decrease).

The Shire will no longer need to insure the old squash courts building if it gifts that building to the West Kimberley Turf Club. A saving on the Shire’s insurance premiums will result (\$1,197/annum). Also, by deleting the asset from the Shire’s asset register, it will slightly improve the Shire’s financial ratios.

**STRATEGIC IMPLICATIONS**

STRATEGIC AREA	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation.	1.2.2 Provide strong governance.
2. Community	2.2 Healthy communities.  2.3 Vibrant and culturally rich communities.	2.2.2 Facilitate a range of accessible sporting and recreational activities  2.3.2 Facilitate and/ or contribute to community events, cultural activities and festivals.

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Community:</b> Groups that choose to only insure for Removal of Debris can be left without a premises if major damage occurs.	Possible	Moderate	Medium	Ensure that lessees are fully aware of the consequence of “under-insurance”, or that lessees choose to insure for “full replacement value”.
<b>Financial:</b> Shire could be requested by the community to replace buildings once damaged beyond repair.	Possible	Moderate	Medium	Ensure that lessees are fully aware of the consequence of “under-insurance”, or that lessees choose to insure for “full replacement value”.

**CONSULTATION**

No community consultation is required, although Council might choose to engage the community in light of the unique nature of the proposal (vis. to change the historic position on insurance for selected buildings in the district).

Liaison has occurred with the West Kimberley Turf Club and Local Government Insurance Services.

**COMMENT**

The cost of insurance has grown to be a significant issue for everyone in the Kimberley, including for community groups. Whilst some will not wish to risk having anything less than replacement value insurance, for small clubs occupying old buildings, a different view might prevail.

The “excess” (vis. the amount the claimant must pay as its contribution towards any insurance claim) is \$1,000 for Shire building damages claims. This accommodates a good portion of minor damage claims, minimises premium costs, and eliminates the need for the Shire of allocate administration time to complete application forms and coordinate claims for smaller sum damage events.

Conditional on Council first agreeing that some buildings are not warranted being replaced if a major damage event occurs, providing community groups that lease selected sites with the option of having only removal of debris insurance might be very palatable for them. Clubs can then choose whether replacement value insurance is worth the effort of raising the funding for the annual premium, when considered against the risk of having no facility to operate from in the event of major damage event occurring.

For future community lease applications, Council would need to consider as part of the provision of the lease, whether it was prepared to provide the option to the lessee of a lower level of insurance. Such a decision would be made on a “case-by-case” basis, and largely dependent on the building’s considered long term future value to the district and its community.

In light of the relative structural soundness and the prominent location of the Old Fire Station building, offering the Lessee to have Removal of Debris Only coverage is not considered to be prudent. Council might however wish to consider offering a community grant to the club if it has difficulty paying its annual insurance premium (approximately \$3,588) at least whilst it established itself.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Community Lease (Changes)** [↓](#) 

**RESOLUTION 161/21****Moved: Cr Andrew Twaddle****Seconded: Cr Rowena Mouda****That Council:**

- 1. Endorses the changes to the “standard” Community Lease Agreement as outlined below:**
  - a. Clause 5.3.5.2 - change to “*such insurance will include insurance for the full replacement value of buildings/agreed value/removal of debris/clean-up (at the Lessor’s discretion)*”.**
  - b. Clause 12.3.1. - “the ~~full~~ agreed insurable value on a replacement or reinstatement basis of the Lessee’s fixtures....”**
  - c. Clause 12.3.3. - “the ~~full~~ agreed insurable value on a replacement or reinstatement basis of all plate.....”**
  - d. Add an additional Other Special Condition – “a. In regard to clause 5.3.5.2, insurance of buildings will be at full replacement value/agreed value/removal of debris and clean-up\* (\*Lessor’s discretion – delete as required)”;**
- 2. Agrees that the market value of the old and un-used Squash Court facility is less than \$20,000 (and therefore exempt from the provisions of S. 3.58 (Disposing of Property)) and endorses its gifting to the West Kimberley Turf Club (and notes that the asset will be deleted from the Shire’s asset register);**
- 3. Offers the option to current (standard) Community Lease Agreement lessees, to have their agreements modified to include the lease modifications referred to in #1;**
- 4. Confirms that the Old Fire Station Building (Clarendon Street, Derby) should continue to be insured for full replacement value; and**
- 5. Authorises the Chief Executive Officer to undertake a review of all shire buildings and their insurance policy types, and to making changes the CEO believes are required (subject to a prior report to Council occurring where changes are of significance).**

**In Favour:** Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

**Against:** Nil

**CARRIED 8/0**

## Parties

## Background

## Operative provisions

### 1. Definitions and interpretation

### 2. Grant of Lease

### 3. Conditions Precedent

### 4. Quiet enjoyment

### 5. Rent and other payments

- 5.1. The Lessee must pay the annual Rent to the Lessor on the Commencement Date and on each first day of July during the Term of this Lease without any deduction or set-off by way or direct payment to the Lessor or as the Lessor may direct.
- 5.2. The first payment of Rent must be paid to the Lessor on the Commencement Date and will be calculated on a pro-rata basis so that the Lessee pays Rent for the period from the Commencement Date to the first 30 June during the Term of this Lease.
- 5.3. The Lessee must punctually pay to the Lessor or to such person as the Lessor may from time to time direct, all the following outgoings or charges, assessed or incurred in respect of the Leased Premises:
  - 5.3.1. local government rates, specified area rates, taxes, service and other charges and including charges for rubbish and garbage removal;
  - 5.3.2. water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
  - 5.3.3. telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection;
  - 5.3.4. land tax and metropolitan regional improvement tax on a single ownership basis;
  - 5.3.5. premiums, excess and other costs arising from any insurance obtained by the Lessor. For the avoidance of doubt, the parties agree:
    - 5.3.5.1. that if such premium or cost does not include a separate assessment or identification of the Leased Premises or the Land, the Lessee must pay a proportionate part of such premium or cost determined by the Lessor acting reasonably; and
    - 5.3.5.2. such insurance will include insurance for the full replacement value of buildings/**agreed value/removal debris (at the Lessor's discretion)**; and
  - 5.3.6. any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Leased Premises.

- 5.4. If the Leased Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in clause
- 5.5. being the proportion that the Leased Premises bears to the total area of the land or premises included in the charge or assessment.

**6. Rent Review**

**7. Lessee’s Covenants**

**8. Use of the Leased Premises**

**9. Lessee to pay for utilities and services**

**10. Comply with Laws**

**11. Risk**

**12. Insurance**

**Public Risk insurance**

- 12.1. The Lessee must during the Term, effect and maintain adequate public risk insurance cover applicable to the Lessee's use of the Leased Premises for at least \$20,000,000 (being the amount which may be paid out arising from any single accident or event) or any increased amount that the Lessor may from time to time require.
- 12.2. The Lessee must supply the Lessor with a certificate of currency from the insurer on request.

**Lessee’s Obligation to effect other insurances**

- 12.3. In addition to public risk insurance, the Lessor may at any time require the Lessee by notice in writing to effect and maintain other policies of insurance relating to the Leased Premises and the Lessee’s fixtures or contents or otherwise as reasonably required by the Lessor from time to time, including policies of insurance for:
  - 12.3.1. the full **agreed** insurable value on a replacement or reinstatement basis of the Lessee’s fixtures against fire, explosion, earthquake, aircraft, riot, civil commotion, flood, lightning, storm, tempest, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown or malfunction, and malicious acts or omissions;
  - 12.3.2. employers’ indemnity insurance including workers’ compensation insurance in respect of all employees of the Lessee employed in or about the Leased Premises;
  - 12.3.3. the full **agreed** insurable value on a replacement or reinstatement basis of all plate glass windows and doors forming part of the Leased Premises; and
  - 12.3.4. any other matter or thing which the Lessor reasonably requires by notice to the Lessee.
- 12.4. If the Lessor has issued a written notice to the Lessee to effect other insurance under clause 12.3, the Lessee must:
  - 12.4.1. supply to the Lessor the current details of all insurance effected in accordance with this clause, including copies of certificates of insurance or policy documents and receipts for premiums as updated, amended or varied from time to time;
  - 12.4.2. not without the Lessor's prior consent, alter the terms or conditions of any policy; and



- 12.4.3. ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Lessor.

**Lessee not to invalidate insurance**

- 12.5. The Lessee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Lease or in respect of the Leased Premises and the Lessee's fixtures becoming void or voidable or which might increase the premium on any policy.

13. **Limit of Lessor's liability**
14. **Indemnity and release**
15. **Alterations by the Lessee**
16. **Assignment**
17. **Costs**
18. **GST**
19. **Lessor's covenants**
20. **Redevelopment**
21. **Events of Default**
22. **Lessor's powers on default**
23. **Essential terms**
24. **Termination**
25. **Disputes**
26. **Option to renew for Further Term**
27. **Damage to or destruction of Leased Premises**
28. **Resumption of Leased Premises**
29. **Holding Over**
30. **Notices**
31. **Caveats and registration of Lease**
32. **Special Conditions**
33. **Discretion of the Lessor in its capacity as a Relevant Authority**
34. **Miscellaneous**
35. **Signing Page**
36. **Schedule 1 – Items**
37. **Schedule 2 – Special Conditions**

**A. Other special conditions**

- a. In regard to clause 5.3.5.2, insurance of buildings will be at full replacement value/agreed value/removal of debris and clean-up\* (\*Lessor's discretion – delete as required).

**38. Annexure 1 – Consent of the Minister of Lands****39. Annexure 2 – Plan of Leased Premises**

*Amanda Dexter left the meeting at 5:50pm.*

**11.3 CHIEF EXECUTIVE OFFICER ANNUAL LEAVE/ ACTING CHIEF EXECUTIVE OFFICER ARRANGEMENTS**

**File Number:** 5355

**Author:** Amanda Dexter, Chief Executive Officer

**Responsible Officer:** Amanda Dexter, Chief Executive Officer

**Authority/Discretion:** Executive

**SUMMARY**

For Council to approve a request from the Chief Executive Officer to take annual leave from the 23 December 2021 to 01 February 2022 inclusive and to appoint an Acting CEO for the duration.

**DISCLOSURE OF ANY INTEREST**

The CEO declares a financial interest as they are the person requesting the leave.

**BACKGROUND**

The CEO is requesting leave for three weeks from 23 December 2021 to 01 February 2022 inclusive and has adequate leave and time and lieu provision to do so.

**STATUTORY ENVIROMENT**

**S. 5.36 (*Local government employees*)** of the Local Government Act 1995 requires that every local government employs a Chief Executive Officer.

**S. 5.39 (*Contracts for CEO and senior employees*)** permits a Council to appoint a person to act in the position of a CEO for a term not exceeding one year without a written contract for that position.

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

The Acting CEO will receive a higher duties allowance during the term. Provision has been made in the 2021/22 Annual Budget for the CEO’s Leave and this allowance.

**STRATEGIC IMPLICATIONS**

STRATEGIC AREA	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation.	1.2.2 Provide strong governance.

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<b>Business Interruption:</b> Not appointing an acting CEO will limit the Shire’s capacity to satisfactorily manage the organisation and undertake the Council’s directions.	Rare	Major	Low	Appoint a suitably qualified A/CEO to support operations and efficient decision making.

**CONSULTATION**

Shire President.

Director of Strategic Business.

Director Technical and Development Services

**COMMENT**

The CEO has requested leave from 23 December 2021 to 01 February 2022 inclusive. Adequate Annual Leave and time and lieu is accrued to take the requested leave.

It is a requirement under the Local Government Act that an Acting Chief Executive Officer be appointed during these periods of absence.

The Director Technical and Development Services, Wayne Neate has been with the Shire for over 20 years and by virtue of his position has taken on the CEO responsibilities on several occasions in the CEO’s absence and will provide sound support and strategic direction if required, during the CEO’s absence. There will be a full complement of Managers and Directors on board for the majority of the CEO’s proposed leave.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

Nil

*Neil Hartley left the meeting at 5:53pm.*

<p><b>RESOLUTION 162/21</b></p> <p><b>Moved: Cr Andrew Twaddle</b> <b>Seconded: Cr Paul White</b></p> <p><b>That Council:</b></p> <p><b>1. Approve the executive and annual leave of the Chief Executive Officer, Amanda Dexter for the period commencing on the 23 December 2021 to 01 February 2022, inclusive;</b></p>
---

2. **Appoint the Director Technical and Development Services, Wayne Neate, as the Acting Chief Executive Officer for the period from 23 December 2021 to 01 February 2022, inclusive; and**
3. **Approve the payment of higher duties to the Director Technical and Development Services, equivalent to the current CEO, during this period.**

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**

*Amanda Dexter returned to the meeting at 5:57pm.*

*Neil Hartley returned to the meeting at 5:57pm.*

**11.4 MINUTES OF THE JOINT MEETING OF THE KIMBERLEY ZONE AND KIMBERLEY REGIONAL GROUP HELD 22 NOVEMBER 2021**

**File Number:** 4221  
**Author:** Sarah Smith, Executive Services Coordinator  
**Responsible Officer:** Amanda Dexter, Chief Executive Officer  
**Authority/Discretion:** Advocacy

**SUMMARY**

This report presents for Council endorsement the Minutes from the Joint Meeting of the Kimberley Zone of the Western Australian Local Government Association (WALGA) and the Kimberley Regional Group held on 22 November 2021.

**DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

**BACKGROUND**

A copy of the minutes from the previous joint meeting held on 22 November 2021 between members of the Kimberley Zone of WALGA (Zone) and Kimberley Regional Group (KRG) are attached for Council consideration.

As a result of a past decision of the group, both the Kimberley Zone and KRG meetings are joined.

It should be remembered that the Kimberley Zone of WALGA is a group established to represent regional issues to the State Council of WALGA. This group includes the four Kimberley Shires in addition to the Shires of Christmas Island and Cocos Keeling Islands.

The KRG is a group defined through a deed of agreement between the four Kimberley local governments with the Minister for Local Government.

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Nil.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**STRATEGIC IMPLICATIONS**

<b>GOAL</b>	<b>OUR PRIORITIES</b>	<b>WE WILL</b>
1. Leadership and Governance	1.1 Collaboration and partnership	1.1.3 Maximise regional opportunities that benefit our community
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<b>Community:</b> That the Shire’s interests and contribution to the zone are represented and reflect the views of the community	Unlikely	Minor	Low	Minutes received and endorsed by Council to allow for transparency and assist zone attendees with clear direction

**CONSULTATION**

Nil.

**COMMENT**

The minutes and respective background information are attached to this report and the following comments are made in relation to the resolutions passed by the Group. Additional recommendations have been made where necessary for Council’s consideration.

It is recommended that Council take particular note of the change to office bearers that occurred at the November Meeting.

**KIMBERLEY ZONE RESOLUTION:  
(REPORT RECOMMENDATION)**

**Minute No. KRG/1121/002**

**Moved: G Haerewa**

**Seconded: M Edwards**

**That the Kimberley Regional Group:**

- 1. Notes the procedure for the election of the KRG Chair and Deputy Chair.**
- 2. Notes the procedure for the election of the WALGA Representative and Deputy Representative.**
- 3. Appoints Cr David Menzel as the Chair of the Kimberley Regional Group.**
- 4. Appoints Cr Geoff Haerewa as the Deputy Chair of the Kimberley Regional Group.**
- 5. Appoints Cr Chris Mitchell as the Representative to the WALGA State Council.**
- 6. Appoints Cr David Menzel as the Deputy Representative to the WALGA State Council.**

**CARRIED UNANIMOUSLY 4/0**

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Zone KRG Joint Meeting Minutes 22 November 2021** [↓](#) 

**RESOLUTION 163/21****Moved: Cr Paul White****Seconded: Cr Linda Evans****That Council**

1. **Receives and endorses the resolutions of the Kimberley Zone of WALGA and Kimberley Regional Group as attached in the minutes from the Joint Meetings held on 22 November 2021.**

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**



**KIMBERLEY REGIONAL GROUP  
Meeting**

**UNCONFIRMED  
MINUTES**

**1:00PM, 22 NOVEMBER 2021**

**Shire of Wyndham/East Kimberley**



**SHIRE OF BROOME**  
**KIMBERLEY REGIONAL GROUP**  
**MONDAY 22 NOVEMBER 2021**

**INDEX – MINUTES**

1.	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS .....	4
2.	RECORD OF ATTENDANCE / APOLOGIES .....	4
3.	DECLARATION OF INTERESTS .....	5
4.	CONFIRMATION OF MINUTES .....	5
	8.3 ELECTION OF OFFICE BEARERS .....	5
5.	BUSINESS ARISING FROM PREVIOUS MEETING .....	8
6.	PRESENTATIONS FROM REPRESENTATIVES .....	8
7.	REPORTS FROM REPRESENTATIVES .....	8
8.	REPORTS FROM KIMBERLEY COUNTRY ZONE .....	9
	8.1 WALGA STATE COUNCIL AGENDA .....	9
	8.2 WALGA ZONE STATUS REPORT .....	116
	8.4 KIMBERLEY ZONE AND KIMBERLEY REGIONAL GROUP MEETING DATES 2022 .....	122
	8.5 LOCAL GOVERNMENT LEGISLATIVE REFORM .....	125
	8.6 WOR HEALTH AND SAFETY (WHS) LEGISLATION UPDATE .....	160
9.	REPORTS FROM KIMBERLEY REGIONAL GROUP .....	163
	9.1 KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21 .....	163
	9.2 KIMBERLEY REGIONAL GROUP FINANCIAL ACTIVITY STATEMENT 31 OCTOBER 2021 .....	179
	9.3 PROJECTS 2022 .....	182
	9.4 SKILLS SUPPLY AND DEMAND RESEARCH PROJECT .....	186
	9.5 BUSINESS PLAN PROGRESS REPORT .....	188
	9.6 CONSULTANT REPORT .....	194
10.	CORRESPONDENCE .....	197
	10.1 CORRESPONDENCE .....	197
11.	GENERAL BUSINESS .....	202
12.	MATTERS BEHIND CLOSED DOORS .....	202

13. MEETING CLOSURE ..... 202

**MINUTES OF THE KIMBERLEY REGIONAL GROUP OF THE SHIRE OF BROOME,  
HELD IN THE SHIRE OF WYNDHAM/EAST KIMBERLEY, ON MONDAY 22 NOVEMBER  
2021, COMMENCING AT 1:00PM.**

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

The Chairman welcomed Members and Officers and declared the meeting open at 1:00pm.

**2. RECORD OF ATTENDANCE / APOLOGIES**

**ATTENDANCE**

<b>Members:</b>	Cr Chris Mitchell	Shire of Broome
	James Watt	Shire of Broome
	Amanda Dexter	Shire of Derby West Kimberley
	Cr Geoff Haerewa	Shire of Derby West Kimberley
	Cr Peter McCumstie	Shire of Derby/West Kimberley
	Nick Kearns	Shire of Wyndham East Kimberley
	Cr David Menzel	Shire of Wyndham East Kimberley
	Cr Tony Chafer	Shire of Wyndham East Kimberley
	Noel Mason	Shire of Halls Creek
	Cr Malcolm Edwards	Shire of Halls Creek
	Cr Chris Loessl	Shire of Halls Creek
	Kelli Small	Shire of Cocos (Keeling) Islands
	Debra Goostrey	Zone Executive - ATEA
	Natasha Mahar	Australia’s North West
	Tim Bray	Kimberley Development Commission
	Greg Hayes	WALGA Roadwise
	Krissie Dickman	Department of Local Government, Sport and Cultural Industries
	Janine Hatch	Regional Development Australia Kimberley
<b>Apologies:</b>	Sam Mastrolembo	Shire of Broome
	Cr Harold Tracey	Shire of Broome
	Vernon Lawrence	Shire of Wyndham East Kimberley
	David Price	Shire of Christmas Island
	Cr Gordon Thomson	Shire of Christmas Island
	Cr Kee Heng Foo	Shire of Christmas Island
	Cr Jeanette Young	Shire of Cocos (Keeling) Islands
	Cr Hua (Helen) Liu	Shire of Cocos (Keeling) Islands

**3. DECLARATION OF INTERESTS**

FINANCIAL INTEREST			
Member	Item No	Item	Nature of Interest
Nil.			

IMPARTIALITY			
Member	Item No	Item	Nature of Interest
Nil.			

**4. CONFIRMATION OF MINUTES**

The Chair put a motion to move Item 8.3 Election of Office Bearers to the first order of business.

**KIMBERLEY ZONE RESOLUTION:** Minute No. KRG/1121/001  
 Moved: Cr D Menzel Seconded: Cr G Haerewa  
 That Item 8.3 Election of Office Bearers be moved to the first order of business.  
**CARRIED UNANIMOUSLY 4/0**

**8.3 ELECTION OF OFFICE BEARERS**

LOCATION/ADDRESS: Nil  
 APPLICANT: Nil  
 FILE: KRG01  
 AUTHOR: Zone Executive  
 CONTRIBUTOR/S: Nil  
 RESPONSIBLE OFFICER: Director Corporate Services  
 DISCLOSURE OF INTEREST: Nil

**SUMMARY:**  
 After the Local Government elections, it is a requirement of the WALGA Constitution to hold elections for the position of Representative and Deputy Representative for the WALGA State Council. The Kimberley Regional Group (KRG) Memorandum of Understanding requires an election to be held for the Chair and Deputy Chair of the KRG at the first meeting after the Local Government Elections.

**COMMENT**

In accordance with sub-clause 9(3) of the WALGA constitution, an election of a Representative and Deputy Representative to the WALGA State Council is required. Further, an election is required for the Chair and Deputy Chair of the Kimberley Regional Group (KRG).

The term of office for both the Kimberley Zone and KRG is for two years. The WALGA Kimberley Zone term commences 1 December 2021 until the day prior to the December 2023 meeting of State Council. The KRG Office Bearer term is from the election at the first ordinary meeting after the local government elections in 2021 until the local government election in 2023. The outgoing Host Shire CEO or their delegate will chair the meeting until a chairperson is elected.

The Kimberley Regional Group (KRG) operates under a Memorandum of Understanding (MOU) signed under seal by each of the four Shires [Participants]. The Board of the KRG comprises elected officials of the Participants.

Clause 5.1. of the MOU states that, at the first council meeting following a local government ordinary election in accordance with the Act, each Participant must appoint one of its councillors to be a Delegate of the KRG, along with a Deputy Delegate, who are:

- Duly authorised to represent and bind that Participant on any matter within the powers of the Board; and
- Has an understanding of the work of the KRG sufficient to make decisions on any matter within the Power of the Board.

Only appointed Delegates can nominate for the role of Chair or Deputy Chair as per Clause 5.1 of the MOU. Deputy Delegates cannot nominate for KRG office bearer positions.

Participant (Member Council) delegates are listed below.

**Shire of Broome**

Cr Chris Mitchell

Cr Harold Tracey (Deputy)

**Shire of Derby West Kimberley**

Cr Geoff Haerewa

Cr Peter McCumstie (Deputy)

**Shire of Halls Creek**

Cr Malcolm Edwards

Cr Chris Loessl (Deputy)

**Shire of Wyndham East Kimberley**

Cr David Menzel

Cr Tony Chafer (Deputy)

Nominations for KRG Office Bearer positions and WALGA Representatives must be made in writing to the Outgoing Host Shire CEO or their delegate. Nominations not received within the authorised timeframe will not be accepted.

KRG Office Bearer positions are Chair and Deputy Chair.

The WALGA positions are Representative and Deputy Representative.

In the case that only one nomination is received for each position, that position will be declared.

Where there is more than one nomination for each position an election will be conducted using a secret ballot with the outgoing Host Shire CEO or their delegate acting as the Returning Officer.

In accordance with the MOU, the new Host Shire will be the Shire from which the incoming Chair is a delegate.

**CONSULTATION**

Nil.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**FINANCIAL IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY ZONE RESOLUTION:**

<b>(REPORT RECOMMENDATION)</b>	<b>Minute No. KRG/1121/002</b>
<b>Moved: G Haerewa</b>	<b>Seconded: M Edwards</b>

**That the Kimberley Regional Group:**

1. **Notes the procedure for the election of the KRG Chair and Deputy Chair.**
2. **Notes the procedure for the election of the WALGA Representative and Deputy Representative.**
3. **Appoints Cr David Menzel as the Chair of the Kimberley Regional Group.**
4. **Appoints Cr Geoff Haerewa as the Deputy Chair of the Kimberley Regional Group.**
5. **Appoints Cr Chris Mitchell as the Representative to the WALGA State Council.**
6. **Appoints Cr David Menzel as the Deputy Representative to the WALGA State Council.**

**CARRIED UNANIMOUSLY 4/0**

**Attachments**

Nil

*Following the resolution being passed to elect Office Bearers, Cr David Menzel assumed the Chair.*

<b><u>KIMBERLEY ZONE RESOLUTION:</u></b>	<b>Minute No. KRG/1121/003</b>
<b>Moved: Cr C Mitchell</b>	<b>Seconded: M Edwards</b>
<b><i>That the Minutes of the Kimberley Regional Group held on 2 September 2021, as published and circulated, be confirmed as a true and accurate record of that meeting.</i></b>	
<b>CARRIED UNANIMOUSLY 4/0</b>	

**5. BUSINESS ARISING FROM PREVIOUS MEETING**

Nil.

**6. PRESENTATIONS FROM REPRESENTATIVES**

Nil.

**7. REPORTS FROM REPRESENTATIVES**

- 7.1 **RDA KIMBERLEY**  
Janine Hatch, Executive Officer
- 7.2 **AUSTRALIA’S NORTH WEST TOURISM**  
Natasha Maher, Chief Executive Officer
- 7.3 **WALGA ROADWISE**  
Greg Hayes, Road Safety Advisor
- 7.4 **KIMBERLEY DEVELOPMENT COMMISSION**  
Tim Bray, Acting Chief Executive Officer
- 7.5 **DEPARTMENT OF SPORT, LOCAL GOVERNMENT AND CULTURAL INDUSTRIES**  
Krisie Dickman, Regional Manager, Kimberley
- 7.6 **WALGA**  
Tim Lane, Manager Strategy and Association Governance

**8. REPORTS FROM KIMBERLEY COUNTRY ZONE**

**8.1 WALGA STATE COUNCIL AGENDA**

<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01; RCG03
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 To consider the recommendations on Matters for Decision that will be considered at the WALGA State Council meeting on 1 December 2021.

**COMMENT**

The next WALGA State Council meeting will be held on 1 December 2021. The following matters for decision will be considered.

	<b>Matters for Decision</b>	<b>WALGA Recommendation</b>	<b>Zone Comment &amp; Recommendation</b>
5.1	Paid Family and Domestic Violence Leave Entitlements	Endorse the submission to the Fair Work Commission (FWC) regarding paid family and domestic violence leave (FDVL) which: <ol style="list-style-type: none"> <li>1. Highlights that FDVL for employees is an important issue for the sector;</li> <li>2. Supports the introduction of a new entitlement in modern awards for employees to receive five days’ paid FDVL per year;</li> <li>3. Advocates for employees to be able to access their paid personal/carer’s leave in circumstances of family and domestic violence; and</li> <li>4. Opposes the introduction of a new entitlement in modern awards for employees to receive 10 days’ paid FDVL per year as sought by the Australian Council of Trade Unions (ACTU).</li> </ol>	Support



5.2	Payment to Independent Committee Members	<p>That WALGA request the Minister for Local Government to amend the Local Government Act 1995 to allow the payment of meeting attendance fees to, and/or defined reimbursements for time committed by, 'other persons' appointed as Committee members under s.5.8 of the Local Government Act 1995.</p> <p><i>Note: Local Governments cannot legally pay meeting attendance fees to independent members of the Audit Committee in respect of their preparing for, attending and/or participating in Audit Committee meetings, and can only provide reimbursement of 'expenses', in accordance with s5.100 of the Local Government Act 1995.</i></p>	Support
5.3.(1)	2021 Annual General Meeting	<p>CONTEXT: This item covers multiple resolutions from the 2021 AGM which are outlined individually below with a recommendation to endorse for action.</p>	
	Cost for Regional Development	<p>That WALGA makes urgent representation to the State Government to address the high cost of development in regional areas for both residential and industrial land, including the prohibitive cost of utilities head-works, which has led to market failure in many regional towns.</p>	Support
	CSRFF Funding Pool and Contribution Ratios	<p>That WALGA lobby the State Government to:</p> <ol style="list-style-type: none"> <li>1. Increase the CSRFF funding pool to \$25 million per annum and revert the contribution ratio to 50% split to enable more community programs and infrastructure to be delivered.</li> <li>2. Increase the \$1 million per annum quarantined for female representation to \$2 million per annum.</li> </ol>	Support
	Regional Tele-communications Project	<p>That WALGA strongly advocates to the State Government to increase funding for the Regional Telecommunications Project to leverage the Federal Mobile Black Spot Program and provide adequate mobile phone coverage to regional areas that currently have limited or no access to the service.</p>	Strongly Support

5.3(2)		<p><i>CONTEXT: 2. The following resolution passed at the 2021 WALGA Annual General Meeting be referred to the Mining Communities Policy Forum and the People and Place Policy Team for advocacy work to be undertaken:</i></p>	
	<p>Review of the Environmental Regulations for Mining  Regarding a review of the Mining Act 1978</p>	<ol style="list-style-type: none"> <li>1. To call on Minister Bill Johnston, Minister for Mines and Petroleum; Energy; Corrective Services to instigate a review of the 43-year-old Mining Act to require mining companies to abide by environmental regulations, and to support research and development into sustainable mining practices that would allow mining without detriment to diversification and community sustainability through other industries and development.</li> <li>2. That abandoned mines in regional Western Australia receive a priority action plan with programmes developed to work with rural and remote communities to assist in the rehabilitation of these mines as a job creation programme, with funding allocated for diversification projects for support beyond mine life across Western Australia.</li> </ol>	Support
5.4	<p>Review of advocacy positions relating to the Building Act 2011 and Building Regulations 2012</p>	<p>That State Council endorses the replacement of Section 6.7: Building Act and Fees of WALGA’s advocacy positions document relating to the Building Act 2011 and Building Regulations 2012 with the following:</p> <ol style="list-style-type: none"> <li>1. Support the retention of Local Government as the primary permit authority in Western Australia for decisions made under the Building Act 2011.</li> <li>2. Supports mandatory inspections for all classes of buildings, however, Local Government should not be solely responsible for all mandatory inspections.</li> <li>3. Advocate for the State Government to urgently prioritise legislative reform that addresses systemic failures in the current</li> </ol>	<p>Supported with additional feedback.</p> <p>Item 2: Mandatory inspections for ALL classes of buildings is onerous for remote areas.</p> <p>Agree that inspections should not be restricted to LG.</p> <p>Note lack of qualified building surveyors/other professionals to do inspections in remote areas.</p>

		<p>building control model and to provide clarification on the role of Local Government in building control to ensure building legislation supports the following objectives:</p> <ul style="list-style-type: none"> <li>a. Quality buildings that are cost efficient.</li> <li>b. Functional, safe and environmentally friendly buildings.</li> <li>c. Good decision making in all aspects of building.</li> <li>d. Efficiency and effectiveness in building management, administration and regulation.</li> <li>e. Openness and accountability with respect to all building matters.</li> <li>f. Recognition of the rights and responsibilities of all parties in building matters in an equitable manner.</li> </ul> <p>4. Existing and proposed building control related fees and charges to be cost recovery for Local Government.</p> <p>5. WALGA will work with members, state agencies and industry groups to develop training opportunities and to promote the Local Government building surveying profession to ensure sustainability of Local Government building control services.</p> <p>6. WALGA supports the Australian Building Codes Boards Trajectory for Low Energy Buildings by supporting Local Governments to meet community strategic objectives of a net zero carbon future by 2050 through work with members, state agencies and industry groups.</p>	<p>It is noted that Professional Indemnity insurance is proving a further barrier for inspections.</p> <p>Class 10 buildings could be removed – admin/ recordkeeping only.</p>
5.5	Draft WA Building Surveyors Code of Conduct	<p>That WALGA:</p> <ul style="list-style-type: none"> <li>1. Recommend to the Department of Mines, Industry Regulation and Safety (DMIRS) that the Draft WA Building Surveyors Code of Conduct be reviewed to ensure it addresses the following matters: <ul style="list-style-type: none"> <li>a) The impact of the obligations recommended in the draft Code be considered in relation to the current Western Australian building control model to ensure Local Government are able to maintain their statutory functions in line with community expectations.</li> </ul> </li> </ul>	<p>Supported with additional feedback.</p> <p>Concern that the framework appears to be a “cut and paste” from the Australian Building Codes Board national framework without consideration of</p>

		<p>b) That other building reform that will greatly impact the role of Local Government in the current Western Australian building control model, such as mandatory inspections and minimum documentation, be formalised prior to the Code of Conduct being introduced to ensure Local Government in Western Australia are able to maintain their statutory functions in line with community expectations.</p> <p>c) Ensure that communities in remote and regional areas are considered when developing policy to restrict building surveyors being involved in design consultation work.</p> <p>2. Endorse the attached consultation response summary on the draft Code.</p>	<p>the WA Legislation.</p> <p>WALGA feedback includes reference to the Australian Institute of Building Surveyors Code of Conduct &amp; CPD requirements – it was noted in the Kimberley that membership of the AIBS is not mandatory and concern was expressed in relation to access to CPD.</p>
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Matters for Noting/Information:

- 6.1 Local Government Support for Single Use Plastic Bans (01-006-02-0003)
- 6.2 Report Municipal Waste Advisory Council (MWAC) (01-006-03-0008 RNB)
- 6.3 WALGA submission on the National Climate Resilience and Adaptation Strategy
- 6.4 Closing the Gap Update
- 6.5 Submission to the Senate Inquiry into Provision of General Practitioner and related primary health services to outer metropolitan, rural, and regional Australians (03-030-03-0001 VB)
- 6.6 Wooroloo Independent Review Letter of Support (05-024-03-0011 SM)
- 6.7 State Budget Outcomes (05-088-03-0001 DT)
- 6.8 Foundations for a Stronger Tomorrow – Submission to the Draft State Infrastructure Strategy (05-001-03- 0018ID)
- 6.9 Regional Telecommunications Review 2021
- 6.10 WALGA submission on Guideline: Native Vegetation Referral, Part V Environmental Protection Act 1986 (05 095-03-0001 GM)
- 6.11 WALGA submission on Draft Native Vegetation Policy for Western Australia (05-095-03-0001 GM)
- 6.12 Submission on Cost Recovery Part IV of the Environmental Protection Act 1986 – assessments by the Environmental Protection Authority
- 6.13 Student Transport Assistance Policy Framework Inquiry – WALGA Submission (05-005-03-0013 ID)

Organisational Reports

- Report on Key Activities, Commercial and Communications (01-006-03-0017 ZD)
- Report on Key Activities, Governance and Organisational Services (01-006-03-0007 TB)
- Report on Key Activities, Infrastructure (05-001-02-0003 ID)
- Report on Key Activities, Strategy, Policy and Planning (01-006-03-0014 ID)
- Policy Forum Reports (01-006-03-0007 TB)

WALGA President’s Report

The President’s Report is attached and includes the following matters:

- Sustainable Energy Project.
- WA Local Government Planning Showcase.
- New Councillor Seminar.
- A summary of Local Government Stakeholder relations activities.

The WALGA President’s Report is attached.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

**Economy Goal – A sustainable and diverse economy:**

Sustainable Local Government revenue

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERELY ZONE RESOLUTION:**

***(REPORT RECOMMENDATION)***

***Minute No. KRG/1121/004***

***Moved: Cr C Mitchell***

***Seconded: G Haerewa***

***That the Kimberley Regional Group:***

- 1. Notes the State Council Agenda Items;***
- 2. Supports the recommendations in the Matters for Decision; and***
- 3. Notes the WALGA President's December Report.***

***CARRIED UNANIMOUSLY 4/0*****Attachments**

1. State Council Agenda December 2021
2. WALGA President's Report December 2021

*Item 8.1 - WALGA STATE COUNCIL AGENDA*

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# State Council Agenda

1 December 2021

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



**NOTICE OF MEETING**

Meeting of the Western Australian Local Government Association (WALGA) State Council to be held at WALGA, ONE70, LV1, 170 Railway Parade, West Leederville on Wednesday, 1 December commencing at 4:00pm.

**1. ATTENDANCE, APOLOGIES & ANNOUNCEMENTS**

**1.1. Attendance**

Members	President of WALGA - <b>Chair</b> Deputy President of WALGA Avon-Midland Country Zone Central Country Zone Central Metropolitan Zone (2 representatives) East Metropolitan Zone (2 representatives) Goldfields Esperance Country Zone Gascoyne Country Zone Great Eastern Country Zone Great Southern Country Zone Kimberley Country Zone Murchison Country Zone North Metropolitan Zone (3 representatives) Northern Country Zone Peel Country Zone Pilbara Country Zone South East Metropolitan Zone (2 representatives) South Metropolitan Zone (3 representatives) South West Country Zone	Mayor Tracey Roberts JP
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*This will be the first meeting of the new State Council, with Zones appointing their State Councillors and Deputy State Councillors during the November round of Zone meetings.*

Ex Officio	Lord Mayor – City of Perth Local Government Professionals WA	Lord Mayor Basil Zempilas Ms Annie Riordan
Secretariat	Chief Executive Officer EM Commercial & Communications EM Governance & Organisational Services EM Infrastructure Acting EM Strategy, Policy & Planning Chief Financial Officer Manager Strategy & Association Governance Manager Governance Contract Manager, Commercial Management Executive Officer Governance	Mr Nick Sloan Mr Zac Donovan Mr Tony Brown Mr Ian Duncan Ms Nicole Matthews Mr Rick Murray Mr Tim Lane Mr James McGovern Mr Toby Costanzo Ms Katherine Robertson

**1.2. Apologies**



*Item 8.1 - WALGA STATE COUNCIL AGENDA*

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**1.3. Announcements**

- 1.3.1. WALGA acknowledges the Whadjuk Nyoongar people who are the Traditional Custodians of the land on which we meet today and pays respect to their Elders past and present.
- 1.3.2. Welcome to all new and returning State Councillors.

**2. MINUTES**

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**2.1. Minutes of the Meeting held 3 September 2021**

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**RECOMMENDATION**

That the Minutes of the WALGA State Council Meeting held on [Friday, 3 September 2021](#) be confirmed as a true and correct record of proceedings.

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**2.2. Minutes of the Special Meeting held 13 October 2021**

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**RECOMMENDATION**

That the Minutes of the WALGA State Council Special Meeting held on Wednesday, 13 October 2021 be confirmed as a true and correct record of proceedings.

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**2.3. Flying Minute – WALGA submission on Guideline: Native Vegetation Referral, Part V Environmental Protection Act 1986**

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**RECOMMENDATION**

That the [Flying Minute - WALGA submission on Guideline: Native Vegetation Referral, Part V Environmental Protection Act 1986](#) be confirmed as a true and correct record of proceedings.

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**2.4. Flying Minute – Regional Telecommunications Review 2021**

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**RECOMMENDATION**

That the [Flying Minute – Regional Telecommunications Review 2021](#) be confirmed as a true and correct record of proceedings.

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**2.5. Flying Minute – Submission on Cost Recovery Part IV of the Environmental Protection Act 1986 – assessments by the Environmental Protection Authority**

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**RECOMMENDATION**

That the [Flying Minute – Submission on Cost Recovery Part IV of the Environmental Protection Act 1986 – assessments by the Environmental Protection Authority](#) be confirmed as a true and correct record of proceedings.

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**2.6. Flying Minute – Student Transport Assistance Policy Framework Inquiry – WALGA Submission**

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**RECOMMENDATION**

That the [Flying Minute – Student Transport Assistance Policy Framework Inquiry – WALGA Submission](#) be confirmed as a true and correct record of proceedings.

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*Item 8.1 - WALGA STATE COUNCIL AGENDA*

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**2.7. Flying Minute – WALGA submission on Draft Native Vegetation Policy for WA**

**RECOMMENDATION**

That the [Flying Minute – WALGA submission on Draft Native Vegetation Policy for WA](#) be confirmed as a true and correct record of proceedings.

**3. DECLARATIONS OF INTEREST**

Pursuant to our Code of Conduct, State Councillors must declare to the Chair any potential conflict of interest they have in a matter before State Council as soon as they become aware of it.

**4. EMERGING ISSUES**

Notification of emerging issues must be provided to the Chair no later than 24 hours prior to the meeting.

**5. MATTERS FOR DECISION**

- As per matters listed.
- Items Under Separate Cover to State Council only.

**6. MATTERS FOR NOTING / INFORMATION**

- As per matters listed.

**7. ORGANISATIONAL REPORTS**

7.1 Key Activity Report

- 7.1.1 Commercial and Communications Unit
- 7.1.2 Governance and Organisational Services Unit
- 7.1.3 Infrastructure Unit
- 7.1.4 Strategy, Policy and Planning Unit

7.2 Policy Forum Report

7.3 President’s Report

**RECOMMENDATION**

That the President’s Report for December 2021 be received.

7.4 CEO’s Report

**RECOMMENDATION**

That the CEO’s Report for December 2021 be received.

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**7.5 Ex Officio Reports**

- 7.5.1 LG Professionals President, Ms Annie Riordan, to provide the LG Professionals report to the meeting.
- 7.5.2 The Rt. Hon. Lord Mayor Basil Zempilas to provide City of Perth report to the meeting.

**8. ADDITIONAL ZONE RESOLUTIONS**

To be advised following Zone meetings.

**9. DATE OF NEXT MEETING**

The next meeting of the WALGA State Council will be held at WALGA, ONE70, LV1, 170 Railway Parade, West Leederville on **Wednesday, 2 March 2022** commencing at 4:00pm.

The State Council meeting schedule for 2022 is as follows:

<b>Date</b>	<b>Venue</b>
Wednesday, 2 March 2022	WALGA
Wednesday, 4 May 2022	South Metropolitan Zone
Wednesday, 6 July 2022 (includes WALGA budget adoption)	WALGA
Thursday, 8 – Friday, 9 September 2022	Peel Country Zone (TBC)
Wednesday, 7 December 2022	WALGA

**10. CLOSURE**



## Agenda Items

<b>5. MATTERS FOR DECISION .....</b>	<b>6</b>
5.1 Paid Family and Domestic Violence Leave Entitlements.....	6
5.2 Payment to Independent Committee Members (05-034-01-0005 TB) .....	24
5.3 2021 Annual General Meeting (01-003-02-0003 TB) .....	26
5.4 Review of advocacy positions relating to the <i>Building Act 2011</i> and Building Regulations 2012 (05-015-02-0010 CL) .....	30
5.5 Draft WA Building Surveyors Code of Conduct (05-015-02-0010 CL) .....	33
<b>6. MATTERS FOR NOTING / INFORMATION.....</b>	<b>45</b>
6.1 Local Government Support for Single Use Plastic Bans (01-006-02-0003) .....	45
6.2 Report Municipal Waste Advisory Council (MWAC) (01-006-03-0008 RNB) .....	47
6.3 WALGA submission on the National Climate Resilience and Adaptation Strategy .....	50
6.4 Closing the Gap Update.....	52
6.5 Submission to the Senate Inquiry into Provision of General Practitioner and related primary health services to outer metropolitan, rural, and regional Australians (03-030-03- 0001 VB) .....	54
6.6 Woorlooloo Independent Review Letter of Support (05-024-03-0011 SM) .....	56
6.7 State Budget Outcomes (05-088-03-0001 DT).....	58
6.8 Foundations for a Stronger Tomorrow – Submission to the Draft State Infrastructure Strategy (05-001-03- 0018ID) .....	60
6.9 Regional Telecommunications Review 2021.....	64
6.10 WALGA submission on Guideline: Native Vegetation Referral, Part V Environmental Protection Act 1986 (05 095-03-0001 GM) .....	67
6.11 WALGA submission on Draft Native Vegetation Policy for Western Australia (05-095-03- 0001 GM) .....	69
6.12 Submission on Cost Recovery Part IV of the Environmental Protection Act 1986 – assessments by the Environmental Protection Authority.....	71
6.13 Student Transport Assistance Policy Framework Inquiry – WALGA Submission (05-005- 03-0013 ID).....	73
<b>7. ORGANISATIONAL REPORTS.....</b>	<b>75</b>
<b>7.1 Key Activity Reports .....</b>	<b>75</b>
7.1.1 Report on Key Activities, Commercial and Communications Unit (01-006-03-0017 ZD) ...	75
7.1.2 Report on Key Activities, Governance and Organisational Services Unit (01-006-03- 0007 TB).....	78
7.1.3 Report on Key Activities, Infrastructure (05-001-02-0003 ID).....	81
7.1.4 Report on Key Activities, Strategy, Policy and Planning Unit (01-006-03-0017 NM) .....	83
7.2 Policy Forum Report (01-006-03-0007 TB) .....	86
<b>STATUS REPORT ON STATE COUNCIL RESOLUTIONS.....</b>	<b>88</b>





## 5. MATTERS FOR DECISION

### 5.1 Paid Family and Domestic Violence Leave Entitlements

By Davina Hunter, Employee Relations Service Manager

#### RECOMMENDATION

That WALGA:

Endorse the submission to the Fair Work Commission (FWC) regarding paid family and domestic violence leave (FDVL) which:

1. highlights that FDVL for employees is an important issue for the sector;
2. supports the introduction of a new entitlement in modern awards for employees to receive five days' paid FDVL per year;
3. advocates for employees to be able to access their paid personal/carer's leave in circumstances of family and domestic violence; and
4. opposes the introduction of a new entitlement in modern awards for employees to receive 10 days' paid FDVL per year as sought by the Australian Council of Trade Unions (ACTU).

#### Attachments

1. Attachment 1 contains the draft submission to the FWC.
2. Attachment 2 contains a summary of the submissions received by the FWC advocating for 10 days' paid FDVL.
3. Attachment 3 contains a summary of the survey questions and results.

#### Executive summary

- There is currently no legislative or award entitlement to *paid* FDVL in the federal industrial relations system.
- The National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) (**FW Act**) provide employees with an entitlement to five days' unpaid FDVL per year.
- The FWC commenced a review of FDVL in April 2021 to determine appropriate FDVL provisions in modern awards, including whether an entitlement to ten days' paid FDVL should be included in modern awards as requested by the ACTU.
- WALGA Employee Relations has surveyed the sector to determine whether WALGA should prepare a submission for the FWC on FDVL and whether Local Governments believe employees should be provided with an entitlement to paid FDVL.
- 50% of the sector responded to the survey and 69% of respondents believe employees should be provided with paid FDVL.
- The majority of respondents take the view that employees should be provided with five days' FDVL per year.
- Many Local Governments already provide employees with paid FDVL either through their enterprise agreement or by policy.

#### Policy implications

The recommendation aligns with WALGA's Advocacy Position 3.10.1 – Family and Domestic Violence, which states:

*WA Local Governments recognise the prevalence, seriousness and preventable nature of family and domestic violence and the roles that Local Governments can play in addressing gender equity and promoting respectful relationships in their local community.*

#### Background to the FDVL Review 2021

- The FWC is currently reviewing the FDVL terms in federal modern awards.
- On 26 March 2018, a decision was made by the FWC as part of the four yearly review of modern awards to include an entitlement to five days' unpaid FDVL in most modern awards. 123 modern

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

awards were varied, including the Local Government Industry Award 2010 which was varied from 1 August 2018.

- Federal Parliament later introduced an entitlement to five days' unpaid FDVL in the NES in the FW Act so that all national system employees (and not just those covered by modern awards) could have access to this entitlement.
- On 13 December 2018, the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018* amended the FW Act to provide all employees with a new entitlement to five days' unpaid FDVL as a NES entitlement.
- When the Local Government Industry Award 2020 commenced operation, the model FDVL term was removed and a note was inserted which referred to the NES entitlement to five days' unpaid FDVL.
- During the four yearly review of modern awards, the ACTU made a claim for 10 days' paid FDVL.
- The ACTU claim for 10 days' paid FDVL was rejected by the Commission at that time, but the majority of the Full Bench expressed the preliminary view that all employees should have access to unpaid FDVL and that employees should be able to access personal/carer's leave for the purposes of taking FDVL. The Full Bench issued a decision on 26 March 2018 confirming the preliminary view regarding access to unpaid FDVL.
- In April 2021 the FWC commenced a review of the FDVL term in modern awards, which will impact on the Local Government Industry Award 2020, to consider:
  - whether employees should be able to access paid personal/carer's leave for the purpose of taking FDVL;
  - the adequacy of the unpaid FDVL entitlement, and
  - whether provisions should be made for paid FDVL.
- WALGA has an opportunity to file a submission in the FWC regarding the proposed changes to the modern awards sought by the ACTU, which includes a new entitlement to 10 days' paid FDVL.

**FDVL in the state industrial relations (IR) system**

The FWC's FDVL Review 2021 will not impact those Local Governments which operate in the state IR system. Currently there is no legislative or award entitlement to paid or unpaid FDVL in the state IR system however, some industrial agreements registered with the WA Industrial Relations Commission may contain an entitlement to FDVL.

The *Industrial Relations Legislation Amendment Bill 2021* which was introduced into WA Parliament on 20 October 2021 contains a new entitlement to five days' unpaid FDVL per year. If this Bill is passed, Local Governments who are state system employers will be required to provide employees with a minimum entitlement to five days' unpaid FDVL per year.

**Proposed variation to modern awards**

The ACTU, the McAuley Community Services for Women and the Victorian Government have each filed a submission seeking 10 days' paid FDVL for employees. A more comprehensive summary of these submissions are outlined in **Attachment 2**.

**WALGA FDVL survey**

WALGA Employee Relations developed a survey for the sector on FDVL to inform an appropriate position that WALGA should take in its submission to the FWC. All Local Governments were invited to participate in the survey which was open from 10 September 2021 to 8 October 2021. The survey was promoted through ER Alerts, LG News and a direct email to all CEOs. 69 Local Governments responded to the survey representing 50% of the sector. The survey results indicate:

- 85% of respondents believe that FDVL is an important issue for the Local Government sector
- 69% of respondents believe that paid FDVL should be provided to employees and 70% believe WALGA should advocate for paid FDVL as a sector issue
- 58% of respondents believe employees should be provided with five days' paid FDVL per year
- 28% of respondents believe employees should be provided with ten days' paid FDVL per year, which is the entitlement sought by the ACTU

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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- 90% of respondents believe employees should be able to access paid personal/carer's leave for the purpose of taking FDVL
- 45% of Local Governments already provide employees with paid FDVL.

A table summarising the full survey questions and results is set out in **Attachment 3**.

**Draft submission**

WALGA Employee Relations has prepared a submission for the FWC based on the survey responses received. The proposed submission is contained in **Attachment 1**. The submission along with any evidence supporting the submission must be filed with the FWC by 4 February 2022.



**Item 5.1 – Attachment 1 – Draft submission to the FWC**

**FAIR WORK COMMISSION  
FAMILY AND DOMESTIC VIOLENCE LEAVE REVIEW 2021 (AM2021/55)**

**Western Australian Local Government Association Submission**

**Introduction**

1. This submission is made on behalf on the Western Australian Local Government Association (**WALGA**).
2. We refer to [Statement \[2021\] FWCFB 2047](#) dated 15 April 2021 and [Statement \[2021\] FWCFB 6028](#) dated 19 October 2021. This submission opposes some of the proposed variations to the modern awards sought by the Australia Council of Trade Unions (**ACTU**) and others.
3. The majority of Local Governments in Western Australia are covered by the Local Government Industry Award 2020 (**LG Award**) and WALGA's submissions regarding FDVL entitlements are made in the context of the current LG Award and any future proposed changes to that award.

**Issues considered by the FDVL Review**

4. As per Statement [2021] FWCFB 2047, the Fair Work Commission's (**FWC**) Family and Domestic Violence Leave Review 2021 (**FDVL Review**) will be considering the following issues:
  - (a) whether employees should be able to access paid personal/carer's leave for the purpose of taking family and domestic violence leave (**FDVL**);
  - (b) the adequacy of the unpaid FDVL entitlement; and
  - (c) whether provisions should be made for paid FDVL.
5. WALGA has prepared brief submissions to provide a response to each of the issues considered by the FDVL Review and the modern award variations sought by the ACTU.
6. WALGA has sought feedback from all WA Local Governments on the issues covered by the scope of the FDVL Review, including through a short survey administered by WALGA. This engagement and survey were undertaken as FDVL is an important issue for the sector.
7. Approximately half of the Local Government respondents surveyed currently provide employees with five days' paid FDVL per annum for full-time and part-time employees. This is primarily provided as an entitlement pursuant to an enterprise agreement or policy.
8. Although approximately half of the Local Government respondents provide paid FDVL, the utilisation rate for accessing this type of leave is low, with 71% of respondents reporting that in the last 12 months, no employees accessed this entitlement.

**FDVL Review – Whether employees should be able to access paid personal/carer's leave for the purpose of taking FDVL**

9. An overwhelming majority of Local Governments believe that employees should be able to access paid personal/carer's leave for the purpose of taking FDVL and would be supportive of any proposed changes made to enable this.

**FDVL Review – The adequacy of the unpaid FDVL entitlement**

10. Approximately half of Local Governments believe that the current National Employment Standards (**NES**) entitlement of five days' unpaid FDVL is inadequate, and a majority of Local Governments believe employees should be provided with a paid FDVL entitlement.



**Item 8.1 - WALGA STATE COUNCIL AGENDA****FDVL Review – Whether provisions should be made for paid FDVL**

11. The majority of Local Governments believe that full-time and part-time employees should be provided with five days of paid FDVL per annum.
12. A few of the reasons provided by Local Governments in support of the provision of paid FDVL include:
  - (a) the threat of loss of income is not an issue that employees in this situation should have to deal with.
  - (b) income and financial security are necessary to escape a family and domestic violence situation.
  - (c) employers should provide a supportive and compassionate working environment.
  - (d) family and domestic violence is a serious societal issue that Local Governments should be recognising and addressing.
13. There are several reasons why Local Governments do not support the provision of 10 days' paid FDVL. These reasons include the following:
  - (a) Employees already have adequate leave entitlements, including various forms of paid and unpaid leave.
  - (b) The potentially significant budget and cost implications of providing 10 days' paid FDVL to employees.
  - (c) The operational impact of the provision of 10 days' paid FDVL.
  - (d) That Local Governments support employee access to personal/carer's leave and other forms of paid and unpaid leave in circumstances of family and domestic violence.
14. WALGA submits that if the result of the FDVL Review is for employees covered by a modern award to be provided with paid FDVL, that the LG Award should be varied to provide five days of paid FDVL per annum for full-time and part-time employees.

**Submissions made in the FDVL Review**

15. We refer to the ACTU's submissions to the FDVL Review dated 30 July 2021 to vary modern awards to include 10 days' paid FDVL, among other things. We have addressed each proposed variation to the modern awards sought by the ACTU below.

**ACTU Submission – 10 days' paid FDVL**

16. WALGA opposes the ACTU's proposed variation to introduce 10 days of paid FDVL.
17. WALGA submits that if the Full Bench decides to introduce an entitlement to paid FDVL into modern awards, that five days of paid FDVL per year is an adequate paid entitlement for employers to provide to full-time and part-time employees.

**ACTU Submission – Rate of pay for FDVL for full-time and part-time employees**

18. WALGA opposes the ACTU's claim for paid FDVL to be payable at an employee's ordinary hourly rate including applicable shift loadings and penalties.
19. WALGA submits that any paid FDVL entitlement should be payable at the employee's base rate of pay for the employee's ordinary hours of work in the period excluding shift loadings and penalties.
20. This is consistent with how annual leave and personal/carer's leave is payable pursuant to sections 90 and 99 of the *Fair Work Act 2009 (FW Act)*.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**ACTU Submission – Rate of pay for FDVL for casual employees**

21. WALGA does not support the provision of paid FDVL to casual employees and submits that casual employees should only be entitled to unpaid FDVL.
22. However, in the event the Full Bench decides to introduce a paid FDVL entitlement for casual employees in the LG Award, WALGA submits that the payment should include the employee's minimum hourly rate and the casual loading only and exclude all other penalty rates and shift loadings.
23. This position is supported by the current casual terms in the LG Award. Casual employees are paid a casual loading of 25% of the minimum hourly rate pursuant to clause 11.1 of the LG Award as compensation instead of paid leave under the LG Award and the NES.
24. If the Full Bench deems casual employees should be entitled to paid FDVL, WALGA submits that casual employees should only be entitled to paid FDVL if they had hours of work rostered in the period in which they will be taking leave.

**ACTU Submission – Access to five days' unpaid FDVL on each occasion after exhaustion of any paid FDVL entitlement**

25. WALGA opposes the variation proposed by the ACTU that if an employee exhausts their paid FDVL entitlement, they should be entitled to five days' unpaid FDVL on each occasion they are required to take FDVL.
26. WALGA submits that a reasonable entitlement would be for employees to access up to five days of unpaid FDVL per annum if they have exhausted their paid FDVL entitlement, as is currently provided for in the NES.
27. By capping the entitlement to unpaid leave, rather than providing unlimited unpaid leave on a per occasion basis, this allows Local Governments to budget and plan their operations appropriately to accommodate these entitlements.
28. In addition, various enterprise agreements in the sector currently provide for unpaid leave to be granted at the discretion of the CEO.

**ACTU Submission – Additional note in section 106B(1) of the *Fair Work Act 2009***

29. WALGA agrees with the ACTU's proposed variation to the note in section 106B(1) of the FW Act regarding unpaid family and domestic violence leave. WALGA submits this is a reasonable addition as an appointment with a medical, financial or legal professional is an example of an action that an employee may need to take in order to deal with the impact of family and domestic violence.

**ACTU Submission – Extension of the definition of FDVL**

30. WALGA agrees with and supports the ACTU's proposed variation that the definition of Family and Domestic Violence should be expanded to include violent, threatening or other abusive behaviour by a member of a person's household.

**Conclusion**

31. In summary, WA Local Governments recognise that FDVL is an important issue for the sector and believe that if a paid entitlement to FDVL is introduced, that full-time and part-time employees should have access to five days' paid FDVL per year.

*Item 8.1 - WALGA STATE COUNCIL AGENDA*

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32. The decision to introduce a paid entitlement to FDVL ought to be considered in light of the context that family and domestic violence is a community issue that extends beyond the scope of employment and should be considered alongside social security benefits, including:
- (a) The Crisis Payment for Extreme Circumstances Family and Domestic Violence.
  - (b) The new Escaping Violence Payment which provides women and children escaping domestic and family violence up to \$5,000 of emergency payments.
  - (c) Centrelink payments and pensions.

*Item 8.1 - WALGA STATE COUNCIL AGENDA*



Item 5.1 – Attachment 2 – Family and Domestic Violence Leave Review 2021 – Summary of FWC submissions received	
PARTY PROPOSING TO VARY THE MODERN AWARDS	SUBMISSION
Australian Council of Trade Unions (ACTU)	<p>Summary of ACTU position on the issues for review:</p> <ul style="list-style-type: none"> <li>• FWC does not have jurisdiction to vary modern awards to provide that employees should be able to access paid personal/carer’s leave for the purpose of taking FDVL, and should not do so in any event, because the operational effect of the term would be detrimental to employees in that the minimum entitlement to 10 days’ paid personal/carer’s leave would be reduced. Also excludes the NES entitlement of 10 days’ personal/carer’s leave.</li> <li>• No changes are needed to the unpaid model leave term as it was removed from modern awards on 25 July 2019.</li> <li>• Provisions should be made for 10 days’ paid FDVL. Paid leave is necessary to ensure that employees are provided with a fair and relevant safety net of minimum terms and conditions of employment. ACTU seeks a variation to modern awards on this basis.</li> </ul> <p>Proposed variation (drafted as an amended version of ss.106A-E and 107 of the FW Act):</p> <ul style="list-style-type: none"> <li>• 10 days’ paid FDVL.</li> <li>• Leave is payable at an employee’s ordinary hourly rate including applicable shift loadings and penalties.</li> <li>• For a casual employee, leave is payable at the rate of pay that the employer would be required to pay the employee for the hours of work in the period for which the employee was rostered, including any casual and shift loadings applicable.</li> <li>• Upon exhaustion of the paid leave entitlement, employees will be entitled to up to 5 days’ unpaid FDVL on each occasion for the purpose of attending to activities related to the experience of being subjected to family and domestic violence.</li> <li>• An addition to the Note in s.106B(1) to clarify that attending appointments with medical, financial, or legal professionals are examples of actions that may be covered by the provision.</li> <li>• The definition of FDVL has been expanded to include violent, threatening, or abusive behaviour by a close relative of an employee or member of a person’s household.</li> </ul> <p>ACTU’s submission</p> <ul style="list-style-type: none"> <li>• The submission can be viewed <a href="#">here</a>.</li> <li>• Annexure A sets out the ACTU’s proposed variation.</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>Bank of Queensland</p>	<ul style="list-style-type: none"> <li>• Did not propose a variation.</li> <li>• BOQ provide 10 days' paid and 10 days' unpaid FDVL to its corporate employees.</li> <li>• BOQ provide 3 days' paid leave to an employee who is required to provide support to a family or household member impacted by family and domestic violence.</li> <li>• BOQ also provide other support such as providing safety and security plans, duress alarms, temporary branch security, onsite car parking and support to attend the police, etc.</li> <li>• The submission can be viewed <a href="#">here</a>.</li> </ul>
<p>McAuley Community Services for Women</p>	<ul style="list-style-type: none"> <li>• 10 days' paid FDVL.</li> <li>• The submission can be viewed <a href="#">here</a>.</li> </ul>
<p>Victorian Government – Tim Pallas MP Minister for Industrial Relations</p>	<ul style="list-style-type: none"> <li>• 10 days' paid FDVL.</li> <li>• Dedicated education campaign that promotes the benefits of paid leave to both the workplace and the affected employees.</li> <li>• The Victorian Government will continue to advocate for 10 days' paid FDVL to become a NES entitlement.</li> <li>• The submission can be viewed <a href="#">here</a>.</li> </ul>



*Item 8.1 - WALGA STATE COUNCIL AGENDA*



Item 5.1 – Attachment 3 – WA Local Governments Family and Domestic Violence Leave Survey Results		
QUESTION NO.	QUESTION	SUMMARY OF RESPONSES
<b>General Information</b>		
1.	Please fill in which Local Government you are from and your contact details below.	
2.	Please provide the total number of employees (based on headcount) employed by your Local Government.	Ranges from 1 to 1200 employees.
3.	Is your Local Government in WA or NT?	WA – 69 responses received
<b>Views on FDVL Review</b>		
4.	Do you believe the current NES entitlement of 5 days of unpaid FDVL is adequate?	<b>Yes – 52.94% (36)</b> No – 47.06% (32)
5.	Please explain why you believe/don't believe the current NES entitlement of 5 days of unpaid FDVL is adequate?	<p>Example responses – entitlement is satisfactory</p> <ul style="list-style-type: none"> <li>• Employees receive other leave entitlements they could use.</li> <li>• There is no current uptake of paid/unpaid FDVL at the LG.</li> <li>• Increasing the paid leave entitlement can increase the workload of other staff.</li> </ul> <p>Example responses – entitlement is not satisfactory</p> <ul style="list-style-type: none"> <li>• People in abusive relationships are not normally financially stable, therefore paid leave is required.</li> <li>• The LG has provided 5 or 10 day's paid FDVL in an enterprise agreement.</li> </ul>
6.	Do you believe Local Governments should provide employees with paid FDVL?	<b>Yes – 69.35% (43)</b> No – 30.65% (19)

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



7.	(If the answer to qu. 6 was no) Please explain why you don't believe Local Governments should provide employees with paid FDVL?	<p>Example responses</p> <ul style="list-style-type: none"> <li>• Employees can access other paid leave entitlements such as annual leave, personal/carer's leave</li> <li>• Limited to no uptake of current unpaid FDVL</li> <li>• Not all LGs may be able to adequately fund paid FDVL</li> <li>• Potential significant operational impact from FDVL</li> </ul>
8.	(If the answer to qu. 6 was yes) Please explain why you believe Local Governments should provide employees with paid FDVL?	<p>Example responses</p> <ul style="list-style-type: none"> <li>• Creates a compassionate work environment</li> <li>• To be part of a societal issue that transcends the workplace</li> <li>• Serious issue that employers should support</li> <li>• Additional financial stress to those experiencing FDVL if they only have an unpaid leave entitlement</li> </ul>
9.	(If the answer to qu. 6 was yes) How many days of paid FDVL should Local Governments provide to their employees?	<p>3 days – 6.98% (3)  <b>5 days – 58.14% (25)</b>                  10 days – 27.91% (12)                  Other (please specify) – 6.98% (3)</p> <ul style="list-style-type: none"> <li>• 5 days (included above).</li> <li>• 2 days.</li> <li>• 3 days subject to annual leave not exceeding one year's annual leave entitlement (i.e., 4 weeks).</li> <li>• 5 to 10 days (included above as 5 days)</li> <li>• Case by case basis to be approved by CEO.</li> </ul>
10.	<p>(If the answer to qu. 6 was yes) Do you think paid FDVL should be payable at employee's base rate of pay for the employee's ordinary hours of work in the period they take the leave or should it be payable at the employee's hourly rate including any applicable shift loadings and penalties for the employee's ordinary hours of work in the period?</p> <p>Note: Under the FW Act, annual leave, paid personal/carer's leave and compassionate leave are paid at the employee's base rate of pay only for the employee's ordinary hours of work in the period.</p>	<p><b>Payable at the employee's base rate of pay only – 93.02% (40)</b></p> <p>Payable at the employee's hourly rate including applicable shift loadings and penalties – 6.98% (3)</p>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



11.	(If the answer to qu. 6 was yes) Should casual employees be entitled to paid FDVL?	Yes – 41.86% (18) <b>No – 58.14% (25)</b>
12.	(If the answer to qu. 11 was yes) The ACTU is seeking payment for FDVL for casual employees at the rate of pay that the employer would be required to pay the casual employee for the hours of work in the period for which the employee was rostered, including any casual and shift loadings applicable. If a casual employee is entitled to paid FDVL, do you think the payment for the leave should include applicable casual and shift loadings?	Should include casual and shift loadings – 11.11% (2) <b>Should include casual loading only – 83.33% (15)</b> Should include applicable shift loadings only – 0% (0) Should not include casual loading or shift loadings – 5.56% (1)
13.	In addition to 10 days of paid FDVL, the ACTU is also seeking that employees should be entitled to an additional 5 days of unpaid FDVL on each occasion if they have exhausted their paid entitlement.  If Local Governments are required to provide paid FDVL to employees, do you think employees should also be entitled to unpaid FDVL on each occasion?	<b>Yes – 68.85% (42)</b> No – 31.15% (19)
14.	(If the answer to qu. 13 was yes) Upon exhaustion of the paid FDVL entitlement, how many days of unpaid FDVL on each occasion should Local Governments provide?	3 days – 7.32% (3) <b>5 days – 68.29% (28)</b> 10 days – 4.88% (2) Other (for example 5 days per annum) – 19.51% (8) <ul style="list-style-type: none"> <li>• 5 per annum as per NES</li> <li>• 5 days per annum</li> <li>• A standardised approach wont enable appropriate support to be given.</li> <li>• Each request (UFDVL) would need to be assessed on its merit and the organisation's operational requirements at the time of the request.</li> <li>• Days per annum</li> <li>• 10 days per annum.</li> <li>• 5 days per annum.</li> <li>• As required.</li> </ul>
15.	(If the answer to qu. 13 was yes) As an alternative, do you think Local Governments should provide unpaid FDVL per annum (rather than per occasion) once the employee has exhausted the paid FDVL entitlement?	<b>Yes – 60% (12)</b> No – 40% (8)



**Item 8.1 - WALGA STATE COUNCIL AGENDA**



16.	(If the answer to qu. 15 was yes) Upon exhaustion of the paid FDVL entitlement, how many days of unpaid FDVL per annum should Local Governments provide?	3 days – 9.09% (1) <b>5 days – 63.64% (7)</b> 10 days – 9.09% (1) Other (please specify) – 18.18% (2) <ul style="list-style-type: none"> <li>• Dependant on the needs of the employee.</li> <li>• Case by case on request to employer.</li> </ul>
17.	<p>The ACTU is seeking to expand the definition of Family Domestic Violence to include violent, threatening or other abusive behaviour by a member of a person’s household. Currently, the definition of Family and Domestic Violence is ‘<i>violent, threatening or other abusive behaviour by a close relative of an employee that seeks to coerce or control the employee and causes the employee harm or to be fearful.</i>’ See s.12 and s.106B(2) of the FW Act.</p> <p>A close relative is a member of the employee’s immediate family or related to the employee according to Aboriginal or Torres Strait Islander kinship rules. The term ‘immediate family’ includes a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee or of their spouse or de facto partner.</p> <p>Do you think the definition of Family and Domestic Violence should be expanded to include violent, threatening or other abusive behaviour by a member of a person’s household?</p>	Yes – <b>75% (45)</b> No – 25% (15)
18.	Do you think employees should be able to access paid personal/carer’s leave for the purpose of taking FDVL?	Yes – <b>90% (54)</b> No – 10% (6)
19.	(If the answer to qu. 18 was yes) How many days of paid personal/carer’s leave do you think employees should be able to access for the purpose of taking FDVL?	3 days – 7.41% (4) <b>5 days – 48.15% (26)</b> Other (please specify) – 44.44% (24) <ul style="list-style-type: none"> <li>• With medical support up to their accrued entitlement potentially it could largely be situational as to the amount required (3).</li> <li>• All of their entitlement/up to the balance of their personal leave entitlement (5).</li> <li>• 10 days (5).</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



		<ul style="list-style-type: none"> <li>• Whatever entitlements they have, dependent on circumstances/whatever is available or accrued (3).</li> <li>• Set at 5 days but enable responsive workplaces (1).</li> <li>• Should be inclusive of their current personal leave entitlement/part of current entitlement (no additional days) (3).</li> <li>• As needed dependent on the situation and leave balance. To be determined on needs basis provided within accrued entitlement (2).</li> <li>• As much as the employer approves (1).</li> <li>• The LG allows employees to access paid carer's leave to support a person experiencing FDV (1).</li> </ul>
20.	Do you think FDVL is an important issue for the Local Government Sector?	<b>Yes – 85% (51)</b> No – 15% (9)
21.	Do you think WALGA should advocate on behalf of Local Governments for paid FDVL as a sector issue?	<b>Yes – 70% (42)</b> No – 30% (18)
<b>FDVL Entitlements and Supports that Local Governments Provide</b>		
22.	Does your Local Government provide employees with paid FDVL?	Yes – 45% (27) <b>No – 55% (33)</b>
23.	(If the answer to qu. 22 was yes) How does your Local Government provide employees with paid FDVL? (Please tick all of the options that apply)	<b>Enterprise agreement – 65.38% (17)</b> Policy – 23.08% (6) Contract of employment – 3.85% (1) Other (please specify) – 19.23% (5) <ul style="list-style-type: none"> <li>• It's an entitlement.</li> <li>• Management practice.</li> <li>• Via personal leave entitlements.</li> <li>• Per the NES – we follow NES.</li> <li>• Award?</li> </ul>
24.	(If the answer to qu. 22 was yes) How many days of paid FDVL are your employees entitled to take each year?	<ul style="list-style-type: none"> <li>• Up to 10 days/10 days (2)</li> <li>• 20 days (1)</li> <li>• 5 days – but we reverse the circumstance where we allow the use of personal leave for this and DFVL when that is exhausted (1)</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



		<ul style="list-style-type: none"> <li>• <b>5 days (14)</b></li> <li>• As per the NES (1)</li> <li>• Currently 5 days but in principle agreement to increase to 10 days in the new EA (1)</li> <li>• 2 days if covered under the Salaried Officers EA (1)</li> <li>• As many days as they have entitled (1)</li> <li>• 10 days paid and 5 days unpaid (1)</li> <li>• Nil (1)</li> <li>• Included with personal leave – 5 days unpaid as a min (1)</li> </ul>
25.	(If the answer to qu. 22 was yes) Does your Local Government provide paid FDVL to all employees (full-time, part-time and casual)? (Tick all of the options that apply)	<b>Full-time employees – 100% (25)</b> Part-time employees – 88% (22) Casual employees – 24% (6)
26.	(If the answer to qu. 22 was yes) How many employees have accessed paid FDVL in the last 12 months?	Ranges from 0 to 3 employees.
27.	(If the answer to qu. 22 was yes) Of the employees who have taken paid FDVL what is the average number of days they have taken in the last 12 months?	Ranges from 0 to 6.5 days.
28.	(If the answer to qu. 22 was yes) What is highest number of days of paid FDVL that employees have accessed in the last 12 months?	Ranges from 0 to 7 days.
29.	(If the answer to qu. 22 was yes) What is the lowest number of days of paid FDVL that employees have accessed in the last 12 months? (minimum 1 day)	Ranges from 0 to 6 days.
30.	Does your Local Government provide employees with more than 5 days of unpaid FDVL?	Yes – 8.77% (5) <b>No – 91.23% (52)</b>
31.	(If the answer to qu. 30 was yes) How many days of unpaid FDVL (including the NES 5 days) does your Local Government provide?	Ranges from 0 to 10 days.
32.	(If the answer to qu. 30 was yes) How is the additional unpaid FDVL provided? (Tick all of the options that apply)	Enterprise agreement – 20% (1) Policy – 20% (1) Contract of employment – 0% (0) <b>Other (please specify) – 60% (3)</b> <ul style="list-style-type: none"> <li>• By request to the CEO</li> <li>• As requested on a case by case basis</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



		<ul style="list-style-type: none"> <li>NES</li> </ul>
33.	How many employees have accessed unpaid FDVL in the last 12 months?	Ranges from 0 to 1 employee.
34.	Of the employees who have taken unpaid FDVL what is the average number of days they have taken in the last 12 months?	Ranges from 0 to 3 days.
35.	What is the highest number of days of unpaid FDVL that an employee has accessed in the last 12 months?	Ranges from 0 to 3 days.
36.	What is the lowest number of days of unpaid FDVL that an employee has accessed in the last 12 months? (Minimum 1 day)	Ranges from 0 to 3 days.
37.	Does your Local Government provide employees with access to paid personal/carer's leave for the purposes of FDVL?	<p><b>Yes – 59.65% (34)</b>  <b>No – 40.35% (23)</b></p>
38.	(If the answer to qu. 37 was yes) How is the access to paid personal/carer's leave for the purposes of FDVL provided? (Tick all of the options that apply)	<p>Enterprise agreement – 37.14% (13)                  Policy – 17.14% (6)                  Contract of employment – 5.71% (2)  <b>Other (please specify) – 54.29% (19)</b></p> <ul style="list-style-type: none"> <li>On its merits with the LG offering the option of paid personal leave if required (1)</li> <li>At the discretion of the CEO (4)</li> <li>The LG would allow employees to apply to use whatever other leave they had in these Circumstances (1)</li> <li>Agreed upon with the employee (2)</li> <li>Under the Award (1)</li> <li>Entitlement (1)</li> <li>By internal procedure (1)</li> <li>Dependant on the supervisor and situation but also two days of personal leave can be taken without the requirement for a certificate (1)</li> <li>Currently an informal arrangement, albeit no request to access this to date, however, this will be included in our new EBA (1)</li> <li>No formal agreement, but would enable staff to take what was required (1)</li> <li>Via the online Payroll system (1)</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



		<ul style="list-style-type: none"> <li>• Management practice (1)</li> <li>• Seeks to support employees in general (1)</li> <li>• As required on a case by case basis (1)</li> <li>• Just as part of their normal access to sick/personal leave (1)</li> </ul>
39.	(If the answer to qu. 37 was yes) How many days of paid personal/carer's leave for the purposes of FDVL does your Local Government provide?	<ul style="list-style-type: none"> <li>• 5 days (3)</li> <li>• Up to accrued entitlement (8)</li> <li>• 3 days (1)</li> <li>• Unknown (3)</li> <li>• 0 days (6)</li> <li>• 10 days (6)</li> <li>• NES (1)</li> <li>• Have not had to offer the leave as yet (1)</li> <li>• 2 days (2)</li> <li>• 12 days (1)</li> <li>• At discretion of the CEO (1)</li> </ul>
40.	Does your Local Government provide employees who are experiencing family and domestic violence with any of the following additional support? (Please tick all of the options that apply)	<p>Duress alarms – 0% (0)</p> <p>Temporary accommodation – 4% (2)</p> <p>Upgrades to home security – 2% (1)</p> <p>Security at the employee's home so that they can move their belongings – 0% (0)</p> <p>Loan car – 0% (0)</p> <p>Redeployment opportunities – 10% (5)</p> <p>Financial support to cover legal advice – 0% (0)</p> <p><b>Employee Assistance Program (EAP) – 82% (41)</b></p> <p>Family violence contact offers in the workplace – 12% (6)</p> <p>Other (please specify) – 24% (12)</p> <ul style="list-style-type: none"> <li>• Encouraged move to alternate accommodation, offered time off and assistance to take the matter to the police (1)</li> <li>• Will look at if individual circumstances dictate/case by case assistance where required (2)</li> <li>• Haven't had to provide any support so far/not had any instances so far (3)</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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		<ul style="list-style-type: none"><li>• Have not had to deal with, would be happy to do any of those things to support (1)</li><li>• Protection to and from vehicle and or safe parking if required (1)</li><li>• The LG has supported employees in many ways with additional paid leave, monitoring of the buildings. Financial advice is also available through the LG's EAP provider (1)</li><li>• How would we know? They wouldn't tell us?/ Unknown (2)</li></ul>
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**Item 8.1 - WALGA STATE COUNCIL AGENDA****5.2 Payment to Independent Committee Members (05-034-01-0005 TB)**

By Tony Brown, Executive Manager Governance & Organisational Services

**RECOMMENDATION**

That WALGA request the Minister for Local Government to amend the *Local Government Act 1995* to allow the payment of meeting attendance fees to, and/or defined reimbursements for time committed by, 'other persons' appointed as Committee members under s.5.8 of the *Local Government Act 1995*.

**Executive Summary**

- Local Governments have raised the issue that clarification is needed to allow Local Governments to pay meeting attendance fees to independent members of Committees in respect of their preparing for, attending and/or participating in Committee meetings, in accordance with s5.100 of the *Local Government Act 1995*.
- There has been differing advice provided to the sector over the years and conjecture as to the method by which a professional person, appointed as the independent member to an Audit Committee, may claim reimbursement for their commitment of time and professional expertise.
- This item recommends advocating for the *Local Government Act 1995* to be amended to allow the payment of meeting attendance fees to, and/or defined reimbursements for time committed by, 'other persons' appointed as Committee members under s.5.8 of the *Local Government Act 1995*.

**Background**

WALGA has received requests from a number of Local Governments highlighting the issue that Local Governments cannot legally pay meeting attendance fees to independent members of the Audit Committee in respect of their preparing for, attending and/or participating in Audit Committee meetings, and can only provide reimbursement of 'expenses', in accordance with s5.100 of the *Local Government Act 1995*.

The current legislative requirements are:

- The *Local Government Act 1995* (Act) provides for payments to members of Council and Committees.
- Section 5.100 of the Act expressly provides that a person who is a committee member but is not a council member or an employee is not to be paid a fee for attending any meeting.
- The Act prescribes a distinction between a re-imbusement of an expense and a payment of a meeting attendance fee in respect of attending a meeting.
- A significant number of Local Governments also have independent committee members on their audit committee and this matter could also affect them.

WALGA's support and assistance has been requested to advocate to the Minister for Local Government to provide a prompt resolution to this matter by making the necessary legislative amendments to enable independent Audit Committee members to be paid a meeting attendance fee.

The Department of Local Government, Sport and Cultural Industries Operational Guideline 9 "*Audit in Local Government – The appointment, function and responsibilities of Audit Committees*", includes the following guidance on the payment / reimbursement of expenses to independent Committee Members:

*"The legislation prevents a meeting fee being paid to an external person but it is permissible for a payment to be made as a reimbursement of expenses, commensurate with the expertise and knowledge such people bring to the committee. The Council will need to determine whether payment will be offered and the level of that reimbursement payment."*

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Comment**

There has been differing advice provided to the sector over the years and conjecture as to the method by which a professional person, appointed as the independent member to an Audit Committee, may claim reimbursement for their commitment of time and professional expertise. In the past, Departmental advice supported arrangements for an independent professional member of an Audit Committee to claim by invoice an hourly rate, as agreed with the Local Government, relevant to the time taken to prepare for and attend an Audit Committee meeting.

However, section 5.9 of the Act, provides that any Committee of Council may include membership of other persons, which may not necessarily be involved in the business of providing professional services, and therefore cannot invoice for their time and expertise in a way that a professional person appointed to an Audit Committee may do.

This ambiguity of how s.5.100 reimbursement may be reasonably applied, results in inconsistent and perhaps unfair arrangements for not only independent persons appointed to Audit Committees, but also to other persons who are appointed to Committees of Council and similarly contribute time and expertise to assist the Council in performing its functions under law.

This issue has recently been raised by a number of Local Governments who are appointing independent Audit Committee members and wishing to compensate them for their time.

There may be a range of options that could be included in an advocacy position regarding providing reimbursements and/or payment of meeting attendance fees to other persons appointed as members of a Committee of Council.

For example, the legislative arrangements could specify that an independent Audit Committee member must be paid the equivalent meeting attendance fee determined by the Local Government for payment to Council Members, but provide flexibility for the Council to determine a separate meeting attendance fee (within the relevant Local Government SAT Bands) for other persons appointed as members of a Committee of Council.

The proposal for advocacy on this matter can be broadened to allow for payment to independent members of any committee of Council established under s.5.8 of the *Local Government Act*.



**Item 8.1 - WALGA STATE COUNCIL AGENDA****5.3 2021 Annual General Meeting (01-003-02-0003 TB)**

*By Tim Lane, Manager Strategy & Association Governance and Kathy Robertson, Executive Officer Governance*

**RECOMMENDATION**

**That:**

1. The following resolutions from the 2021 WALGA Annual General Meeting be endorsed for action:

**Cost of Regional Development**

*That WALGA makes urgent representation to the State Government to address the high cost of development in regional areas for both residential and industrial land, including the prohibitive cost of utilities headworks, which has led to market failure in many regional towns.*

**CSRFF Funding Pool and Contribution Ratios**

*That WALGA lobby the State Government to:*

1. *Increase the CSRFF funding pool to \$25 million per annum and revert the contribution ratio to 50% split to enable more community programs and infrastructure to be delivered.*
2. *Increase the \$1 million per annum quarantined for female representation to \$2 million per annum.*

**Regional Telecommunications Project**

*That WALGA strongly advocates to the State Government to increase funding for the Regional Telecommunications Project to leverage the Federal Mobile Black Spot Program and provide adequate mobile phone coverage to regional areas that currently have limited or no access to the service.*

2. The following resolution passed at the 2021 WALGA Annual General Meeting be referred to the Mining Communities Policy Forum and the People and Place Policy Team for advocacy work to be undertaken:

**Review of the Environmental Regulations for Mining**

*Regarding a review of the Mining Act 1978:*

1. *To call on Minister Bill Johnston, Minister for Mines and Petroleum; Energy; Corrective Services to instigate a review of the 43-year-old Mining Act to require mining companies to abide by environmental regulations, and to support research and development into sustainable mining practices that would allow mining without detriment to diversification and community sustainability through other industries and development.*
2. *That abandoned mines in regional Western Australia receive a priority action plan with programmes developed to work with rural and remote communities to assist in the rehabilitation of these mines as a job creation programme, with funding allocated for diversification projects for support beyond mine life across Western Australia.*

**Executive Summary**

- WALGA's 2021 Annual General Meeting was held on Monday, 20 September 2021.
- The meeting resolved for WALGA to act in relation to four member motions:
  1. Cost of Regional Development
  2. CSRFF Funding Pool and Contribution Ratios
  3. Regional Telecommunications Project
  4. Review of the Environmental Regulations for Mining

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

- The meeting also resolved by special majority to make suggested amendments to the Association's Constitution as per an executive motion.
- The action taken or proposed to be taken in relation to each of the resolutions since the Annual General Meeting has been summarized for State Council's information.

**Attachment**

- [WALGA 2021 Annual General Meeting Minutes](#)

**Background**

The 2021 Annual General Meeting (AGM) was held on Monday, 20 September 2021.

Four member motions, as follows, were considered and supported by members at the AGM:

**1. Cost of Regional Development**

*That WALGA makes urgent representation to the State Government to address the high cost of development in regional areas for both residential and industrial land, including the prohibitive cost of utilities headworks, which has led to market failure in many regional towns.*

**2. CSRFF Funding Pool and Contribution Ratios**

*That WALGA lobby the State Government to:*

1. *Increase the CSRFF funding pool to \$25 million per annum and revert the contribution ratio to 50% split to enable more community programs and infrastructure to be delivered.*
2. *Increase the \$1 million per annum quarantined for female representation to \$2 million per annum.*

**3. Regional Telecommunications Project**

*That WALGA strongly advocates to the State Government to increase funding for the Regional Telecommunications Project to leverage the Federal Mobile Black Spot Program and provide adequate mobile phone coverage to regional areas that currently have limited or no access to the service.*

**4. Review of the Environmental Regulations for Mining**

*Regarding a review of the Mining Act 1978:*

1. *To call on Minister Bill Johnston, Minister for Mines and Petroleum; Energy; Corrective Services to instigate a review of the 43-year-old Mining Act to require mining companies to abide by environmental regulations, and to support research and development into sustainable mining practices that would allow mining without detriment to diversification and community sustainability through other industries and development.*
2. *That abandoned mines in regional Western Australia receive a priority action plan with programmes developed to work with rural and remote communities to assist in the rehabilitation of these mines as a job creation programme, with funding allocated for diversification projects for support beyond mine life across Western Australia.*

In addition to the member motions, an executive motion was endorsed by special majority to amend the [Association's Constitution](#).

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



**Comment**

Comment on the 2021 AGM resolutions is as per below:

**1. Cost of Regional Development**

*That WALGA makes urgent representation to the State Government to address the high cost of development in regional areas for both residential and industrial land, including the prohibitive cost of utilities headworks, which has led to market failure in many regional towns.*

It is recommended that this resolution be endorsed for action.

**2. CSRFF Funding Pool and Contribution Ratios**

*That WALGA lobby the State Government to:*

1. *Increase the CSRFF funding pool to \$25 million per annum and revert the contribution ratio to 50% split to enable more community programs and infrastructure to be delivered.*
2. *Increase the \$1 million per annum quarantined for female representation to \$2 million per annum.*

As this resolution is consistent with an existing WALGA advocacy position, as per below, it is recommended that the resolution above be endorsed for action.

*3.7.1 Community Infrastructure*

*The Association continues to advocate for better planning and support for community infrastructure and investment by the State, Commonwealth and private partners (Last updated May 2018)*

**3. Regional Telecommunications Project**

*That WALGA strongly advocates to the State Government to increase funding for the Regional Telecommunications Project to leverage the Federal Mobile Black Spot Program and provide adequate mobile phone coverage to regional areas that currently have limited or no access to the service.*

The Western Australian State Budget includes \$12.971 million in 2021-22 to deliver the Regional Telecommunications Project administered by the Department of Primary Industries and Regional Development (DPIRD). This project focuses on improving high-speed mobile voice and data coverage across regional Western Australia, leveraging investment by the Commonwealth Government and the telecommunications carriers. The currently funded projects are due to be completed by 30 June 2022. Further applications have been made under Round 5A of the Commonwealth Mobile Black Spot Program.

The Australian Government has committed \$80 million for Round 6 of the Program. The design process for Round 6 has not been completed. However, it is likely that project proposals that include significant co-contributions from State Governments will be highly competitive. Western Australia will be well placed if the State Government is able to both coordinate the identification of needs and provide co-funding.

In September 2021, WALGA made a submission to the Regional Telecommunications Independent Review Committee, based on advice received during consultation with Local Governments (including matters raised during WALGA Zone meetings). The submission was endorsed by State Council by [Flying Minute](#). The submission identified acute limitations in the coverage, capacity, reliability and resilience of the mobile telecommunications network, particularly in remote, rural and peri-urban areas. Further investment will be required to remedy these constraints.

It is recommended that this resolution be endorsed for action.



**Item 8.1 - WALGA STATE COUNCIL AGENDA****4. Review of the Environmental Regulations for Mining**

Regarding a review of the Mining Act 1978:

1. To call on Minister Bill Johnston, Minister for Mines and Petroleum; Energy; Corrective Services to instigate a review of the 43-year-old Mining Act to require mining companies to abide by environmental regulations, and to support research and development into sustainable mining practices that would allow mining without detriment to diversification and community sustainability through other industries and development.
2. That abandoned mines in regional Western Australia receive a priority action plan with programmes developed to work with rural and remote communities to assist in the rehabilitation of these mines as a job creation programme, with funding allocated for diversification projects for support beyond mine life across Western Australia.

This resolution is consistent with the 2019 WALGA AGM resolution which called for:

- WALGA to request the Hon. Bill Johnston, Minister for Mines and Petroleum, to undertake a review of the *Mining Act 1978* with a view to maximising the benefits to local communities and its impact on local communities; and
- the Mining application process to include a mandatory MOU with the Local Government which would be overseen by the Auditor General to ensure fairness to the Community by having the mining company contribute to local infrastructures as a Legacy project.

The WALGA Mining Communities Policy Form considered this resolution on 4 December 2019 and agreed that there are many aspects of the *Mining Act 1978* that require a review and update, including to:

- make the negotiation and compensation process between the mining Industry and other stakeholders more balanced;
- require mining companies to make an ongoing social contribution to the communities they operate in;
- limit the use of FIFO and DIDO to encourage the use of workers from residential communities;
- require compulsory planning approval for onsite accommodation;
- require miners to fund the upgrades/maintenance of local infrastructure use for their operations, such as local roads that were not initially constructed to carry heavy freight;
- require mining companies to pay outstanding rates when they transfer leases or when their lease lapses; and
- make it easier for Local Governments to appropriately categorise and rate mining tenements and mining infrastructure.

It was also acknowledged that the State Government is unlikely to be open to a review of the *Mining Act*, particularly if it would result in making it more difficult for miners to do business or impact on job creation and economic growth.

It is recommended that the 2021 AGM resolution, together with the 2019 AGM resolution, be referred to the Mining Communities Policy Forum and the People and Place Policy Team for further advocacy work to be undertaken. The next meeting of the Forum is scheduled for Monday, 8 November 2021.

**5. Amendments to WALGA's Constitution**

The proposed amendments to the Association's Constitution were endorsed by a special majority of State Council at the meeting on 7 July, before being endorsed by a special majority at the 2021 AGM (as required by clause 29 of the Constitution). The [Constitution](#) has now been amended as per the above resolution.

Letters enclosing a copy of the amended Constitution were sent by the WALGA Chief Executive Officer, Nick Sloan, to the Commissioner for Consumer Protection and the Minister for Local Government for their information.



#### 5.4 Review of advocacy positions relating to the *Building Act 2011* and *Building Regulations 2012* (05-015-02-0010 CL)

By Claire Lings, Project Officer, Building

##### RECOMMENDATION

That State Council endorses the replacement of Section 6.7: *Building Act* and Fees of WALGA's advocacy positions document relating to the *Building Act 2011* and *Building Regulations 2012* with the following:

1. Support the retention of Local Government as the primary permit authority in Western Australia for decisions made under the *Building Act 2011*.
2. Supports mandatory inspections for all classes of buildings, however, Local Government should not be solely responsible for all mandatory inspections.
3. Advocate for the State Government to urgently prioritise legislative reform that addresses systemic failures in the current building control model and to provide clarification on the role of Local Government in building control to ensure building legislation supports the following objectives:
  - a. Quality buildings that are cost efficient.
  - b. Functional, safe and environmentally friendly buildings.
  - c. Good decision making in all aspects of building.
  - d. Efficiency and effectiveness in building management, administration and regulation.
  - e. Openness and accountability with respect to all building matters.
  - f. Recognition of the rights and responsibilities of all parties in building matters in an equitable manner.
4. Existing and proposed building control related fees and charges to be cost recovery for Local Government.
5. WALGA will work with members, state agencies and industry groups to develop training opportunities and to promote the Local Government building surveying profession to ensure sustainability of Local Government building control services.
6. WALGA supports the Australian Building Codes Boards Trajectory for Low Energy Buildings by supporting Local Governments to meet community strategic objectives of a net zero carbon future by 2050 through work with members, state agencies and industry groups.

##### Executive Summary

- At its meeting on 16 August 2021 the People and Place Policy Team considered and endorsed a review of WALGA's Planning and Building Related advocacy positions.
- The Policy Team determined the Building Act and Fees policy positions as a section to be retained and reviewed, and that the policy area would have a high priority as part of the broader review.
- A review of the Building Act and Fees policy section has been undertaken, with several recommended changes proposed, and
- The People and Place Policy Team considered the matter at its meeting on 25 October and resolved to support the review and progress the matter to State Council for endorsement.

##### Attachments

- [Attachment 1: Existing positions and comments](#)
- [Attachment 2: Proposed new positions and comments](#)

##### Relevance to Strategic Plan

###### Advocating and facilitating sector solutions and policy

- We amplify the voice of Local Government and bring sector concerns directly to key decision makers
- We develop future-focused and evidence-based policy positions

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

- We connect and bring together expertise to maximise sector outcomes

**Policy Implications**

WALGA's existing policy positions are based on several State Council Resolutions dating back to 2011, including:

- December 2020 – 143.6/2020
- December 2019 – 151.7/2019
- December 2019 – 153.7/2019
- March 2017 – 7.1/2017
- September 2016 - 85.5 /2016
- July 2016 – 60.4/2016
- December 2015 - 124.7/2015
- December 2014 – 119.5/2014
- September 2013 – 246.4/2013
- December 2012 – 140.6/2012
- May 2012 – 56.3/2012
- February 2011 – 16.2/2011

Acceptance of the recommendation will see the replacement of the existing policy positions. Attachment 1 provides an overview of the existing positions and rationale for deleting, retaining and/or amending these.

**Background**

Assessments of the effectiveness of building control systems across Australia have recognised that there is diminishing public confidence in the building and construction industry, and that change is required to ensure buildings are safe and perform to expected standards. Now more than ever the focus is on Local Government building departments to deliver good governance, local leadership and sustainable services that meet the needs of their communities whilst supporting local jobs and economic growth.

The *Building Amendment Act 2012* was passed in Parliament in October 2012, with regulations being drafted shortly to accompany this Act. Prior to the release of the new Act, WALGA presented an issues paper that identified the guiding principles that should influence the new proposals:

- Quality buildings that are cost efficient.
- Functional, safe and environmentally friendly buildings.
- Good decision making in all aspects of building.
- Efficiency and effectiveness in building management, administration and regulation.
- Openness and accountability with respect to all building matters.
- Recognition of the rights and responsibilities of all parties in building matters in an equitable manner.

Following the Grenfell tower fire in 2017 and a number of high-profile structural issues in apartment buildings in New South Wales (NSW) and Victoria, all State and Territory Building Ministers agreed to an assessment of the effectiveness of compliance and enforcement systems for the building industry across Australia. It was recognised that there was diminishing public confidence in the building and construction industry and change was required to ensure buildings were safe and performed to expected standards. The resulting *Shergold Weir-Building Confidence Report* made 24 recommendations for a best practice model for compliance and enforcement, to strengthen the effective implementation of the National Construction Code (NCC). A team was set up in the office of the Australian Building Codes Board (ABCB) to develop and publicly report on a national framework for the implementation of the recommendations. In February 2018, the State Government gave in-principle agreement to implement recommendations of the Commonwealth Government Building Ministers Forum, *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*. In addition, the State also noted the findings of a 2018 inquiry into non-conforming building products conducted by the Senate Economics References Committee of the Parliament of Australia.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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The State Government through DMIRS is currently undertaking a comprehensive reform process of building regulation in response to the in-principal agreement to implement the Building Confidence Report. WALGA and the Local Government sector has been heavily engaged in these reforms. It is expected that this reform agenda will take several years to finalise and implement. The review of WALGA's advocacy positions is in part to provide a more robust policy position to support early, active and efficient engagement with the State Government going forward.

In support of the review, WALGA's existing positions were circulated to 54 metropolitan based and 35 regional Local Government Building Surveyors for comment, with feedback received from officers at the City of Perth, City of Swan, Shire of Collie, Town of Victoria Park, Shire of Beverley and Shire of Boddington. In total the 89 officers consulted undertake building regulatory functions for approximately 110 Local Governments. The Local Government officers who provided a response indicated support for reviewing the existing positions to ensure they reflected the current industry climate.

The existing positions and recommendations for re-wording, removal or new positions are detailed in Attachment 1 and 2, respectively.



**Item 8.1 - WALGA STATE COUNCIL AGENDA****5.5 Draft WA Building Surveyors Code of Conduct (05-015-02-0010 CL)**

By Claire Lings, Project Officer, Building

**RECOMMENDATION**

That WALGA:

1. Recommend to the Department of Mines, Industry Regulation and Safety (DMIRS) that the Draft WA Building Surveyors Code of Conduct be reviewed to ensure it addresses the following matters:
  - a) The impact of the obligations recommended in the draft Code be considered in relation to the current Western Australian building control model to ensure Local Government are able to maintain their statutory functions in line with community expectations.
  - b) That other building reform that will greatly impact the role of Local Government in the current Western Australian building control model, such as mandatory inspections and minimum documentation, be formalised prior to the Code of Conduct being introduced to ensure Local Government in Western Australia are able to maintain their statutory functions in line with community expectations.
  - c) Ensure that communities in remote and regional areas are considered when developing policy to restrict building surveyors being involved in design consultation work.
2. Endorse the attached consultation response summary on the draft Code.

**Executive Summary**

- The Department of Mines, Industry Regulation and Safety is undertaking consultation on the WA Building Surveyors Code of Conduct (draft Code), which is based on a National Code.
- Building on previous consultation regarding the National Code, WALGA has engaged with Local Government building surveyors regarding the implications of the draft Code.
- Key concerns from the sector include:
  - Potential to limit Local Government building surveyor ability to provide advice on how to meet the requirements of building standards
  - Significant liability concerns for individual building surveyors
  - Inability to meet provisions regarding conflict of interest, particularly in non-metropolitan areas
  - Lack of integration of the draft Code with the other building reform measure in progress.

**Attachment**

- Consultation response summary

**Background**

Following the Grenfell tower fire in 2017 and a number of high-profile structural issues in apartment buildings in New South Wales (NSW) and Victoria, all State and Territory Building Ministers agreed to an assessment of the effectiveness of compliance and enforcement systems for the building industry across Australia. It was recognised that there was diminishing public confidence in the building and construction industry and change was required to ensure buildings were safe and performed to expected standards. The resulting *Shergold Weir-Building Confidence Report* made 24 recommendations for a best practice model for compliance and enforcement, to strengthen the effective implementation of the National Construction Code (NCC). Recommendation 9, 10 and 11 of the Building Confidence report recommended legislative changes around the integrity of private building surveyors, codes of conduct for building surveyors and building surveyors role in enforcement, respectively.

In response to these recommendations the Australian Building Codes Board (ABCB) released, in December 2020, a National Model Code of Conduct for Building Surveyors. As the Code was a model, it did not have any force until adopted by jurisdictions. The ABCB advised in its document that States and Territories should have regard to the content of the Code when amending or adopting a Code of



**Item 8.1 - WALGA STATE COUNCIL AGENDA**

Conduct for Building Surveyors in their jurisdiction. WALGA has previously provided Submissions to the ABCB on a Discussion Paper the integrity of private building surveyors and their role in enforcement that proposed changes to how a private building surveyor may be appointed, detailing conflict of interest controls and enhanced supervisory and enforcement powers for private building surveyors. On 17 September 2021, the Department of Mines, Industry Regulation and Safety (DMIRS), the Department with carriage of this issue in WA, released a draft WA Code of Conduct for Building Surveyors (draft Code).

**Comment**

WALGA circulated the draft Code to the Local Government Building Surveyor group (representing approximately 100 Local Governments) for comment. Feedback was received from officers at the City of Vincent, City of Karratha, Town of Victoria Park, Shire of Collie, Shire of Boddington, Shire of Broome, City of Perth, Shire of East Pilbara, City of Joondalup, City of Stirling, Town of Cambridge, Shire of Waroona and Shire of Bridgetown-Greenbushes. Separate meetings were held for metropolitan and non-metropolitan building surveyors in October where the draft Code was discussed in detail with approximately 60 officers. Comments received from Local Government officers expressed concern regarding the negative impact that the proposed changes will have on the service the building surveyors provide to their communities. Of particular concern was the potential limitations the Code would place on Local Government building surveyors' ability to provide design advice and liability that is placed on building surveying practitioners.

The draft Code defines statutory "*building surveying approval work*" (authorising construction and occupation) and "*building surveying assessment work*" (verification/review, inspection and testing of construction works). In Western Australia, unlike other jurisdictions, this work is not only carried out by private building surveyors but extends to registered building surveyors in Local Government. The draft Code proposes to prohibit carrying out statutory building surveying approval work where the building surveyor participates in design work. Included in the proposed prohibited design work is providing advice on how to amend a plan or specification in order to comply with building standards. It is common practice in Western Australia, for a Local Government Building Surveyor to carry out both consultation with the community and a regulatory role as the permit authority. If they are prohibited from providing design advice services, if they have a regulatory function, there would be a detrimental impact in these communities, particularly in regional areas, where it is often difficult to gain access to independent design services. The draft Code also proposes that carrying out statutory building surveying work where there is a risk that their decision could be influenced by a conflict of interest would be a contravention. Regional building surveyors have also expressed that compliance with this provision would be extremely difficult in small towns where they interact with most community members.

There is also concern from Local Government building surveyors that the draft Code only references registered "*building surveying practitioners*". The *Building Services (Registration) Act 2011* uses the terminology "*building surveying contractor*" and "*building surveying practitioner*" with the contractor being the only registered entity required to hold Professional Indemnity (PI) insurance. Individual Practitioners are not required to have PI insurance nor are they able to obtain it in Western Australia. Recent enforcement action by DMIRS' registration board has been directed towards a Practitioner, which has raised concerns that building surveyors will hold a liability risk even if they change jobs or retire from a Local Government position. There is already industry concern regarding declining numbers of building surveyors; the sector has expressed that the implementation of the draft Code will only serve to further discourage Local Government building surveyors from remaining in the profession and exacerbate the current trend.

The implementation of a draft Code in Western Australia without addressing the lack of mandatory inspections, minimum documentation standards and registration of other professionals will not result in better quality or safer buildings for the community, nor will it enhance community confidence in the building industry. As such it is recommended that the draft Code be reviewed to ensure it is combined with other legislative reform that addresses systemic failures in the current building control model and to provide clarification and certainty regarding the role of Local Government in building control.

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



**Item 5.5 – Attachment – Consultation response summary**

Draft Code of Conduct Clause	Consultation response summary
<p>1.3. A building surveyor must not perform a statutory function in relation to building work they have assisted to:</p> <ul style="list-style-type: none"> <li>• design, or</li> <li>• develop a Performance Solution for.</li> </ul>	<ul style="list-style-type: none"> <li>• Provisions such as this are currently in place in Victoria and other States where the work is mostly carried out by private building surveyors rather than Local Government. Overall it is not apparent how having building surveyor provide comment on early or concept-based plans can only be seen as a negative conflict, it should be seen as a positive, providing much needed early BCA advice prior to proceeding to final or construction plans.                         <ul style="list-style-type: none"> <li>○ This will save the designers money, time, and resources in producing a set of drawings only to find there are areas of BCA non-compliance.</li> <li>○ Performance solutions may form part of the early design phase and surely it would make more sense that the building surveyor involved in the performance solutions was also part of the final assessment, as they would be aware of the reasons for supporting the performance solution rather than casting doubt as to why.</li> </ul> </li> <li>• In relation to unauthorised work, (Class 10 and 1) where the work is old and doesn't comply with the BCA, the private building surveyor will decide if they can support it in combination with providing a performance solution. In the smaller communities such professionals are not present, let alone finding two of them. Thus, the cost of authorising this type of work will be high in relation to the value of the building. Much of the draft Code is in relation to the registration that already exists and compliance with the Building Act which is a given. Most building surveyors see helping the community as an important part of their role, and documents like this will likely prevent this from occurring.</li> <li>• Whilst it is agreed that there should be a requirement to have an outside professional opinion when developing performance solutions, Building Surveyors provide large amounts of design compliance advice, and this is seen as one of their core functions. Building Surveyors should continue to provide design advice where they relate to DTS matters and this should not affect their ability to certify/sign off on proposals and offer options for compliance. Additionally, this will affect one of the core functions of Local Government Building Surveyors and if applied literally, how will they perform the customer service that ratepayers expect whilst also completing statutory duties i.e. providing design advice/solutions and then signing off CDC's?</li> <li>• Local Government Building Surveyors are responsible for providing advice, guidance and instruction for all types of building works. It would be a complete conflict of purpose and expectation from their employer and the public, not to mention absolute confusion where smaller Local Governments are involved.</li> <li>• It is unclear how this clause will function work if the building surveyor is in a multi-discipline office? Clarification should be provided on how "independence" will be maintained?</li> <li>• Regarding Performance Solutions, only Local Governments are permitted by the Building Regulations to decide on a performance solution for a swimming pool barrier. Clarity on if this would then be a contravention of clause 1.3 of the draft Code is required.</li> </ul>



**Item 8.1 - WALGA STATE COUNCIL AGENDA**



	<ul style="list-style-type: none"> <li>• The Local Government’s customers are largely residents who have little to no knowledge of building legislation or the requirements of the National Construction Code and they want to do the right thing. This proposal is not considered to be practical and workable for a lot of Permit Authorities that have only one or two building surveyors. It is noted that there are no details of how this is proposed to work in a real-life scenario. Local Governments receives a lot of enquiries during the day by telephone and at the front counter from the community seeking assistance. Is it the intention that each building surveyor keeps a log of every person they assist to ensure they do not receive and work on their future uncertified applications? Requesting that a customer engage the services of a private building surveyor is often very costly as the open market has no caps on pricing and often the cost of certification is more than the proposal itself.</li> <li>• This clause has the potential to undermine the sustainability of the building industry, a strict interpretation of the clause would mean that every project where consultation takes place will require a minimum of 2 Building Surveyors independent of each other. There is already a shortage of Building Surveyors and Local Governments are not funded or structured to support such a model. This would likely increase lead to increases in building costs and lengthen design and approval timeframes.</li> <li>• Under this clause, a building surveyor must not perform a statutory function in relation to building work they have assisted to design or develop a Performance Solution. This effectively prevents Local Government building surveyors from developing Performance Solutions in relation to an uncertified building permit application. For example, patio setback 500mm from the allotment boundary in lieu of the minimum 900mm. Some Local Governments are providing a Performance Solution for this variation and then issuing the CDC and Building Permits for the patio. Under the draft Code it would appear Local Government building surveyors would no longer be permitted to do so. Does this imply then that all classes of buildings will be privately certified and Local Government building surveyors will take on a record-keeping, auditing / compliance / enforcement role, similar to the Victorian model? Clarification on these points is required.</li> </ul>
<p>1.4 A building surveyor must notify the Building Commissioner where they have become aware of, or hold a reasonable suspicion of, unlawful activity or a matter that may create an immediate or imminent risk to health and safety, in relation to building work for which they are or were, but for replacement or resignation, engaged to provide a statutory function.</p>	<ul style="list-style-type: none"> <li>• Under the current legislative model, the Local Government usually resolves issues pertaining to health and safety risks on building sites. Consideration should be given to the draft Code making it clear that private building surveyors should be obliged to report these matters to the Local Government.</li> <li>• Clause 1.4 states ‘...but for replacement or resignation...’ this wording only exacerbates the frustration Building Surveyors have with understanding and interpretation. This clause needs a defined explanation in simple English to eliminate confusion and misinterpretation.</li> <li>• This type of inspection is not currently mandatory in WA, nor is there a requirement to obtain structural engineer sign off. Such matter can be referred to the permit authority, Local Governments can issue a Building Order and then prosecute if necessary.</li> </ul> <p>For example, the draft Code states during an inspection a building surveyor becomes aware that a lower quality concrete, not in accordance with the approved structural design, has been used in a building and has created an imminent risk to health and safety for workers, building occupants or the public. If the building surveyor is unable to get the non-compliance rectified through consultation with the builder (or</p>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



	<p>building owner) the building surveyor must report the matter to the permit authority, and the Building Commissioner.</p> <ul style="list-style-type: none"> <li>This clause talks about reporting a non-compliance matter to the Permit Authority and the Building Commissioner. There is no reference to the fact that almost all building compliance issues are dealt with by Permit Authorities and mostly raised and investigated by or via Local Government Building Surveyors who receive the complaints. The Permit Authority usually makes a judgement call on an issue to decide if it needs to be sent the Building Commissioner. There is no value at all in doubling up on reporting issues and this will likely lead to greater levels of red-tape and increase inefficiencies in the system.</li> </ul>
<p>2.1 A building surveyor must only perform statutory functions that are permitted under their registration and within their professional competency.</p>	<ul style="list-style-type: none"> <li>The term professionalism needs to be elaborated to include definitions and details of what the expectations on building surveyors will be. Further, it is difficult for building surveyors to meet standards and ensure quality of work when there are no minimum standards determined in legislation. One building surveyor's standard and expectation of quality of work can be vastly different to another building surveyors.</li> <li>Clarification is needed on if cadet building surveyors are allowed to carry out basic assessments, providing they are reviewed and signed off by an appropriate accredited building surveyor. This is often the case within some Local Governments given the difficulty in finding staff. Continuation of this practice is necessary to support current workflow models used by Local Government.</li> <li>Clarify if Local Governments will be able to question the compliance of projects, based on the competence of the building surveyor? "...In addition, building surveyors must critically self-assess their knowledge, skills and experience for work within their registration. For example, if a building surveyor holds an unrestricted license, but has never worked on a Class 9a building or has not done so for many years, then the certification of a hospital would generally be considered to be outside their experience and would therefore be beyond their professional competency." This would rely on others including Local Governments to report a building surveyor if their work is not adequate, to meet the satisfaction of Item 1.4.</li> </ul>
<p>2.2 A building surveyor should maintain their professional competency to ensure their knowledge and skills are current for the work they undertake</p>	<ul style="list-style-type: none"> <li>If CPD's are being proposed as a matter of capturing professional competency, then the industry related seminars need to be made more affordable for smaller Local Governments and private sole traders etc.</li> <li>Clarification on if CPD points will be mandatory is required. There is a reference in the draft Code to "...either voluntarily or as required under legislation will assist to meet this obligation...." As this requirement is not currently legislated it is unclear why this is included. This is again mentioned in the Compliance Policy part of the document.</li> <li>It is not clear if this is targeted just at those who work in the private industry? Due to there being private certification, it is unlikely that a Local Government building surveyor would be engaged to work on a Class 2-9 building. Clarification on this point should be provided.</li> <li>In this section the words 'should' and 'reasonable' are used. These words need to be changed to words that are definitive, like MUST, and the word reasonable needs to be defined.</li> <li>In regard to quality of work, as there are no minimum standards specified in legislation, it can be difficult to convince a client what a building surveyor requires to comply the structure. Most technical industries have</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



	<p>set guidelines or standard job procedures to ensure all work is to a high standard, which is not available for building surveyors. The statement in relation to cooperation requires a more work. Some private building surveyors take offence when queried about the information they have certified, and DMIRS should provide guidance on how building surveyors should go about reporting under this clause.</p> <ul style="list-style-type: none"> <li>• It is unclear how a Local Government building surveyor would know whether the private building surveyor who had certified the project has the necessary knowledge, skills, experience and professional competency? On the Building Surveyor Register, a building surveyor's registration only has the level they are registered under i.e. technician, Level 1, or Level 2. This issue would impact potential clients as to whether the certifier they've engaged can provide the required certification.</li> <li>• It is noted that similar requirements are not applied to builders in this State. Currently only three (3) trades required to build a house or a commercial building within WA require registration, with the buildings being built to lockup stage including foundation and footings without one required registered trade. Continual learning needs to be mandatory for all built environment related professionals, however it needs to be made more affordable and more readily accessed.</li> <li>• The wording "... a building surveyor should maintain their professional competency...", and "participating in CPD courses either voluntarily or as required under legislation" implies a building surveyor can choose whether to participate in training courses / workshops or not. WA currently does not require registered building surveyors to do CPD training.</li> <li>• Consider redrafting the draft Code to require all registered building surveyors to maintain CPD points, particularly now that the AIBS has implemented the Professional Standards Scheme for Building Surveyors which commenced from 1 July 2021. Under this scheme, all practicing AIBS members (public and private) are now required to become accredited members, which triggers the need to complete CPD training and submitting evidence to the accreditation board annually. As WA AIBS members must undertake CPD training, it would make sense to bring non-AIBS members into line as well.</li> </ul>
<p>2.3 A building surveyor should take reasonable steps to ensure the quality of their work by obtaining and assessing the suitability of all relevant information when carrying out a statutory function.</p>	<ul style="list-style-type: none"> <li>• It is unclear how a building surveyor practically achieve this in WA where engineers and trades aren't required to be registered with DMIRS. For example, how would a Building Surveyor determine if a structural engineer from anywhere in Australia has experience and is competent in cyclonic wind loads, or precast concrete or light weight midrise timber?</li> <li>• The draft code expects building surveyors to be responsible for their own competency, skills and knowledge; but there is no similar expectation for other practitioners. Engineers and tradesman should be satisfying their own code of conduct, CPD, knowledge and experience and that the burden of proof be placed on DMIRS when they apply for registration. Building Commissions from other states bear this responsibility, not the surveyor. The introduction of registration schemes for engineers and other associated building trades should occur prior to the full implementation of this draft Code.</li> </ul>



**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>2.4 A building surveyor should work cooperatively with others in the building industry, and regulators.</p>	<ul style="list-style-type: none"> <li>This part requires further explanation and is extremely subjective depending on your degree of tolerance. It is unclear who is going to monitor this. Will obligations be placed on builders and developers who make unnecessary and unreasonable demands on building surveyors?</li> </ul>
<p>3.1 A building surveyor must not engage, whether by act or omission, in misleading or deceptive conduct in connection with the performance of a statutory function.</p>	<ul style="list-style-type: none"> <li>In clause 1.4 it states '...but for replacement or resignation...' this wording only exacerbates the frustration Building Surveyors have with understanding and interpretation. This clause needs a defined explanation to eliminate confusion and misinterpretation.</li> <li>This section requires examples of what is expected. The statements are not clear and are therefore open to interpretation. The sentences should be definitive such that they can be understood by all and actioned accordingly especially if there are issues with compliance.</li> <li>Clause 3.1 states 'This means that conduct can be misleading and deceptive even if it was not intended to be.' The words 'misleading and 'deceptive' imply premeditated ideas. If an action was not intended to be misleading or deceptive but was wrong, then it is an action of negligence not a misleading or deceptive action. The wording of this point should be clarified.</li> <li>In this section the words 'should' and 'reasonable' are used. The words used need to be more definitive like MUST and the word reasonable needs to be defined. The statement in relation to 3.1 requires further consideration in consultation with the Local Government sector.</li> </ul>
<p>3.3 A building surveyor should not use their statutory function role for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for themselves or for any other person.</p>	<ul style="list-style-type: none"> <li>The draft Code could clarify conflicts of interest much better and acknowledge what should occur when conflicts are unavoidable. In regional areas/smaller communities where there may only be 1 or 2 building surveyors in a small town. It would be frequently expected that the surveyor will need to issue CDC's or Building Permits for owners or builders they have a perceived or actual conflict of interest with.</li> </ul> <p>As an example. How would a Local Government Building Surveyor be expected to undertake enforcement action against the City itself, or another City employee, especially if that other employee is in a position of higher authority. For instance, if the City or a Director undertook illegal or non-compliant building work. The Building Surveyor would then have to undertake enforcement action against their own employer or colleagues, undermining their job security and may be exposing themselves to potential mistreatment. The draft Code does not address this, but it is an example of an industry regulator, regulating itself.</p> <p>Example 2: Obtaining private quotes and undertaking building work at your own home, in a town where you have issued building permits to every local builder/tradesman etc. This would result in at least an indirect conflict, but in a small town this would be an unavoidable conflict.</p>
<p>4.1 A building surveyor must ensure any agreement or contract for performing statutory functions is consistent with WA legislation, this Code and any requirements</p>	<ul style="list-style-type: none"> <li>This section requires examples and/or definitions so the reader knows what is expected and what they are being measured against.</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>set out by the Building Commissioner</p>	
<p>4.2 A building surveyor should maintain a record of reasons for decisions on statutory functions and be able to provide these decisions to the regulator and interested parties if requested to do so.</p>	<ul style="list-style-type: none"> <li>• While in the employment of a Local Governments building surveyors make many decisions. The practicalities of this clause do not seem reasonable or reflective of the level of risk. While most Local Governments have a checklist to aid reporting of decisions these are not exhaustive as the BCA is a detailed document. This provision will likely have detrimental impacts on the workflow of Local Governments.</li> <li>• The Building Permit application contents is the reason a Permit is approved or declined. The Building Act 2011 is very clear of the process in granting a Permit. Compliance issues are already documented.</li> </ul>
<p><b>Introduction</b> This Code of Conduct for Building Surveyors (the Code) sets out minimum expectations of registered building surveyors undertaking building surveying work in Western Australia (WA).  It applies to building surveyors who are registered under the Building Services (Registration) Act 2011 (WA) to perform statutory functions of assessing compliance and approving building designs and building work under the Building Act 2011 (WA) and associated legislation. This can involve assessing and certifying that the design demonstrates how the building work, if built, will meet the applicable building standards and, when inspecting building work during and post construction, certifying that the building work meets applicable</p>	<ul style="list-style-type: none"> <li>• This section requires "minimum expectations" clearly defined that are measurable, achievable and understood by all.</li> <li>• Generally it would appear the draft code is in relation to practitioners and not contractors. How will this impact contractors and the implications with insurance? The document is a very simple, overarching document that is non-specific and may therefore not address the reason for its development which is arguably to ensure the industry is providing a valuable, consistent and professional service. The Association holds the view that the most important issues that need to be addressed is the development of minimum standards of documentation to ensure consistency with processes throughout the industry (including procedures or practice documentation), the development of cost effective and accurate training, and to understand the implications of the departure of experienced building surveyors in next 5 years.</li> <li>• Clarification on the application of this on practitioners and contractors and the obligation on each is required. The Building Services (Registration) Act uses the terminology Building Surveying Contractor and Building Surveying practitioner. Consideration should be given to replacing the words Building Surveyor with BSP and BSC. In relation to BSP and BSC DMIRS board is now fining both for errors etc. This is interesting as only the BSC has PL and PI insurance. The link between corporations and employees is generally a corporation is responsible for its employees hence why only the BSC needs insurance. If the BSP in Local Government makes an error then the Local Government is liable and is covered by the LG's PI insurance. The draft Code should flesh this out further as there appears to be an overemphasis on the individual BSP whereas the Criminal Procedures Act and Builder's Registration Act hold the company and Local Government responsible who hold the relevant insurance.</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>standards and any conditions on the applicable building permit.</p>	
<p>Professional associations or the Building Commissioner may set standards that apply to other services provided by building surveyors, however, these must not reduce the minimum obligations in the Code. It is acknowledged individuals may choose to comply with a higher standard, for example through membership of an organisation that has an approved professional standards scheme.</p>	
<p>The Code establishes a consistent basis for education, audit and compliance activities undertaken by regulators. It also assists registered building surveyors to meet their obligations, and manage the expectations of others. This Code of Conduct applies to all building surveying practitioners registered under the Building Services (Registration) Act 2011. All mentions of building surveyor in The Code means registered building surveying practitioner.</p>	
<p><b>Adoption of the Code</b> Western Australia is adopting the National Model Code of Conduct for Building Surveyors, as</p>	<ul style="list-style-type: none"> <li>• The Code cannot be a National adoption, as each State has a different model of legislation. Any code of conduct in WA should not be into the direction of other states, especially considering their own processes have evidence of shortfalls and failings in the past. Any code of conduct in WA needs to be based on our legislative model.</li> </ul>



**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>prepared by the Australian Building Codes Board (ABCB) in 2020. The purpose of this adoption is to provide regulatory oversight to building surveyors in a nationally consistent manner.</p>	<ul style="list-style-type: none"> <li>• It is apparent that the draft Code has been based on an eastern states model rather than our unique WA model where Local Government Building Surveyors do similar work to the private Building Surveyors however only Building Surveyors working for Permit Authorities issue Permits.</li> </ul>
<p>1.1 A registered building surveyor must comply with laws relevant to their work, conduct and organisation.</p> <p>Laws enacted in Western Australia govern the licensing, functions and powers of building surveyors. Building surveyors must carry out their work in accordance with these laws. For example, a building surveyor must not issue certification unless the building work complies with relevant Western Australian legislation and the National Construction Code (NCC).</p> <p>Building surveyors, like most professionals, are subject to a range of other laws that govern their conduct and that of their business. These include, but are not limited to, consumer protection, work health and safety, anti-discrimination and privacy laws.</p>	<ul style="list-style-type: none"> <li>• Part 1.1 (fourth paragraph) appears contradictory to itself and is effectively covered in clause 1.4 on page 6. Suggest the fourth paragraph be removed to avoid confusion.</li> <li>• As the WA building surveying industry is quite small, most building surveyors are acquainted with each other. The practicalities of this need to be considered when expecting building surveyors to report the wrongdoings by their peers.</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>Building surveyors will meet their obligation by being aware of the Federal and state laws applicable to their work and taking proactive steps to ensure they comply with these.</p> <p>A building surveyor is not required to check other practitioners are meeting any legal obligations that are outside their statutory functions, but may be required to report activities they become aware of (see obligation 1.4).</p>	
<p>1.2 A registered building surveyor must act in the public interest when providing advice or making decisions relating to their statutory functions.</p> <p>Building laws and the NCC have a number of objectives such as health and safety, amenity, accessibility, cost effectiveness, efficiency of the industry and sustainability in the design, construction, performance and liveability of buildings. Building surveyors must balance and apply these objectives when performing statutory functions. Building surveyors are required to give greater weight to objectives considered to be of higher concern to the public, those being</p>	<ul style="list-style-type: none"> <li>• Further clarification and explanations are required as to how building surveyors are to be accountable for balancing cost effectiveness vs compliance.</li> <li>• It is arguable that not all building surveyors act in the public interest when providing advice. Some may consider providing cost savings to their clients is more important. This type of action may ensure they receive ongoing work.</li> <li>• The is concerns regarding this section particularly in relation to rural and country areas as it can be very difficult to remain independent when the building surveyor is the only one building surveyor in a regional area.</li> <li>• Even though a building surveyor is expected to put public interest before their responsibility to clients and employers, for building surveyors in Local Government, it is quite common for external pressure to be exerted on building surveyors to issue a permit, or to try and find a way to accept a building design that is not deemed to satisfy without a performance solution. Additional commentary in the finalised Code of Conduct would be of use.</li> </ul>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



<p>health, safety and amenity of buildings. A building surveyor undertaking a statutory function must put the public interest before their responsibility to clients and employers.</p> <p>For example, project documentation may appear to be sufficient to demonstrate a design complies, but a building surveyor is concerned an assumption made in structural design may have an unintended impact on another part of the building. In this situation the building surveyor should take steps to investigate the potential issue and ensure that it is resolved rather than defer to the client's interest in getting earlier authorisation for construction.</p>	
<p><b>Definition</b> Reasonable steps mean an action or series of actions an objective person would consider sensible and fair to address an issue or achieve a desired outcome in the circumstances. This includes decisions, omissions and inaction.</p>	<ul style="list-style-type: none"> <li>As there is an assumed test being applied here by what an objective person or reasonable person may do/think, it may be a useful to add a definition of what an objective or reasonable person is.</li> </ul>



**6. MATTERS FOR NOTING / INFORMATION**

**6.1 Local Government Support for Single Use Plastic Bans (01-006-02-0003)**

*By Rebecca Brown, Manager, Waste and Recycling*

**RECOMMENDATION**

**That WALGA note the introduction of the Single Use Plastics Bans.**

**Executive Summary**

- The State Government have committed to banning a number of single-use plastic items by the end of 2021, including plates, bowls, cutlery, stirrers, straws, cups and lids, thick plastic bags, polystyrene food containers and helium balloon releases. Then from 2022, a range of other single use plastic items.
- Local Government has an opportunity to support the implementation of the bans, which will assist in reducing litter and encourage the transition to reusable or compostable alternatives which will reduce contamination in the kerbside recycling and Food Organic and Garden Organic (FOGO) bins.
- Local Government has previously been supportive of state-wide regulation for these products as the approach is more consistent and streamlined than each Local Government regulating.

**Background**

In 2018, after significant advocacy from Local Government and WALGA, the State Government introduced a ban on light weight single use plastic bags. The State Government, through the Department of Water and Environmental Regulation (DWER), is now progressing [bans](#) for a range of other single use plastic items. With the proposed schedule for the bans as follows:

End of 2021 – Regulations in place, enforcement to commence mid 2022	End 2022 - Regulations in place
<ul style="list-style-type: none"> <li>• plates</li> <li>• bowls and lids</li> <li>• cutlery</li> <li>• stirrers</li> <li>• straws</li> <li>• cups and lids</li> <li>• thick plastic bags</li> <li>• polystyrene takeaway food containers</li> <li>• helium balloon releases</li> </ul>	<ul style="list-style-type: none"> <li>• barrier/produce bags</li> <li>• microbeads</li> <li>• polystyrene packaging</li> <li>• polystyrene cups</li> <li>• coffee cups and lids</li> <li>• cotton buds with plastic shafts</li> <li>• oxo-degradable plastics (plastics designed to break up more rapidly into fragments under certain conditions).</li> </ul>

WALGA represents Local Government on the DWER Single Use Plastics Working Group.

**Comment**

The Municipal Waste Advisory Council (MWAC) considered the single-use plastic ban at the August meeting and resolved to write to the Environment Minister in support of the single use plastic bans. MWAC would also like to encourage Local Government to show support for the bans by writing to the Environment Minister and identifying the various benefits of the bans from the community and service provision perspective.

MWAC was supportive of the bans because:

- Environmental benefit: many of the products which will be covered by the bans are currently being littered and contribute to plastic pollution in rivers and oceans. By eliminating the product, and ensuring it is replaced with a more environmentally acceptable material, the bans will reduce littering and improve overall environmental outcomes.

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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- Recycling benefit: biodegradable and compostable plastics are plant-based products which are difficult to distinguish from petroleum-based products. Compostable and biodegradable plastics are considered a contaminant in the recycling stream. When the ban is in place, many of these plastic types will be eliminated. This will assist in improving the quality of recyclable materials collected.
- Food Organic and Garden Organic (FOGO) benefit: Currently, compostable plastic packaging is not accepted through the FOGO collections provided by Local Governments because there is a large range of plastic packaging in the market, and it is not possible to differentiate between compostable and non-compostable plastics. When the bans are in place, the only options on the market will be compostable, which presents an opportunity to potentially allow these products into the FOGO system.

The approach that DWER has taken is to recommend that no single-use plastics are used (including compostable plastic), where there is a workable alternative. There are some instances where there is not currently an alternative product, so compostable plastic is allowed in some instances. Terminology is frequently confusing for the community, as the terms degradable, biodegradable and compostable are often used interchangeable. Some general definitions:

- Degradable – describes petroleum-based plastics that break down into smaller fragments of plastic.
- Biodegradable – frequently used to describe petroleum-based and petroleum/plant-based plastics which contain additives that enable the plastic to be broken down into smaller fragments by bacteria or other living organisms.
- Compostable – when used appropriately, describes plant-based plastics that can be readily broken down through home or industrial composting systems.

The bans are targeted at retailers so Local Governments will still be able to provide products such as dog waste bags for their communities to use in public areas and caddy liners for FOGO systems.





**6.2 Report Municipal Waste Advisory Council (MWAC) (01-006-03-0008 RNB)**

*By Rebecca Brown, Manager, Waste & Recycling*

**RECOMMENDATION**

**That WALGA note the resolutions of the Municipal Waste Advisory Council at its 25 August and 13 October 2021 meetings.**

**Executive Summary**

- This item summaries the outcomes of the MWAC meetings held on 25 August and 13 October 2021.

**Background**

The Municipal Waste Advisory Council is seeking State Council noting of the resolutions from the **25 August and 13 October 2021** meetings, consistent with the delegated authority granted to the Municipal Waste Advisory Council to deal with waste management issues.

Copies of Agendas and Minutes are available from WALGA staff, on request.

**Comment**

The key issues considered at the meetings held on **25 August and 13 October 2021** included:

**Submission on Department of Water and Environmental Regulation Guideline Assessment of environmental noise emissions**

In June 2016, WALGA made a Submission on the Department’s Draft Guideline on Environmental Noise for prescribed premises. In that Submission issues identified included:

- The use of separation distances as a trigger for a full-scale noise assessment
- Noise from construction activities was not addressed
- Existing and prospective facilities will be subject to significant and costly requirements to assess noise.

On 16 June 2021, the Department released its Draft Guideline: Assessment of environmental noise emissions for public consultation for a 12-week period. The Draft Guideline is a more extensive version of the previously released Guideline.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council endorse the Draft Submission on the Department of Water and Environmental Regulation Guideline Assessment of environmental noise emissions.**

**Moved: Mayor Howlett Seconded: Mayor Butterfield**

**CARRIED**

**Submission on Dust Emissions**

DWER has released a Draft Guideline: Dust emissions for consultation. The Draft Guideline relates to fugitive dust emissions only (point source emissions are covered in separate document). The Draft Guideline is more comprehensive form of an existing Guideline and will apply to new and existing licenced premises.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council endorse the Draft Submission on Department of Water and Environmental Regulation (DWER) Draft Guideline: Dust Emissions.**

**Moved: Cr Price Seconded: Cr Stroud**

**CARRIED**

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Submission on Productivity Commission inquiry into the Right to Repair**

In December 2020, WALGA undertook an online survey of Local Government seeking feedback on the potential for Right to Repair legislation that could extend the life of products and reduce waste going to landfill. The February Submission was informed by the survey and input from MWAC. In June 2021 the Productivity Commission released a Draft Report seeking additional input for the final report which will be submitted to the Australian Government by 29 October 2021. The Draft MWAC Submission builds on the February Submission and identifies the benefits that right to repair requirements could have for Local Government and the community.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council endorse the Draft Submission on Right to Repair.**

**Moved: Mayor Howlett Seconded: Mayor Butterfield**

**CARRIED**

**Local Government Support for Plastics Bans**

The State Government have committed to banning a number of single-use plastic items. Local Government has been consistently supportive of this approach as state-wide regulation is a more consistent and streamlined way to regulate these products. Consultation has occurred regarding the bans, with some concerns raised by the packaging industry about the timeline and approach. Local Government has an opportunity to support the implementation of the bans, which will assist in reducing the use of single-use plastic items, transitioning to reusable or compostable alternatives and reduce potential contamination issues for recycling and FOGO systems.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council:**

- 1. Write to the Environment Minister supporting the Single-use Plastics Ban**
- 2. Encourage Local Governments to write to the Environment Minister supporting the Ban**
- 3. MWAC request State Council to place this item on the agenda for the next round of Zone Meetings.**

**Moved: Mayor Howlett Seconded: Mayor Butterfield**

**CARRIED**

**Submission on Waste Tyres Rules**

The Export Bans of glass, plastic, tyres and paper/cardboard are being progressively implemented, with the tyre export ban scheduled for 1 December 2021. The Rules are the regulations which will govern the ban. The ban is for baled and whole tyres but allows shredded tyres and some types of tyres for re-treading. In the draft Submission, two main concerns are raised regarding tyres:

- If shredded tyres are still exported to the same destination and for the same use as baled whole tyres, this does not represent a more positive environmental outcome or a value-added product
- Shredded tyres represent an increased fire risk, compared to whole tyres.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council endorse the Draft Submission on Waste Tyres Rules Discussion Paper.**

**Moved: Cr Price Seconded: Cr Stroud**

**CARRIED**

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Product Stewardship Principles**

WALGA, working with other State and Territory Local Government Associations, has developed Principle for Product Stewardship. The intent of this document is to assist in generating national consistency, between Local Government Associations, regarding what product stewardship needs to include which will amplify advocacy on this issue.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council endorse the draft Product Stewardship Principles.**

**Moved: Cr Price Seconded: Cr Stroud**

**CARRIED**

**Submission on Container Deposit Scheme Minimum Network Standards**

DWER has released an Issues Paper on the Minimum Network Standards for the Container Deposit Scheme. The DWER Paper outlines considerations relating to access to refund points over the first year of Scheme operation including:

- How the Standards apply to public holidays and emergency event
- How the definition of flexible refund points has been interpreted
- The requirement for a full-time fund point in every region.

**MUNICIPAL WASTE ADVISORY COUNCIL MOTION**

**That the Municipal Waste Advisory Council endorse the draft Submission on CDS Minimum Network Standards.**

**Moved: Cr Price Seconded: Cr Stroud**

**CARRIED**





### 6.3 WALGA submission on the National Climate Resilience and Adaptation Strategy

By Garry Middle, Acting Environment Policy Manager

#### RECOMMENDATION

That WALGA's submission to the Commonwealth Government National Climate Resilience and Adaptation Strategy (NCRAS) be noted.

#### Executive Summary

- The Commonwealth Government is seeking to update the National Climate Resilience and Adaptation Strategy, accepting public consultation for a short period of only 4 weeks.
- WALGA prepared a draft submission on behalf of the sector, aligned with WALGA's existing [Climate Change Policy Statement](#) and other previous submissions endorsed by State Council.
- The submission argues that the implementation of the overarching strategic framework for climate adaptation requires strong leadership and adequate resourcing from the Commonwealth Government.
- The draft submission was considered by the Environment Policy Team out of session and was signed by WALGA State Council President, Mayor Tracey Roberts.
- State Council is to note the final WALGA submission as submitted to the Commonwealth Government as the consolidated position of the sector on the proposed NCRAS update.

#### Attachment

- [WALGA's submission on the Commonwealth Government National Climate Resilience and Adaptation Strategy](#)

#### Background

The Commonwealth Government is developing a new National Climate Resilience and Adaptation Strategy (NCRAS) in 2021. The Commonwealth intends that [the new strategy](#) will provide a roadmap towards a climate resilient Australia and will showcase Australia's adaptation and resilience efforts and strengthening national coordination to manage physical climate impacts.

Due to the very tight consultation periods, WALGA has prepared a submission, on behalf of the sector, aligned with WALGA's existing [Climate Change Policy Statement](#) and other previous submissions endorsed by State Council.

To facilitate sector engagement within the extremely tight consultation timeframe, WALGA alerted the sector to the consultation period via WALGA Climate Change Officer network. WALGA acknowledged that the submission would be aligned with WALGA'S existing policy position.

The draft submission was considered by the Environment Policy Team for endorsement on Tuesday, 7 September as the submission date was prior to the next State Council meeting. The final submission was signed by WALGA President, Mayor Tracey Roberts on Friday, 10 September before submitting to the Commonwealth Government.

#### Comment

WALGA's submission argues that climate change adaptation cannot be separated from mitigation and the need for the Commonwealth to commit to a more ambitious emissions reduction target under the Paris Agreement, as detailed within the WALGA Climate Change Policy Statement. The nature and extent of the adaptation task is intrinsically linked to the extent of climate change, which is in turn dependent on reducing emissions.

Further, the extensive role expected of Local Government in shouldering the immediate impacts of climate change proposed by NCRAS, such as addressing coastal erosion and inundation, is not backed by adequate support or funding from the Commonwealth Government.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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The submission also argues that the implementation of the overarching strategic framework for climate adaptation requires strong leadership from the Commonwealth Government.

WALGA will continue to advocate for stronger leadership, adequate resourcing and funding and a shift away from the emergency response approach currently taken in climate adaptation planning on behalf of its members.



## 6.4 Closing the Gap Update

By Alina Hobson, Policy Officer, Resilient Communities

### RECOMMENDATION

That the recent updates on Closing the Gap are noted.

#### Executive Summary

- The [National Agreement on Closing the Gap](#) (the National Agreement) came into effect on 27 July 2020. The objective of the National Agreement is to enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality faced by Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians. The National Agreement requires all government parties to develop Implementation Plans that set out how they will meet their commitments.
- In September 2021, the State Government released its [Implementation Plan](#), which sets out their approach to meeting the Closing the Gap outcomes included in the National Agreement.
- The [Partners in Government Agreement](#) signed in September 2021 between the State Government, WALGA and LG Professionals includes Closing the Gap as a focus area.
- The Australian Local Government Association (ALGA) is a co-signatory to the Agreement on behalf of the Local Government sector and released its [Closing the Gap Implementation Plan](#) on 9 September 2021.
- Being the level of Government closest to the community Local Governments play a key role in delivering outcomes that address Closing the Gap priority areas, with many already delivering initiatives through Reconciliation Action Plans.

#### Background

The refreshed National Agreement came into effect on 27 July 2020. The objective of the National Agreement is to enable Aboriginal and Torres Strait Islander and governments to work together to overcome the inequality faced by Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians. The National Agreement was developed in partnership between Australian Governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations.

The National Agreement contains four key priority reform areas:

1. **Formal partnerships and shared decision making** - building and strengthening structures to empower Aboriginal and Torres Strait Islander people to share decision-making with governments.
2. **Building the community-controlled sector** - building formal Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support Closing the Gap.
3. **Transforming government organisations** - systemic and structural transformation of mainstream government organisations to improve accountability and better respond to the needs of Aboriginal and Torres Strait Islander people.
4. **Shared access to data and information at a regional level** - enable shared access to location specific data and information to support Aboriginal and Torres Strait Islander communities and organisations to achieve the first three Priority Reforms.

All Government parties are required to develop an implementation plan outlining how they will meet their commitments under the National Agreement.

The State Government released its Implementation Plan (the Plan) in September 2021. The Plan focusses on a phased approach to whole of Government reform. The Plan details actions that the State Government is currently undertaking or planning to undertake in the near future. The Plan is in two parts:

- Part A: an overview of system-level actions the WA Government intends to progress.
- Part B: information on specific activities, programs and services relevant to each priority reform areas.

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

The [Partners in Government Agreement](#) signed in September 2021 between the State Government, WALGA and LG Professionals includes Closing the Gap as a focus area.

ALGA is a co-signatory to the National Agreement on behalf of the Local Government sector. ALGA's Implementation Plan is designed to:

- Ensure that Local Government understands the National Agreement and its commitments thereunder, and encourage its adoption by Local Governments.
- Assist State and Territory Governments to work with Local Governments in the implementation of the National Agreement.
- Support strengthened shared decision-making at the local level, supporting Local Governments to be part of partnerships with the Commonwealth, State, and Territory Governments and local Aboriginal and Torres Strait Islander Communities.

**Comment**

As the level of Government closest to the community, Local Government play an important role in supporting the development and implementation of policies and programs in partnership with local Aboriginal communities that address the priority reform areas within the National Agreement.

Through the implementation of Reconciliation Action Plans many Local Governments are already undertaking actions that align with the Closing the Gap outcomes, for example through:

- Delivery of Aboriginal focused Mentorship/Traineeship Programs.
- Facilitation of Aboriginal Advisory Groups.
- Celebrating key events such as NAIDOC Week and Reconciliation Week.

WALGA works to support Local Governments to build strong, positive relationships with local Aboriginal communities through a number of avenues including:

- Delivery of Aboriginal engagement and reconciliation forums and events for Local Government, such as the recent Aboriginal Engagement and Reconciliation Forum held on 22 September 2021 at Crown Perth which was attended by more than 200 registrants.
- Supporting the WA Local Government Aboriginal Engagement Network which brings together Aboriginal and non-Aboriginal officers at quarterly meetings to share peer to peer advice and learnings, offer support and encouragement and explore opportunities for partnership and collaboration between Local Governments.
- Regular engagement with key stakeholders including the South West Aboriginal Land and Sea Council, Department of the Premier and Cabinet, Department of Planning, Lands and Heritage, Reconciliation WA and Danjoo Koorliny Aboriginal Elders to ensure that Local Government is abreast of emerging legislative and policy matters including Closing the Gap, South West Native Title Settlement and other native title settlements, and the new Aboriginal Cultural heritage legislation.

WALGA will continue to work with the State Government through the Partners in Government Agreement on the implementation of the National Agreement, and ALGA, to support Local Governments actions in response to the key outcome that Aboriginal and Torres Strait Islander peoples and governments work together to overcome the inequality faced by Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians.



**Item 8.1 - WALGA STATE COUNCIL AGENDA**

**6.5 Submission to the Senate Inquiry into Provision of General Practitioner and related primary health services to outer metropolitan, rural, and regional Australians (03-030-03-0001 VB)**

By Vikki Barlow, Senior Policy Advisor, Resilient Communities

**RECOMMENDATION**

**That the WALGA submission to the Senate Inquiry into Provision of General Practitioner and related primary health services to outer metropolitan, rural, and regional Australians, be noted.**

**Executive Summary**

- The Standing Committee on Community Affairs of the Commonwealth Parliament commenced an inquiry into the above matter on 4 August 2021 with submissions due by 30 September 2021.
- 18 Local Governments provided input into WALGA's submission.
- Regional and rural Local Governments have consistently identified shortages in the provision of GP and related health services as a serious long-standing issue in their communities.
- Local Governments, as the 'provider of last resort', are compelled to enter costly medical services contracts to support housing, medical center operations and other benefits to attract and retain GPs and related health professionals to regional areas.
- Submissions are due by 30 September 2021 and will be published on the [Committee's website](#) on 8 October 2021.

**Attachment**

- [WALGA Senate Inquiry Rural and Regional Health Services Submission](#)

**Policy Implications**

The Submission aligns with [WALGA Policy Position 3.2.2 – Regional Health Services](#):

*The Association supports continuing to work with affected Local Governments and key stakeholders to identify and develop collaborative strategies. The Association supports continuing to advocate to the State Government to prioritise regional health and the regional health workforce. The Association supports developing a policy connection with the Australian Local Government Association as a pathway for advocating for stronger specialised regional health workforces.*

September 2018 – 105.5/2018

**Background**

The Standing Committee on Community Affairs commenced an inquiry into the above matter on 4 August 2021, with submissions due by 30 September 2021.

The Terms of Reference sought feedback on:

1. the current state of outer metropolitan, rural, and regional GPs and related services.
2. current state and former Government reforms to outer metropolitan, rural and regional GP services and their impact on GPs, including policies such as: the stronger Rural Health Strategy,
  - a. Distribution Priority Area and the Modified Monash Model (MMM) geographical classification system,
  - b. GP training reforms, and
  - c. Medicare rebate freeze.
3. the impact of the COVID-19 pandemic on doctor shortages in outer metropolitan, rural, and regional Australia; and
4. any other related matters impacting outer metropolitan, rural, and regional access to quality health services.

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



**Comment**

Chronic shortages of adequate medical and related workforce in rural and regional areas of Western Australia is a significant, long standing issue which continues to impact on the health outcomes and viability of local communities.

In 2018 WALGA conducted the *Regional Health Services in Western Australia Survey of Local Governments*. 161 responses were received from 91 WA Local Governments, representing 66% of members. The survey results highlighted issues with:

1. **Workforce** challenges in recruiting and retaining doctors, nurses and allied health staff (health professionals).
2. **Distance** to travel to see a health professional.
3. **Access** to health professionals (Hours of operation or number of staff providing service).
4. **Aged care** services for people to stay within their region as they age are limited.

17 Regional and 1 Metropolitan Local Governments provided input to WALGA's Submission, and 1 Local Government made a submission directly to the Committee. The feedback received was consistent with the themes identified in the 2018 survey. The Submission highlights the challenges Local Governments face as the 'provider of last resort', with the high cost of subsidising health service provision and ongoing workforce challenges in recruitment and retention of health professionals. Many rural and regional Local Governments have found it necessary to enter contracts for medical services and/or general practice support services. There is a strong view expressed by the sector that this should not be the responsibility of Local Government and that Local Governments should not be required to provide incentives such as housing and medical centre facilities, especially as there is no opportunity to recoup these expenses.

Regional and rural Local Governments are also concerned about the quality and accessibility of essential health care for their communities and call upon the Commonwealth and State Governments to urgently improve coordination in the planning and provision of GPs and related primary health services in regional and rural areas.

**Local Government Respondents via WALGA Submission**

Trayning	Three Springs
Lake Grace	Greater Geraldton
Murray (and submitted to the Committee)	Kondinin
Pingelly	Manjimup
Chittering	Morawa
Gingin	Armadale
Nannup	Corrigin (and submitted to Committee)
Karratha (and submitted to the Committee)	Irwin
Dumbleyung	Yalgoo

**Item 8.1 - WALGA STATE COUNCIL AGENDA****6.6 Wooroloo Independent Review Letter of Support (05-024-03-0011 SM)**

*By Cassandra Mora, Policy Officer, Emergency Management*

**RECOMMENDATION**

**That the Letter of Support to the Wooroloo Bushfire Independent Inquiry be noted.**

**Executive Summary**

- The Australasian Fire and Emergency Services Authorities Council (AFAC) commenced an Independent Review (Independent Review) into the Wooroloo Bushfire on Friday, 20 August with submissions open to the public and closing Friday, 8 October 2021.
- WALGA obtained an extension of the submission deadline to Friday, 15 October 2021 to enable the City of Swan and Shire of Mundaring to explore opportunities for a joint submission and enable the endorsement of their submission/s at their respective Ordinary Council meetings.
- WALGA provided a letter of support to the Independent Review highlighting key issues identified in WALGA Policy Positions and in submissions to recent emergency reviews and inquiries.

**Attachment**

- [2021 Wooroloo Independent Review Submission letter](#)
- [City of Swan submission](#)
- [Shire of Mundaring submission](#)

**Background**

The Wooroloo Bushfire started on Monday, 1 February 2021, during a COVID-19 lockdown, and devastated over 10,000 hectares of land and destroying 86 homes.

The Terms of Reference for the Independent Review are as follows:

1. Evaluate the first stage of the review of the Wooroloo Bushfire and undertake independent analysis across the range of focus areas examined, including response to the Wooroloo Bushfire, fuel management and processes for access into the fire affected areas.
2. Examine the effectiveness of the use of heavy earthmoving equipment in the fire suppression effort including the systems, processes and capability that supports this.
3. Examine the effectiveness of interagency coordination during the response and initial recovery phases of the incident.
4. Consider the effectiveness of the impact assessment processes employed in informing early and timely recovery efforts and consider the effectiveness of the recovery function post response phase.
5. Consider the extent, geographic range, method, effectiveness and duration of public warnings.
6. Examine the effectiveness of the 'Animal Welfare in Emergencies' program as implemented by the Department of Primary Industries and Regional Development.
7. Consider the meteorological aspects of the fire as examined by the Bureau of Meteorology.
8. Provide a means for members of the public and other interested parties to make submissions to the Review and give these due regard in compiling its report.
9. Consider any other matter that the Review Team identifies in its course of activities.

Given the short time frame provided and significant role of Local Governments in supporting their local communities during bushfire response and recovery, WALGA sought an extension of the submission deadline to Friday, 15 October, which enabled the City of Swan and Shire of Mundaring to have their submissions endorsed at their respective Ordinary Council meetings.

**Comment**

WALGA's letter of support highlights key issues identified in relevant WALGA Policy Positions and in submissions to recent emergency management reviews and inquiries that are of relevance to the Wooroloo Bushfire.



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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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Under the *Emergency Management Act 2005*, Local Governments are responsible for managing recovery following an emergency. Local Governments also have significant roles across preparedness, prevention and response, including supporting community disaster resilience.

Common practice following an emergency is for the hazard management agency to undertake an evaluative review of the activities relating to the emergency response. In incidents where a significant loss (human, environment or economic) occurs, a review or inquiry may ensue to examine response activities and provide recommendations to improve the capacity and capability of key agencies. Given Local Governments unique position as the level of government closest to the community and its roles and responsibilities across the emergency management spectrum, Local Government input into such reviews and inquiries is essential for the improvement of emergency management arrangements in WA.

Key recommendations included in the letter are:

- calling for a response from the State Government to the Royal Commission into National Natural Disaster Arrangements;
- the development of an assurance framework to monitor the implementation and effectiveness of recommendations arising from all public inquiries and reviews;
- more effective agency interoperability during the response and recovery phases of emergencies;
- addressing the administrative burden and lack of timeliness of funding accessible to Local Governments through the Disaster Recovery Funding Arrangements Western Australia (DRFA-WA);
- increasing funding to support the replacement or restoration of damaged assets to a more resilient standard following an emergency; and
- the commitment to specific funding programs by the Commonwealth and State Governments to enable Local Governments to undertake essential physical mitigation programs to further reduce the exposure of communities to the impacts of natural disasters and to ensure the protection of essential community infrastructure.



## 6.7 State Budget Outcomes (05-088-03-0001 DT)

By Daniel Thomson, Economist

### RECOMMENDATION

**That the update on the 2021 State Budget be noted.**

#### Executive Summary

- The 2021-22 State Budget, handed down on 9 September 2021, contained little direct funding for Local Governments, with most of the spending focussed on the delivery of election commitments and big-ticket programs.
- A larger than expected surplus of \$5.6 billion in 2020-21 - mainly due to record high iron ore prices and forecast surpluses over the forward estimates - has provided the capacity for the Government to embark on major new spending programs, focussed on health and mental health, COVID-19 response and social housing.
- While these are important priorities, only one of the nine initiatives identified in WALGA's "Immediate Priorities for the State Government" received (partial) funding. Advocacy efforts will continue throughout this term of Government.
- The Budget also demonstrated Western Australia's strong economic recovery from the impact of the COVID-19 pandemic.
- Treasury estimates Gross State Product (GSP) grew 3.25% in 2020-21 and is forecasting further growth of 3.5% in 2021-22, in contrast with a national recession in 2020 and the global economic slowdown.
- After losing more than 100,000 jobs at the start of the pandemic, the WA economy recovered to regain these jobs and more as the unemployment rate fell from 6.1% pre-COVID to 4.9% in the June quarter. With job vacancies at levels comparable to that experienced during the mining boom, employment growth is expected to see another 34,000 jobs created in 2021-22. This tightening in the labour market along with subdued population growth is leading to skills shortages in some sectors.
- Further detail about the State Budget can be found in the Budget summary documents and WALGA Economic Briefing.

#### Attachments

- [WALGA State Budget Review](#)
- [WALGA State Budget Submission](#)
- [October 2021 Economic Briefing](#)

#### Background

The Premier has framed the Government's fifth budget – the first of its second term – as a budget that sets Western Australia up for the future, built on the back of its success in keeping Western Australians safe and the WA economy strong during the COVID-19 pandemic.

A larger than expected surplus of \$5.6 billion in 2020-21 – mainly due to record high iron ore prices and forecast surpluses over the forward estimates – has provided the capacity for the Government to embark on major new spending programs. The headline new announcements in the Budget were:

- \$1.9 billion in new funding to help address the unprecedented demand on WA's health and mental health system;
- \$1.8 billion for the construction of a new Women and Babies hospital;
- \$1 billion for additional support to respond to COVID-19 (taking the State's total investment in COVID-19 response and recovery to \$9 billion);
- A new \$750 million social housing investment fund;
- Establishment of a \$750 million Climate Action Fund; and
- \$400 million for the new Westport Project.

The Budget also includes a record \$30.7 billion asset investment program, with \$9.1 billion of this allocated to projects in regional areas.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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Reflecting the limited capacity in the civil and building construction industries, \$2.6 billion in project spending from 2020-21 and 2021-22 has been deferred into later years. This may ease some pressures in the industry and enable Local Governments to deliver projects, particularly time-bound Commonwealth funded projects.

**Comment**

While the Government is to be commended for focussing spending to areas of need, WALGA considers that the State's strong financial position offered an opportunity to go further in areas that address important community priorities, deliver positive outcomes in terms of creating new jobs, make WA's environment more liveable, transform our infrastructure, and support local communities.

Ahead of the State Budget, WALGA developed a policy document "Immediate Priorities for the State Government" to advocate for funding key initiatives in this term of Government that will strengthen the economic recovery from COVID-19, address key environmental challenges and support local communities.

These priorities included:

- Expand the Coast WA Program
- Create an Urban Greening grant program
- Extend the State Underground Power Program
- Support the construction of FOGO Processing Infrastructure
- Extend the Small Business Friendly Approvals program
- Support the transition to the State Industrial Relations System
- Address the shortage of Government Regional Officer Housing (GROH)
- Homelessness Outreach Services
- Regional telecommunications infrastructure

Of the nine "Immediate Priorities for the State Government", the Budget only contained modest funding for the management of coastal erosion hot spots. These are initiatives that WALGA will continue to pursue with Government during this term.



### 6.8 Foundations for a Stronger Tomorrow – Submission to the Draft State Infrastructure Strategy (05-001-03-0018 ID)

By Ian Duncan, Executive Manager, Infrastructure

#### RECOMMENDATION

**That the WALGA submission to Infrastructure WA in response to the draft State Infrastructure Strategy, Foundations for a Stronger Tomorrow, be noted.**

#### Executive Summary

- Infrastructure WA was established in 2019 and following extensive stakeholder engagement, research and analysis has released a draft 20 year State Infrastructure Strategy titled [Foundations for a Stronger Tomorrow](#) for consultation.
- The draft Strategy makes 88 recommendations across:
  1. seven themes: Digital connectivity and technology; Aboriginal cultural heritage, wellbeing and enterprise; Climate change and sustainability; Regional development; Planning and coordination; Infrastructure delivery; Asset management; and
  2. nine sectors: Energy; Water; Waste; Transport; Social and Affordable Housing; Health; Education; Arts, culture, sport and recreation; Justice and public safety.

The WALGA submission supports the strategic approach to infrastructure planning and management proposed by Infrastructure WA and the vast majority of the recommendations. However, the draft strategy makes little reference to the significant role that Local Governments play in the planning and delivery of infrastructure. The submission highlights that without explicit consideration of these functions, it is difficult to take a state-wide approach to infrastructure development. It is also not clear from the Draft Strategy how it will align and connect with existing Local Government Strategic Community and infrastructure plans.

Across the identified themes and sectors the submission seeks to highlight:

- the importance and value of maintaining local decision-making;
- constraints on Local Government's capacity to raise own sourced revenue and the need to avoid transferring unfunded responsibilities onto the sector; and
- the need to continue genuine consultation with Local Governments in finalising, implementing and ultimately reviewing the strategy.

The submission is based on the structure of the draft State Infrastructure Strategy. No comment is provided for recommendations that are not relevant to the Local Government sector or where the draft recommendation is supported without further clarification.

Key recommendations of concern that the submission opposes, seeks significant amendment or draws attention to are:

#### Regional Development

- Highlights that resourcing will be a critical consideration for developing any new regional service delivery model. To the extent that Local Governments are expected to play a greater role in facilitating and supporting place-based integrated service models, adequate funding must be provided to the sector to deliver on any additional responsibilities.

#### Planning and coordination

- Opposes extension of changes to Part 17 of the Planning and Development Act 2005 that give effect to the State Development Assessment unit beyond the current end date.
- Identifies practical examples of the failure of current arrangements to facilitate infill development where this is actively sought by Local Governments, to ensure proposed changes resolve the existing constraints.



**Item 8.1 - WALGA STATE COUNCIL AGENDA**

- Extend the recommendation to identify and secure strategic sites through a recurrent fund for regional land acquisition to include support for delivery of infrastructure projects by Local Governments.

**Water**

- Seeks that the need for water to sustain public spaces is recognised

**Waste**

- Opposes state-wide application of the Waste Levy.
- Calls for all the funds generated from the Levy to assist in the implementation of the State Waste Strategy.
- Seeks waste to energy infrastructure and strategic location of waste facilities be identified.

**Transport**

- Opposes the proposal to amend the existing hypothecation of motor vehicle licence fee revenue, specifically to use this funding for public transport operational expenditure. Motor vehicle licence fee revenue is currently hypothecated to Main Roads WA under legislation and a portion of this provided under agreement for the maintenance, renewal and upgrade of roads under the control of Local Governments.
- Seeks regional aviation infrastructure be considered amongst strategic transport planning needs.

**Health**

- Funding for and clarity of the key role for Local Governments envisaged in the Sustainable Health Review is required. This is critically important in regional WA where there is a lack of GP and allied health services.

**Attachments**

- [Submission: Foundations for a Stronger Tomorrow](#)

**Policy Implications**

This submission draws on and consolidates policy positions previously endorsed by State Council.

**Background**

WALGA has advocated for and supported development of a long term State Infrastructure Strategy since at least April 2006. At the time, the Association provided a submission to the State Government development of a State Infrastructure Strategy focused on the key issues of planning, development, renewal, preservation and funding of the infrastructure that is vital to the economic and social development of the people of Western Australia. The Association provided comment on the Green Paper considering a State Infrastructure Strategy towards the end of 2006.

Infrastructure Australia was established in 2008 and State based infrastructure advisory bodies were established or revitalised in the following years.

In 2015 the WALGA State Council again endorsed a recommendation to advocate to the State Government to develop a long term State Infrastructure Strategy. Local Governments sought engagement with the State and Federal Government in transparent processes leading to efficient long term infrastructure planning.

The *Infrastructure WA Act (2019)* came into effect in July 2019, establishing Infrastructure WA for the principal purpose of providing advice and assistance to the Government on matters relating to infrastructure. Through a consultative process Infrastructure WA staff under the direction of the Board have developed a draft State Infrastructure Strategy titled *Foundations for a Stronger Tomorrow*.

Once finalised, the State Infrastructure Strategy will be submitted to the Premier later in 2021. The *Infrastructure WA Act (2019)* sets out the timetable for the Premier to respond and table the strategy and government response in Parliament.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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All Local Governments have been invited to contribute to the development of the draft strategy through consultation forums, surveys and direct input. WALGA has participated in the External Stakeholder Reference Group and other topic specific workshops.

The draft State Infrastructure Strategy was released for consultation on 21 July 2021. The Association prepared an analysis and framework to facilitate engagement with and feedback from Local Government officers. This was published on 6 August with Local Governments and Regional Councils providing feedback over the following three weeks.

Input was received from 7 metropolitan and 4 non-metropolitan Local Governments.

- Augusta – Margaret River
- Belmont
- Canning
- Chapman Valley
- Dundas
- Esperance
- Gosnells
- Kalamunda
- Kwinana
- Rockingham
- Serpentine-Jarrahdale
- Vincent

Advice was also provided by East Metropolitan Regional Council.

The limited time frame made meant that some were unable to respond during the time period, particularly those for who the Infrastructure WA workshops were scheduled after the WALGA State Council meeting date.

Eighty four percent of the responses were provided by Band 1 or Band 2 Councils.

Due to the timing of the consultation period, the draft submission was considered and endorsed by WALGA State Council as an item under separate cover on 3 September 2021.

**Comment**

High quality infrastructure underpins our economic prosperity and many aspects of the lifestyle enjoyed by West Australians. This public infrastructure is provided by State and Local Governments. The establishment of Infrastructure WA in 2019 has opened the opportunity for a whole of State Government approach to the development of infrastructure proposals. However, it should also open the opportunity for stronger and structured engagement between State and Local Government to align the needs and opportunities at a regional and local level. Consequently Local Government should continue to contribute to the development of sound State infrastructure planning and delivery processes.

The draft State Infrastructure Strategy focusses on State Government managed infrastructure and State Government Department and agency responsibilities and processes. The Local Government sector could choose to not participate in the consultative processes, including this opportunity, offered by Infrastructure WA. However, Local Government typically relies on funding from State and Federal sources to contribute to infrastructure development and renewal. More importantly, regional and local economic development is closely linked to the provision of essential infrastructure-based services. For these reasons the Local Government sector through WALGA and directly should actively participate in the development of infrastructure strategies and plans.



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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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Foundations for a Stronger Tomorrow identifies few capital investment projects. The specific projects noted are high profile and are most already on a development path. It is acknowledged that some Local Governments may be disappointed not to see specific projects that are key to unlocking the development potential of their area identified. However, this Infrastructure WA document is a high-level strategy. If adopted and successfully implemented, it will guide the processes to ensure greater value from future infrastructure investments.

The attached submission draws on advocacy positions previously adopted by WALGA State Council. The cross-cutting themes of Planning and Coordination and Regional Development are likely to have the most far-reaching implications across many aspects of Local Government.



## 6.9 Regional Telecommunications Review 2021

By Ian Duncan, Executive Manager, Infrastructure

### RECOMMENDATION

**That the endorsed submission to the Regional Telecommunications Review 2021 Committee be noted.**

#### Executive Summary

- A Regional Telecommunications Independent Review Committee, established under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, sought submissions from stakeholders to inform a review into telecommunications services in regional, rural and remote parts of Australia.
- A submission was developed based on:
  1. unresolved issues identified in a 2019 consultation with Local Governments regarding risks to emergency management capability that arise due to failure of telecommunications services during emergency conditions;
  2. strategic and specific issues identified by Local Governments; and
  3. matters raised during consultation at WALGA Zone meetings.
- Local Governments identified weaknesses in the telecommunications service:
  1. coverage (BlackSpots);
  2. capacity (to meet growing and seasonal demands);
  3. resilience (specifically during power outages); and
  4. cost (lack of price competitive options).
- These issues were found in peri-urban and some metropolitan areas as well as regional and remote parts of the State.
- The submission to the Regional Telecommunications Independent Review Committee identified 15 recommended solutions that if effectively delivered will provide improved equity in the level of telecommunications services delivered across Australia.
- The draft submission was endorsed by State Council by Flying Minute on 29 October 2021.

#### Attachment

- [Flying Minute: Regional Telecommunications Review 2021 Submission](#)

#### Background

In late 2019 WALGA collated examples and case studies highlighting the long-standing issue of telecommunication failures, particularly in regional and peri-urban areas and specifically during emergencies. Matters identified included:

- Blackspots (areas with no mobile phone coverage);
- Battery backup failures (both mobile towers and telephone exchanges);
- Outages (which have led to loss of landlines and mobiles during emergency situations);
- Telstra Notification Systems (that mean the telecommunications carrier is reliant on customers to advise there is no service)

Importantly these issues identified the inextricable link with power supplies in the provision of reliable telecommunications service.

A Regional Telecommunications Independent Review Committee (the Committee) is established every three years under Part 9B of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to conduct a review into telecommunications services in regional, rural and remote parts of Australia.

The Committee for the 2021 Regional Telecommunications Review was appointed on 1 June 2021 and submissions were open until 30 September 2021.

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



In developing the submission, the Association sought the views of all Local Governments. Submissions were received from eight Local Governments and one Regional Council. Telecommunications issues were discussed at 16 WALGA Zone meetings during August 2021 with five Zones contributing formal resolutions.

WALGA staff attended and contributed three online consultative sessions conducted by the Committee during August and September. Local Government representatives also took the opportunity to provide input to the Committee's consultation sessions.

The Regional Telecommunications Independent Review Committee is particularly interested to hear views on:

- The reliability of local mobile and broadband services
- The role of telecommunications during COVID-19 and natural disasters
- The effectiveness of Government programs like the Mobile Black Spot Program
- How telecommunications can support regional development
- The potential of emerging communications technologies
- Ways to help regional consumers get connected, stay connected and use their connection

A submission was endorsed by State Council by Flying Minute on 29 October 2021.

Total invited to survey:	24
Total finished survey:	14
Endorse the Recommendation:	12
Endorse the Recommendation subject to comment below:	2
Do not endorse:	0

Additional information was added to the draft submission in response to the comments provided.

**Comment**

Feedback from members articulated very similar themes across rural, regional and remote WA, and peri-urban Perth.

15 recommended solutions were provided that address the key issues identified by Local Governments:

1. To ensure the requirements and accountabilities of the Universal Service Guarantee (USG) are met, immediate attention to the capability of Telstra's existing copper and wireless networks is required to address the core issues being faced regionally.
2. Investigate mechanisms to increase competition in the delivery of telecommunication to reduce the current monopoly experienced by a large areas of regional Australia.
3. Partnerships including all levels of government and industry to investigate and trial emerging technologies with the potential to deliver cost-effective mobile communications and power reliability ensuring trials are not constrained by the limitation of funds available via government programs.
4. Ensure that the Security Legislation Amendment (Critical Infrastructure) Bill 2020 expanded scope of the Act includes telecommunications critical infrastructure and that any new technologies that enable significant change to the delivery of telecommunications services in regional Australia need to be cognisant of the ongoing and real threat of cybersecurity on the security of infrastructure, personal and commercial data.
5. When developing funding programs ensure that power supply (including improved back up and Stand Alone Power Systems) is a key consideration to any solution sought, and that a

**Item 8.1 - WALGA STATE COUNCIL AGENDA**

collaborative approach between power and telecommunication providers is essential to any funding application.

6. Guarantee engagement with Local Governments as a pre-requisite for input, particularly in regards to identification of local blackspots and optimum infrastructure locations.
7. Where approved signal boosters or enhanced telecommunication products are recommended by telecommunication carriers as the solution to achieve mobile connectivity, this equipment should be technically evaluated and funded rather than the consumer having to take all of the risks and fund this inequity.
8. A comprehensive community education program is required to ensure it is not assumed that the mobile phone network, land line telephones or nbnco based internet services can be relied on during or in the aftermath of emergencies. This program should offer solutions such as transistor radios that at least allow the community to receive (although not send) information during emergencies.
9. Leverage major regional road upgrades, such as the Tanami Road, to install fibre optic cable as part of integrated earthworks. This will lower the overall costs, increase accessibility and, in the case of the Tanami Road, potentially provide an alternative from the single line currently servicing northern Western Australia.
10. Broaden both the deployment and application of nbnco satellite services to all evacuation centres to ensure access to telecommunication not only during an emergency but to provide backup redundancy when fixed lines connections are experiencing outages.
11. Investigate the technology that facilitates quicker service restoration including locally or regionally located generators and the ability to connect them to telecommunications facilities, Cells on Wheels (COWs) and mobile exchanges on wheels (MEOWs). Analyse the transferability for a broader scale, long term solution.
12. Establishment of an independent telecommunications committee to address black spots and telecommunications issues in peri-urban and metropolitan areas.
13. Call upon the Commonwealth Government to:
  - a. fund the extension of fibre deeper into regional communities based on products similar to the Nbnco Enterprise Ethernet business product, and
  - b. ensure guaranteed prices charged by service providers are equivalent to those in a city CBD.
14. Request the Federal Government to fulfil the commitment of full mobile coverage on the North West Coastal Highway.
15. Request the Federal Government to ensure that the drawdown of data, particularly from autonomous vehicles used by the mining sector, doesn't compromise the quality and reliability of service.

Local Governments have clearly identified that telecommunications infrastructure is fundamental to basic service provision and economic development in all parts of the country. The proposed solutions go some way towards ensuring that choice, equity and sustainability of telecommunications services are provided to rural, regional and remote Western Australia.



*Item 8.1 - WALGA STATE COUNCIL AGENDA*
**6.10 WALGA submission on Guideline: Native Vegetation Referral, Part V Environmental Protection Act 1986 (05 095-03-0001 GM)**

By Garry Middle, Acting Manager Environment Policy

**RECOMMENDATION**

**That the endorsed WALGA submission on the draft *Guideline: Native Vegetation Referral* be noted.**

**Executive Summary**

- On 5 July 2021 the Department of Water and Environment Regulation (DWER) released the draft [Guideline: Native Vegetation Referrals \(the Guideline\)](#) for consultation by 30 July. WALGA was granted an extension to 6 August 2021.
- The Guidelines relate to a new clearing referral process introduced as part of the *Environmental Protection Act Amendment Act 2020* passed in November 2020 which removes the requirement for a clearing permit for low impact proposals. Referrals considered low impact are not subject to public consultation and no fees are payable by proponents to DWER for the assessment of referrals.
- The Guideline provides information on this new referral process for approval of low impact native vegetation clearing. This new process could, in some circumstances, assist some Local Governments with more timely delivery of minor infrastructure projects and reduce costs associated with clearing permits.
- WALGA's submission reiterates its support for this referral process for which an exemption does not apply, on the proviso that environmental outcomes are not negatively affected. It also recommends that Guidelines need to provide greater clarity regarding the type of clearing that would be considered low impact to avoid confusion and delays to projects.
- The final submission was endorsed by State Council via Flying Minute (resolution 207.FM/2021).

**Attachments**

- [Flying Minute – Guidelines Native Vegetation Referral, Part V Environmental Protection Act 1986](#)
- [WALGA's final submission on Draft Guidelines: Native Vegetation Referrals](#)

**Background**

On 5 July 2021 the Department of Water and Environmental Regulation (DWER) released the draft [Guideline: Native Vegetation Referrals \(the Guideline\)](#) for consultation by 30 July. WALGA was granted an extension to 6 August 2021.

The draft Guidelines provide information on the new clearing referral process introduced as part of the *Environmental Protection Act Amendment Act 2020* which removes the requirement for a clearing permit for low impact clearing and seek to help with the interpretation of the criteria set out in the *Environmental Protection Act 1986* (EP Act) for the assessment of these referrals.

To facilitate sector engagement on the draft Guidelines, WALGA distributed an InfoPage on 9 July, inviting comments from the sector by 22 July. Local Governments were encouraged to join in the DWER's on-line information session held on 19 July.

Officer comments on the draft Guideline were received from one Local Government, the City of Joondalup.

The final submission is consistent with WALGA's previous submissions on native vegetation regulation, in particular the [Environmental Protection Act 1986 \(EP Act amendments\) submission](#) endorsed by State Council in January 2020 and the [Native Vegetation in Western Australia Issues Paper submission](#) endorsed by State Council in February 2020.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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The final submission was endorsed by State Council via Flying Minute.

**Comment**

In reviewing the draft Guidelines, WALGA focused on whether the Guidelines provide adequate detail on what type of clearing activities could be considered low impact and how DWER would determine the outcomes of the referral.

WALGA's Submission noted that the new referral process has the potential to improve the efficiency of meeting the regulatory requirements for some essential clearing activities undertaken by Local Governments, such as small scale road upgrades, improving sightlines, the extension of crossovers or other minor infrastructure projects.

However, the format and content of the draft Guidelines was found to be confusing, and recommendations were made to provide further detail in the Guidelines on the criteria for determining what is low impact clearing.

The Submission also acknowledged that the determination criteria are designed to ensure that only low impact clearing activities proceed without a clearing permit and that some Local Governments, particularly those on the Swan Coastal Plain and in the Wheatbelt, will be less likely to be able to utilise the new referral pathway. In this context WALGA reiterated its documented position on the need for further improvements and efficiencies to the regulatory process for native vegetation clearing, including:

- increased State Government investment in the collection and provision of better information to support regulatory processes;
- the implementation of a more strategic approach to the management of native vegetation in Western Australia, particularly for priority bioregions such as the Swan Coastal Plain and the Wheatbelt; and
- the allocation of dedicated staff within the Department to assist Local Governments with the native vegetation clearing referrals and permits process (noting the sector is second only to the State Government in the number of clearing permit applications submitted annually).



*Item 8.1 - WALGA STATE COUNCIL AGENDA*
**6.11 WALGA submission on Draft Native Vegetation Policy for Western Australia (05-095-03-0001 GM)**

By Garry Middle, Acting Manager Environment Policy

**RECOMMENDATION**

**That the endorsed submission to the Department of Water and Environment Regulation on the Draft Native Vegetation Policy for Western Australia be noted.**

**Executive Summary**

- The State Government has released for public comment a Draft Native Vegetation Policy for Western Australia (Draft Policy) on 30 August 2021.
- Whilst it is primarily aimed at State Government agencies and developing a whole of government approach to native vegetation management, many aspects are of interest to, or have implications for, Local Governments.
- A draft submission was prepared and sent out to the sector for comment, with some changes made to the draft.
- Comments on the revised draft submission were sought from members of the Environment Policy Team by Thursday, 14 October 2021.
- The submission was endorsed by State Council via Flying Minute (resolution 211.FM/2021).

**Attachment**

- [Flying Minute: WALGA Submission on Draft Native Vegetation Policy for Western Australia](#)

**Background**

The draft [Native Vegetation Policy](#) for Western Australia was released on Monday, 30 August. This policy is one of four key initiatives in the 2019 [Native Vegetation in Western Australia Issues Paper](#). The Department of Water and Environment Regulation (DWER) also released a document [summarising feedback on the Issues Paper, submissions](#) and [Explanatory Notes](#) on how feedback on the Issues Paper is reflected in the Draft Policy and including answers to Frequently Asked Questions.

To facilitate sector engagement, WALGA:

- Alerted the sector to the release of the discussion paper and draft Bill in November 2019 via an article and InfoPage in WALGA newsletters and by direct email to key contacts;
- Facilitated an information session with DWER on 7 September 2021, which was attended by 61 Local Government staff representing 43 Local Governments from 10 different Zones. The information session was followed by a workshop, where participants were asked to respond to the following questions:
  - How could the Draft Policy be strengthened to support Local Governments to manage native vegetation?
  - What aspects of the Draft Policy are problematic for Local Government?
  - What is missing from the Draft Policy?
- Provided a draft submission to the sector on 21 September, for feedback by 5 October. The submission considered matters raised in past submissions (listed in the attachment) and comments made by participants at the workshop held on 7 September.

Officer comments were received from eight Local Governments: City of Busselton, City of Cockburn, City of Greater Geraldton, City of Kalamunda, Town of Mosman Park, Shire of Murray, Shire of Serpentine-Jarrahdale and the City of Vincent. Changes were made to the draft in response to this additional feedback, including comments received after the draft submission was sent to the Environment Policy Team.

The draft submission was considered by the Environment Policy Team out of session and endorsed by State Council via Flying Minute.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Comment**

The Draft Native Vegetation Policy seeks to provide mechanisms for coordinating whole-of-state government management of native vegetation by defining the guiding principles, strategies and approaches to achieving the proposed outcomes.

Whilst it is primarily aimed at State Government agencies and on developing a whole of government response, many aspects are of interest to, or have implications for, Local Governments.

The Draft Policy provides a further opportunity to realise some of the changes in the current practice of native vegetation management advocated for in WALGA's submission on the Native Vegetation Issues Paper and other forums.

WALGA's submission focuses on the aspects of the policy which are of interest to or have implications for Local Government. WALGA's draft submission provides comments on the format of the Draft Policy, raising concerns over its complexity, lack of clearly defined objectives and makes 19 recommendations.



### 6.12 Submission on Cost Recovery Part IV of the Environmental Protection Act 1986 – assessments by the Environmental Protection Authority

By Garry Middle, Acting Manager Environment Policy

#### RECOMMENDATION

That the endorsed WALGA submission to the Department of Water and Environmental Regulation on Cost Recovery under Part IV of the *Environmental Protection Act 1986* – assessments by the Environmental Protection Authority be noted.

#### Executive Summary

- Changes made to the Environmental Protection Act 1986 (EP Act) earlier this year included a Head of Power for the Department of Water and Environmental Regulation (DWER) to establish a cost recovery mechanism for proposals subject to assessment by the Environmental Protection Authority (EPA).
- DWER has released a discussion paper and draft Regulations setting out the proposed cost recovery model for comment by 22 October 2021.
- WALGA's submission provides two case studies that demonstrate that the proposed cost recovery fees would have a significant financial impact on Local Government projects requiring EPA assessment.
- It is also argued that most Local Government proposals requiring environmental assessment are for the community and broader public benefit, are consistent with State Government Planning, Strategies and Policies, and are not for profit.
- On this basis the submission recommends that cost recovery fees for these Local Government projects should be waived.
- The final submission was endorsed by State Council via Flying Minute (resolution 209.FM/2021).

#### Attachment

- [Flying Minute – Submission on Cost Recovery Part IV of the Environmental Protection Act 1986 – assessments by the Environmental Protection Authority](#)

#### Background

Recent amendments to the EP Act have included a head of power to allow the EPA to impose cost recovery fees on proponents for carrying out environmental assessments of their proposals (not including assessment of planning schemes). DWER is seeking feedback and comment on the [discussion paper implementing this cost recovery as well as draft Regulations](#), by 22 October 2021.

To facilitate sector engagement WALGA:

- Alerted the sector to the release of the discussion paper and regulations on 23 September 2021, inviting them to register for the webinar and workshop and contribute to WALGA's submission; and
- Hosted a webinar and workshop attended by officers from 21 Local Governments on Friday, 1 October 2021, where DWER officials provided further information on the proposed cost recovery model.

Officer comments were received by 10 Local Governments: City of Bayswater, City of Bunbury, City of Cockburn, Shire of Dardanup, Shire of Denmark, Shire of Harvey, City of Joondalup, Shire of Ngaanyatjarraku, Shire of Wandering, and Shire of Wongan-Ballidu. An Elected Member from the Shire of Toodyay also provided comment.

The draft submission was considered by the Environment Policy Team out of session and endorsed by State Council via Flying Minute.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Comment**

Most Local Government proposals have not historically required EPA assessment under Part IV of the EP Act - since 1991 there have been 28 proposals by Local Governments that have been subject to EPA assessments, including for road constructions, waste disposal sites, and coastal infrastructure. However, WALGA's submission includes two case studies of Local Government proposals that were and are currently being assessed by the EPA that demonstrate that the fees to be imposed would likely range from \$200,000 to over \$500,000. There are also charges for changes to conditions and proposals after assessment which range from \$60,000 to \$90,000.

The submission notes that the imposition of cost recovery fees of this scale could impact the cost/benefit analysis of Local Government projects to such an extent that a project that provides a public good may not proceed due to the additional charges.

Further, WALGA's submission argues that most Local Government proposals that could be subject to an EP Act Part IV assessment are for the provision of essential public infrastructure. These projects are for public, not private, benefit, are endorsed activities either through State and Local Planning (e.g. roads and waste treatment facilities) and provide benefits beyond the local area at a regional and State level.

The submission strongly recommends that cost recovery for these proposals should be exempt from cost recovery and fees should be waived.



*Item 8.1 - WALGA STATE COUNCIL AGENDA*

<b>6.13 Student Transport Assistance Policy Framework Inquiry – WALGA Submission (05-005-03-0013 ID)</b>
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*By Ian Duncan, Executive Manager, Infrastructure*

#### RECOMMENDATION

**That the endorsed submission to the Parliamentary Public Accounts Committee Inquiry into the Student Transport Assistance Policy Framework be noted.**

#### Executive Summary

- The Parliamentary Public Accounts Committee is leading an inquiry into the current Student Transport Assistance Policy (STAP) framework.
- This submission examines the relationship of the STAP to Local Government, with a focus on:
  - Restricted Access Vehicles;
  - Local Road Maintenance;
  - Turnaround Facilities;
  - Use of Local Government Property;
  - Students with Physical Mobility Issues; and
  - Population Decline and Economic Development.
- Policy recommendations are developed as part of this submission.
- The draft submission has been reviewed and supported by the Infrastructure Policy Team and endorsed by State Council via Flying Minute.

#### Attachment

- [Flying Minute – Student Transport Assistance Policy Framework Inquiry](#)

#### Background

The Public Accounts Committee of the WA Legislative Assembly is conducting an inquiry into the Student Transport Assistance Policy (STAP) framework. The STAP framework is applicable to students receiving Western Australian State Government transport assistance under the following conditions:

- Students live in rural areas and attend mainstream government and non-government schools, or
- Students have special needs and attend education support schools and centres provided by government and non-government agencies.

Submissions must be made by the Friday, 29 October and can address specific elements of the STAP Terms of Reference or the issues generally.

#### Comment

In brief, the policy recommendations in the draft submission are as follows:

1. Effective processes should be in place to ensure that Local Governments and Main Roads WA Heavy Vehicle Services are made aware of proposed changes to school bus routes.
2. The value of re-establishing school bus advisory committees or an alternative formal process for regular (perhaps annual) engagement between the PTA Contract Officer, Local Government, school and bus contractors should be evaluated.
3. The principles set out in the Agreement between WALGA and the Public Transport Authority Defining Roles and Responsibilities for Planning, Installation and Maintenance of Bus Stop Infrastructure (2018) should guide the approach to provide access for students with physical mobility issues.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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4. The policy should provide guidance concerning how the health of a town (district) or remote community is considered in developing and applying the policy.
5. The inquiry should consider the option of providing students the choice of reliably accessing bus services, where these exist, to schools other than the closest school.

This draft submission has been reviewed and supported by the Infrastructure Policy Team and was endorsed by State Council via Flying Minute.





## 7. ORGANISATIONAL REPORTS

### 7.1 Key Activity Reports

#### 7.1.1 Report on Key Activities, Commercial and Communications Unit (01-006-03-0017 ZD)

*By Zac Donovan, Executive Manager Commercial and Communications*

#### RECOMMENDATION

**That the Key Activity Report from the Commercial and Communications unit to the December 2021 State Council meeting be noted.**

Commercial and Communications comprises of the following WALGA work units:

- Commercial Development
- Commercial Management
- LGIS Contract Management
- Communications (Marketing and Events)

#### **Commercial Development Energy and Sustainability Project Update**

47 Local Governments have made declarations acknowledging that climate change is occurring, and that climate change will continue to have significant effects on the WA environment, society, economy, and Local Government sector. Many of these Local Governments have adopted environmental policies with carbon neutral targets included. WALGA was requested by its Members to explore alternative options for a whole of sector energy arrangement to assist to collectively reach these emission targets.

An application for authorisation for a 15-year joint energy purchasing group has been approved by the ACCC for this project.

With the support of a steering committee, WALGA has concluded a Tender process and presented offers to 51 participating Members. Participants have until 18 November to confirm their acceptance of this offer. If the collective threshold of 60GWh is met, then this collaboration will proceed to contract to deliver access to renewable energy and a collective cost saving estimated at \$5 million per annum.

The initial phase of the project is adopting locally sourced renewable energy derived from Albany Wind Farm, Collgar Wind Farm and Emu Downs Wind Farm. A complete renewable adoption from the sector resulting from the initial tender is the carbon reduction equivalent to planting 14 million new trees.

The offer has been designed for integration and encouragement of existing and new Local Government infrastructure or efficiency projects with full flexibility to adapt future joint ventures with other organisations in the community. By collaborating, aggregating, and aligning our energy, renewable and carbon spending, the sector is best positioning itself as a leading industry sector to achieve net zero energy policy targets. The project represents new innovation and capability within energy procurement for both the Western Australian market and nationally.

Following completion of the first stage of the project, which is scheduled as a phased transition and three-year initial contract term commencing April 2022, work will commence on further activity including the future evolution of a PPA (Power Purchase Agreement), spend modelling analytics and carbon reporting, carbon offsets, and other aggregate sustainability procurement in areas such as alternative fuels, EV's and fleet.

**Item 8.1 - WALGA STATE COUNCIL AGENDA****Commercial Management****PSP Annual Report**

Annual report data for the Preferred Supplier Program (PSP) has been delivered to Members. During the 2021 Financial Year the program delivered \$358 million of goods, services and works, providing estimated savings of \$36.2 million. Additional benefits are realised through a reduction in administrative activities, alongside the added value of contract management oversight, due diligence and risk mitigation. More than 1,500 supplier engagements were facilitated through WALGA's eQuotes portal during the year. The annual activity was achieved during a period of significant market disruption due to COVID-19, and concurrent to a procurement transformation that has shifted the WALGA PSP activity into a new and more agile operating structure.

**Member Engagement**

The Contract Management team continues with Member engagement to support use of the WALGA PSP. During the quarter of July to September, there were 17 Member visits to the following regional Members via road trip activity:

- City of Albany
- Shire of Boddington
- Shire of Brookton
- Shire of Broomehill-Tambellup
- Shire of Cranbrook
- Shire of Cuballing
- Shire of Denmark
- Shire of Dumbleyung
- Shire of Gnowangerup
- Shire of Jerramungup
- City of Karratha
- Shire of Kondinin
- Shire of Kulin
- Shire of Lake Grace
- Shire of Narrogin
- Shire of Plantagenet
- Shire of Wickelup

Since the start of 2021, more than 120 Member visits have been made by the Commercial Management Contract Managers. Additional visits have been made for the Energy Sustainability project that are specific to presenting specific offers to participants.

**LGIS Contract Management**

The LGIS Annual Report has been adopted and is now published.

A new LGIS Scheme Management Agreement is currently under negotiation between WALGA and JLT. This will, among other changes, provide for:

- fixed fee broking, with Commissions paid back into Scheme;
- fixed contract term; and
- regular WALGA review of Management and Broking Fees to confirm Value for Money.

**Marketing and Communications****Convention**

The 2021 WA Local Government Convention and Trade Exhibition was held from Sunday, 19 September to Tuesday, 21 September at Crown Perth. There were 500 registered delegates for the event, with 81 companies participating in the Trade Exhibition. The Convention Gala Dinner was held at Optus Stadium and included the launch of *To Dwell in Unity*, the book commemorating the sesquicentenary of Local Government authored by Dr Chris Berry and supported by WALGA and the Department of Local Government, Sport and Cultural Industries. It is anticipated that net profit from the event will slightly exceed budget, in the main due to less expenses with COVID-19 related changes to speakers impacting speaker fees.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Electoral Reform Campaign**

At direction of State Council, WALGA engaged in a campaign to present the sector's position regarding the State Electoral reform process. The West Australian column placement was utilised for this purpose, with two editorials from State Councillors - Shire of Cue Deputy President Les Price and Serpentine Jarrahdale President Cr Michelle Rich. An eight-week campaign on social media was employed to create awareness of the sector position under the tagline 'One Vote One Value – Does Not Add Up'. Google display and Facebook Advertising were used across five different creative treatments; with over four million impressions achieved via Google ads and another 80,000 on Facebook. Google ads attracted 1,210 clicks and Facebook advertising a further 9,600.

**Local Government Elections Campaign: Be a Vocal Local**

Together with the Department of Local Government, Sport and Cultural Industries, WALGA engaged in a two-phase campaign around Local Government Elections. Under the tagline 'Be a Vocal Local', the campaign was split into a 'Stand' phase encouraging individuals to consider standing as candidates in the elections and the second 'Vote' phase encouraging participation in the elections on Saturday, 16 October. Two separate creative treatments were employed with television advertisements run in the weeks prior to close of candidate nominations and again prior to election date, in conjunction with print and social media placements. The two phases attracted a total of 1.35 million impressions on Google ads and reach of another 100,000 on Facebook.

**Awards**

WALGA is a national finalist in the Australian Marketing Institute awards for the Association's Marketplace initiative and campaign that attracted the participation of 10,000 small businesses to share in \$41 million in Local Government spending in 2020. The project is a finalist across two separate categories of Acquisition Marketing and Public Sector Marketing.

The WALGA Commercial Team was runner up in the national Procurement and Supply Australia award for the Procurement Team Transformation Award 2021.

**New Website**

Work is progressing on new site architecture and functionality for a refresh of the WALGA website including integration with the Preferred Supplier CRM and updated search functionality, with the new site anticipated to be complete by the end of the year.



*Item 8.1 - WALGA STATE COUNCIL AGENDA*
**7.1.2 Report on Key Activities, Governance and Organisational Services Unit  
(01-006-03-0007 TB)**

*By Tony Brown, Executive Manager Governance and Organisational Services*

**RECOMMENDATION**

**That the Key Activity Report from the Governance and Organisational Services Business Unit to the September 2021 State Council meeting be noted.**

Governance and Organisational Services comprises of the following WALGA work units: Governance and Procurement, Employee Relations, Training, Regional Capacity Building and Strategy & Association Governance

The following provides an outline of the key activities of Governance and Organisational Services since the last State Council meeting.

**Strategy and Association Governance**
**Elected Member Superannuation Policy Proposal**

WALGA has been canvassing the Local Government sector in relation to a [draft policy proposal](#) for Local Government Elected Members to be entitled to receive superannuation.

The proposal references reforms in other Australian jurisdictions and, based around equity and diversity arguments, contends that Elected Members should be able to receive superannuation.

Specifically, the proposal argues that payment of superannuation to Elected Members:

- aligns with the goal of the superannuation system;
- recognises the opportunity cost of Elected Members to undertake other income earning activities; and
- could increase nominations for election to Council from traditionally under-represented cohorts.

Feedback from the Local Government sector so far has been mixed. A number of Local Governments support the proposal in line with the arguments summarised above. Case studies of professionals sacrificing paid employment opportunities to serve on Council have also been received during the feedback period.

A number of Local Governments oppose the proposal on the basis that serving on Council is a voluntary act of community service, and that the proposal would confuse the role of Elected Members with that of employees. While this is not the case, as board members are typically entitled to superannuation, this feedback is noted.

Due to the consultation period being undertaken during Local Governments' caretaker and electoral period, Zone and State Council consideration of this issue has been deferred for this round of meetings pending further discussion and engagement with the Local Government sector.

**Governance and Procurement**
**New Councillor Inductions**

WALGA has been requested to assist individual Local Governments with the induction of newly elected members. The Governance and Procurement team focus the induction presentations on an introduction to the 5 Council Member Essentials training modules, to raise awareness of each modules content and encourage early participation undertaking this training obligations.

In addition to assisting individual Local Governments, a sector New Councillor Seminar will be held on Friday, 12 November at the Perth Convention & Exhibition Centre.

**Item 8.1 - WALGA STATE COUNCIL AGENDA****Employee Relations****New Industrial Relations Legislation Amendment Bill 2021**

Currently 109 Local Governments and 6 Regional Councils (totaling 79% of the sector) operate in the Federal industrial relations system. In 2020, the WA Government introduced the *Industrial Relations Legislation Amendment Bill 2020*, which sought to require all WA Local Governments to operate in the State industrial relations system. The 2020 Bill was not passed before the final sitting day of Parliament in 2020.

The *Industrial Relations Legislation Amendment Bill 2021* (IR Bill 2021) was recently tabled again in WA Parliament on 20 October 2021. The progress of the IR Bill 2021, the text of the Bill and Explanatory Memorandum can be viewed on the WA Parliament website [here](#). The IR Bill 2021 seeks to enable a declaration to be made that WA Local Government authorities are not "national system employers" under the *Fair Work Act 2009* (Cth).

WALGA is continuing to advocate for the State Government to provide funding in accordance with the [Immediate Priorities for the State Government](#) document.

**State IR Transition Bulletin**

WALGA Employee Relations released its first monthly State IR Transition Bulletin to the sector on 19 October 2021. The purpose of the Bulletin is to provide the sector with key information on the proposed transition of WA Local Governments and Regional Councils to the State industrial relations system. The October Bulletin can be viewed [here](#).

The first webinar in an upcoming series of webinars on the State IR Transition was held on Tuesday, 16 November 2021 for subscribers to the WALGA Employee Relations service. The purpose of this webinar was to explain the key differences between the Federal and State minimum employment standards.

**WA Government's Mandatory COVID-19 Vaccination Policy**

WALGA Employee Relations service has been receiving a high number of queries regarding the State Government's proposed mandatory COVID-19 vaccinations policy and the impact on Local Government employees. WALGA Employee Relations released an FAQ document for subscribers to the service on 22 October 2021 which will be updated as the advice on vaccinations progresses with the release of any Government Directions and new relevant case law.

**Breakfast Seminar: HR Responses to COVID-19**

WALGA hosted a Breakfast Seminar on Friday, 29 October 2021 to discuss the challenges Local Government CEOs and HR experience in responding to COVID-19 and the State Government's mandatory vaccination policy. 29 Local Government officers attended the breakfast and a further 56 participants attended via webinar.

The following presentations were delivered at the Seminar:

- Nick Sloan presented on the occupation areas to be covered by the mandatory vaccination directions and WALGA's advocacy in this space.
- Samantha Maddern (Partner, Mills Oakley) presented on mandatory vaccinations, privacy when collecting vaccination information, key legal risks and recent case law precedent.
- A panel discussion was held with Nick Sloan, Samantha Maddern, Wayne Jack (CEO, City of Kwinana), Jemma Illes (Executive People Experience and Transformation, City of Cockburn), and Sue Wiltshire (Manager Human Resources, City of Kwinana). The purpose of the panel was for Local Governments to share their experiences about how they are managing COVID-19 and vaccinations in the workplace, including incentivising employees to be vaccinated, and to provide the audience with an opportunity to ask questions of the panellists.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**WALGA Salary and Workforce Survey 2021**

Data collection for the annual WALGA Salary and Workforce Survey 2021 closed on 2 November 2021. Approximately 66 Local Governments commenced the survey and will be able to review the Survey Report and online dashboard of remuneration and workforce data in early 2022.

**Training**

Enquiries and bookings are in full swing after the recent Council elections. WALGA Training is seeing a big increase for in-house training requests for both officers and Elected Members and current courses at WALGA are well attended.

The WALGA Training team with the support of the Governance team and our product developers have completed the full review of all Council Member Essentials training materials for both the eLearning and face-to-face learning resources to capture the latest legislative and regulatory changes. We have conducted specialised training with our approved WALGA trainers to ensure the new materials are being delivered to the highest and most current standard.

We would like to sincerely thank all members who have contribute to the course review through the Industry Advisory Groups. The feedback we have received during the consultation phase has been very insightful and helpful to ensure our training meets the need of industry.

For November we have two new courses in our program:

- The Role of Mayors and Presidents – 24 November 2021
- Emergency Management for Local government Leaders 25 November 2021



**Item 8.1 - WALGA STATE COUNCIL AGENDA****7.1.3 Report on Key Activities, Infrastructure (05-001-02-0003 ID)**

*By Ian Duncan, Executive Manager Infrastructure*

**RECOMMENDATION**

**That the Key Activity Report from the Infrastructure Unit to the December 2021 State Council meeting be noted.**

**Roads****Condition Assessment of Roads of Regional Significance**

Funding has been provided through the *State Road Funds to Local Government Agreement* to perform visual condition surveys of Significant sealed roads over a five-year cycle. The first phase of this project, a survey of the roads in the Mid-West region, was recently completed. Talis Consultants are progressing the second phase of the project covering the Great Southern and Goldfields-Esperance regions that is scheduled for completion in November. In addition to the condition assessment and video data capture of sealed roads, the survey will include video of Significant unsealed roads and condition reporting on access roads to remote Aboriginal communities. It is proposed to cover the Wheatbelt regions in the next phase which is scheduled for the start of 2022.

**Road Safety Management System**

WALGA, Main Roads WA and the South West Regional Road Group have finalised modifications to the project prioritisation guidelines and multi criteria assessment model to provide a greater focus on road safety when setting the annual roads program for the region. The South West Regional Road Group will consider the revised guidelines and model. This is an important pilot to deliver the commitment agreed in the *State Road Funds to Local Government Agreement 2018/19 to 2022/23* to work towards establishing a road safety management system. With agreement from the Regional Road Group chairs, WALGA will examine the common elements of the prioritisation guidelines and multi criteria assessment models for all of the regions and develop a standard template for including road safety in the prioritisation process for setting the annual roads program for each region. Any changes will need to be supported by the relevant Regional Road Group.

**Road – Rail Interface Agreements**

WALGA, Main Roads WA and the Public Transport Authority (PTA) have made substantial progress toward developing a revised Road-Rail Interface Agreement. The draft Agreement, which identifies the responsibilities of the parties to manage risks associated with a road/rail crossing on the PTA network, will be provided to Local Governments for consideration and feedback, once finalised.

**Transport and Roads Forum 2022**

Due to repeated COVID-19 related postponements, the Transport and Roads Forum was cancelled for 2021. A 2022 event is now scheduled for Wednesday, 30 March 2022, and program planning has begun.

**Local Government Road Research Program**

WALGA and Main Roads will be developing a research program that will deliver guidance to Local Governments to assist in the adoption of technologies and practices that will enhance productivity and delivery of roads and transport initiatives. WALGA is currently collecting topic proposals that will then be prioritised by an operations team of Local Government practitioners.

**eRideables Regulations**

WALGA successfully advocated for the State Government to discuss with Local Governments proposed changes to regulations that would legalise the use of e-scooters and similar devices on paths and some public roads. This presentation to Local Government officers was held on Friday, 29 October.

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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**Urban and Regional Transport****Temporary Traffic Management**

WALGA has arranged a workshop on 7 December for Local Government officers involved in designing, implementing or approving temporary traffic management. This will cover updates to Australian Standard 1742.3, changes to the Austroads Guide to Temporary Traffic Management as well as the key Main Roads WA documents and policies that have been updated. There will also be an opportunity to discuss contemporary Local Government practices.

**Regional Roadworks Signage Review**

Recommendations from a working group, that included WALGA, overseeing a review of regional roadworks signage, presented a report to the Minister for Transport in August. The State Government announced in October that it had accepted all the recommendations. The data and trends in other jurisdictions indicates that effective identification and treatment of risks to road users and road workers is required, even on low volume rural roads. Changes proposed will be reflected in the Codes and Standards that guide temporary traffic management for road works.

**Road Safety****Road Safety Council Update**

WALGA hosted the September meeting of the Road Safety Council. In his welcome address, WALGA CEO, Nick Sloan, acknowledged the Driving Change Road Safety Strategy 2020-2030 and the role of the Road Safety Council in leading the collaboration and coordination of that effort. Nick emphasised the critical role of Local Governments, as partners in creating a safe road transport system, and outlined WALGA's approach to supporting Local Governments in that role.

Members welcomed back Iain Cameron, following his reappointment as the Chair of the Road Safety Council. Matters considered at the meeting included:

- the Section 13 report which is tabled in Parliament each year;
- the Road Trauma Trust Account budget process for 2022-23;
- the priorities and three-year deliverables for Driving Change;
- Council governance; and
- the sustainability of the Road Trauma Trust Account.

**7.1.4 Report on Key Activities, Strategy, Policy and Planning Unit (01-006-03-0017 NM)**

*By Nicole Matthews, Acting Executive Manager, Strategy, Policy and Planning*

**RECOMMENDATION**

**That the Key Activity Report from the Strategy, Policy and Planning Unit to the December 2021 State Council meeting be noted.**

**Economics and Strategic Projects****Immediate Spending Priorities for the WA Government**

WALGA recently prepared a strategic policy platform identifying the immediate spending priorities for the McGowan Government in its second term.

The document encourages the Government to use the State's strong financial position to build upon the success of its COVID-19 Recovery Plan, and further invest in areas that will ensure that the State is well placed to address looming economic, environmental, and social challenges. These initiatives primarily relate to the extension or expansion of existing successful State Government programs in areas including climate change adaptation, waste management, small business support, underground power and housing.

The document was provided to the State Government in advance of the 2021-22 Budget and will form an important policy and advocacy platform for this term of Government.

WALGA has received positive responses from a number of Ministers and Directors General, including:

- Hon John Carey, Minister for Housing; Local Government
- Emily Roper, Director General, Department of Premier and Cabinet
- Mike Rowe, Director General, Department of Communities.

**Economic Briefing**

In October, WALGA released its latest Economic Briefing, which contained updated forecasts for the Local Government Cost Index (LGCI). Costs faced by Local Governments are expected to rise in coming years largely as a result of capacity constraints in the construction sector. WALGA's latest forecasts indicate that the LGCI will grow by 3.5% in 2021-22, and 2.6% in 2022-23. Given challenges with forecasting in the current environment, WALGA is urging caution when using the LGCI, and encouraging Local Governments to take into account their own local issues and experiences when considering cost pressures and prepare multiple scenarios for cost increases coming years.

**Environment****Submissions to State Government initiatives**

WALGA prepared submissions on three significant State Government initiatives: Draft Native Vegetation Policy; Cost Recovery Regulations for Environmental Protection Authority (EPA) assessments under Part IV of the *Environmental Protection Act 1986* (EP Act); and draft Guidelines for the new referral process for clearing native vegetation with low impact.

The Draft Native Vegetation Policy seeks to provide a mechanism for coordinating whole-of-State Government management of native vegetation. WALGA's submission focused on the aspects of the policy which are of interest to, or have implications for, Local Government. The Submission raised concerns over the Policy's complexity and lack of clearly defined objectives. Other recommendations focused on support for a regional approach to managing native vegetation and the goal of net gain in vegetation cover provided it doesn't place unreasonable constraints, costs and delays for activities undertaken by Local Government.



**Item 8.1 - WALGA STATE COUNCIL AGENDA**

WALGA's Submission on the Cost Recovery Regulations noted that most Local Government proposals have not historically required EPA assessment under Part IV of the EP Act, but that if such proposals were subject to cost recovery, the estimated cost of those assessments would be between \$200,000 to over \$500,000. WALGA's Submission argued that most Local Government proposals that could be subject to an EP Act Part IV assessment are for the provision of essential public infrastructure which are for public, not private, benefit, are endorsed activities either through State and Local Planning (e.g. roads and waste treatment facilities) and provide benefits beyond the local area at a regional and State level. For these reasons, cost recovery for these proposals should be exempt from cost recovery and fees should be waived

The draft Guidelines relate to a new clearing referral process introduced as part of changes to the EP Act introduced in November 2020 which removes the requirement for a clearing permit for low impact proposals. WALGA's Submission reiterated its support for this new referral process on the proviso that environmental outcomes are not negatively affected but recommended that greater clarity is needed regarding the type of clearing that would be considered under the new referral process.

**Planning and Building****Planning Showcase**

WALGA hosted the inaugural Local Government Planning Showcase on Tuesday, 21 September at Crown in conjunction with the Local Government Convention. Over 100 Local Government planning officers were in attendance and heard from eight speakers on a range of topic, including a legal update from McLeod's and a contemporary approach to protecting significant trees through the planning system from the Town of Bassendean. A survey of attendees' post event found universal satisfaction with the event, its format and strong willingness to attend in future years. A repeat of the event is planned for 2022.

**Water State Planning Policy Officers Session**

In August 2021, the WAPC released draft SPP 2.9: Planning for Water for public comment. As part of WALGA's consultation with members a webinar was held. The purpose of this event was to:

- understand the key policy changes;
- identify how these changes are expected to effect on-ground outcomes and Local Government processes; and
- identify key areas of support and improvement for inclusion in WALGA's Submission.

The webinar included a presentation by the water policies team from the Department of Planning, Lands and Heritage. Participants included Local Government planners, engineers and other officers with water related responsibilities. Over 70 officers from 40 Local Governments attended the webinar.

**Patio Fire Fuel Load National Construction Code Project**

The purpose of this project is to address the historical application of the National Construction Code (NCC) carport exemption to patios when assessing the setback requirements for fire safety in Western Australia. Most building surveyors have applied the National Construction Code carport exemption to patios when assessing the requirements for patios based on setback provisions in previous WA State legislation such as the *Uniform Building By-Laws* and the *Miscellaneous Provisions Act* which pre-date the adoption of the NCC and the *Building Act 2012*. The setback provision allowed for in the carport exemption is also consistent with the setback requirement for patios deemed to comply in the R Codes. In recent years, following the flammable cladding audits and the release of the Shergold Weir - Building Confidence Report, Local Governments (and building surveyors in general) have become more aware of governance procedures and the importance of risk analysis in their decision making.

Local Government building surveyors have asked that WALGA help facilitate a state variation to the NCC to permit the current practice to continue. They have expressed that this would help to ensure that there is a consistent approach across the sector rather than Local Governments taking individual action. Department of Mines Industry Regulation and Safety (DMIRS) was contacted regarding this issue and were aware of the current practice in the sector and broader industry, but initially advised

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

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that evidence would need to be included from a suitably qualified professional such as a Fire Safety Engineer. To obtain this evidence WALGA, in collaboration with eight members, engaged a qualified fire safety engineer on behalf of the sector to provide the fire load data. DMIRS has now contacted WALGA and is willing to jointly develop a proposal for change to the NCC or a regulation change for Western Australia based on the fire report and historical data collated by WALGA. The change in DMIRS position is a significant advocacy win for the sector.

**DAP Dashboard Data Update**

WALGA's Development Assessment Panel Dashboard has been recently updated to include all decisions made in the 2020/21 financial year. The dashboard is used to inform WALGA's ongoing advocacy around DAPs and highlight opportunities to improve the system. The dashboard can be accessed [here](#)

**Resilient Communities****Work Health and Safety (WHS) and Local Government Volunteer Bushfire Brigades**

On 31 August WALGA and LGIS delivered a webinar on the new WHS legislation which was attended by more than 140 people from 80 Local Governments. A panel of presenters from LGIS, Department of Fire and Emergency Services (DFES), McLeod's Barristers and Solicitors, and the City of Mandurah shared their knowledge and experience in relation to the new legislation, work health and safety obligations, and volunteer training and management of volunteer bushfire brigades. The webinar and presentations are available on the WALGA website [here](#) and a FAQ document is being developed jointly by LGIS and DFES. LGIS has also prepared a Volunteer Handbook and CEO Briefing Note on the WHS legislation. It was apparent from the level of interest and issues raised that there is a need for WALGA to continue to work in partnership with LGIS, DFES, and other stakeholders to provide information and support to Local Governments and ongoing work is underway.

**Aboriginal Engagement and Reconciliation Forum, 22 September**

WALGA hosted its annual Aboriginal Forum on Wednesday, 22 September. This year, the forum was themed 'Doynjtj Doynjtj Come Together' and focussed on how Local Governments can develop strong, ongoing relationships with local Aboriginal communities, create opportunities for empowerment and celebrate success. This year's Forum attracted its largest crowd since the event commenced in 2017, with over 230 attendees representing 51 Local Governments, 11 State Government Departments and many other stakeholders. A highlight of the day was the presentation by Danjoo Koorliny sharing the key message '*Aboriginal culture is based on now and the past. What changes do we want to see today, in this moment?*'. With the feedback received from participants, WALGA will continue to work with key stakeholders, such as the Department of Premier and Cabinet, Department of Lands and Heritage, Department of Local Government, Sport and Culture Industries and the Aboriginal Reconciliation Network members, to build on the success of this year for 2022.

**Homelessness Update**

On Tuesday, 7 September WALGA hosted a Webinar delivered by the Department of Communities to provide information for Local Governments on the Local Government Partnership Fund for Homelessness. The fund will provide one-off finance co-contributions towards new initiatives that are identified and led by Local Governments to respond to and prevent homelessness. Over 30 metropolitan and regional Local Government officers participated. Applications closed on Friday, 15 October. WALGA is represented on the assessment panel which will consider applications in November 2021.

Shelter WA has been awarded a Lotterywest grant to undertake a project to develop a Local Government Homelessness Knowledge Hub which will provide information and resources to assist Local Governments address homelessness. Shelter WA is in the process of employing a Project Officer to develop the resource. The project will take approximately 12 months to complete. WALGA is a member of the project reference group, along with several Local Governments with significant experience across a range of homelessness responses and strategies including the City of Perth, City of Rockingham and City of Mandurah.

**Item 8.1 - WALGA STATE COUNCIL AGENDA****7.2 Policy Forum Report (01-006-03-0007 TB)**

*By Tony Brown, Executive Manager, Governance and Organisational Services*

The following provides an outline of the key activities of Policy Forums that have met since the last State Council meeting.

**RECOMMENDATION**

**That the report on the key activities of WALGA Policy Forums to the December 2021 State Council meeting be noted.**

The Mining Communities Policy Forum has been re-established and will review the Terms of Reference and consider the following issues;

- Review of the Environmental Regulations for Mining Review of the *Mining Act 1978* (2021 AGM resolution refer to Agenda item 5.3):
  1. *To call on Minister Bill Johnston, Minister for Mines and Petroleum; Energy; Corrective Services to instigate a review of the 43-year-old Mining Act to require mining companies to abide by environmental regulations, and to support research and development into sustainable mining practices that would allow mining without detriment to diversification and community sustainability through other industries and development.*
  2. *That abandoned mines in regional Western Australia receive a priority action plan with programmes developed to work with rural and remote communities to assist in the rehabilitation of these mines as a job creation programme, with funding allocated for diversification projects for support beyond mine life across Western Australia.*
- *Review of the Mining Act 1978 concerning with a view to maximising the benefits to local communities and its impact on local communities; and the Mining application process to include a mandatory MOU with the Local Government which would be overseen by the Auditor General to ensure fairness to the Community by having the mining company contribute to local infrastructures as a Legacy project (Mining Communities Policy Forum, previous meeting).*
- State Agreements (Peel Country Zone)

That the Policy Team considers the merits of the following:

1. Adopt a policy position advocating that the State Government prepare and publish a toolkit to assist Local Governments in working with mining operators bound by State Agreements.
  2. Advocate that the State Government initiates a review of State Agreement Acts to ensure their currency and compliance status.
  3. Advocate that the Minister for the Environment amend the membership of the Mining and Management Program Liaison Group (MMPLG) to include representation from affected Local Governments.
- Location of mining airstrips (Pilbara Country Zone)
- The Pilbara Zone considers the location of mining airstrips close to existing local government airports is a major risk to both the services provided and the overall viability of those Local Government airports and requests that WALGA:
1. Advocates to the State Government to amend C7 of the Draft Aviation Strategy to provide a clearer policy framework for the approval of jetports which consider the location of the nearest regional airport.
  2. Strongly recommends that the State Government should not allow new mining airstrips within a radius of (WALGA to find Queensland benchmark on this distance) km.



***Item 8.1 - WALGA STATE COUNCIL AGENDA***

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3. Expresses the security concerns and unfair competition that arises when mining companies avoid security screening of passengers and baggage by using charter rather than RPT aircraft
4. Investigates current legislative impediments to limiting construction of mining airstrips within a certain distance of regional towns

The Forum is scheduled to meet on Monday, 8 November and an update report will be prepared for the next State Council agenda.

*Item 8.1 - WALGA STATE COUNCIL AGENDA*



**STATUS REPORT ON STATE COUNCIL RESOLUTIONS  
To the December 2021 State Council Meeting**

MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
<p><b>3 September 2021</b> <b>Item 4.1</b> Protocols for State Councillors Contesting State or Federal Elections</p>	<p>1. In the event the WALGA President or State Councillor contest a State or Federal Election, in order to manage any perceived conflicts of interest, the following is hereby inserted into the Corporate Governance Charter:</p> <ul style="list-style-type: none"> <li>• Ministerial Meetings – the Deputy President or relevant Policy Team Chair to accompany the President to all Ministerial Meetings;</li> <li>• Parliamentary Commitments – the Deputy President or relevant Policy Team Chair to accompany the President to all WALGA related meetings with Members of Parliament;</li> <li>• Media releases and responses – the Deputy President to be consulted in-conjunction with the President on all media responses and media releases with State or Commonwealth policy implications; and</li> <li>• Ministerial Letters – the Deputy President to be included on consultation on proposed correspondence to State and Commonwealth Ministers.</li> <li>• In the event of WALGA's advocacy position presenting a conflict of interest to the President in the combined judgement of the Deputy President and CEO, the Deputy President provides and responds to any public comment.</li> </ul> <p>2. State Council request the CEO to provide a report to a future State Council meeting recommending amendment to the Association's Constitution to deal with matters related to State Councillors Candidature for State or Federal elections.</p> <p>RESOLUTION 262.5/2021</p>	<p>1. WALGA's Corporate Governance Charter has been updated.</p> <p>2. A report will be prepared for State Council for the December 2021 State Council meeting.</p>	<p>December 2021</p>	<p>Tony Brown Executive Manager Governance &amp; Organisational Services</p>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
3 September 2021 Item 5.1 External Oversight of Local Level Complaints	That WALGA advocate for an external oversight model for local level behavioural complaints made under Council Member, Committee Member and Candidate Codes of Conduct, that is closely aligned to the Victorian Councillor Complaints Framework. RESOLUTION 263.5/2021	Correspondence has been sent to the Minister for Local Government advocating for this position.	Ongoing – November 2021	Tony Brown Executive Manager Governance & Organisational Services
3 September 2021 Item 5.2 Tender Exemption Provisions – General Practitioner Services	That WALGA: 1. Adopt a new Advocacy Position Statement under 'Local Government Legislation - Tender Exemption General Practitioner Services': <i>WALGA advocates for the inclusion of a tender exemption for General Practitioner (GP) services under Part 4, Division 2 of the Local Government (Functions and General) Regulations 1996, to support Local Governments to secure and retain necessary primary health care services for their communities; and</i> 2. Undertake additional research in support of the Advocacy Position with the following aims: a. Identify State and Federal Government policy settings and other factors contributing to gaps in primary health care services in regional communities; and b. Quantify the number of regional Local Governments that have current contracts, or are proposing to enter into contracts, for General Practitioner services and the associated costs to Local Government incurred. RESOLUTION 264.5/2021	1. Correspondence has been sent to the Minister for Local Government advocating for this position. 2. Further research is carried out as per this resolution.	Ongoing – November 2021	Tony Brown Executive Manager Governance & Organisational Services
3 September 2021 Item 5.3 Phase 2 Planning Reform Submission	That the submission to the Department of Planning, Lands and Heritage on Phase 2 Planning Reform be endorsed. RESOLUTION 265.5/2021	Endorsed submission was lodged with DPLH on 4 September 2021. WALGA will continue to engage with DPLH and the State Government on the Association's reform proposals. There is no current timeframe for consideration of submissions by the Minister, though final announcement of Phase 2 initiatives is expected in early 2022.	Complete	Narelle Cant Executive Manger Strategy, Policy and Planning

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
3 September 2021 <b>Item 5.4</b> Partners in Government Agreement	That the Partners in Government Agreement be endorsed for signing by the WALGA President at the 2021 WALGA Annual General Meeting. RESOLUTION 266.5/2021	The Partners in Government Agreement was signed at the WALGA 2021 AGM.	Completed	Tony Brown Executive Manager Governance & Organisational Services
3 September 2021 <b>Item 5.5</b> Foundations for a Stronger Tomorrow – Submission to the Draft State Infrastructure Strategy	That: 1. The submission to Infrastructure WA in response to the draft State Infrastructure Strategy, Foundations for a Stronger Tomorrow, be endorsed. 2. WALGA continue to advocate for on-going engagement between Infrastructure WA and Local Governments in the implementation and subsequent reviews of the State's infrastructure strategy. RESOLUTION 267.5/2021	The submission has been sent to Infrastructure WA and advocacy is ongoing.	Completed	Ian Duncan Executive Manager Infrastructure
3 September 2021 <b>Item 6.1</b> Stop Puppy Farming Legislation	1. That the update on the Dog Amendment (Stop Puppy Farming) Bill 2021 be noted. 2. That: a. any additional costs incurred by a Local Government in administering the Dog Act be paid by the State Government; and b. the Fees and Charges set in Regulations are reviewed bi-annually and at minimum, be adjusted by the Local Government Cost Index. RESOLUTION 275.5/2021	Correspondence has been written to the Minister for Local Government advising of resolution 2.	Ongoing – November 2021	Tony Brown Executive Manager Governance & Organisational Services
7 July 2021 <b>Item 5.2</b> Amendments to WALGA's Constitution	That the WALGA Constitution be amended as follows: 1. INSERT Definition – "Present" means attendance in person or by electronic means deemed suitable by the Chief Executive Officer. 2. Clause 5 (10) – DELETE "and Associate Members". 3. Clause 5 (11) – DELETE "Ordinary Member or", REPLACE "State Council" with "Chief Executive Officer" in the first sentence, INSERT "or its delegate" after State Council in the second sentence. 4. Clause 6 (3) – REPLACE "31 May" with "30 June". 5. Clause 7 (2) – REPLACE "30 June" with "31 July".	An item was prepared for the Annual General Meeting to be held on 20 September 2020 and subsequently endorsed by a Special majority of 75% of delegates.  Correspondence has been sent to the Minister for Local Government and the Commissioner for Consumer Protection advising of the constitutional amendments.	Completed	Tony Brown Executive Manager Governance & Organisational Services

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
	<p>6. Clause 11 (1) – after Chief Executive Officer, INSERT “in accordance with the Corporate Governance Charter”.</p> <p>7. Clause 11 (2) – after Chief Executive Officer INSERT “by providing notice to State Councillors of the date, time, place and purpose of the meeting”</p> <p>8. DELETE Clause 11 (3)</p> <p>9. Clause 12 (1) – DELETE “as, being entitled to do so, vote in person”</p> <p>10. DELETE Clause 12 (2)</p> <p>11. Clause 12 (3) – DELETE “as, being entitled to do so, vote in person”</p> <p>12. Clause 12 (4) – DELETE “as, being entitled to do so, vote in person”</p> <p>13. Clause 16 (1) &amp; (2) – After Any election INSERT “other than to elect the President or Deputy President”, REPLACE “generally in accordance with the provisions of the Local Government Act 1995 as amended (2) For the purposes of the election referred to in sub-section (1)” with “as follows”.</p> <p>14. Clause 16 (2) (f) – REPLACE two instances of “2” with “1”.</p> <p>15. INSERT Clause 16A – Election Procedure – President and Deputy President</p> <p>(1) An election to elect the President or Deputy President shall be conducted as follows:</p> <p>(a) the Chief Executive Officer or his/her delegate shall act as returning officer;</p> <p>(b) representatives are to vote on the matter by secret ballot;</p> <p>(c) votes are to be counted on the basis of “first-past-the-post”;</p> <p>(d) the candidate who receives the greatest number of votes is elected;</p> <p>(e) if there is an equality of votes between two or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued, and the meeting adjourned for not more than 30 minutes;</p>			



**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
	<p>(f) any nomination for the office may be withdrawn, and further nominations may be made, before or when the meeting resumes;</p> <p>(g) when the meeting resumes, an election will be held in accordance with sub-sections 1(a), 1(b), 1(c) and 1 (d);</p> <p>(h) if two or more candidates receive the same number of votes so that sub-section 1(d) cannot be applied, the Chief Executive Officer is to draw lots in the presence of any scrutineers who may be present to determine which candidate is elected.</p> <p>16. Clause 21 (4) – REPLACE “Chairman” with “Chair”.</p> <p>17. Clause 22 (1) – REPLACE “in August or September of” with “prior to 31 October”.</p> <p>18. Clause 22 (3) – DELETE “in person”</p> <p>19. DELETE Clause 22 (4) (b).</p> <p>20. Clause 23 (3) – DELETE “in person”</p> <p>21. Clause 24 (2) – DELETE “and of which vote is to be exercised in person”</p> <p>22. Clause 24 (4) – DELETE “as, being entitled to do so, vote in person”</p> <p>23. Clause 28 (1) – DELETE “The common seal shall be held in the custody of the Chief Executive Officer at all times.”</p> <p>24. Clause 29 (1) – DELETE “as, being entitled to do so, vote in person”</p> <p>25. Clause 29 (2) – DELETE “as, being entitled to do so, vote in person”</p> <p>26. Clause 31 (4) (c) – DELETE “and Regional Development”.</p> <p>RESOLUTION 233.4/2021</p>			
<p><b>5 May 2021</b> <b>Item 5.4</b> Review of the State Industrial Relations System</p>	<p>That WALGA:</p> <p>1. Seek confirmation from the State Government on whether it intends to re-introduce legislation for Local Governments to operate solely in the State Industrial Relations System.</p>	<p>Correspondence has been sent to the Minister for Industrial Relations advising of this resolution.</p> <p>A meeting was held with the Minister for Industrial Relations on 14 July 2021.</p>	Ongoing	<p>Tony Brown Executive Manager Governance and Organisational Services</p>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
	<p>2. If the State Government reintroduces legislation to require all Local Governments to operate within the State Industrial Relations System, continue to advocate for the State Government to:</p> <ul style="list-style-type: none"> <li>a. Amend the <i>Industrial Relations Act 1979 (WA)</i> to include additional provisions to modernise the State IR system; and</li> <li>b. Provide adequate funding and resourcing to ensure Local Governments are equipped with the appropriate tools and training to enable a smooth transition.</li> </ul> <p>RESOLUTION 207.2/2021</p>	<p>The Minister advised that this legislation is likely to be introduced in the spring session in Parliament and hopes the legislation will go through State Parliament prior to Christmas 2021.</p> <p>This legislation then requires the support of the Federal Government.</p>		
<p><b>3 March 2021</b> <b>Item 5.3</b> Eligibility of Slip On Fire Fighting Units for Local Government Grants Scheme Funding</p>	<p>That WALGA:</p> <ul style="list-style-type: none"> <li>1. Supports the inclusion of capital costs of Trailer Fire Fighting Units and Slip On Fire Fighting Units including for Farmer Response Brigades (for use on private motor vehicles) on the Eligible List of the Local Governments Grants Scheme (LGGS).</li> <li>2. Requests the Local Government Grants Scheme Working Group to include this matter on the Agenda of their next Meeting (expected March 2021).</li> <li>3. Requests WALGA to work with the Local Government Grants Scheme Working Group to develop appropriate operational guidelines and procedures for the safe use of Slip On Fire Fighting Units funded in accordance with the LGGS.</li> <li>4. Supports the update of the WALGA membership of the Local Government Grants Scheme Working Group to include one Local Government Elected Member and one Local Government Officer, with these appointments determined through the WALGA Selection Committee process.</li> </ul> <p>RESOLUTION 180.1/2021</p>	<p>A letter was sent to DFES Commissioner Klemm on 16 March 2021 advising of State Council's decision on 3 March. The Local Government Grants Scheme Working Group met on 20 March 2021 however did not discuss eligible items in the Manual. An EOI process for the Officer position was successful but a second round process will be run for the Elected member position.</p> <p>DFES has advised that the Local Government Grants Scheme Working Group has been discontinued. WALGA CEO Nick Sloan is meeting with the DFES Commissioner Darren Klemm on 2 August to discuss how Local Government input to the LGGS Manual will be collected in future.</p> <p>DFES advised on 4 June 2021 that the matter of eligibility of slip on units was not yet finalized. A further follow up email was sent on 26 July 2021.</p> <p>A further follow up email was sent to DFES on 25 October 2021.</p>	Ongoing	Narelle Cant Executive Manager Strategy, Policy and Planning
<p><b>2 December 2020</b> <b>Item 5.3</b> Family and Domestic Violence and the Role of LGs</p>	<p>That:</p> <ul style="list-style-type: none"> <li>1. WA Local Governments recognise the prevalence, seriousness and preventable nature of family and domestic violence and the roles that Local Governments can play in addressing gender equity</li> </ul>	<p>In February 2021 WALGA wrote a letter to the Director General Communities, Michelle Andrews, to advise of WALGA State Council's newly adopted policy position on family and domestic violence.</p>	Ongoing	Narelle Cant Executive Manger Strategy, Policy and Planning

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
	<p>and promoting respectful relationships in their local community.</p> <p>2. WALGA advocates to the State Government:</p> <p>a. to work with Local Government in defining the role and responsibilities and expectations of Local Governments in family and domestic violence.</p> <p>b. for adequate funding for family and domestic violence programs and services, particularly in regional areas.</p> <p>c. for appropriate resources and funding be allocated to Local Governments to implement any particular roles and actions addressing family and domestic violence as defined in the State Strategy.</p> <p>d. to provide support to Local Government in the broader rollout of the Prevention Toolkit for Local Government.</p> <p>e. to continue advocacy to the Commonwealth Government for additional funding and support.</p> <p>3. WALGA organises presentations for Local Governments that address family and domestic violence, as part of relevant events or webinars.</p> <p>RESOLUTION 144.6/2020</p>	<p>WALGA met with the Department of Communities on Thursday, 25 February 2021 to discuss WALGA State Council's endorsed policy position and key advocacy statements. The key message provided was that the Department of Communities needs to engage more thoroughly with Local Governments, and in particular more engagement and communication is required regarding the State Strategy which was adopted in July 2020.</p> <p>Since 18 January 2021 WALGA has been meeting with the Australian Local Government Association and other Local Government Associations, together with Our Watch (the National prevention agency established by the Commonwealth Government) to share information and combine advocacy efforts for Local Governments across Australia. Our Watch is working on a strategy to engage more thoroughly with Local Governments across Australia through this group.</p> <p>WALGA in collaboration with the Local Government Community Safety Network Steering Committee delivered an event on 18 May focusing on family and domestic violence.</p> <p>WALGA has recently been added to the Department of Communities Path to Safety Steering Group. The next meeting is on 16 August 2021.</p> <p>WALGA was advised on 3 August 2021 that due to changes within the Department of Communities, including a functional realignment and the establishment of an Office for the Prevention of Family and Domestic Violence, scheduled meetings of the Path to Safety Steering group were cancelled to allow a review of the functions and membership of the Group. WALGA contacted the Department for an update in October 2021 and is awaiting a response.</p>		
<p><b>5 December 2018</b></p> <p><b>Item 5.1</b></p> <p>Proposed Removal by Main Roads WA of the</p>	<p>That WALGA:</p> <p>1. Opposes withdrawal of the "Letter of Approval" Restricted Access Vehicle Operating Condition until an acceptable alternative to Local Government is developed;</p>	<p>On advice from the State Solicitors Office, Main Roads WA is intending to remove the CA07 condition that requires a transport operator to obtain a letter of approval from the relevant Local Government. Main Roads is proposing to replace the condition with a notification process (CA88). After</p>	<p>Ongoing</p>	<p>Ian Duncan Executive Manager Infrastructure</p>

**Item 8.1 - WALGA STATE COUNCIL AGENDA**



MEETING DATE	RESOLUTION	COMMENT	Completion Date	Officer Responsible
"Letter of Approval" Restricted Access Vehicle Operating Condition	2. Supports the position that Local Governments not use provision of the Letter of Authority to charge transport operators to access the Restricted Access Vehicle network; 3. Supports the development of standard administrative procedures including fees and letter formats; and 4. Supports the practice of Local Governments negotiating maintenance agreements with freight owners/ generators in cases where the operations are predicted to cause extraordinary road damage as determined by the Local Government. 5. Advocates to Main Roads to establish a stakeholder working group to develop an appropriate mechanism through which the increased infrastructure costs from the use of heavy vehicles and those loaded in excess of limits (concessional loading) can be recovered from those benefitting, and redirected into the cost of road maintenance. RESOLUTION 132.7/2018	consultation with Regional Road Groups and a Stakeholder Working Group, the overwhelming majority of participants are of the view that the proposed arrangement is not an acceptable alternative. WALGA has written to Main Roads WA stating that WALGA does not support the alternative and that the position adopted by Sate Council in December 2018 has not changed.		
<b>5 December 2018</b> Item 4.1 State / Local Government Partnership Agreement on Waste Management and Resource Recovery	1. That State Council endorse investigating a State / Local Government Partnership Agreement on Waste Management and Resource Recovery. 2. That the item be referred to MWAC for is development and negotiation with the State Government. 3. A report regarding a proposed "State / Local Government Partnership Agreement on Waste Management and Resource Recovery" be brought back to the next meeting of State Council. RESOLUTION 131.7/2018	MWAC has sought a meeting with the new Minister for Environment, Hon Amber-Jade Sanderson, MLA and this matter will be on the agenda.	Ongoing	Narelle Cant Executive Manager Strategy, Policy and Planning



## President's Report December 2021



### Local Government Legislative Reform

The Minister for Local Government, the Hon John Carey, MLA announced Local Government legislative reform initiatives on Wednesday, 10 November 2021.

The reform proposals are based on the following six major themes:

1. Earlier intervention, effective regulation and stronger penalties
2. Reducing red tape, increasing consistency and simplicity
3. Greater transparency and accountability
4. Stronger local democracy and community engagement
5. Clear roles and responsibilities
6. Improved financial management and reporting.

The State Government have advised of a 3 month consultation period ending on 4 February 2022.

Many of the initiatives outlined as a part of this package have been informed by engagement between our Members and the Minister for Local Government. The Local Government sector will welcome the tiered approach to many requirements according to the differing size and scale of Local Governments.

The Local Government sector has been advocating for the following reform initiatives including:

- introduction of a contemporary intervention framework
- greater clarity of roles and responsibilities of Elected Members and Chief Executive Officers
- tiered compliance approach to financial reporting requirements according to size and scale of Local Governments
- model financial statements and fit for purpose financial ratios
- improved processes relating to regional subsidiaries to facilitate collaborative service delivery
- reducing unnecessary red-tape and a more flexible approach to enable resource sharing
- retention of current election cycle for Elected Members, and
- simplification of strategic planning processes and community engagement models.

The Minister addressed the sector at a webinar on Monday 15 November 2021 with approximately 250 people tuning in.

WALGA will prepare information to the sector analysing the proposals against current sector positions and recommending positions on proposals that currently do not have a formal position. Sector feedback will be requested with a view to providing a sector response to all of the proposals.

### Mandatory COVID-19 Vaccination Requirements

On Wednesday, 20 October the State Government announced a three-phase, mandatory COVID-19 vaccination policy with accompanying mandates for different workforces across the State, ahead of the commencement of interstate and international travel at 90 percent double vaccination levels, expected in late January to early February 2022. WALGA attended a Roundtable with Minister John Carey to discuss the detail of the requirements as they relate to Local Government and the waste sector on Thursday, 4 November and has been working closely with the State Government to inform the Public Health Directions

### CONTACTS

T: (08) 9213 2000 [www.walga.asn.au](http://www.walga.asn.au)



**Item 8.1 - WALGA STATE COUNCIL AGENDA**

that will give legal effect to these requirements, based on the comprehensive feedback provided by the sector. These Directions are being released progressively in the lead up to the deadline and regular updates to the sector are through the [COVID-19: Update from WALGA President and CEO](#) newsletter.

WALGA and Local Governments across the state are also encouraging employees and local community members to get vaccinated for COVID-19 with a sector-wide #LGsrollup promotion. Local Governments across the State have joined the call with social media posts and a call to action for their communities and staff and Elected Members participated in a photo shoot alongside the WALGA New Councillors Seminar held on 12 November.



**Sustainable Energy Project**

WALGA is currently contracting for an aggregated energy project involving 51 Members. The project will deliver 100% renewable energy and is the first renewables and carbon offset aggregation project to be granted authorisation by the ACCC. It is estimated the first phase of the project will save \$5 million per annum in expenditure. WALGA intends to further evolve this project to support sustainable procurement in related areas and to assist Members who have made climate change declarations and set net zero emission targets.

**WA Local Government Planning Showcase**

The WALGA Planning and Building team held a Local Government Planning Showcase at Crown Perth as part of the Local Government Convention on Tuesday, 21 September. The Showcase was an opportunity for Local Government planners to share with and hear from colleagues across the sector on their approaches to current and emerging issues in urban and regional planning.

Topics presented included coastal adaptation planning, strategic transport planning, design review for regional areas and community benefit schemes. McLeod's Legal provided a legal update on urban planning matters, and the event was sponsored by WALGA preferred supplier Element, who presented their work with the Shire of Waroona on their town centre revitalisation strategy.

**CONTACTS**

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**Item 8.1 - WALGA STATE COUNCIL AGENDA**

Over 100 attendees from 25 metropolitan and regional Local Governments attended, with a post-event survey indicating the event was highly valued by attendees. The Planning and Building team intend to run the event annually in conjunction with the Local Government Convention.

**New Councillor Seminar**

WALGA held a really successful New Councillor Seminar on Friday 12 November 2021. Approximately 120 Elected Members attended the seminar. Attendees heard from a diverse range of knowledgeable and interesting speakers including the Minister for Local Government, Hon John Carey MLA, on a range of relevant topics, including:

- experience of a new Councillor from two years ago
- the relationship between Mayor and CEO
- Elected Member legal responsibilities
- essentials of planning
- community leadership, and
- WALGA Training and Governance Support.

**President's Contacts**

President's contacts since 3 September and scheduled before 1 December are as follows:

**State Government Relations**

- Federal Assistant Minister for Local Government, Hon Kevin Hogan
- Minister for Disability Services; Fisheries; Innovation and ICT; Seniors and Ageing, Hon Don Punch MLA
- Minister for Environment; Climate Action; Commerce, Hon Amber-Jade Sanderson MLA

**Zone Meetings**

- Peel Country Zone Meeting
- North Metropolitan Zone Meeting
- Northern Country Zone Meeting
- Pilbara Country Zone Meeting
- South Metropolitan Zone Meeting
- Goldfields Esperance Country Zone Meeting

**Local Government Relations**

- State Council Meeting - Broome
- Strategic Forum - Broome
- Finance and Services Committee Meeting
- Special State Council Meeting
- Local Government Convention 21
  - Mayors and Presidents Forum
  - Annual General Meeting
  - Convention
- Aboriginal Engagement and Reconciliation Forum
- New Councillor Seminar
- Management Committee Meeting (WALGA/LGIS) x 2
- Lord Mayor's Distress Relief Fund Board Meeting x 2
- ALGA – Board Meeting x 2
- ALGA – Annual General Meeting
- ALGA – Policy Framework Meeting
- LGIS – Board Meeting x 2

**CONTACTS**

T: (08) 9213 2000 [www.walga.asn.au](http://www.walga.asn.au)

***Item 8.1 - WALGA STATE COUNCIL AGENDA***

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- LGHT Meeting
- Local Government House Trust Special Meeting
- WALGA End of Year Function

**Conferences, Workshops, Public Relations**

- West Travel Club Happy Places Dinner

Please take care and keep safe.

**Mayor Tracey Roberts JP**  
**President**

**CONTACTS**

T: (08) 9213 2000 [www.walga.asn.au](http://www.walga.asn.au)

<b>8.2 WALGA ZONE STATUS REPORT</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 This Status Report provides an update on the WALGA response to relevant Kimberley Zone Resolutions.

**BACKGROUND**

Previous Considerations

Joint Meeting 28 June 2021           Item 9.8  
 Joint Meeting 20 April 2021       Item 11.1

**COMMENT**

Following the submission of resolutions from the Kimberley Zone, WALGA has provided responses in the attached Zone Status Report November 2021 (attached). The following summary is provided for each of the resolutions submitted to WALGA.

Kimberley Zone Item 9.8 29 June 2021 Rating of Aboriginal Land

<b><u>KIMBERLEY REGIONAL GROUP RESOLUTION:</u></b>	
<b><u>(REPORT RECOMMENDATION)</u></b>	<b>Minute No. KRG/0621/010</b>
<b>Moved: Cr G Haerewa</b>	<b>Seconded: Cr M Edwards</b>
<b>That the Kimberley Regional Group writes to WALGA to:</b>	
<ol style="list-style-type: none"> <li><b>1. Highlight the emerging issue of the rating process on Aboriginal lands, and</b></li> <li><b>2. Request that WALGA write to the State Government to seek clarification about how land uses on Aboriginal Lands should be treated across a range of contexts and tenures.</b></li> </ol>	
<b>CARRIED UNANIMOUSLY 4/0</b>	

**WALGA Response**

The issue of Rating Exemptions is one of the main areas of WALGA’s advocacy in respect to Local Government Act amendments. The rating exemptions that are of concern for the sector relate to the following:

- Rating of Charitable Purpose properties
- Department of Housing: Leasing to Charitable Organisations

- Government Trading Entities
- State Agreement Act projects
- State Owned Unallocated Crown Land

On this basis, the Local Government sector supports an independent review of all rating exemptions to enhance equity among ratepayers in the community.

The State Government has been advised of the WALGA position and a copy of the WALGA Rating Review Advocacy item is attached.

Kimberley Zone Item 11.1 20 April 2021 Disaster relief and recovery funding arrangements.

**KIMBERLEY REGIONAL GROUP RESOLUTION:**  
**(REPORT RECOMMENDATION)**

**Moved: Cr D Menzel** **Minute No. KRG/0421/007**  
**Seconded: Cr M Edwards**

**That the Kimberley Zone:**

- 1. Express dissatisfaction with current disaster relief and recovery funding arrangements and call for urgent action from the State Government to investigate and address these shortcomings.**
- 2. Seek WALGA advocacy to support the motion.**

**CARRIED UNANIMOUSLY 4/0**

**WALGA Response**

WALGA has endorsed advocacy positions seeking improvements to disaster relief and recovery funding including assessment periods, eligibility of certain costs and improving resilience of reconstructed infrastructure. Regular meetings with DFES and Main Roads officers are on-going. Detailed evidence of examples where the process is not effective have been collected and continue to be. Timelines for decision-making and an escalation process would seem to be an important addition to the process.

**CONSULTATION**

Nil.

**STATUTORY ENVIRONMENT**

**Local Government Act 1995**

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration



Recognition of Kimberley Local Government issues and opportunities

**Built Environment Goal – Improved and secure transport, communications, community and essential services:**

Improved regional arterial road network, ports and airports

**Economy Goal – A sustainable and diverse economy:**

Sustainable Local Government revenue

Improved regional infrastructure

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY ZONE RESOLUTION:**

**(REPORT RECOMMENDATION)**

*Minute No. KRG/1121/005*

**Moved: G Haerewa**

**Seconded: Cr C Mitchell**

**That the Kimberley Zone notes the WALGA Zone Status Report August 2021.**

***CARRIED UNANIMOUSLY 4/0***

**Attachments**

1. WALGA Rating Exemptions Review
2. Kimberley Country Zone Status Report

**Item 8.2 - WALGA ZONE STATUS REPORT**

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**1.1.1 Rating Exemptions Review**

Position Statement	A broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the <i>Local Government Act 1995</i> .
State Council Resolution	December 2020 – 142.6/2020 March 2019 – 06.3/2019

**1.1.2 Rating Exemptions – Charitable Purposes**

Position Statement	<p>WALGA’s policy position regarding charitable purposes is as follows:</p> <ol style="list-style-type: none"> <li>1. Amend the <i>Local Government Act 1995</i> to clarify that Independent Living Units should only be exempt from rates where they qualify under the <i>Commonwealth Aged Care Act 1997</i>;</li> <li>2. Either             <ol style="list-style-type: none"> <li>a) amend the charitable organisations section of the <i>Local Government Act 1995</i> to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or</li> <li>b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.</li> </ol> </li> <li>3. Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the <i>Local Government Act 1995</i>.</li> </ol>
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Background	<p>Exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes, which increase the rate burden to other ratepayers. There may be an argument for exemptions to be granted by State or Federal legislation. Examples include exemptions granted by the <i>Commonwealth Aged Care Act 1997</i> and group housing for the physically and intellectually disabled which is supported under a government scheme such as a Commonwealth-State Housing Agreement or Commonwealth-State Disability Agreement.</p>
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**Item 8.2 - WALGA ZONE STATUS REPORT**

**COMPLETE ZONE STATUS REPORT  
NOVEMBER 2021**



Zone	Agenda Item	Zone Resolution	WALGA Response	Update	WALGA Contact
Kimberley C	2021 20 April Zone Agenda Item 11.1 Disaster Relief and Recovery Funding Arrangements	That the Kimberley Zone: 1. Express dissatisfaction with current disaster relief and recovery funding arrangements and call for urgent action from the State Government to investigate and address these shortcomings. 2. Seek WALGA advocacy to support the motion.	The Association has endorsed advocacy positions seeking improvements to disaster relief and recovery funding including assessment periods, eligibility of certain costs and improving resilience of reconstructed infrastructure. Regular meetings with DFES and Main Roads officers are on-going. Detailed evidence of examples where the process is not effective have been collected and continue to be. Timelines for decision-making and an escalation process would seem to be an important addition to the process.	Ongoing	Ian Duncan Executive Manager Infrastructure <a href="mailto:iduncan@walga.asn.au">iduncan@walga.asn.au</a> 9213 2031
Kimberley C	2021 28 June Zone Agenda Item 9.8 Rating of Aboriginal Lands	That the Kimberley Regional Group writes to WALGA to: 1. Highlight the emerging issue of the rating process on Aboriginal lands, and 2. Request that WALGA write to the State Government to seek clarification about how land uses on Aboriginal Lands should be treated across a range of contexts and tenures.	The issue of Rating Exemptions is one of the main areas of WALGA's advocacy in respect to Local Government Act amendments. The rating exemptions that are of concern for the sector relate to the following: <ul style="list-style-type: none"> <li>• Rating of Charitable Purpose properties</li> <li>• Department of Housing: Leasing to Charitable Organisations</li> <li>• Government Trading Entities</li> <li>• State Agreement Act projects</li> <li>• State Owned Unallocated Crown Land</li> </ul> On this basis, the Local Government sector supports an independent review of all rating exemptions to enhance equity among ratepayers in the community. Ongoing advocacy will continue.	Ongoing	Tony Brown Executive Manager Governance and Organisational Services 9213 2051 <a href="mailto:tbrown@walga.asn.au">tbrown@walga.asn.au</a>

**8.3 ELECTION OF OFFICE BEARERS**

This item was moved forward in the Agenda by resolution of Council.

<b>8.4 KIMBERLEY ZONE AND KIMBERLEY REGIONAL GROUP MEETING DATES 2022</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01; RCG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 This item provides recommendations for Kimberley Zone and Kimberley Regional Group meeting dates for 2022, consistent with the WALGA range of meeting dates provided.

**COMMENT**

The Kimberley Zone and Kimberley Regional Group meetings are established within the range of preferred meeting dates identified by WALGA. This process ensures that meetings are scheduled to provide an appropriate amount of lead time prior to the WALGA State Council meetings. WALGA State Council, WALGA preferred Zone meeting dates, school and public holidays, as well as the proposed meeting dates for 2022 are provided in the tables below. Some of the dates may be subject to change as not all Shires have confirmed their 2022 meeting schedule.

	<b>WALGA STATE COUNCIL</b>	<b>WALGA RANGE</b>		<b>SCHOOL HOLIDAYS</b>	<b>PUBLIC HOLIDAYS</b>
February		14/02/2022	21/02/2022		
March	2/3/2022				7/03/2021
April		19/04/2022	26/04/2022	9-25 April 2022	15,18,25 April 2022
May	4/5/2022				
June		20/06/2022	27/06/2022		6/06/2022
July	6/7/2022			2-17 July 2022	
August		22/08/2022	29/08/2022		
September	8/11/2022 9/11/2022			24/9/2022 – 9/10/2022	26/09/2022
October				24/9/2022 – 9/10/2022	
November		21/11/2022	28/11/2022		
December	1/12/2022			Commence 16/12/2022	

<b>Proposed Zone/KRG</b>					
<b>Date</b>	<b>Location</b>	<b>SoHC</b>	<b>SoB</b>	<b>SDWK</b>	<b>SWEK</b>
Monday, 14 February	Derby	17/02/2022	24/02/2022	24/02/2022	22/02/2022



2022					
		17/03/2022	31/03/2022	31/03/2022	22/03/2022
Tuesday, 19 April 2022*	Video	21/04/2022	28/04/2022	28/04/2022	26/04/2022
		19/05/2022	26/05/2022	26/05/2022	31/05/2022
Monday, 20 June 2022	Halls Creek	16/06/2022	30/06/2022	30/06/2022	28/06/2022
		28/07/2022	28/07/2022	28/07/2022	26/07/2022
Monday, 22 August 2022	Video	18/08/2022	25/08/2022	25/08/2022	23/08/2022
		15/09/2022	29/09/2022	29/09/2022	27/09/2022
		20/10/2022	27/10/2022	27/10/2022	25/10/2022
Monday, 28 November 2022	Kununurra	17/11/2022	17/11/2022	24/11/2022	22/11/2022
		15/12/2022	15/12/2022	8/12/2022	13/12/2022

\* Both Mondays in the WALGA range for April are impacted by public holidays (Easter and ANZAC Day) and school holidays.

Perth Meeting 2022

It has been normal practice to organise a meeting in Perth during local government week, along with relevant advocacy meetings. The date of the 2022 Local Government Week and WALGA conference were not known at the time of the preparation of this item, however it likely to be held in or around August. A Perth meeting and advocacy delegation will be organised when the date is confirmed:.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**FINANCIAL IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY ZONE RESOLUTION:**

**(REPORT RECOMMENDATION)**

**Minute No. KRG/1121/006**

**Moved: M Edwards**

**Seconded: G Haerewa**

**That the Kimberley Zone:**

- 1. Approves the meeting dates for 2022 as follows:**

- a. *14 February (Derby)*
- b. *19 April (Video)*
- c. *20 June (Halls Creek)*
- d. *22 August (Video)*
- e. *28 November (Kununurra)*

2. *Notes a meeting and advocacy delegation will be scheduled in Perth when the WALGA State Convention date is announced.*

**CARRIED UNANIMOUSLY 4/0**

**Attachments**

Nil

<b>8.5 LOCAL GOVERNMENT LEGISLATIVE REFORM</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 The Minister for Local Government, the Hon John Carey, MLA announced Local Government legislative reform initiatives on Wednesday 10 November 2021. This item provides an overview of the reform proposals.

**COMMENT**

The Minister for Local Government, the Hon John Carey, MLA announced Local Government legislative reform initiatives on Wednesday 10 November 2021.

The reform proposals are based on the following six major themes:

1. Earlier intervention, effective regulation and stronger penalties
2. Reducing red tape, increasing consistency and simplicity
3. Greater transparency and accountability
4. Stronger local democracy and community engagement
5. Clear roles and responsibilities
6. Improved financial management and reporting.

The reform proposals are based on consultation undertaken over the last five years, and have been developed considering:

- The Local Government Review Panel Final Report (mid 2020)
- The City of Perth Inquiry Report (mid 2020)
- Department of Local Government, Sport and Cultural Industries (DLGSC) consultation on Act Reform (2017-2020)
- The Victorian Local Government Act 2020 and other State Acts
- The Parliament’s Select Committee Report into Local Government (late 2020)
- Western Australian Local Government Association (WALGA) Submissions
- Direct engagement with local governments
- Correspondence and complaints
- Miscellaneous past reports.

The information on the reform initiatives can be found [here](#) and are attached.

The State Government have advised of a 3 month consultation period ending on 4 February 2022.

Many of the initiatives outlined as a part of this package have been informed by engagement between our Members and the Minister for Local Government. The Local Government sector will welcome the tiered approach to many requirements according to the differing size and scale of Local Governments.

The Local Government sector has been advocating for the following reform initiatives including:

- introduction of a contemporary intervention framework
- greater clarity of roles and responsibilities of Elected Members and Chief Executive Officers
- tiered compliance approach to financial reporting requirements according to size and scale of Local Governments
- model financial statements and fit for purpose financial ratios
- improved processes relating to regional subsidiaries to facilitate collaborative service delivery
- reducing unnecessary red-tape and a more flexible approach to enable resource sharing
- retention of current election cycle for Elected Members, and
- simplification of strategic planning processes and community engagement models.

WALGA will prepare information to the sector analysing the proposals against current sector positions and recommending positions on proposals that currently do not have a formal position. Sector feedback will be requested with a view to providing a sector response to all of the proposals.

#### **CONSULTATION**

Nil

#### **STATUTORY ENVIRONMENT**

*Local Government Act 1995*

#### **FINANCIAL IMPLICATIONS**

Nil

#### **STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY REGIONAL GROUP RESOLUTION:**

**(REPORT RECOMMENDATION)**

**Minute No. KRG/1121/007**

**Moved: Cr C Mitchell**

**Seconded: G Haerewa**

**That the Kimberley Zone:**

- 1. Notes the update on Local Government Legislative Reform;**
- 2. Requests the Chief Executive Officers to provide feedback on the reforms to the KRG Executive Officer by 1 December 2021;**
- 3. Requests the Kimberley Zone Executive Officer to draft a submission to be circulated out of session for decision by 6 December 2021, to be forwarded to WALGA.**

**CARRIED UNANIMOUSLY 4/0**

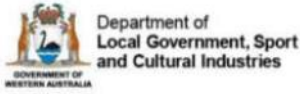
**Attachments**

1. Local Government Reforms - Summary of Proposed Reforms



*Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM*

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## Local Government Reform – Summary of Proposed Reforms

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**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM****Local Government Reform – Consultation on Proposed Reforms**

Local government benefits all Western Australians. It is critical that local government works with:

- a culture of openness to innovation and change
- continuous focus on the effective delivery of services
- respectful and constructive policy debate and democratic decision-making
- an environment of transparency and accountability to ensure effective public engagement on important community decisions.

Since first coming to office in 2017, the McGowan Government has already progressed reforms to improve specific aspects of local government performance. This includes new laws that work to improve transparency, cut red tape, and support jobs growth and economic development - ensuring that local government works for the benefit of local communities.

Based on the significant volume of research and consultation undertaken over the past five years, the Minister for Local Government has now announced the most significant package of major reforms to local government in Western Australia since the Local Government Act 1995 was passed more than 25 years ago. The package is based on six major themes:

1. Earlier intervention, effective regulation and stronger penalties
2. Reducing red tape, increasing consistency and simplicity
3. Greater transparency and accountability
4. Stronger local democracy and community engagement
5. Clear roles and responsibilities
6. Improved financial management and reporting.

A large focus on the new reform is oversight and intervention where there are significant problems arising within a local government. The introduction of new intermediate powers for intervention will increase the number of tools available to more quickly address problems and dysfunction within local governments. The proposed system for early intervention has been developed based on similar legislation in place in other jurisdictions, including Victoria and Queensland.

This will deliver significant benefits for small business, residents and ratepayers, industry, elected members and professionals working in the sector.

**Local Government Reforms**

These reforms are based on extensive consultation undertaken over the last five years, and have been developed considering:

- The Local Government Review Panel Final Report (mid 2020)
- The City of Perth Inquiry Report (mid 2020)
- Department of Local Government, Sport and Cultural Industries (DLGSC) consultation on Act Reform (2017-2020)
- The Victorian Local Government Act 2020 and other State Acts
- The Parliament's Select Committee Report into Local Government (late 2020)
- Western Australian Local Government Association (WALGA) Submissions
- Direct engagement with local governments
- Correspondence and complaints
- Miscellaneous past reports.

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***Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM***

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**Consultation**

Comments on these proposed reforms are invited. Comments can be made against each proposed reform in this document. For details on how to make a submission, please visit [www.dlgsc.wa.gov.au/lgactreform](http://www.dlgsc.wa.gov.au/lgactreform).

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

**Theme 1: Early Intervention, Effective Regulation and Stronger Penalties**

CURRENT PROVISIONS	PROPOSED REFORMS	COMMENTS
<b>1.1 Early Intervention Powers</b>		
<ul style="list-style-type: none"> <li>The Act provides the means to regulate the conduct of local government staff and council members and sets out powers to scrutinise the affairs of local government. The Act provides certain limited powers to:                             <ul style="list-style-type: none"> <li>Suspend or dismiss councils</li> <li>Appoint Commissioners</li> <li>Suspend or, order remedial action (such as training) for individual councillors.</li> </ul> </li> <li>The Act also provides the Director General with the power to:                             <ul style="list-style-type: none"> <li>Conduct Authorised Inquiries</li> <li>Refer allegations of serious or recurrent breaches to the State Administrative Tribunal</li> <li>Commence prosecution for an offence under the Act.</li> </ul> </li> <li>Authorised Inquiries are a costly and a relatively slow response to significant issues. Authorised Inquiries are currently the only significant tool for addressing significant issues within a local government.</li> <li>The Panel Report, City of Perth Inquiry, and the Select Committee Report made various recommendations related to the establishment of a specific office for local government oversight.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed to establish a Chief Inspector of Local Government (the <b>Inspector</b>), supported by an Office of the Local Government Inspector (the <b>Inspectorate</b>).</li> <li>The Inspector would receive minor and serious complaints about elected members.</li> <li>The Inspector would oversee complaints relating to local government CEOs.</li> <li>Local Governments would still be responsible for dealing with minor behavioural complaints.</li> <li>The Inspector would have powers of a standing inquiry, able to investigate and intervene in any local government where potential issues are identified.</li> <li>The Inspector would have the authority to assess, triage, refer, investigate, or close complaints, having regard to various public interest criteria – considering laws such as the <i>Corruption, Crime and Misconduct Act 2003</i>, the <i>Occupational Safety and Health Act 1984</i>, the <i>Building Act 2011</i>, and other legislation.</li> <li>The Inspector would have powers to implement minor penalties for less serious breaches of the Act, with an appeal mechanism.</li> <li>The Inspector would also have the power to order a local government to address non-compliance with the Act or Regulations.</li> <li>The Inspector would be supported by a panel of <b>Local Government Monitors</b> (see item 1.2).</li> <li>The existing Local Government Standards Panel would be replaced with a new <b>Conduct Panel</b> (see item 1.3).</li> <li><b>Penalties</b> for breaches to the Local Government Act and Regulations will be reviewed and are proposed to be generally strengthened (see item 1.4).</li> </ul>	

Page 4 of 31

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT PROVISIONS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>These reforms would be supported by new powers to more quickly resolve issues within local government (see items 1.5 and 1.6).</li> </ul>	
<b>1.2 Local Government Monitors</b>		
<ul style="list-style-type: none"> <li>There are currently no legislative powers for the provision of monitors/ temporary advisors.</li> <li>The DLGSC provides support and advice to local governments, however there is no existing mechanism for pre-qualified, specialised assistance to manage complex cases.</li> </ul>	<ul style="list-style-type: none"> <li>A panel of <b>Local Government Monitors</b> would be established.</li> <li>Monitors could be appointed by the Inspector to go into a local government and try to resolve problems.</li> <li>The purpose of Monitors would be to proactively fix problems, rather than to identify blame or collect evidence.</li> <li>Monitors would be qualified specialists, such as:                             <ul style="list-style-type: none"> <li>Experienced and respected former Mayors, Presidents, and CEOs - to act as mentors and facilitators</li> <li>Dispute resolution experts - to address the breakdown of professional working relationships</li> <li>Certified Practicing Accountants and other financial specialists - to assist with financial management and reporting issues</li> <li>Governance specialists and lawyers - to assist councils resolve legal issues</li> <li>HR and procurement experts - to help with processes like recruiting a CEO or undertaking a major land transaction.</li> </ul> </li> <li>Only the Inspector would have the power to appoint Monitors.</li> <li>Local governments would be able to make requests to the Inspector to appoint Monitors for a specific purpose.</li> </ul> <p><b>Monitor Case Study 1 – Financial Management</b></p> <p>The Inspector receives information that a local government is not collecting rates correctly under the <i>Local Government Act 1995</i>. Upon initial review, the Inspector identifies that there may be a problem. The Inspector appoints a Monitor who specialises</p>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT PROVISIONS	PROPOSED REFORMS	COMMENTS
	<p>in financial management in local government. The Monitor visits the local government and identifies that the system used to manage rates is not correctly issuing rates notices. The Monitor works with the local government to rectify the error, and issue corrections to impacted ratepayers.</p> <p><b>Monitor Case Study 2 – Dispute Resolution</b></p> <p>The Inspector receives a complaint from one councillor that another councillor is repeatedly publishing derogatory personal attacks against another councillor on social media, and that the issue has not been able to be resolved at the local government level. The Inspector identifies that there has been a relationship breakdown between the two councillors due to a disagreement on council.</p> <p>The Inspector appoints a Monitor to host mediation sessions between the councillors. The Monitor works with the councillors to address the dispute. Through regular meetings, the councillors agree to a working relationship based on the council's code of conduct. After the mediation, the Monitor occasionally makes contact with both councillors to ensure there is a cordial working relationship between the councillors.</p>	
<b>1.3 Conduct Panel</b>		
<ul style="list-style-type: none"> <li>The Local Government Standards Panel was established in 2007 to resolve minor breach complaints relatively quickly and provide the sector with guidance and benchmarks about acceptable standards of behaviour.</li> <li>Currently, the Panel makes findings about alleged breaches based on written submissions.</li> <li>The City of Perth Inquiry report made various recommendations that functions of</li> </ul>	<ul style="list-style-type: none"> <li>The Standards Panel is proposed to be replaced with a new Local Government <b>Conduct Panel</b>.</li> <li>The Conduct Panel would be comprised of suitably qualified and experienced professionals. Sitting councillors will not be eligible to serve on the Conduct Panel.</li> <li>The Inspector would provide evidence to the Conduct Panel for adjudication.</li> <li>The Conduct Panel would have powers to impose stronger penalties – potentially including being able to suspend</li> </ul>	



**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT PROVISIONS	PROPOSED REFORMS	COMMENTS
the Local Government Standards Panel be reformed.	<ul style="list-style-type: none"> <li>councillors for up to three months, with an appeal mechanism.</li> <li>For very serious or repeated breaches of the Local Government Act, the Conduct Panel would have the power to recommend prosecution through the courts.</li> <li>Any person who is subject to a complaint before the Conduct Panel would have the right to address the Conduct Panel before the Panel makes a decision.</li> </ul>	
<b>1.4 Review of Penalties</b>		
<ul style="list-style-type: none"> <li>There are currently limited penalties in the Act for certain types of non-compliance with the Local Government Act.</li> </ul>	<ul style="list-style-type: none"> <li>Penalties for breaching the Local Government Act are proposed to be strengthened.</li> <li>It is proposed that the suspension of councillors (for up to three months) is established as the main penalty where a councillor breaches the Local Government Act or Regulations on more than one occasion.</li> <li>Councillors who are disqualified would not be eligible for sitting fees or allowances. They will also not be able to attend meetings, or use their official office (such as their title or council email address).</li> <li>It is proposed that a councillor who is suspended multiple times may become disqualified from office.</li> <li>Councillors who do not complete mandatory training within a certain timeframe will also not be able to receive sitting fees or allowances.</li> </ul>	
<b>1.5 Rapid Red Card Resolutions</b>		
<ul style="list-style-type: none"> <li>Currently, local governments have different local laws and standing orders that govern the way meetings run. Presiding members (Mayors and Presidents) are reliant on the powers provided in the local government standing orders local laws.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed that Standing Orders are made consistent across Western Australia (see item 2.6). Published recordings of all meetings would also become standard (item 3.1).</li> <li>It is proposed that Presiding Members have the power to "red card" any attendee (including councillors) who</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT PROVISIONS	PROPOSED REFORMS	COMMENTS
<ul style="list-style-type: none"> <li>Differences between local governments is a source of confusion about the powers that presiding members have to deal with disruptive behaviours at council meetings.</li> <li>Disruptive behaviour at council meetings is a very common cause of complaints. Having the Presiding Member be able to deal with these problems should more quickly resolve problems that occur at council meetings.</li> </ul>	<p>unreasonably and repeatedly interrupt council meetings. This power would:</p> <ul style="list-style-type: none"> <li>Require the Presiding Member to issue a clear first warning</li> <li>If the disruptions continue, the Presiding Member will have the power to “red card” that person, who must be silent for the rest of the meeting. A councillor issued with a red card will still vote, but must not speak or move motions</li> <li>If the person continues to be disruptive, the Presiding Member can instruct that they leave the meeting.</li> </ul> <ul style="list-style-type: none"> <li>Any Presiding Member who uses the “red card” or ejection power will be required to notify the Inspector.</li> <li>Where an elected member refuses to comply with an instruction to be silent or leave, or where it can be demonstrated that the presiding member has not followed the law in using these powers, penalties can be imposed through a review by the Inspector.</li> </ul>	
<p><b>1.6 Vexatious Complaint Referrals</b></p>		
<ul style="list-style-type: none"> <li>No current provisions.</li> <li>The Act already provides a requirement for Public Question Time at council meetings.</li> </ul>	<ul style="list-style-type: none"> <li>Local governments already have a general responsibility to provide ratepayers and members of the public with assistance in responding to queries about the local government’s operations. Local governments should resolve queries and complaints in a respectful, transparent and equitable manner.</li> <li>Unfortunately, local government resources can become unreasonably diverted when a person makes repeated vexatious queries, especially after a local government has already provided a substantial response to the person’s query.</li> <li>It is proposed that if a person makes repeated complaints to a local government CEO that are vexatious, the CEO will have the power to refer that person’s complaints to the</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT PROVISIONS	PROPOSED REFORMS	COMMENTS
	Inspectorate, which after assessment of the facts may then rule the complaint vexatious.	
<b>1.7 Minor Other Reforms</b>		
<ul style="list-style-type: none"> <li>Other minor reforms are being considered to enhance the oversight of local government.</li> <li>Ministerial Circulars have traditionally been used to provide guidance to the local government sector.</li> </ul>	<ul style="list-style-type: none"> <li>Potential other reforms to strengthen guidance for local governments are being considered.</li> <li>For example, one option being considered is the potential use of sector-wide guidance notices. Guidance notices could be published by the Minister or Inspector, to give specific direction for how local governments should meet the requirements of the Local Government Act and Regulations. For instance, the Minister could publish guidance notices to clarify the process for how potential conflicts of interests should be managed.</li> <li>It is also proposed (see item 1.1) that the Inspector has the power to issue notices to individual local governments to require them to rectify non-compliance with the Act or Regulations.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

**Theme 2: Reducing Red Tape, Increasing Consistency and Simplicity**

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>2.1 Resource Sharing</b>		
<ul style="list-style-type: none"> <li>The Act does not currently include specific provisions to allow for certain types of resource sharing – especially for sharing CEOs.</li> <li>Regional local governments would benefit from having clearer mechanisms for voluntary resource-sharing.</li> </ul>	<ul style="list-style-type: none"> <li>Amendments are proposed to encourage and enable local governments, especially smaller regional local governments, to share resources, including Chief Executive Officers and senior employees.</li> <li>Local governments in bands 2, 3 or 4 would be able to appoint a shared CEO at up to two salary bands above the highest band. For example, a band 3 and a band 4 council sharing a CEO could remunerate to the level of band 1.</li> </ul>	
<b>2.2 Standardisation of Crossovers</b>		
<ul style="list-style-type: none"> <li>Approvals and standards for crossovers (the section of driveways that run between the kerb and private property) are inconsistent between local government areas, often with very minor differences.</li> <li>This can create confusion and complexity for homeowners and small businesses in the construction sector.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed to amend the <i>Local Government (Uniform Local Provisions) Regulations 1996</i> to standardise the process for approving crossovers for residential properties and residential developments on local roads.</li> <li>A Crossover Working Group has provided preliminary advice to the Minister and DLGSC to inform this.</li> <li>The DLGSC will work with the sector to develop standardised design and construction standards.</li> </ul>	
<b>2.3 Introduce Innovation Provisions</b>		
<ul style="list-style-type: none"> <li>The <i>Local Government Act 1995</i> currently has very limited provisions to allow for innovations and responses to emergencies to (such as the Shire of Bruce Rock Supermarket).</li> </ul>	<ul style="list-style-type: none"> <li>New provisions are proposed to allow exemptions from certain requirements of the <i>Local Government Act 1995</i>, for:                             <ul style="list-style-type: none"> <li>Short-term trials and pilot projects</li> <li>Urgent responses to emergencies.</li> </ul> </li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>2.4 Streamline Local Laws</b>		
<ul style="list-style-type: none"> <li>Local laws are required to be reviewed every eight years.</li> <li>The review of local laws (especially when they are standard) has been identified as a burden for the sector.</li> <li>Inconsistency between local laws is frustrating for residents and business stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed that local laws would only need to be reviewed by the local government every 15 years.</li> <li>Local laws not reviewed in the timeframe would lapse, meaning that old laws will be automatically removed and no longer applicable.</li> <li>Local governments adopting Model Local Laws will have reduced advertising requirements.</li> </ul>	
<b>2.5 Simplifying Approvals for Small Business and Community Events</b>		
<ul style="list-style-type: none"> <li>Inconsistency between local laws and approvals processes for events, street activation, and initiatives by local businesses is frustrating for business and local communities.</li> </ul>	<ul style="list-style-type: none"> <li>Proposed reforms would introduce greater consistency for approvals for:                             <ul style="list-style-type: none"> <li>alfresco and outdoor dining</li> <li>minor small business signage rules</li> <li>running community events.</li> </ul> </li> </ul>	
<b>2.6 Standardised Meeting Procedures, Including Public Question Time</b>		
<ul style="list-style-type: none"> <li>Local governments currently prepare individual standing order local laws.</li> <li>The <i>Local Government Act 1995</i> and regulations require local governments to allocate time at meetings for questions from the public.</li> <li>Inconsistency among the meeting procedures between local governments is a common source of complaints.</li> </ul>	<ul style="list-style-type: none"> <li>To provide greater clarity for ratepayers and applicants for decisions made by council, it is proposed that the meeting procedures and standing orders for all local government meetings, including for public question time, are standardised across the State.</li> <li>Regulations would introduce standard requirements for public question time, and the procedures for meetings generally.</li> <li>Members of the public across all local governments would have the same opportunities to address council and ask questions.</li> </ul>	

Page 11 of 31

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>2.7 Regional Subsidiaries</b>		
<ul style="list-style-type: none"> <li>• Initiatives by multiple local governments may be managed through formal Regional Councils, or through less formal “organisations of councils”, such as NEWROC and WESROC.</li> <li>• These initiatives typically have to be managed by a lead local government.</li> <li>• In 2016-17, provisions were introduced to allow for the formation of Regional Subsidiaries. Regional Subsidiaries can be formed in line with the <i>Local Government (Regional Subsidiaries) Regulations 2017</i>.</li> <li>• So far, no Regional Subsidiary has been formed.</li> </ul>	<ul style="list-style-type: none"> <li>• Work is continuing to consider how Regional Subsidiaries can be best established to:                             <ul style="list-style-type: none"> <li>○ Enable Regional Subsidiaries to provide a clear and defined public benefit for people within member local governments</li> <li>○ Provide for flexibility and innovation while ensuring appropriate transparency and accountability of ratepayer funds</li> <li>○ Where appropriate, facilitate financing of initiatives by Regional Subsidiaries within a reasonable and defined limit of risk</li> <li>○ Ensure all employees of a Regional Subsidiary have the same employment conditions as those directly employed by member local governments.</li> </ul> </li> </ul>	



**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

**Theme 3: Greater Transparency & Accountability**

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>3.1 Recordings and Live-Streaming of All Council Meetings</b>		
<ul style="list-style-type: none"> <li>• Currently, local governments are only required to make written minutes of meetings.</li> <li>• While there is no legal requirement for livestreaming or video or audio recording of council meetings, many local governments now stream and record their meetings.</li> <li>• Complaints relating to behaviours and decisions at meetings constitute a large proportion of complaints about local governments.</li> <li>• Local governments are divided into bands with the largest falling in bands 1 and 2, and smaller local governments falling bands 3 and 4. The allocation of local governments into bands is determined by The Salaries and Allowances Tribunal based on factors<sup>1</sup> such as:                         <ul style="list-style-type: none"> <li>○ Growth and development</li> <li>○ Strategic planning issues</li> <li>○ Demands and diversity of services provided to the community</li> <li>○ Total expenditure</li> <li>○ Population</li> <li>○ Staffing levels.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• It is proposed that all local governments will be required to record meetings.</li> <li>• Band 1 and 2 local governments would be required to livestream meetings, and make video recordings available as public archives.</li> <li>• Band 1 and 2 are larger local governments are generally located in larger urban areas, with generally very good telecommunications infrastructure, and many already have audio-visual equipment.</li> <li>• Band 1 and 2 local governments would be required to livestream meetings, and make video recordings available as public archives.</li> <li>• Several local governments already use platforms such as YouTube, Microsoft Teams, and Vimeo to stream and publish meeting recordings.</li> <li>• Limited exceptions would be made for meetings held outside the ordinary council chambers, where audio recordings may be used.</li> <li>• Recognising their generally smaller scale, typically smaller operating budget, and potential to be in more remote locations, band 3 and 4 local governments would be required to record and publish audio recordings, at a minimum. These local governments would still be encouraged to livestream or video record meetings.</li> <li>• All council meeting recordings would need to be published at the same time as the meeting minutes. Recordings of all confidential items would also need to be submitted to the DLGSC for archiving.</li> </ul>	

<sup>1</sup> See page 3 of the [2018 Salaries and Allowance Tribunal Determination](#)

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>3.2 Recording All Votes in Council Minutes</b>		
<ul style="list-style-type: none"> <li>A local government is only required to record which councillor voted for or against a motion in the minutes of that meeting if a request is made by an elected member at the time of the resolution during the meeting.</li> <li>The existing provision does not mandate transparency.</li> </ul>	<ul style="list-style-type: none"> <li>To support the transparency of decision-making by councillors, it is proposed that the individual votes cast by all councillors for all council resolutions would be required to be published in the council minutes, and identify those for, against, on leave, absent or who left the chamber.</li> <li>Regulations would prescribe how votes are to be consistently minuted.</li> </ul>	
<b>3.3 Clearer Guidance for Meeting Items that may be Confidential</b>		
<ul style="list-style-type: none"> <li>The Act currently provides broad definitions of what type of matters may be discussed as a confidential item.</li> <li>There is limited potential for review of issues managed as confidential items under the current legislation.</li> </ul>	<ul style="list-style-type: none"> <li>Recognising the importance of open and transparent decision-making, it is considered that confidential meetings and confidential meeting items should only be used in limited, specific circumstances.</li> <li>It is proposed to make the Act more specific in prescribing items that may be confidential, and items that should remain open to the public.</li> <li>Items not prescribed as being confidential could still be held as confidential items only with the prior written consent of the Inspector.</li> <li>All confidential items would be required to be audio recorded, with those recordings submitted to the DLGSC.</li> </ul>	
<b>3.4 Additional Online Registers</b>		
<ul style="list-style-type: none"> <li>Local governments are required to provide information to the community through annual reports, council minutes and the publication of information online.</li> <li>Consistent online publication of information can substitute for certain material in annual reports.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed to require local governments to report specific information in online registers on the local government's website. Regulations would prescribe the information to be included.</li> </ul> <p>The following new registers, each updated quarterly, are proposed:</p>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<ul style="list-style-type: none"> <li>Consistency in online reporting across the sector will provide ratepayers with better information.</li> <li>These registers supplement the simplification of financial statements in Theme 6.</li> </ul>	<ul style="list-style-type: none"> <li><b>Lease Register</b> to capture information about the leases the local government is party to (either as lessor or lessee)</li> <li><b>Community Grants Register</b> to outline all grants and funding provided by the local government</li> <li><b>Interests Disclosure Register</b> which collates all disclosures made by elected members about their interests related to matters considered by council</li> <li><b>Applicant Contribution Register</b> accounting for funds collected from applicant contributions, such as cash-in-lieu for public open space and car parking</li> <li><b>Contracts Register</b> that discloses all contracts above \$100,000.</li> </ul>	
<p><b>3.5 Chief Executive Officer Key Performance Indicators (KPIs) be Published</b></p>		
<ul style="list-style-type: none"> <li>It is a requirement of the <i>Local Government Act 1995</i> that CEO performance reviews are conducted annually.</li> <li>The Model Standards for CEO recruitment and selection, performance review and termination require that a local government must review the performance of the CEO against contractual performance criteria.</li> <li>Additional performance criteria can be used for performance review by agreement between both parties.</li> </ul>	<ul style="list-style-type: none"> <li>To provide for minimum transparency, it is proposed to mandate that the KPIs agreed as performance metrics for CEOs:                             <ul style="list-style-type: none"> <li>Be published in council meeting minutes as soon as they are agreed prior to (before the start of the annual period)</li> <li>The KPIs and the results be published in the minutes of the performance review meeting (at the end of the period)</li> <li>The CEO has a right to provide written comments to be published alongside the KPIs and results to provide context as may be appropriate (for instance, the impact of events in that year that may have influenced the results against KPIs).</li> </ul> </li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

**Theme 4: Stronger Local Democracy and Community Engagement**

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>4.1 Community and Stakeholder Engagement Charters</b>		
<ul style="list-style-type: none"> <li>There is currently no requirement for local governments to have a specific engagement charter or policy.</li> <li>Many local governments have introduced charters or policies for how they will engage with their community.</li> <li>Other States have introduced a specific requirement for engagement charters.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed to introduce a requirement for local governments to prepare a community and stakeholder engagement charter which sets out how local government will communicate processes and decisions with their community.</li> <li>A model Charter would be published to assist local governments who wish to adopt a standard form.</li> </ul>	
<b>4.2 Ratepayer Satisfaction Surveys (Band 1 and 2 local governments only)</b>		
<ul style="list-style-type: none"> <li>Many local governments already commission independent surveying consultants to hold a satisfaction survey of residents/ratepayers.</li> <li>These surveys provide valuable data on the performance of local governments.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed to introduce a requirement that every four years, all local governments in bands 1 and 2 hold an independently-managed ratepayer satisfaction survey.</li> <li>Results would be required to be reported publicly at a council meeting and published on the local government's website.</li> <li>All local governments would be required to publish a response to the results.</li> </ul>	
<b>4.3 Introduction of Preferential Voting</b>		
<ul style="list-style-type: none"> <li>The current voting method for local government elections is first past the post.</li> <li>The existing first-past-the-post does not allow for electors to express more than one preference.</li> <li>The candidate with the most votes wins, even if that candidate does not have a majority.</li> <li>Preferential voting better captures the precise intentions of voters and as a result</li> </ul>	<ul style="list-style-type: none"> <li>Preferential voting is proposed be adopted as the method to replace the current first past the post system in local government elections.</li> <li>In preferential voting, voters number candidates in order of their preferences.</li> <li>Preferential voting is used in State and Federal elections in Western Australia (and in other states). This provides voters with more choice and control over who they elect.</li> <li>All other states use a form of preferential voting for local government.</li> </ul>	

Page 16 of 31

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<p>may be regarded as a fairer and more representative system. Voters have more specific choice.</p>		
<p><b>4.4 Public Vote to Elect the Mayor and President</b></p>		
<ul style="list-style-type: none"> <li>• The Act currently allows local governments to have the Presiding Member (the Mayor or President) elected either:                             <ul style="list-style-type: none"> <li>○ by the electors of the district through a public vote; or</li> <li>○ by the council as a resolution at a council meeting.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Mayors and Presidents of all local governments perform an important public leadership role within their local communities.</li> <li>• Band 1 and 2 local governments generally have larger councils than those in bands 3 and 4.</li> <li>• Accordingly, it is proposed that the Mayor or President for all band 1 and 2 councils is to be elected through a vote of the electors of the district. Councils in bands 3 and 4 would retain the current system.</li> <li>• A number of Band 1 and Band 2 councils have already moved towards Public Vote to Elect the Mayor and President in recent years, including City of Stirling and City of Rockingham.</li> </ul>	
<p><b>4.5 Tiered Limits on the Number of Councillors</b></p>		
<ul style="list-style-type: none"> <li>• The number of councillors (between 5-15 councillors) is decided by each local government, reviewed by the Local Government Advisory Board, and if approved by the Minister.</li> <li>• The Panel Report recommended electoral reforms to improve representativeness.</li> </ul>	<ul style="list-style-type: none"> <li>• It is proposed to limit the number of councillors based on the population of the entire local government.</li> <li>• Some smaller local governments have already been moving to having smaller councils to reduce costs for ratepayers.</li> <li>• The <a href="#">Local Government Panel Report</a> proposed:                             <ul style="list-style-type: none"> <li>○ For a population of up to 5,000 – five councillors (including the President)</li> <li>○ population of between 5,000 and 75,000 – five to nine councillors (including the Mayor/President)</li> <li>○ population of above 75,000 – nine to fifteen councillors (including Mayor).</li> </ul> </li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>4.6 No Wards for Small Councils (Band 3 and 4 Councils only)</b>		
<ul style="list-style-type: none"> <li>A local government can make an application to be divided into wards, with councillors elected to those wards.</li> <li>Only about 10% of band 3 and 4 local governments currently have wards.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed that the use of wards for councils in bands 3 and 4 is abolished.</li> <li>Wards increase the complexity of elections, as this requires multiple versions of ballot papers to be prepared for a local government's election.</li> <li>In smaller local governments, the population of wards can be very small.</li> <li>These wards often have councillors elected unopposed, or elect a councillor with a very small number of votes. Some local governments have ward councillors elected with less than 50 votes.</li> <li>There has been a trend in smaller local governments looking to reduce the use of wards, with only 10 councils in bands 3 and 4 still having wards.</li> </ul>	
<b>4.7 Electoral Reform – Clear Lease Requirements for Candidate and Voter Eligibility</b>		
<ul style="list-style-type: none"> <li>A person with a lease in a local government district is eligible to nominate as a candidate in that district.</li> <li>A person with a lease in a local government district is eligible to apply to vote in that district.</li> <li>The City of Perth Inquiry Report identified a number of instances where dubious lease arrangements put to question the validity of candidates in local government elections, and subsequently their legitimacy as councillors.</li> </ul>	<ul style="list-style-type: none"> <li>Reforms are proposed to prevent the use of "sham leases" in council elections. Sham leases are where a person creates a lease only to be able to vote or run as a candidate for council.</li> <li>The City of Perth Inquiry Report identified sham leases as an issue.</li> <li>Electoral rules are proposed to be strengthened:                         <ul style="list-style-type: none"> <li>A minimum lease period of 12 months will be required for anyone to register a person to vote or run for council.</li> <li>Home based businesses will not be eligible to register a person to vote or run for council, because any residents are already the eligible voter(s) for that address.</li> <li>Clarifying the minimum criteria for leases eligible to register a person to vote or run for council.</li> </ul> </li> </ul>	



**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>The reforms would include minimum lease periods to qualify as a registered business (minimum of 12 months), and the exclusion of home based businesses (where the resident is already eligible) and very small sub-leases.</li> <li>The basis of eligibility for each candidate (e.g. type of property and suburb of property) is proposed to be published, including in the candidate pack for electors.</li> </ul>	
<b>4.8 Reform of Candidate Profiles</b>		
<ul style="list-style-type: none"> <li>Candidate profiles can only be 800 characters, including spaces. This is equivalent to approximately 150 words.</li> </ul>	<ul style="list-style-type: none"> <li>Further work will be undertaken to evaluate how longer candidate profiles could be accommodated.</li> <li>Longer candidate profiles would provide more information to electors, potentially through publishing profiles online.</li> <li>It is important to have sufficient information available to assist electors make informed decisions when casting their vote.</li> </ul>	
<b>4.9 Minor Other Electoral Reforms</b>		
<ul style="list-style-type: none"> <li>Other minor reforms are proposed to improve local government elections.</li> </ul>	<ul style="list-style-type: none"> <li>Minor other electoral reforms are proposed to include:                             <ul style="list-style-type: none"> <li>The introduction of standard processes for vote recounts if there is a very small margin between candidates (e.g. where there is a margin of less than 10 votes a recount will always be required)</li> <li>The introduction of more specific rules concerning local government council candidates' use of electoral rolls.</li> </ul> </li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

**Theme 5: Clear Roles and Responsibilities**

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>5.1 Introduce Principles in the Act</b>		
<ul style="list-style-type: none"> <li>The Act does not currently outline specific principles.</li> <li>The Act contains a short "Content and Intent" section only.</li> <li>The Panel Report recommended greater articulation of principles</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed to include new principles in the Act, including:                             <ul style="list-style-type: none"> <li>The recognition of Aboriginal Western Australians</li> <li>Tiering of local governments (with bands being as assigned by the Salaries and Allowances Tribunal)</li> <li>Community Engagement</li> <li>Financial Management.</li> </ul> </li> </ul>	
<b>5.2 Greater Role Clarity</b>		
<ul style="list-style-type: none"> <li>The Act provides for the role of council, councillor, mayor or president and CEO.</li> <li>The role of the council is to:                             <ul style="list-style-type: none"> <li>govern the local government's affairs</li> <li>be responsible for the performance of the local government's functions.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The <a href="#">Local Government Act Review Panel</a> recommended that roles and responsibilities of elected members and senior staff be better defined in law.</li> <li>It is proposed that these roles and responsibilities are further defined in the legislation.</li> <li>These proposed roles will be open to further consultation and input.</li> <li>These roles would be further strengthened through <b>Council Communications Agreements</b> (see item 5.3).</li> </ul>	
	<p><b>5.2.1 - Mayor or President Role</b></p> <ul style="list-style-type: none"> <li>It is proposed to amend the Act to specify the roles and responsibilities of the Mayor or President.</li> <li>While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that the Mayor or President is responsible for:                             <ul style="list-style-type: none"> <li>Representing and speaking on behalf of the whole council and the local government, at all times being consistent with the resolutions of council</li> <li>Facilitating the democratic decision-making of council by presiding at council meetings in accordance with the Act</li> </ul> </li> </ul>	

Page 20 of 31

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>○ Developing and maintaining professional working relationships between councillors and the CEO</li> <li>○ Performing civic and ceremonial duties on behalf of the local government</li> <li>○ Working effectively with the CEO and councillors in overseeing the delivery of the services, operations, initiatives and functions of the local government.</li> </ul>	
	<p><b>5.2.2 - Council Role</b></p> <ul style="list-style-type: none"> <li>• It is proposed to amend the Act to specify the roles and responsibilities of the Council, which is the entity consisting of all of the councillors and led by the Mayor or President.</li> <li>• While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that the Council is responsible for:                             <ul style="list-style-type: none"> <li>○ Making significant decisions and determining policies through democratic deliberation at council meetings</li> <li>○ Ensuring the local government is adequately resourced to deliver the local governments operations, services and functions - including all functions that support informed decision-making by council</li> <li>○ Providing a safe working environment for the CEO;</li> <li>○ Providing strategic direction to the CEO;</li> <li>○ Monitoring and reviewing the performance of the local government.</li> </ul> </li> </ul>	
	<p><b>5.2.3 - Elected Member (Councillor) Role</b></p> <ul style="list-style-type: none"> <li>• It is proposed to amend the Act to specify the roles and responsibilities of all elected councillors.</li> <li>• While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that every elected councillor is responsible for:</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>○ Considering and representing, fairly and without bias, the current and future interests of all people who live, work and visit the district (including for councillors elected for a particular ward)</li> <li>○ Positively and fairly contribute and apply their knowledge, skill, and judgement to the democratic decision-making process of council</li> <li>○ Applying relevant law and policy in contributing to the decision-making of the council</li> <li>○ Engaging in the effective forward planning and review of the local governments' resources, and the performance of its operations, services, and functions</li> <li>○ Communicating the decisions and resolutions of council to stakeholders and the public</li> <li>○ Developing and maintaining professional working relationships with all other councillors and the CEO</li> <li>○ Maintaining and developing their knowledge and skills relevant to local government</li> <li>○ Facilitating public engagement with local government.</li> <li>• It is proposed that elected members should not be able to use their title (e.g. "Councillor", "Mayor", or "President") and associated resources of their office (such as email address) unless they are performing their role in their official capacity.</li> </ul>	
	<p><b>5.2.4 - CEO Role</b></p> <ul style="list-style-type: none"> <li>• The <i>Local Government Act 1995</i> requires local governments to employ a CEO to run the local government administration and implement the decisions of council.</li> <li>• To provide greater clarity, it is proposed to amend the Act to specify the roles and responsibilities of all local government CEOs.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>• While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that the CEO of a local government is responsible for:                             <ul style="list-style-type: none"> <li>○ Coordinating the professional advice and assistance necessary for all elected members to enable the council to perform its decision-making functions</li> <li>○ Facilitating the implementation of council decisions</li> <li>○ Ensuring functions and decisions lawfully delegated by council are managed prudently on behalf of the council</li> <li>○ Managing the effective delivery of the services, operations, initiatives and functions of the local government determined by the council</li> <li>○ Providing timely and accurate information and advice to all councillors in line with the Council Communications Agreement (see item 5.3)</li> <li>○ Overseeing the compliance of the operations of the local government with State and Federal legislation on behalf of the council</li> <li>○ Implementing and maintaining systems to enable effective planning, management, and reporting on behalf of the council.</li> </ul> </li> </ul>	
<b>5.3 Council Communication Agreements</b>		
<ul style="list-style-type: none"> <li>• The Act provides that council and committee members can have access to any information held by the local government that is relevant to the performance of the member in their functions.</li> <li>• The availability of information is sometimes a source of conflict within local governments.</li> </ul>	<ul style="list-style-type: none"> <li>• In State Government, there are written Communication Agreements between Ministers and agencies that set standards for how information and advice will be provided.</li> <li>• It is proposed that local governments will need to have Council Communications Agreements between the council and the CEO.</li> <li>• These Council Communication Agreements would clearly specify the information that is to be provided to councillors, how it will be provided, and the timeframes for when it will be provided.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>A template would be published by DLGSC. This default template will come into force if a council and CEO do not make a specific other agreement within a certain timeframe following any election.</li> </ul>	
<b>5.4 Local Governments May Pay Superannuation Contributions for Elected Members</b>		
<ul style="list-style-type: none"> <li>Elected members are eligible to receive sitting fees or an annual allowance.</li> <li>Superannuation is not paid to elected members. However, councillors can currently divert part of their allowances to a superannuation fund.</li> <li>Councils should be reflective and representative of the people living within the district. Local governments should be empowered to remove any barriers to the participation of gender and age diverse people on councils.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed that local governments should be able to decide, through a vote of council, to pay superannuation contributions for elected members. These contributions would be additional to existing allowances.</li> <li>Superannuation is widely recognised as an important entitlement to provide long term financial security.</li> <li>Other states have already moved to allow councils to make superannuation contributions for councillors.</li> <li>Allowing council to provide superannuation is important part of encouraging equality for people represented on council – particularly for women and younger people.</li> <li>Providing superannuation to councillors recognises that the commitment to elected office can reduce a person's opportunity to undertake employment and earn superannuation contributions.</li> </ul>	
<b>5.5 Local Governments May Establish Education Allowances</b>		
<ul style="list-style-type: none"> <li>Local government elected members must complete mandatory training.</li> <li>There is no specific allowance for undertaking further education.</li> </ul>	<ul style="list-style-type: none"> <li>Local governments will have the option of contributing to the education expenses for councillors, up to a defined maximum value, for tuition costs for further education that is directly related to their role on council.</li> <li>Councils will be able to decide on a policy for education expenses, up to a maximum yearly value for each councillor. Councils may also decide not to make this entitlement available to elected members.</li> </ul>	



**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>Any allowance would only be able to be used for tuition fees for courses, such as training programs, diplomas, and university studies, which relate to local government.</li> <li>Where it is made available, this allowance will help councillors further develop skills to assist with making informed decisions on important questions before council, and also provide professional development opportunities for councillors.</li> </ul>	
<b>5.6 Standardised Election Caretaker period</b>		
<ul style="list-style-type: none"> <li>There is currently no requirement for a formal caretaker period, with individual councils operating under their own policies and procedures.</li> <li>This is commonly a point of public confusion.</li> </ul>	<ul style="list-style-type: none"> <li>A statewide caretaker period for local governments is proposed.</li> <li>All local governments across the State would have the same clearly defined election period, during which:                             <ul style="list-style-type: none"> <li>Councils do not make major decisions with criteria to be developed defining 'major'</li> <li>Incumbent councillors who nominate for re-election are not to represent the local government, act on behalf of the council, or use local government resources to support campaigning activities.</li> <li>There are consistent election conduct rules for all candidates.</li> </ul> </li> </ul>	
<b>5.7 Remove WALGA from the Act</b>		
<ul style="list-style-type: none"> <li>The Western Australian Local Government Association (WALGA) is constituted under the <i>Local Government Act 1995</i>.</li> <li>The Local Government Panel Report and the Select Committee Report included this recommendation.</li> </ul>	<ul style="list-style-type: none"> <li>The <a href="#">Local Government Panel Report</a> recommended that WALGA not be constituted under the <i>Local Government Act 1995</i>.</li> <li>Separating WALGA out of the Act will provide clarity that WALGA is not a State Government entity.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>5.8 CEO Recruitment</b>		
<ul style="list-style-type: none"> <li>Recent amendments introduced provisions to standardise CEO recruitment.</li> <li>The recruitment of a CEO is a very important decision by a local government.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed that DLGSC establishes a panel of approved panel members to perform the role of the independent person on CEO recruitment panels.</li> <li>Councils will be able to select an independent person from the approved list.</li> <li>Councils will still be able to appoint people outside of the panel with the approval of the Inspector.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

**Theme 6: Improved Financial Management and Reporting**

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>6.1 Model Financial Statements and Tiered Financial Reporting</b>		
<ul style="list-style-type: none"> <li>The financial statements published in the Annual Report is the main financial reporting currently published by local governments.</li> <li>Reporting obligations are the same for large (Stirling, Perth, Fremantle) and small (Sandstone, Wiluna, Dalwallinu) local governments, even though they vary significantly in complexity.</li> <li>The Office of the Auditor General has said that some existing reporting requirements are unnecessary or onerous - for instance, information that is not relevant to certain local governments, or that is a duplicate of other published information.</li> </ul>	<ul style="list-style-type: none"> <li>The Minister strongly believes in transparency and accountability in local government. The public rightly expects the highest standards of integrity, good governance, and prudent financial management in local government.</li> <li>It is critically important that clear information about the financial position of local governments is openly available to ratepayers. Financial information also supports community decision-making about local government services and projects.</li> <li>Local governments differ significantly in the complexity of their operations. Smaller local governments generally have much less operating complexity than larger local governments.</li> <li>The Office of the Auditor General has identified opportunities to improve financial reporting, to make statements clearer, and reduce unnecessary complexity.</li> <li>Recognising the difference in the complexity of smaller and larger local governments, it is proposed that financial reporting requirements should be tiered – meaning that larger local governments will have greater financial reporting requirements than smaller local governments.</li> <li>It is proposed to establish standard templates for <b>Annual Financial Statements</b> for band 1 and 2 councils, and simpler, clearer financial statements for band 3 and 4.</li> <li><b>Online Registers</b>, updated quarterly (see item 3.4), would provide faster and greater transparency than current annual reports. Standard templates will be published for use by local governments.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>• <b>Simpler Strategic and Financial Planning</b> (item 6.2) would also improve the budgeting process.</li> </ul>	
<b>6.2 Simplify Strategic and Financial Planning</b>		
<ul style="list-style-type: none"> <li>• Requirements for plans are outlined in the Local Government Financial Management and Administration Regulations.</li> <li>• There is also the Integrated Planning and Reporting (IPR) framework.</li> <li>• While many councils successfully apply IPR to their budgeting and reporting, IPR may seem complicated or difficult, especially for smaller local governments.</li> </ul>	<ul style="list-style-type: none"> <li>• Having clear information about the finances of local government is an important part of enabling informed public and ratepayer engagement and input to decision-making.</li> <li>• The framework for financial planning should be based around information being clear, transparent, and easy to understand for all ratepayers and members of the public.</li> <li>• In order to provide more consistency and clarity across the State, it is proposed that greater use of templates is introduced to make planning and reporting clearer and simpler, providing greater transparency for ratepayers.</li> <li>• Local governments would be required to adopt a standard set of plans, and there will be templates published by the DLGSC for use or adaption by local governments.</li> <li>• It is proposed that the plans that are required are:                         <ul style="list-style-type: none"> <li>○ Simplified <b>Council Plans</b> that replace existing Strategic Community Plans and set high-level objectives, with a new plan required at least every eight years. These will be short-form plans, with a template available from the DLGSC</li> <li>○ Simplified <b>Asset Management Plans</b> to consistently forecast costs of maintaining the local government’s assets. A new plan will be required at least every ten years, though local governments should update the plan regularly if the local government gains or disposes of major assets (e.g. land, buildings, or roads). A template will be provided, and methods of valuations will be simplified to reduce red tape</li> <li>○ Simplified <b>Long Term Financial Plans</b> will outline any long term financial management and sustainability</li> </ul> </li> </ul>	

Page 28 of 31

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<p>issues, and any investments and debts. A template will be provided, and these plans will be required to be reviewed in detail at least every four years</p> <ul style="list-style-type: none"> <li>○ A new <b>Rates and Revenue Policy</b> (see item 6.3) that identifies the approximate value of rates that will need to be collected in future years (referencing the Asset Management Plan and Long Term Financial Plan) – providing a forecast to ratepayers (updated at least every four years)</li> <li>○ The use of simple, one-page <b>Service Proposals</b> and <b>Project Proposals</b> that outline what proposed services or initiatives will cost, to be made available through council meetings. These will become <b>Service Plans</b> and <b>Project Plans</b> added to the yearly budget if approved by council. This provides clear transparency for what the functions and initiatives of the local government cost to deliver. Templates will be available for use by local governments.</li> </ul>	
<b>6.3 Rates and Revenue Policy</b>		
<ul style="list-style-type: none"> <li>• Local governments are not required to have a rates and revenue policy.</li> <li>• Some councils defer rate rises, resulting in the eventual need to drastically raise rates to cover unavoidable costs – especially for the repair of infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>• The Rates and Revenue Policy is proposed to increase transparency for ratepayers by linking rates to basic operating costs and the minimum costs for maintaining essential infrastructure.</li> <li>• A Rates and Revenue Policy would be required to provide ratepayers with a forecast of future costs of providing local government services.</li> <li>• The Policy would need to reflect the Asset Management Plan and the Long Term Financial Plan (see item 6.2), providing a forecast of what rates would need to be, to cover unavoidable costs.</li> <li>• A template would be published for use or adaption by all local governments.</li> </ul>	

**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
	<ul style="list-style-type: none"> <li>The <a href="#">Local Government Panel Report</a> included this recommendation.</li> </ul>	
<b>6.4 Monthly Reporting of Credit Card Statements</b>		
<ul style="list-style-type: none"> <li>No legislative requirement.</li> <li>Disclosure requirements brought in by individual councils have shown significant reduction of expenditure of funds.</li> </ul>	<ul style="list-style-type: none"> <li>The statements of a local government’s credit cards used by local government employees will be required to be tabled at council at meetings on a monthly basis.</li> <li>This provides oversight of incidental local government spending.</li> </ul>	
<b>6.5 Amended Financial Ratios</b>		
<ul style="list-style-type: none"> <li>Local governments are required to report seven ratios in their annual financial statements.</li> <li>These are reported on the MyCouncil website.</li> <li>These ratios are intended to provide an indication of the financial health of every local government.</li> </ul>	<ul style="list-style-type: none"> <li>Financial ratios will be reviewed in detail, building on work already underway by the DLGSC.</li> <li>The methods of calculating ratios and indicators will be reviewed to ensure that the results are accurate and useful.</li> </ul>	
<b>6.6 Audit Committees</b>		
<ul style="list-style-type: none"> <li>Local governments must establish an Audit Committee that has three or more persons, with the majority to be council members.</li> <li>The Audit Committee is to guide and assist the local government in carrying out the local government’s functions in relation to audits conducted under the Act.</li> <li>The Panel Report identified that Audit Committees should be expanded, including to provide improved risk management.</li> </ul>	<ul style="list-style-type: none"> <li>To ensure independent oversight, it is proposed the Chair of any Audit Committee be required to be an independent person who is not on council or an employee of the local government.</li> <li>Audit Committees would also need to consider proactive risk management.</li> <li>To reduce costs, it is proposed that local governments should be able to establish shared Regional Audit Committees.</li> <li>The Committees would be able to include council members but would be required to include a majority of independent members and an independent chairperson.</li> </ul>	

Page 30 of 31



**Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM**

Local Government Reform – Consultation on Proposed Reforms

CURRENT REQUIREMENTS	PROPOSED REFORMS	COMMENTS
<b>6.7 Building Upgrade Finance</b>		
<ul style="list-style-type: none"> <li>The local government sector has sought reforms that would enable local governments to provide loans to property owners to finance for building improvements.</li> <li>This is not currently provided for under the Act.</li> <li>The Local Government Panel Report included this recommendation.</li> </ul>	<ul style="list-style-type: none"> <li>Reforms would allow local governments to provide loans to third parties for specific building improvements - such as cladding, heritage and green energy fixtures.</li> <li>This would allow local governments to lend funds to improve buildings within their district.</li> <li>Limits and checks and balances would be established to ensure that financial risks are proactively managed.</li> </ul>	
<b>6.8 Cost of Waste Service to be Specified on Rates Notices</b>		
<ul style="list-style-type: none"> <li>No requirement for separation of waste charges on rates notice.</li> <li>Disclosure will increase ratepayer awareness of waste costs.</li> <li>The Review Panel Report included this recommendation.</li> </ul>	<ul style="list-style-type: none"> <li>It is proposed that waste charges are required to be separately shown on rate notices (for all properties which receive a waste service).</li> <li>This would provide transparency and awareness of costs for ratepayers.</li> </ul>	

*Item 8.5 - LOCAL GOVERNMENT LEGISLATIVE REFORM*

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<b>8.6 WORK HEALTH AND SAFETY (WHS) LEGISLATION UPDATE</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 This item provides an update to members on the progress of the enactment of the *Work Health and Safety (WHS) Act 2020* and subsidiary regulation.

**COMMENT**

The *Work Health and Safety Act 2020* was passed by the West Australian Parliament in November 2020, and is expected to come into effect in January 2022 with the Regulations and transition period still to be finalised.

- The *Work Health and Safety Act 2020* (WHS legislation) was passed by the West Australian Parliament in November 2020, and is expected to come into effect in January 2022 with the Regulations and transition period still to be finalised.
- The new WHS legislation introduces a number of new legal terms and concepts, including the term Person Conducting a Business or Undertaking (PCBU). Further, volunteers are now included in the definition of Workers.
- The Local Government sector has expressed concern with the new WHS legislation, particularly around the implications for the management of volunteer bushfire brigades (BFBs).
- A Duty of Care may be shared with others, and if more than one person has a duty in relation to the same matter, they must consult, cooperate and coordinate their activities, which adds additional complexity in the case of BFBs.
- WALGA and LGIS are working to provide support and resources to the sector to assist with the transition to the new WHS legislation.

The main changes in the new legislation are:

- 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 broader definition of 'worker' which specifically includes volunteers, including BFB volunteers;
- Broader and overlapping duties of care attach to those who have the capacity to exercise influence and control over health and safety matters and a duty to consult with other duty holders;

- A positive duty of due diligence for officers of a PCBU; and
- Increased penalties for offences under the WHS legislation and the introduction of industrial manslaughter provisions;

On 31 August WALGA and LGIS delivered a webinar on the new WHS legislation which was attended by more than 140 people from 80 Local Governments. A panel of presenters from LGIS, Department of Fire and Emergency Services (DFES), McLeods Barristers and Solicitors, and the City of Mandurah shared their knowledge and experience in relation to the new legislation, WHS obligations, and BFB volunteer training and management. The webinar is available on the WALGA [website](#) and a FAQ document is being developed jointly by LGIS and DFES. LGIS has also prepared a Volunteer Handbook and CEO Briefing Note on the WHS legislation available on their website.

#### **Comment**

WALGA and LGIS are continuing to liaise with DFES and DMIRS on these issues, recognising the need for further information and clarification regarding the implications and requirements of the WHS legislation for the sector's management of bushfire brigade volunteers. Other activities that WALGA is undertaking include:

- Meetings with the Workplace Commissioner Darren Kavanagh and other groups responsible for Volunteer organisations and DFES to discuss the concerns being raised by volunteers and relevant organisations.
  - This was a positive meeting with all wanting to put in place reasonable and practical measures to assist Local Governments and Volunteers. The Workplace Commissioners' department DMIRS has released [a Guide to Work health and safety for volunteer organisations](#) which WALGA provided feedback on.
  - On 12 November DMIRS delivered a webinar for volunteers and volunteer organisations;
- LGIS is obtaining legal advice about which Local Government officers are considered 'officers' for the purposes of the WHS legislation which will be provided to the sector;
- WALGA is developing a scope of works for a WHS consultant to develop additional tools and resources to support the sector; and
- WALGA will advocate to the Minister for the commencement of the WHS legislation for Local Governments to be delayed until June 2022 to allow additional time to ensure that safe work practices are implemented for volunteers.

To inform its advocacy on this and sector emergency management issues more generally, WALGA is also undertaking an Emergency Management Survey of Local Governments to ascertain the sentiment of the sector to their emergency management obligations, and to understand how they are undertaking their management of BFBs. The survey includes questions about the types of additional support that Local Governments require in order to comply with the WHS legislation. Preliminary survey feedback indicates:

- Local Governments need more information on Work Health and Safety and Guidelines and templates to support compliance with the legislation;
- Further work is needed to ensure that Local Governments are well prepared to meet WHS requirements in relation to:
  - Providing up to date Standard Operating Procedures and directives for incident response;

- Training for use of vehicles and equipment use;
- Ensuring Bush Fire brigade stations do not present a risk to health and safety; and
- Providing for volunteer fatigue management and access to welfare services; and
- Local Governments generally feel well prepared in relation to WHS regarding provision of personal protective equipment for volunteers.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Work Health and Safety Act 2020*

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY ZONE RESOLUTION:**  
**(REPORT RECOMMENDATION)** **Minute No. KRG/1121/008**  
**Moved: M Edwards** **Seconded: Cr C Mitchell**  
**That the Kimberley Zone notes the WALGA update on the Work Health and Safety Act 2020.**  
**CARRIED UNANIMOUSLY 4/0**

**Attachments**

Nil

**9. REPORTS FROM KIMBERLEY REGIONAL GROUP**

**KIMBERLEY REGIONAL GROUP RESOLUTION:** *Minute No. KRG/1121/009*  
*Moved: G Haerewa* *Seconded: D Menzel*  
*That Standing Orders be suspended at 2:50pm.*  
**CARRIED UNANIMOUSLY 4/0**

**KIMBERLEY REGIONAL GROUP RESOLUTION:** *Minute No. KRG/1121/010*  
*Moved: D Menzel* *Seconded: G Haerewa*  
*That Standing Orders be reinstated at 3:00pm.*  
**CARRIED UNANIMOUSLY 4/0**

**9.1 KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21**

<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	RCG01; OGS03
<b>AUTHOR:</b>	Director Corporate Services
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 The Kimberley Regional Group (KRG) Governance Agreement dictates that the Host Shire must arrange to have the KRG’s accounts and records for each accounting period audited and prepare an annual financial report of the KRG that represents a true and fair view of the financial position of the KRG. This item presents the 2020/21 Audit Report, Annual Financial Statement and Management Report for member consideration.

**BACKGROUND**

Previous Considerations

Nil.

The KRG Governance Agreement dictates that the Host Shire must prepare an annual financial report of the KRG that represents a true and fair view of the financial position of the KRG. The report must include the results of its operation for the Accounting Period in compliance with, and in the form required by, the *Local Government Act 1995* (the Act) and associated regulations including the *Local Government (Financial Management) Regulations 1996* (FMR).

Additionally, the Host Shire must arrange to have the KRG’s accounts and records for each Accounting Period audited by the Host Shire’s auditor in accordance with the requirements of the Act and the *Local Government (Audit) Regulations 1996* (WA), and



have the auditor's report delivered to the Participants. The audit may form part of the Host Shire's annual auditing of its own accounts.

The Host Shire must also arrange for the KRG's auditor to conduct an audit review of the KRG's accounts and records once a year.

It should be noted that Moore Australia (previously Moore Stephens) are the auditors for the KRG.

#### **COMMENT**

Moore Australia (Moore) were engaged by the Shire of Broome to undertake an independent Audit of the 2020/21 Financials for the Kimberley Zone Secretariat and Kimberley Regional Group.

In the auditor's opinion, the financial report presents fairly in all material respects, the income and expenditure of the Secretariat, and each project of the group for the year ending 30 June 2021.

The audit was undertaken in accordance with the Australian Auditing Standards with responsibilities required under that standard described further in the Auditor's Responsibilities for the Audit of the Financial Report section of the attached Audit Report.

Moore are independent of the Secretariat, the KRG and the Shire's in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's Code of Ethics.

The signed Annual Financial Statement for the period ending 30 June 2021 and Auditors Report on the Annual Financial Statement is attached.

#### **CONSULTATION**

Moore Australia

#### **STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Local Government (Financial Management) Regulations 1996*

*Local Government (Audit) Regulations 1996*

#### **FINANCIAL IMPLICATIONS**

The signed Annual Financial Statement and Auditors Report on the Annual Financial Statement is attached. The Audited Annual Financial Statement indicates a carry-forward surplus of \$278,365.

#### **STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

**VOTING REQUIREMENTS**

*Absolute Majority*

**KIMBERLEY REGIONAL GROUP RESOLUTION:**

**(RECOMMENDATION)**

**Minute No. KRG/1121/011**

**Moved: Cr C Mitchell**

**Seconded: M Edwards**

**That the Kimberley Regional Group:**

- 1. Notes the 2020-21 Audit Report and Management Report and receives the Annual Financial Statement for the period ending 30 June 2021 as attached; and**
- 2. Notes a carry-forward surplus position of \$278,365 to 30 June 2021.**

**CARRIED UNANIMOUSLY BY ABSOLUTE MAJORITY 4/0**

**Attachments**

1. Kimberley Regional Group Management Report 2020-21
2. Kimberley Regional Group Audit Report 2020-21
3. Kimberley Regional Group Annual Financial Report 2020-21

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**Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21**

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12 November 2021

Mr Sam Mastrolembro  
Chief Executive Officer  
Shire of Broome  
27 Weld Street  
BROOME WA 6725

**Moore Australia Audit (WA)**

Level 15, Exchange Tower,  
2 The Esplanade, Perth, WA 6000  
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Dear Sam

**Management Report for the Year Ended 30 June 2021**

We advise that we have completed our audit procedures for the year ended 30 June 2021 and enclose our audit report.

It should be appreciated that our audit procedures are designed primarily to enable us to form an opinion on the financial report and therefore may not bring to light all weaknesses in systems and procedures which may exist. However, we aim to use our knowledge of your Association gained during our work to make comments and suggestions, which we hope will be useful to you.

We noted no matters we wish to draw to your attention.

**Uncorrected Misstatements**

We advise there were no uncorrected misstatements noted by us during the course of our audit.

We take this opportunity to thank you and your staff for their assistance provided during the audit.

Should you wish to discuss any matters relating to the audit or any other matter, please do not hesitate to contact me.

Yours faithfully

Wen-Shien Chai  
Partner  
Moore Australia Audit (WA)

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**Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21**

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**INDEPENDENT AUDITOR'S REPORT  
TO THE MEMBERS OF  
KIMBERLEY ZONE OF WALGA AND REGIONAL COLLABORATIVE GROUP  
AND THE SHIRE OF BROOME****Report on The Financial Report****Opinion**

We have audited the accompanying financial report of Kimberley Zone Secretariat (the Secretariat) comprising the statement of income and expenditure of the Secretariat and the statements of income and expenditure for each individual project being undertaken by the Kimberley Zone of WALGA and Regional Collaborative Group (the Group), for the year ended 30 June 2021. The financial report has been prepared by the Shire of Broome (the Shire) for the purpose of reporting on the income and expenditure by the Secretariat to the Group.

In our opinion, the financial report presents fairly in all material respects, the income and expenditure of the Secretariat and each project of the Group for the year ended 30 June 2021.

**Basis for Opinion**

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Report section of our report. We are independent of the Secretariat, the Group and the Shire in accordance with the ethical requirements of the Accounting Professional & Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) that are relevant to our audit of the financial report in Australia, and we have fulfilled our other ethical responsibilities in accordance with the Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

**Emphasis of Matter – Basis of Accounting and Restriction on Distribution**

The financial report is prepared to assist the Shire of Broome (the Shire) in reporting to the Group on the income and expenditure of the Secretariat and each individual project. As a result, the financial report may not be suitable for another purpose. Our report is intended solely for the Shire and members of the Group and should not be distributed to or used by parties other than the Shire and members of the Group.

**Responsibilities of the Shire of Broome for the Financial Report**

The Shire, on behalf of the Group, is responsible for the preparation of the financial report in accordance with the accrual basis of accounting; this includes determining that the accrual basis of accounting is an acceptable basis for the preparation of the financial statement and for such internal control as the Shire determined is necessary, to enable the preparation of the financial statement that is free from material misstatement, whether due to fraud or error.

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*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*



**INDEPENDENT AUDITOR'S REPORT  
TO THE MEMBERS OF  
KIMBERLEY ZONE OF WALGA AND REGIONAL COLLABORATIVE GROUP  
AND THE SHIRE OF BROOME (CONTINUED)**

**Auditor's Responsibility for the Audit of the Financial Report**

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standard Board website at [http://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). This description forms part of our audit report.

WEN-SHIEN CHAI  
PARTNER

MOORE AUSTRALIA AUDIT (WA)  
CHARTERED ACCOUNTANTS

Signed at Perth this 12 day of November 2021.

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

**KIMBERLEY ZONE OF WALGA  
AND KIMBERLEY REGIONAL GROUP**

**FINANCIAL REPORT**

**FOR THE YEAR ENDED 30TH JUNE 2021**

**TABLE OF CONTENTS**

Statement by Chief Executive Officer	2
Statement of Income and Expenditure	3
Statement of Income and Expenditure - Kimberley Zone Secretariat	4
Statement of Income and Expenditure - Alcohol Management Initiatives	5
Statement of Income and Expenditure - Volunteer Strategy	6
Summary of Accounting Policies	7
Independent Audit Report	9
Principal place of business: Address 27 Weld Street Broome WA 6725	



Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21

KIMBERLEY ZONE OF WALGA AND KIMBERLEY REGIONAL GROUP  
 FINANCIAL REPORT  
 FOR THE YEAR ENDED 30TH JUNE 2021


STATEMENT BY CHIEF EXECUTIVE OFFICER

In the opinion of the Chief Executive Officer, the financial report set out in this document:

- (i) presents fairly the results of its operations for the year ended 30 June 2021.
- (ii) confirms the projects of the Kimberley Zone of Walga and Kimberley Regional Group have been carried out in accordance with respective funding agreements.

This statement is made and signed by the Chief Executive Officer on behalf of the Shire of Broome.

Signed as authorisation of issue on the 11th day of November 2021

  
 Sam Mastrolembo  
 Chief Executive Officer

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

**Kimberley Zone of WALGA and Kimberley Regional Group  
Statement of Income and Expenditure  
for the year ended 30 June 2021**

	2021	2020
	\$	\$
Opening Balance as at 1 July Surplus/(Deficit)	327,907	302,610
<b>Operating Income</b>		
Kimberley Zone Secretariat	78,113	57,291
Kimberley Zone Interest on Reserves	2,345	4,006
<b>Operating Income Total</b>	<u>80,458</u>	<u>61,297</u>
<b>Operating Expenditure</b>		
Kimberley Zone - Alcohol Management Initiatives	(130,000)	-
Kimberley Zone - Volunteer Strategy	-	(36,000)
<b>Operating Expenditure Total</b>	<u>(130,000)</u>	<u>(36,000)</u>
<b>Net Operating Surplus/(Deficit)</b>	<u>(49,542)</u>	<u>25,297</u>
<b>Closing Balance as at 30 June Surplus/(Deficit)</b>	<u>278,365</u>	<u>327,907</u>

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

**Kimberley Zone of WALGA and Kimberley Regional Group  
Kimberley Zone Secretariat  
Statement of Income and Expenditure  
for the year ended 30 June 2021**

	2021	2020
		\$
<b>Operating Income</b>		
Kimberley Zone - Reimbursement Zone & RCG Meetings Expenses	731	-
Kimberley Zone - Reimbursement Darwin Forum	-	6,753
Kimberley Zone - Members Contribution Secretariat Costs	200,000	200,000
<b>Operating Income Total</b>	<b>200,731</b>	<b>206,753</b>
<b>Operating Expenditure</b>		
Kimberley Zone - Executive Consultancy	(89,441)	(117,392)
Kimberley Zone - Administrative Consultancy	(21,150)	(18,900)
Kimberley Zone - Zone & RCG Meeting Expenses	(4,196)	(8,181)
Kimberley Zone - Annual Financial Audit	(4,050)	(4,170)
Kimberley Zone - IT Support	(2,774)	-
Kimberley Zone - Sundry Expenses	(1,007)	-
<b>Operating Expenditure Total</b>	<b>(122,618)</b>	<b>(149,462)</b>
<b>Net Operating Surplus/(Deficit)</b>	<b>78,113</b>	<b>57,291</b>
<b>Interest on Reserve Funds</b>		
Kimberley Zone - Interest on Reserve	2,345	4,006
<b>Interest on Reserve Funds Total</b>	<b>2,345</b>	<b>4,006</b>
<b>Capital Expenditure</b>		
Kimberley Zone - Transfer to Kimberley Zone Reserve	(2,345)	(4,006)
<b>Capital Expenditure Total</b>	<b>(2,345)</b>	<b>(4,006)</b>
<b>Capital Income</b>		
<b>Capital Income Total</b>	<b>-</b>	<b>-</b>
<b>Kimberley Regional Group Secretariat Surplus/(Deficit)</b>	<b>78,113</b>	<b>57,291</b>

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

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**Kimberley Zone of WALGA and Kimberley Regional Group  
Alcohol Management Project  
Statement of Income and Expenditure  
for the year ended 30 June 2021**

	2021	2020
	\$	\$
Opening Balance as at 1 July Surplus/(Deficit)	-	-
<b>Operating Income</b>		
Kimberley Zone - Alcohol Management Initiatives Grant	-	-
<b>Operating Income Total</b>	-	-
<b>Operating Expenditure</b>		
Kimberley Zone - Alcohol Management Initiatives	(130,000)	-
<b>Operating Expenditure Total</b>	(130,000)	-
Kimberley Regional Group Volunteer Strategy Surplus/(Deficit)	(130,000)	-

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

**Kimberley Zone of WALGA and Kimberley Regional Group  
Savannah Way Membership Project  
Statement of Income and Expenditure  
for the year ended 30 June 2021**

	2021	2020
	\$	\$
Opening Balance as at 1 July Surplus/(Deficit)	-	-
<b>Operating Expenditure</b>		
Kimberley Zone - Savannah Way Membership Project	-	-
<b>Operating Expenditure Total</b>	-	-
<b>Kimberley Regional Group Savannah Way Membership Project Surplus/(Deficit)</b>	-	-

Note: Any deficit amounts have been offset by funds in the general account

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

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Kimberley Zone of WALGA and Kimberley Regional Group Volunteer Strategy Statement of Income and Expenditure for the year ended 30 June 2021		
	2021	2020
	\$	\$
Opening Balance as at 1 July Surplus/(Deficit)	650	36,650
<b>Operating Income</b>		
Kimberley Zone - Kimberley Volunteer Strategy DLGC Grant		
<b>Operating Income Total</b>	-	-
<b>Operating Expenditure</b>		
Kimberley Zone - Volunteer Strategy	-	(36,000)
<b>Operating Expenditure Total</b>	-	(36,000)
<b>Kimberley Regional Group Volunteer Strategy Surplus/(Deficit)</b>	650	650



**Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21**

Kimberley Zone of WALGA and Kimberley Regional Group Waste Management Plan Statement of Income and Expenditure for the year ended 30 June 2021		
	2021	2020
	\$	\$
Opening Balance as at 1 July Surplus/(Deficit)	-	-
<b>Operating Income</b>		
Kimberley Zone - Member Contribution Improved Waste Water Management	-	-
Kimberley Zone - Waste Authority Grant Waste Management Plan	-	-
Kimberley Zone - Members Contribution - Kimberley Waste Management Plan	-	-
<b>Operating Income Total</b>	<u>-</u>	<u>-</u>
<b>Operating Expenditure</b>		
Kimberley Zone - Kimberley Waste Management Plan	-	-
<b>Operating Expenditure Total</b>	<u>-</u>	<u>-</u>
<b>Capital Income</b>		
Transfer From Kimberley Zone Reserve - Kimberley Zone	-	-
<b>Capital Income Total</b>	<u>-</u>	<u>-</u>
<b>Kimberley Regional Group Waste Management Plan Surplus/(Deficit)</b>	<u>-</u>	<u>-</u>

Note: Any deficit amounts have been offset by funds in the general account

*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

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**Kimberley Zone of WALGA and Kimberley Regional Group  
DLGC Youth Strategy  
Statement of Income and Expenditure  
for the year ended 30 June 2021**

	2021	2020
	\$	\$
Opening Balance as at 1 July Surplus/(Deficit)	2,636	2,636
<b>Operating Income</b>		
Kimberley Zone - Youth Strategy DLGC Grant	-	-
<b>Operating Income Total</b>	-	-
<b>Operating Expenditure</b>		
Kimberley Zone - Youth Strategy - Op Exp	-	-
<b>Operating Expenditure Total</b>	-	-
<b>Kimberley Regional Group DLGC Youth Strategy Surplus/(Deficit)</b>	<b>2,636</b>	<b>2,636</b>

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*Item 9.1 - KIMBERLEY REGIONAL GROUP ANNUAL FINANCIAL REPORT 2020-21*

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**Kimberley Zone of WALGA and Kimberley Regional Group  
Notes to the Financial Statements  
for the year ended 30 June 2021**

**1. Summary of Accounting Policies**

The accounting policies adopted by the Group are stated in order to assist in a general understanding of the financial statements. These policies have been consistently applied except as otherwise indicated.

**Reporting Entity**

The group is not a reporting entity because in the Shire of Broome's opinion there are unlikely to exist users who are unable to command the preparation of reports tailored so as to satisfy all of their information needs, and these accounts are therefore "special purpose accounts" that have been prepared solely to meet the requirements of the Accounting Standards.

**Accounting Policies**

The financial report has been prepared under the historical cost and cash basis of accounting conventions and does not take into account changing money values except to the extent that they are reflected in the revaluation of certain assets.

In order for the financial report to present fairly the state of affairs of the Group and the results of the Group for the year, Australian Accounting Standards have been adopted to the extent disclosed in this note.

**Income Tax**

The Group is of the opinion that it is not subject to income tax.

<b>9.2 KIMBERLEY REGIONAL GROUP FINANCIAL ACTIVITY STATEMENT 31 OCTOBER 2021</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01; RCG01
<b>AUTHOR:</b>	<i>Director Corporate Services</i>
<b>CONTRIBUTOR/S:</b>	<i>Nil</i>
<b>RESPONSIBLE OFFICER:</b>	<i>Director Corporate Services</i>
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 This report presents the Kimberley Regional Group Financial Activity Statement for the period ended 31 October 2021. The report recommends that the Kimberley Regional Group (KRG) receives the Financial Activity Statement.

**BACKGROUND**

Previous Considerations

Joint Meeting 28 June 2021                      Item 9.4  
 Joint Meeting 2 September 2021            Item 9.8

The 2021/22 KRG Annual Budget was adopted at the 28 June 2021 Joint Meeting. The Annual Budget was adopted as a balanced budget.

Following the adoption of the KRG Budget for 2021/22 the group resolved to allocate \$40,000 ex GST from the surplus reserve to fund an investigation into regional labour shortages.

**COMMENT**

The Financial Activity Statement presents a year to date surplus position of \$278,939 and an estimated surplus position of \$238,365 to 30 June 2022.

The budget amendment approved at the 2 September 2021 Joint Meeting to increase the allocation for consultancy (Regional Labour Shortage) has been processed, with the total budget for account 22183 Consultancy now \$40,000. This has resulted in a corresponding increase in the transfer from surplus.

Executive Consultancy budget remains on target.

Invoices for Member Contributions have recently been released with payment expected to occur in late November, early December.

**CONSULTATION**

Nil.

**STATUTORY ENVIRONMENT**

**Local Government Act 1995**

**FINANCIAL IMPLICATIONS**

As at the 30 June 2021 the Kimberley Regional Group surplus was \$278,365.

The Kimberley Regional Group budget was adopted as a balanced budget with an opening surplus balance of \$278,365.

The Kimberley Regional Group surplus at 31 October 2021 is \$276,939.

The estimated budget position to 30 June 2022 is a \$238,365 surplus position.

Acct Code	Account	Original Budget	Current Budget	Actual
<b>OPENING SURPLUS CARRY FORWARD</b>				
100235970	Kimberley Zone - Transfer to Kimberley Zone Reserve - Cap Exp - MUN	-\$278,365.00	-\$278,365.00	-\$278,365.00
<b>CAPITAL INCOME</b>				
100235980	Transfer From Kimberley Zone Reserve - Cap Inc - Kimberley Zone MUN		-\$40,000.00	-\$40,000.00
<b>TOTAL CAPITAL INCOME</b>		<b>\$0.00</b>	<b>-\$40,000.00</b>	<b>-\$40,000.00</b>
<b>REMAINING SURPLUS</b>		<b>-\$278,365.00</b>	<b>-\$238,365.00</b>	<b>-\$238,365.00</b>
<b>OPERATING EXPENDITURE</b>				
100221290	Kimberley Zone - Zone & RCG Meeting Expenses - Op Exp MUN	\$10,000.00	\$10,000.00	\$2,396.00
100221340	Kimberley Zone - Annual Financial Audit - Op Exp MUN	\$5,000.00	\$5,000.00	\$0.00
100221360	Kimberley Zone - IT Support - Op Exp MUN	\$1,500.00	\$1,500.00	\$0.00
100221370	Kimberley Zone - Sundry Expenses - Op Exp MUN	\$1,000.00	\$1,000.00	\$0.00
100221430	Kimberley Zone - Savannah Way Membership - Op Exp MUN	\$5,000.00	\$5,000.00	\$0.00
100221810	Kimberley Zone - Executive Consultancy - Op Exp MUN	\$147,320.00	\$147,320.00	\$0.00
100221830	Kimberley Zone - Consultancy - Op Exp MUN	\$0.00	\$40,000.00	\$0.00
104052970	Kimberley Zone - Admin Cost Allocated - Op Exp MUN	\$0.00	\$0.00	\$0.00
<b>TOTAL OPERATING EXPENDITURE</b>		<b>\$169,820.00</b>	<b>\$209,820.00</b>	<b>\$2,396.00</b>
<b>OPERATING INCOME</b>				
100230130	Kimberley Zone - Reimbursement Zone & RCG Meetings Expenses - Op Inc MUN	-\$3,000.00	-\$3,000.00	-\$970.00
100230210	Kimberley Zone - Members Contribution Secretariat Costs - Op Inc MUN	-\$164,320.00	-\$164,320.00	\$0.00
100235360	Kimberley Zone - Interest on Reserve - Op Inc. MUN	-\$2,500.00	-\$2,500.00	\$0.00
<b>TOTAL OPERATING INCOME</b>		<b>-\$169,820.00</b>	<b>-\$169,820.00</b>	<b>-\$970.00</b>
<b>TOTAL CAPITAL INCOME</b>		<b>\$0.00</b>	<b>-\$40,000.00</b>	<b>-\$40,000.00</b>
<b>TOTAL OPERATING EXPENDITURE</b>		<b>\$169,820.00</b>	<b>\$209,820.00</b>	<b>\$2,396.00</b>
<b>TOTAL OPERATING INCOME</b>		<b>-\$169,820.00</b>	<b>-\$169,820.00</b>	<b>-\$970.00</b>
<b>TOTAL</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>-\$38,574.00</b>

<b>SURPLUS/DEFICIT</b>			
<i>**Current Surplus = Actual Income less Actual Expenditure + Opening Surplus</i>	<b>-\$278,365.00</b>	<b>-\$238,365.00</b>	<b>-\$276,939.00</b>

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

Secure funding for regional initiatives

**VOTING REQUIREMENTS**

*Simple Majority*

<b><u>KIMBERLEY REGIONAL GROUP RESOLUTION:</u></b>	
<b>(REPORT RECOMMENDATION)</b>	<b>Minute No. KRG/1121/012</b>
<b>Moved: Cr C Mitchell</b>	<b>Seconded: G Haerewa</b>
<b><i>That the Kimberley Regional Group notes the \$276,939 year to date budget surplus and an estimated \$238,365 surplus position to the end of June 2022.</i></b>	
<b>CARRIED UNANIMOUSLY 4/0</b>	

**Attachments**

Nil



<b>9.3 PROJECTS 2022</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 This item sets out the projects planned for the current period to 30 June 2022 and forecasts projects for FY 2023.

**BACKGROUND**

Previous Considerations

28 June 2021 Joint Meeting                      Item 9.4

**COMMENT**

The Kimberley Regional Group undertakes projects that progress the agenda of the group as identified in the Strategic Community Plan and Business Plan. Some projects are outsourced to third parties due to the specialist nature of the project or forecast in-house capacity constraints. The projects to 30 June 2022 are focused on the key issues of youth (including anti-social behaviour), housing and workforce availability as these are the matters of highest concern in the community, along with finalisation of 2021 projects. Outsourced projects for FY 2023 are also listed with project scopes to be developed consistent with the timeframes identified in the Memorandum of Understanding. Ongoing matters such as the updating of the Infrastructure Prospectus and the Advocacy Agenda are considered ongoing works and are therefore not included in this project list.

The projects are listed in the following groups:

1. Finalisation of 2021 in-house projects.
2. In-house projects consistent with the Strategic Community Plan and Business Plan.
3. Outsourced items where funding has been approved.
4. New projects not yet approved or budgeted.
5. Forecast outsourced projects FY 2022- 2023 – project scope to be developed in 2022.

1. Finalisation of 2021 in-house projects

Item	Output	Description	Source
1.5.1.1	Education Advocacy Paper	Develop an advocacy paper to support the provision of fit-for-purpose education facilities and	In-house

		pedagogy.	
2.5.4.1	Affordable, reliable lower carbon footprint energy status and advocacy paper.	Develop an advocacy paper on energy with that will deliver affordable and reliable energy with a lower carbon footprint.	In-house

2. In-house projects consistent with the Strategic Community Plan and Business Plan.

Item	Output	Description	Source
1.3.2.1	Key indicators (updatable) infographic – Youth Anti-social Behaviour.	Monitor and report on key data associated with youth anti-social behavior to support advocacy.	In-house
1.3.3.2	Advocacy Paper - Youth Custodial Facilities.	Develop an advocacy paper in relation to the benefit of youth custodial facilities in the Kimberley, including earlier intervention such as diversion programs.	In-house

3. Outsourced items where funding has been approved.

Item	Output	Description	Source
3.2.2	Report: Kimberley Workforce Requirements.	Data collection and collation on current skills gaps and future needs consistent with the project scope.	Outsourced Budget allocation of \$40,000.

4. New projects not yet approved or budgeted.

Item	Output	Description	Source
1.6.1.1	Housing in the Kimberley Initial Scoping Report (Stage 1):	A review of demographic and dwelling construction trends across the market sectors in the Kimberley.	Stage 1: Initial scoping project in-house.

5. Forecast outsourced projects FY 2022- 2023 – Project scope to be developed

Item	Output	Description	Source
1.6.1.1	Housing in the Kimberley Report (Stage 2). This project is contingent on the outcomes of Stage 1.	A detailed project/business case to underpin project funding applications.	Outsourced project estimate \$50,000-\$75,000 contingent upon scope. If approved by the KRG, grant funding to be

			sourced to support the project.
1.3.3.2	Report - Youth Priority Services	Consistent with the Youth Strategy, identify priority Youth Services across the region and prepare a Youth Services Priorities Report.	Outsourced. Project estimate \$20,000.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**FINANCIAL IMPLICATIONS**

Funding requirements to be confirmed.

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Secure funding for regional initiatives

Alignment and integration of regional and local priorities for member Councils.

**Built Environment Goal – Improved and secure transport, communications, community and essential services:**

Liveable towns supporting regional communities

Adequate land supply

High standard of infrastructure planning

Reliable and adequate power and communications.

**Community Goal – A vibrant community based on equity, inclusion and opportunity for all:**

Innovative and joined up approach to housing development, ownership and design through community participation

Improved Kimberley regional outcomes in health

Improved Kimberley regional outcomes in education

Greater participation in the community and workforce

**Economy Goal – A sustainable and diverse economy:**

Improved outcomes in employment

Energy sustainability

Improved regional infrastructure

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY REGIONAL GROUP RESOLUTION:**

**(REPORT RECOMMENDATION)**

**Minute No. KRG/1121/013**

**Moved: D Menzel**

**Seconded: G Haerewa**

**That the Kimberley Regional Group:**

1. **Notes the 2021 projects for finalisation.**
2. **Approves the in-house projects for 2022:**
  - (a) **Key indicators infographic (updatable) – Youth Anti-social Behaviour.**
  - (b) **Advocacy Paper - Youth Custodial Facilities.**
3. **Notes the 2022 projects previously approved and funded:**
  - (a) **Kimberley Workforce Requirements Report.**
4. **Approves projects for 2022:**
  - (a) **Housing in the Kimberley Initial Scoping Report (Stage 1).**
5. **Notes forecast outsourced Projects FY 2022- 2023:**
  - (a) **Housing in the Kimberley Report Stage 2 (outsourced).**
  - (b) **Report - Youth Priority Services.**

**CARRIED UNANIMOUSLY 4/0**

**Attachments**

Nil

**9.4 SKILLS SUPPLY AND DEMAND RESEARCH PROJECT**

<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**

This item provides a progress report on the research project to investigate the supply and demand for skills in the Kimberley, the relationship to a Designated Area Migration Agreement and alternatives that may be appropriate.

**BACKGROUND**

Previous Considerations

9.8 2 September 2021

**COMMENT**

A briefing paper was circulated on the 7<sup>th</sup> July 2021 in relation to labour force shortages and the role of a Designated Area Migration Agreement (DAMA). The briefing paper recommended that research be undertaken into the nature and scale of the current shortages and consider future demand.

At the meeting on 2 September 2019, the meeting ratified the out of session approval to engage a suitably qualified consultant to undertake a Stage 1 investigation to determine the scale of the labour shortage in the Kimberley and the nature of the demand including:

- (a) The alignment to ANZSCO Codes.
- (b) A Shire by Shire breakdown.
- (c) Options for addressing skills shortfalls in the short, medium and longer term.
- (d) Employer interest in migration programs of different typologies.
- (e) Considers the proposed and operational DAMA arrangements across northern Western Australia with a particular focus on risk and benefit.

A project brief has been developed and will be released to the market as soon as practicable.

**CONSULTATION**

Chamber of Commerce Broome  
 East Kimberly Chamber of Commerce  
 Regional Development Australia - Kimberley  
 Kimberley Development Commission

**STATUTORY ENVIRONMENT**

Local Government Act 1995  
 The Migration Act 1958

**FINANCIAL IMPLICATIONS**

\$40,000 allocation for research consultation has been made.

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Alignment and integration of regional and local priorities for member Councils.

**Economy Goal – A sustainable and diverse economy:**

Improved outcomes in employment

Sustainable tourism market and tourism experiences

Sustainable primary industries

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY REGIONAL GROUP RESOLUTION:**

<b>(REPORT RECOMMENDATION)</b>	<b>Minute No. KRG/1121/014</b>
<b>Moved: D Menzel</b>	<b>Seconded: M Edwards</b>
<b><i>That the Kimberley Regional Group notes the progress of the project.</i></b>	
<b><i>CARRIED UNANIMOUSLY 4/0</i></b>	

**Attachments**

There are no attachments for this report.



<b>9.5 BUSINESS PLAN PROGRESS REPORT</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 The Strategic Community Plan and Business Plan for the period 2020-2024 was adopted in June 2021. This report provides an update on progress towards the achievement of the Business Plan which has a four year horizon.

**COMMENT**

The Strategic Community Plan and Business Plan for the period 2021-2025 was adopted in June 2021. The summary report attached provides an update on progress towards the achievement of the Business Plan.

Key matters addressed in the Business Plan include:

- Liaison with the Department and Minister’s office re announcement and implementation of the carriage limits in the Kimberley.
- Ongoing liaison with Ministerial offices in relation to advocacy matters and meetings.
- Updating the Infrastructure Prospectus in preparation for the Federal election and the State Budget submission.
- Submission on the guidelines for the Digital Connectivity Program North Australia grants and liaison with the Minister’s office.
- Developed proposed scope for the investigation into current skills gaps and future employment requirements.
- Project support for the Kerbside Waste Contract Review Committee.
- Initial discussions in relation to a pathway towards greater housing availability based on a paper prepared by the Shire of Halls Creek.

The attached report provides the linkages to the Strategic Community Plan and Business Plan for the period 2020-2024.

**VOTING REQUIREMENTS**

*Simple Majority*

**COMMITTEE RESOLUTION:**  
**(REPORT RECOMMENDATION)** **Minute No. KRG/1121/015**  
**Moved: G Haerewa** **Seconded: Cr C Mitchell**  
**That the Kimberley Regional Group notes the Business Plan Update.**

**CARRIED UNANIMOUSLY 4/0**

**Attachments**

1. Business Plan - 12 Month Report

**Item 9.5 - BUSINESS PLAN PROGRESS REPORT**

**ACTIVITY AGAINST THE BUSINESS PLAN**

NOTE: Only matters in the Business Plan responded to this period are reported.

**Our People**

Goal 1: A vibrant community based on equity, inclusion and opportunity for all.

OUTCOME	STRATEGY	ACTIONS
1.1 Substance abuse and associated harm is reduced.	1.1.2 Advocate for fit for purpose and consistent alcohol management systems in the Kimberley.	1.1.2.1 Meet with relevant Ministers to discuss next steps to reduce alcohol related harm.
		1.1.2.2 Meet with State Government officers to discuss next steps to reduce alcohol related harm.
ACTION: Liaison with the Department and Minister's office re announcement and implementation of the carriage limits in the Kimberley		
1.2 Kimberley regional health outcomes improve.	1.2.1 Advocate for key health equipment, such as dialysis machines, to be available throughout the Kimberley.	1.2.1.1 Correspond and meet with relevant Ministers to discuss timeframes in relation to budget items and election promises.
ACTION: Letter to the Member for the Kimberley, Divina D'anna in relation to attendance at the November KRG meeting to discuss budget items and election promises		
1.3 Crime is reduced both across the region and by location	1.3.2 Advocate for improved management of youth anti-social behaviour including funding for diversion programs.	1.3.2.1 Monitor funding allocated or committed to the provision of diversion programs across the Kimberley.
NOTE: The funding allocated in the State budget for the planning of a youth facility in the Kimberley is for a non-custodial "voluntary" facility where troubled youth can participate in positive programs.		
1.5 School attendance improves with a higher number of students graduating year 12.	1.5.1 Advocate for fit for purpose education facilities and pedagogy to improve school attendance and outcomes.	1.5.1.1 Develop and advocacy document to support the provision of fit-for-purpose education facilities and pedagogy.
	1.5.2 Advocate for enhanced post school employment pathways.	1.5.2.1 Develop an advocacy document (in conjunction with 1.5.1.1) to support the provision of enhanced post school employment pathways.

**Item 9.5 - BUSINESS PLAN PROGRESS REPORT**

1.5.1.1 In progress.			
1.6	Fit for purpose housing is available to meet individual and community needs.	1.6.1	Advocate for appropriate housing typology, location and volume to meet the changing needs of the community.
		1.6.1.1	Monitor housing availability and affordability.
		1.6.1.2	Advocate for improved housing affordability and availability when stock levels fall below market expectations.
ACTION: Initial discussions in relation to a pathway towards greater housing availability based on a paper prepared by the Shire of Halls Creek.			

Our Place

Goal 2.

Our region will become a leader in creating a sense of place and liveability whilst preserving history, culture and our unique environment.

OUTCOME	STRATEGY	ACTIONS
2.1 Our towns provide a variety of public spaces that welcome local residents and visitors with shaded spaces and safe access.	2.1.1 Advocate for funding to support master planning and urban renewal.	2.1.1.1 Ensure the Infrastructure Prospectus remains up to date. 2.1.1.2 Advocate to relevant Ministers in relation to the Infrastructure Prospectus.
2.3 We have liveability attractors including sufficient and fit for purpose recreation areas, aquatic facilities, libraries, sporting facilities and a variety of leisure experiences.	2.3.1 Advocate for funding for liveability attractors.	2.3.1.1 Ensure the Infrastructure Prospectus remains up to date.
ACTION: The Infrastructure Prospectus currently being updated in preparation for the Federal election and the State Budget submission.		
2.5 A reduced ecological footprint for the region (cont).	2.5.4 Advocate for affordable and reliable energy with a lower carbon footprint.	2.5.4.1 Develop an advocacy paper on energy with that will deliver affordable and reliable energy with a lower carbon footprint.
ACTION: The development of the Advocacy paper is in progress – waiting for additional information on solar currently available in the Kimberley.		

**Item 9.5 - BUSINESS PLAN PROGRESS REPORT**

Our Prosperity

Goal 3.

The potential of the Kimberley as a strong and diversified economy is realised with benefits retained in the region and the opportunity to participate available to all.

OUTCOME	STRATEGY	ACTIONS
3.1 The Kimberley region is prosperous with a diversified and sustainable economy.	3.1.1 Advocate for the infrastructure required to attract and retain business and projects in the region.	3.1.1.1 Monitor the Kimberley Infrastructure Prospectus and update annually.
		3.1.1.2 Advocate for agreed infrastructure to attract and retain business and projects in the Kimberley.
ACTION: The Infrastructure Prospectus currently being updated in preparation for the Federal election and the State Budget submission. A submission on the guidelines for the Digital Connectivity Program North Australia grants was completed including liaison with the Minister's office.		
3.2 Local businesses and jobs are enhanced through opportunity created through private and government investment.	3.2.2 Advocate for local jobs creation in all new projects to reduce reliance on a FIFO workforce.	3.2.2.1 Promote opportunities and benefits in the Kimberley for the use of a local workforce.
		3.2.2.2 Monitor and identify current and potential barriers to a local workforce and advocate mitigation of those issues.
ACTION: Developed proposed scope for the investigation into current skills gaps and future employment requirements.		
3.5 Our infrastructure is protected from known and potential threats.	3.5.1 Advocate for improved protection and recovery from natural and other disasters.	3.5.1.1 Advocate for appropriate processes and timeframes for state responses to disasters including funding for recovery projects.
	3.5.2 Advocate for improved Protection from global threats.	3.5.2.1 Monitor global threats and provide and intermittent report on any increased threat. 3.5.2.2 Advocate on the vulnerability of the north of the State to hostile actions towards key infrastructure.
ACTION: Respond to request for information/article from each Shire for the North West Defence Alliance website including preparation of an article for each Shire for their consideration.		

**Item 9.5 - BUSINESS PLAN PROGRESS REPORT**

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Our Performance

Goal 4

As a collective, we will support the delivery of excellence in governance and service delivery that is relevant and of value.

Outcomes		Strategy		Action	
4.1	Shire resources are maximised.	4.1.1	Facilitate shared tendering and contracting where regional benefit can be achieved.	4.1.1.1	Identify projects where shared tendering and contracting processes will be mutually beneficial.
ACTION: Ongoing support for the Kerbside tender contract review.					



<b>9.6 CONSULTANT REPORT</b>	
<b>LOCATION/ADDRESS:</b>	Nil
<b>APPLICANT:</b>	Nil
<b>FILE:</b>	KRG01
<b>AUTHOR:</b>	Zone Executive
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services
<b>DISCLOSURE OF INTEREST:</b>	Nil

**SUMMARY:**  
 This report provides an overview of the activity undertaken by the consultant to support the activities of the WALGA Kimberley Country Zone (Zone) and the Kimberley Regional Group (KRG).

**BACKGROUND**

Previous Considerations

Nil

**COMMENT**

After a very busy lead up to the WALGA regional meeting held in Broome, the conversion of the Canberra delegation to video conference meetings and the finalisation of the strategic review process, this period was largely taken with progressing existing works, such as the Kerbside waste contract, updating documents such as the Infrastructure Prospectus, ongoing liaison with Ministerial offices at State and Federal government level and the preparation of correspondence and the submission to the Digital Connectivity (Northern Australia) Program. The RFQ scope and documentation was progressed for the skills gap project and the list of projects for the balance of FY 2022 and forecast projects for 2023 were developed.

The attached report provides further detail.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

**Local Government Act 1995**

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

**Governance Goal – A collaborative group demonstrating strong regional governance:**

Effective governance protocols and systems for business efficiency and improved services through collaboration

Secure funding for regional initiatives

Effective engagement with Aboriginal governance structures

Recognition of Kimberley Local Government issues and opportunities

Alignment and integration of regional and local priorities for member Councils.

**Natural Environment Goal – Responsible management of the environment:**

Secure quality water supply

Integrated waste management

Reuse of waste water

Recognition of significant heritage areas.

**Built Environment Goal – Improved and secure transport, communications, community and essential services:**

Liveable towns supporting regional communities

Improved regional arterial road network, ports and airports

Adequate land supply

High standard of infrastructure planning

Reliable and adequate power and communications.

**Community Goal – A vibrant community based on equity, inclusion and opportunity for all:**

Innovative and joined up approach to housing development, ownership and design through community participation

Improved Kimberley regional outcomes in health

Improved Kimberley regional outcomes in education

Greater participation in the community and workforce

Better alcohol management across the Kimberley.

**Economy Goal – A sustainable and diverse economy:**

Generational advantage that captures the wealth for the region

- Improved outcomes in employment
- Sustainable tourism market and tourism experiences
- Sustainable primary industries
- Energy sustainability
- Sustainable Local Government revenue
- Improved regional infrastructure

**VOTING REQUIREMENTS**

*Simple Majority*

**KIMBERLEY REGIONAL GROUP RESOLUTION:**

**(REPORT RECOMMENDATION)**

**Minute No. KRG/1121/016**

**Moved: G Haerewa**

**Seconded: Cr C Mitchell**

***That the Kimberley Regional Group notes the Consultant Report provided by ATEA Consulting as attached.***

***CARRIED UNANIMOUSLY 4/0***

**Attachments**

There are no attachments for this report.

**10. CORRESPONDENCE**

**10.1 CORRESPONDENCE**

CORRESPONDENCE IN

DATE	FROM	SUBJECT
19 October 2020	The Hon Ben Morton MP, Minister Assisting the Prime Minister	National Plan to transition Australia’s COVID-19 Response.

CORRESPONDENCE OUT

DATE	FROM	SUBJECT
21 October 2021	Ms Davina D’Anna	Invitation to November Joint Zone/KRG meeting.

**Attachments**

1. Letter of Invitation - Member for Kimberley.
2. Letter on behalf of the Prime Minister

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**Item 10.1 - CORRESPONDENCE**

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21 October 2021

The Hon Divina D'Anna MLA  
Member for the Kimberley  
PO Box 1807  
Broome 6725

By email: Divina.DAnna@mp.wa.gov.au

Dear Ms D'Anna

**Invitation to address the Kimberley Regional Group Meeting 22 November 2021**

On behalf of member Shires, I would like to invite you to address the joint meeting of the Kimberley Regional Group and Kimberley Zone on the 22<sup>nd</sup> of November in Kununurra.

The Kimberley Regional Group (KRG) is an alliance of the four Shires of the Kimberley, being the Shire of Broome, the Shire of Derby West Kimberley, the Shire of Halls Creek and the Shire of Wyndham East Kimberley. Collaboratively the group seeks to support outcomes for the region through improved social, economic and cultural outcomes.

We look forward to working with you to realise the potential of this region for current and future generations and providing more detailed background information on our work to address the key issues facing our shared region. Of particular interest to the KRG is the status of matters that were identified during the election campaign for funding, as well as other funding provided in the State Budget. Your views on economic development, crime, youth services and health, including the vaccine rollout, will also be of interest to the group.

The meeting will be held from 1pm – 3pm and attended by two senior delegates from each of the four Shires as well as the Chief Executive Officers. Should you not be available either in person or by video link at that time, we are flexible on the day as all delegates will be in Kununurra. Alternatively we can organise a separate meeting via video link at a mutually convenient time. Please note, the nomination of delegates to the KRG following the Local Government elections is currently in progress and a list will be provided for your information.

In the interim, please find attached a copy of a recent publication on our priorities as we move forward in the COVID-19 recovery process. You will note that some of the projects have now received funding.

.../2

Kimberley Regional Group and Kimberley Zone  
PO Box 44, Broome 6725 | (08) 9191 3456 | 0439380266

*Item 10.1 - CORRESPONDENCE*

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Our office will be in touch shortly, alternatively please contact Debra Goostrey in our executive on 0439 380 266 to discuss the meeting.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S Mastrolembo'.

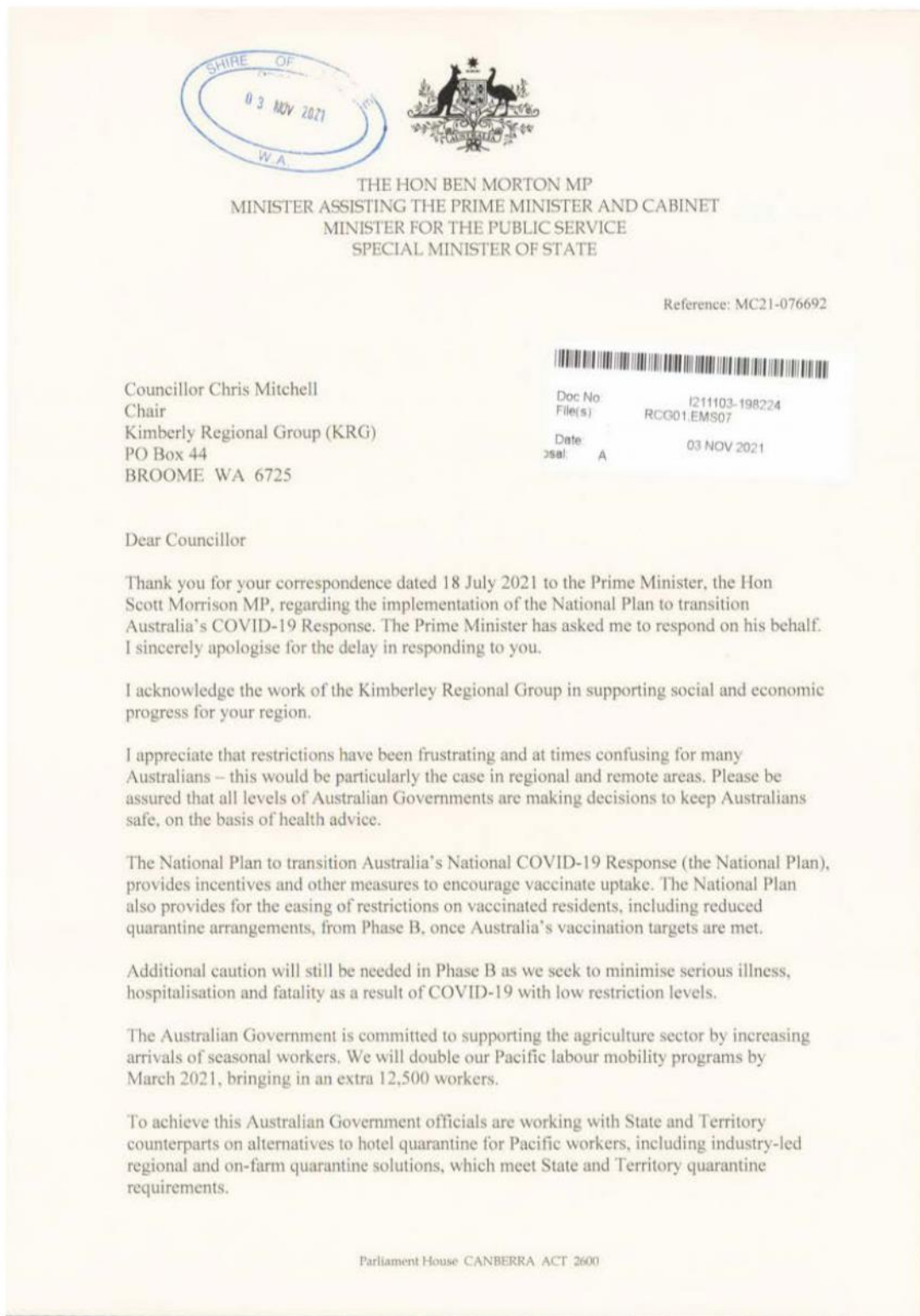
Sam Mastrolembo  
A/Chair  
Kimberley Regional Group



Kimberley Regional Group and Kimberley Zone  
PO Box 44, Broome 6725 | (08) 9191 3456 | 0439380266



**Item 10.1 - CORRESPONDENCE**



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**Item 10.1 - CORRESPONDENCE**

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The Australian Government has also announced the development of an agriculture visa to help address workforce shortages. Together, these initiatives will help the agriculture sector to have successful harvests this season and into the future.

Our National Plan gives us hope. When we achieve our 70 per cent and 80 per cent double dose vaccination targets, we can get on with our new normal.

With the support of our strong public health system and common sense public hygiene measures, we will be able to treat COVID-19 like other infectious diseases.

Thank you again for writing to the Prime Minister.

Yours sincerely



**BEN MORTON**

19/11/2021

**11. GENERAL BUSINESS**

**11.1 SECTION 64 KIMBERLEY**

East Kimberley Liquor Accord and Derby Liquor Accord have requested a letter supporting the Kimberley licences for an extension of the 5 week response timeline to the Section 64 consultation process.

**KIMBERLEY REGIONAL GROUP RESOLUTION:**      *Minute No. KRG/1121/017*  
**Moved:** *D Menzel*      **Seconded:** *G Haerewa*  
*That the Kimberley Regional Group prepare a letter to the Director Liquor Licensing, supporting the Kimberley licensees in their request for an extension to the Section 64 consultation process.*  
**CARRIED UNANIMOUSLY 4/0**

**11.2 DRFAWA**

Noel Mason advised of correspondence received from DFES regarding proposed changes to the process associated with DRFAWA approval.

**KIMBERLEY REGIONAL GROUP RESOLUTION:**      *Minute No. KRG/1121/018*  
**Moved:** *M Edwards*      **Seconded:** *Cr C Mitchell*  
*That the Kimberley Regional Group contacts WALGA providing an update on the current DRFAWA issues impacting local governments in the Kimberley and requesting feedback on the consistency of the DRFAWA approval processes in the Kimberley.*  
**CARRIED UNANIMOUSLY 4/0**

**12. MATTERS BEHIND CLOSED DOORS**

Nil

**13. MEETING CLOSURE**

*There being no further business the Chair declared the meeting closed at 4:03pm.*

**11.5 REVIEW OF AUDIT COMMITTEE MEETING SCHEDULE FOR 2022**

**File Number:** 4150  
**Author:** Sarah Smith, Executive Services Coordinator  
**Responsible Officer:** Amanda Dexter, Chief Executive Officer  
**Authority/Discretion:** Administrative

**SUMMARY**

This item is to confirm Council Meeting dates for 2022 and to modify the 2022 Audit Committee dates so as to allow added time for Audit Committee minutes to be considered by Council.

**DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

**BACKGROUND**

**Ordinary Council Meeting:**

At the Ordinary Meeting of Council held on 28 October 2021, Council determined its meeting dates up to and including the 8 December 2022, it was proposed to hold the Audit Committee Meeting on the last Thursday of the month.

Subsequent consideration has concluded that to best promote good governance and the proper oversight of the Audit Committee minutes being considered at the Ordinary Council Meetings, a greater amount of time between the two meetings is preferred.

**STATUTORY ENVIRONMENT**

*Local Government (Administration) Regulations 1996 – Regulation 12* outlines that at least once each year local public notice of the dates, times, and places at which ordinary council, and committee meetings that are required to be open to the public, are to be held in the next 12 months.

**POLICY IMPLICATIONS**

Council Policy C5 – Council Meetings – Date, Time and Venue.

**FINANCIAL IMPLICATIONS**

The cost of advertising is estimated at \$500 if newspaper advertising is incorporated in to the local advertising mix.

**STRATEGIC IMPLICATIONS**

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<p><b>Legal &amp; Compliance:</b> Failure to set and advertise meeting dates will contravene the requirements of the Local Government Act 1995.</p>	Unlikely	Moderate	Medium	That Council and Committee Meeting times and dates are approved and advertised (noting that dates and times may be subject to change).

**CONSULTATION**

Once dates are approved by Council, they will be advertised throughout the Shire in accordance with relevant legislation. There is no need for public consultation to occur in addition to the above.

**COMMENT**

It is recommended that Council continue holding its Audit Committee on the Thursday prior to the Ordinary Council Meeting of each month (excluding January when Council is in recess). In accordance with Council’s Policy – *C5 Council Meetings – Date, Time and Venue*, nine meetings are scheduled to be held in Derby and two in Fitzroy Crossing (March, August and November). Once adopted by Council, Officers will advertise this information to the public by way of public notices as per statutory regulations, and to upload to the Shire’s website.

With regard to the December 2022 meeting, it is proposed to hold it on the second Thursday, being 8 December 2022, as opposed to the last Thursday (vis. 29 December 2022) to ensure availability of Elected Members in the festive holiday period.

Meeting dates are not impacted by the Easter holiday period for 2022.

The Committee has a membership of six Councillors and the Terms of Reference for the Committee are attached to this item. The purpose of the Committee is to facilitate:

- Compliance with laws and regulations with reference to best practice guidelines relative to auditing, risk management, internal control and legislative compliance;
- The provision of an effective means of communication between the external auditor, the CEO and the Council;
- Integrated Planning review and adoption;
- Policy review and adoption; and
- Upon request of the Council, other matters with potential impact on finances, resources, strategic direction and policy of the Shire.

The Audit Committee meeting can be attended by all Elected Members.

Agenda Review, Briefing and Forum Meetings in 2022 remain as being held on the second Thursday of each month, so for example:

<b>Date</b>	<b>Time</b>	<b>Meeting</b>
Thursday, 10 February 2021	4:30pm	Agenda Review, Briefings and Forums / Workshops
Thursday, 17 February 2021	4:00pm	Audit Committee Meeting
Thursday, 24 February 2021	5:30pm	Ordinary Council Meeting

Below are the annual events that are appropriate to be taken into consideration when adopting Council Meeting dates for the 2022 calendar year. Most dates will not interfere with Council’s traditional meeting dates (i.e. last Thursday of each month).

- Joint Pilbara/Kimberley Forum: 2021 Forum was held 22-23 April 2021. Dates for 2022 still to be confirmed;
- Easter: Friday, 15 April 2022 – Monday, 18 April 2022;
- Anzac Day: Public Holiday Monday, 25 April 2022;
- Developing Northern Australia Conference: Mackay, QLD – 6-8 July 2022;
- Local Government Week, Perth (including Kimberley Zone meeting): 2022 dates not yet published, assume September; and

The following is a list of public holidays for Western Australia in 2022:

<b>Name of Public Holiday</b>	<b>2022 Date</b>
<b>New Year Public Holiday</b>	<b>Monday, 3 January</b>
<b>Australia Day</b>	<b>Wednesday, 26 January</b>
<b>Labour Day</b>	<b>Monday, 7 March</b>
<b>Good Friday</b>	<b>Friday, 15 April</b>
<b>Easter Monday</b>	<b>Monday, 18 April</b>
<b>Anzac Day</b>	<b>Monday, 25 April</b>
<b>Western Australia Day</b>	<b>Monday, 6 June</b>
<b>Queen's Birthday</b>	<b>Monday, 26 September</b>
<b>Christmas Day</b>	<b>Sunday, 25 December &amp; Monday, 26 December</b>
<b>Boxing Day</b>	<b>Monday, 26 December &amp; Tuesday, 27 December</b>

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Terms of Reference - Compliance and Strategic Review Committee** [!\[\]\(c580b67c7cd5c9e9e19f04ff6d5093e0\_img.jpg\)](#) [!\[\]\(81f7c93ea32d9f7160f5d63859611838\_img.jpg\)](#)
2. **Council Meeting Dates - 2022** [!\[\]\(ba314389b6ecfa02b6b9fcc7005e4045\_img.jpg\)](#) [!\[\]\(b97fa2bc0f8f47a470570a614b3c9117\_img.jpg\)](#)

**MOTION**

**Moved: Cr Andrew Twaddle**

**Seconded: Cr Paul White**

**That Council:**

- 1. APPROVE the following Audit Committee and confirm the Ordinary Meeting of Council (OCM) dates, times and venues for the 2022 calendar year:**

<b>DAY</b>	<b>MEETING</b>	<b>DATE</b>	<b>TIME</b>	<b>VENUE</b>
Thursday	Audit	17 February	4.00pm	Council Chambers, Derby
Thursday	OCM	24 February	5.30pm	Council Chambers, Derby
Thursday	Audit	24 March	4.00pm	Council Chambers, Derby
Thursday	OCM	31 March	5.30pm	Fitzroy Crossing
Thursday	Audit	21 April	4.00pm	Council Chambers, Derby
Thursday	OCM	28 April	5.30pm	Council Chambers, Derby
Thursday	Audit	19 May	4.00pm	Fitzroy Crossing
Thursday	OCM	26 May	5.30pm	Council Chambers, Derby
Thursday	Audit	23 June	4.00am	Council Chambers, Derby
Thursday	OCM	30 June	1.00pm	Remote Aboriginal Community (Location to be advised)
Thursday	Audit	21 July	4.00pm	Council Chambers, Derby
Thursday	OCM	28 July	5.30pm	Council Chambers, Derby
Thursday	Audit	18 August	4.00pm	Council Chambers, Derby
Thursday	OCM	25 August	5.30pm	Fitzroy Crossing
Thursday	Audit	22 September	4.00pm	Council Chambers, Derby
Thursday	OCM	29 September	5.30pm	Council Chambers, Derby
Thursday	Audit	20 October	4.00pm	Fitzroy Crossing
Thursday	OCM	27 October	5.30pm	Council Chambers, Derby
Thursday	Audit	17 November	4.00pm	Council Chambers, Derby
Thursday	OCM	24 November	5.30pm	Fitzroy Crossing
Thursday	Audit	8 December	4.00pm	Council Chambers, Derby
Thursday	OCM	8 December	5.30pm	Council Chambers, Derby

- 2. REQUEST that the Chief Executive Officer advertise the approved dates and include on the Shire of Derby/West Kimberley website.**



**AMENDMENT****RESOLUTION 164/21****Moved: Cr Andrew Twaddle****Seconded: Cr Peter McCumstie**

That the Audit Committee meetings in Fitzroy Crossing on Thursday, 19 May 2022 at 4:00pm and Thursday, 20 October 2022 at 4:00pm are moved to the Derby Council Chambers.

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**



## TERMS OF REFERENCE

### Compliance and Strategic Review Committee

#### INTRODUCTION

Historically the establishment of an Audit Committee was to provide an independent oversight of the financial position of the Shire of Derby West Kimberley in relation to the function of auditing and was generally confined to setting the scope of the audit and the process of selecting and appointing an auditor. Amendments to the Audit Regulations 1996 in February 2013 now require an Audit Committee to expand its focus to include corporate governance, specifically risk management, internal control and legislative compliance.

These Terms of Reference document the responsibilities of the Compliance and Strategic Review Committee and explain the roles of the Committee within Council.

#### OBJECTIVE

The Compliance and Strategic Review Committee plays a key role in assisting the Shire fulfil its corporate governance responsibilities in managing the affairs of the organisation. This includes financial reporting, risk management, compliance requirements and auditing.

The Committee will ensure compliance in the Shire's financial reporting and will liaise with the CEO to ensure the effective and efficient management of the Shire's financial accounting systems to meet statutory requirements.

The Committee is to facilitate:

- Compliance with laws and regulations with reference to best practice guidelines relative to auditing, risk management, internal control and legislative compliance;
- The provision of an effective means of communication between the external auditor, the CEO and the Council;
- Integrated Planning review and adoption;
- Policy review and adoption;
- Upon request of the Council, other matters with potential impact on finances, resources, strategic direction and policy of the Shire.

#### Derby

(08) 9191 0999  
sdwk@sdwk.wa.gov.au

30 Loch Street  
PO Box 94, Derby WA 6728

#### Fitzroy Crossing

(08) 9191 5355  
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ABN: 99 934 203 062

[www.sdwk.wa.gov.au](http://www.sdwk.wa.gov.au)



## POWERS OF THE COMPLIANCE AND STRATEGIC REVIEW COMMITTEE

To facilitate informed decision making by Council in relation to the legislative functions and duties that have not been delegated to the Chief Executive Officer. The committee is to report to Council and provide appropriate advice and recommendations on matters relevant to its Terms of Reference. The Committee is a formally appointed committee of Council responsible to Council and may exercise a monitoring and review role over financial and other reporting, internal control, integrated planning and legislative and ethical compliance.

The Committee does not have executive powers, authority to implement actions in areas over which the CEO has legislative responsibility-or management functions. The primary responsibility for financial and other reporting, compliance with laws, internal control, strategic planning, policy and ethics rests with management.

## MEMBERSHIP

The Committee will consist of at least four elected members. All members shall have full voting rights. The CEO and employees are not members of the Committee; however the CEO or his/her nominee is to attend all meetings to provide advice and guidance. Secretarial and administrative support is to be provided to the Committee.

## MEETINGS

The Committee shall meet at least bi-annually with additional meetings convened as required at the discretion of the presiding person.

## REPORTING

Reports and recommendations of each Committee meeting shall be presented to the next Ordinary Meeting of the Council.

## DUTIES AND RESPONSIBILITIES

In order to facilitate informed decision making by Council the Compliance and Strategic Review Committee is to report to Council and provide appropriate recommendations on matters relevant to these Terms of Reference.

- a) Provide guidance and assistance to Council in carrying out the functions in relation to audits;
- b) Recommend to Council an appropriate process for the selection and appointment of a person as auditor;
- c) Recommend to Council a list of matters to be audited and the scope of the audit to be undertaken;
- d) Recommend to Council the person or persons to be appointed as auditor;
- e) Recommend to Council a written agreement for the appointment of the auditor in accordance with Regulations;

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- f) Meet with the auditor once in each year and provide a report to Council on the matters and outcomes discussed;
- g) Liaise with the CEO to ensure that the Shire assists the auditor to promptly conduct the audit;
- h) After receiving a report from the CEO, examine the reports of the auditor and ensure that appropriate action is taken in respect of matters determined to require further action;
- i) Review the report prepared by the CEO on any actions taken in respect of any matters raised in the report of the auditor and presenting the report to Council for adoption prior to the end of the next financial year or 6 months after the last report prepared by the auditor is received, whichever is the latest in time;
- j) Consider the Chief Executive Officer's biennial reviews on the appropriateness and effectiveness of the Shire's systems and procedures in relation to risk management; internal control and legislative compliance and report to Council the results of those reviews;
- k) Recommend adoption of the Annual Financial Report to Council and review any significant changes that may arise;
- l) Respond to requests from Council for advice that are within the parameters of the Committee's Terms of Reference;
- m) Recommend to Council on the adoption of the statutory Annual Compliance Return;
- n) Recommend to Council on policy review and adoption;
- o) Recommend to Council on the Integrated Planning and Reporting Framework review and adoption.
- p) Any other compliance or governance direction from change of regulatory environment, as advised from Department of Local Government and Communities from time to time.

Adopted: 26 March 2015.  
**MINUTE NO. 26/2015**

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### Ordinary Council Meetings, Audit Committee Meeting and Agenda Review, Briefings and Forums / Workshops

DAY	MEETING	DATE	TIME	LOCATION
Thursday	Agenda Review, Briefings and Forums / Workshops	10 February	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	17 February	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – February	24 February	5:30pm	Derby Council Chambers
Thursday	Agenda Review, Briefings and Forums / Workshops	17 March	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	24 March	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – March	31 March	5:30pm	Fitzroy Crossing
Thursday	Agenda Review, Briefings and Forums / Workshops	14 April	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	21 April	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – April	28 April	5:30pm	Derby Council Chambers
Thursday	Agenda Review, Briefings and Forums / Workshops	12 May	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	19 May	4:00pm	Fitzroy Crossing
Thursday	Ordinary Council Meeting – May	26 May	5:30pm	Derby Council Chambers
Thursday	Agenda Review, Briefings and Forums / Workshops	16 June	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	23 June	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – June	30 June	5:30pm	Remote Aboriginal Community (Location to be advised)
Thursday	Agenda Review, Briefings and Forums / Workshops	14 July	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	21 July	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – July	28 July	5:30pm	Derby Council Chambers
Thursday	Agenda Review, Briefings and Forums / Workshops	11 August	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	18 August	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – August	25 August	5:30pm	Fitzroy Crossing
Thursday	Agenda Review, Briefings and Forums / Workshops	15 September	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	22 September	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – September	29 September	5:30pm	Derby Council Chambers
Thursday	Agenda Review, Briefings and Forums / Workshops	13 October	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	20 October	4:00pm	Fitzroy Crossing
Thursday	Ordinary Council Meeting – October	27 October	5:30pm	Derby Council Chambers
Thursday	Agenda Review, Briefings and Forums / Workshops	10 November	4:30pm	Derby Council Chambers
Thursday	Audit Committee Meeting	17 November	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – November	24 November	5:30pm	Fitzroy Crossing
Thursday	Audit Committee Meeting	8 December	4:00pm	Derby Council Chambers
Thursday	Ordinary Council Meeting – December	8 December	5:30pm	Derby Council Chambers

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**11.6 PROPOSED LEASE TO DERBY VISITOR CENTRE (INC)**

**File Number:** 0150

**Author:** Neil Hartley, Strategic Business Manager

**Responsible Officer:** Amanda Dexter, Chief Executive Officer

**Authority/Discretion:** Administrative

**SUMMARY**

The Shire has an existing lease with Derby Visitor Centre (Inc.). The 5+5 year lease concluded on 30 September 2021 and has been operating in “holding over” mode since then.

This report proposes that the Derby Visitor Centre (Inc.) be offered a 10 + 10 year replacement Lease.

**DISCLOSURE OF ANY INTEREST**

The Director – Strategic Business undertakes occasional contract work for Civic Legal. Civic Legal prepares/provides advice in regard to lease documentation for the Shire’s leases.

**BACKGROUND**

The Derby Visitor Centre (Inc.) has an existing lease for its site in Loch Street (see attached).

The Shire has “standard” (or template) community lease agreement but due to the retail nature of the leased area, it is proposed that a more commercial type lease will need to apply in this instance.

The land on which the leased building sits is outlined below:

Club	Land Description
Derby Visitor Centre (Inc.)	Reserve 6929 being land more particularly described as Lot 500 on Deposited Plan 70767, and being the whole of the land comprised in Crown Land Certificate of Title Volume LR3159 Folio 977.

**STATUTORY ENVIRONMENT**

**Section 3.58 (Disposing of property) of the Local Government Act** deals with how a local government can lease property. This generally requires a public auction or a public tender, or a local public notice inviting public submissions if a private bid is being considered.

**Regulation 30 (Dispositions of property excluded from Act s. 3.58) of the Local Government (Functions and General) Regulations** provides for exemptions (if the local government wishes to take that option) and one of those exemptions is where the land is disposed of to a body, whether incorporated or not —

- (i) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and



- (ii) the members of which are not entitled or permitted to receive any pecuniary profit from the body’s transactions.

As the proposal is to offer the property to the Derby Visitor Centre (Inc.), then the exemption of regulation 30 can be applied.

**POLICY IMPLICATIONS**

Policy (ES5) Community Leases and Licence Agreements and (ES2) Establishment of Commercial Leases are both relevant.

Whilst the Shire has a policy specifically relevant to Commercial Leases, the terms and Lessee responsibilities/payment structure are suggested should more closely align to a Community type lease.

**FINANCIAL IMPLICATIONS**

The lessees will essentially take on the sites “as is where is” with costs being met by the lessees to be consistent with Council Policy. There is a substantial purpose built building made available to Derby Visitor Centre (Inc.).

The Shire will continue to maintain the entrance road and car-parking area (which sits outside of the leased area).

The Schedule of Lessee Costs Responsibilities would be represented as outlined below:

<b>Cost Area and Details</b>	<b>Percentage of Community Group Responsibility</b>
Maintain the buildings	100%
Maintain garden and surrounds (which are outside of the leased area)	0%
Lease Fee (currently \$100)	100%
State Government Land Tax	100%
State Government DFES Levy	100%
Water Corporation – Annual Water/Sewerage Rates Charge and Water Consumption Charges (or appropriate similar charge if Shire supplied service)	100%
Gas Charges (Annual Charge and Consumption)	100%
Electricity (Annual/Fixed Charges and Consumption)	100%
Telephones/Internet (Annual/Fixed Charges and Consumption)	100%
Cost of installation of any meter, wiring or other device necessitated by the use of a utility and service	100%
Cost of annual pest control inspections, servicing of fire extinguishers, exit lights, security lights, fire hydrants, air conditioners (not owned by the Lessee) and recertification of any fall arrest systems in place	100%



Insurance – see clause 12 (includes buildings and structures not owned by the Shire).	100%
Shire of Derby/West Kimberley’s Annual Local Government Rates	0%
Shire of Derby/West Kimberley’s Annual 210lt bin Charge (if service requested by Lessee)	100%
Cost of annual licences (e.g. food surveillance fee)	100%
Special Conditions: (1) Lessee to meet the legal costs of the lease’s preparation; and (2) Lessee to provide a visitor centre service for the term of the lease.	100%

The existing Derby Visitor Centre (Inc.) lease requires it to meet 50% of the building insurance premium. Community Lessees with sole occupancy of a leased area are now required to meet all building insurance premium costs. It is suggested that insurance be fully charged out, and that if the Visitor Centre finds itself unable to meet that cost, then the Shire consider offering a community grant to assist it to meet that expense. This would then better display within the Shire’s financial records, the financial support the Council offers through its budget for tourism/visitor centres.

**STRATEGIC IMPLICATIONS**

STRATEGIC AREA	OUR PRIORITIES	WE WILL
1. LEADERSHIP AND GOVERNANCE	1.2 Capable, inclusive and effective organisation.	1.2.2 Provide strong governance.
2. COMMUNITY	2.2 Healthy communities.  2.3 Vibrant and culturally rich communities.	2.2.2 Facilitate a range of accessible sporting and recreational activities  2.3.2 Facilitate and/ or contribute to community events, cultural activities and festivals.

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Reputation:</b> Potential for reputational damage if the lease is not re-issued for tourism purposes.	Unlikely	Moderate	Medium	Re-lease the building to the Derby Visitor Centre (Inc.).
<b>Financial:</b>	Possible	Moderate	Medium	Manage the lease to maintain understanding

Lessee might not meet costs as per lease.				of group and its viability.
---	--	--	--	-----------------------------

**CONSULTATION**

There is not considered to be a realistic alternative use, or Lessee, for the sites and so no community consultation is suggested as being required on this occasion.

There has been direct consultation with the current site occupiers, Derby Visitor Centre (Inc.).

**COMMENT**

Whilst the “Special Conditions” components of the community lease are being used as a basis for clarifying which costs will be applied to the Derby Visitor Centre (Inc.) lease, the lease will be prepared by the Shire’s legal advisors in the form of a commercial type lease.

Club	Special Conditions	
Derby Visitor Centre (Inc.)	Special Conditions: (1) Lessee to meet the legal costs of the lease’s preparation; and (2) Lessee to provide a visitor centre service for the term of the lease.	100%

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. Lease (in holding over)  

<p><b>RESOLUTION 165/21</b></p> <p><b>Moved: Cr Peter McCumstie</b>  <b>Seconded: Cr Paul White</b></p> <p><b>That Council lease part of Reserve #’s 6929, 30 Loch Street, Derby to Derby Visitor Centre (Inc.) on the following significant conditions:</b></p> <ul style="list-style-type: none"> <li>a. lease area to be consistent with the description outlined in Annexure #1 of the attachment as “Sketch of Premises”);</li> <li>b. a commercial type Lease to be utilised, but the annual lease fee be consistent with a Community Lease fee (currently \$100pa);</li> <li>c. the lease period to be 10 + 10 years (with renewals at the Shire’s sole discretion);</li> <li>d. the Schedule of Lessee Costs Responsibilities as outlined in the Financial Implications section of this report to be incorporated into the lease; and</li> <li>e. the Special Conditions as outlined in the Comments section of this report to be also incorporated into the lease.</li> </ul> <p><b>In Favour:</b> Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith</p>
---

Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**



Our Ref  
Your Ref

LMC:LC:DERB-30728

26 September 2012

Ms D Fitzpatrick  
Administration Officer  
Shire of Derby-West Kimberley  
PO Box 94  
DERBY WA 6728

By email: [dena.fitzpatrick@sdwk.wa.gov.au](mailto:dena.fitzpatrick@sdwk.wa.gov.au)



3 OCT 2012

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Peter Gillett  
Elizabeth Stevenson (Special Counsel)  
Trud Firth (Associate)  
Tim Backett (Associate)

CS/304  
AO  
133983

Dear Ms Fitzpatrick

**Lease – Shire of Derby-West Kimberley and Derby Visitors Centre Inc.  
Reserve 6929, Lot 500 Clarendon Street, Derby**

We refer to your email of 25 September 2012.

As requested, please find enclosed a copy of the final Lease between the Shire and the Derby Visitors Centre Inc.

We also enclose a copy of a self-explanatory letter we have sent to the Department of Regional Development and Lands for the Shire's records.

We confirm that we will contact you as soon as we receive the Minister for Lands in-principle consent.

Should you have any queries in respect to the above, please do not hesitate to contact Leah Christie of this office.

Yours faithfully,

Contact: Leah Christie  
Email: [lechristie@mcleods.com.au](mailto:lechristie@mcleods.com.au)  
Partner responsible: Fiona Grgich

Encl: Lease  
Letter

(20728-1209-274.MC-Derby.doc)

MIDLAND OFFICE: 35 SPRING PARK ROAD, MIDLAND  
ALL CORRESPONDENCE TO CLAREMONT OFFICE



Our Ref  
Your Ref

LMC:LC:DERB-30728

27 September 2012

The Manager  
State Land Services  
Department of Regional Development and Lands  
PO Box 1143  
WEST PERTH WA 6872

Dear Sir/Madam

**Lease – Shire of Derby-West Kimberley and Derby Visitors Centre Inc.  
Reserve 6929, Lot 500 Clarendon Street, Derby**

We are the solicitors for the Shire of Derby-West Kimberley (Shire).

The Shire has, subject to the Minister's approval, agreed to lease a portion of Reserve 6929 to the Derby Visitors Centre Inc.

Pursuant to section 18 of the *Land Administration Act 1997*, the Shire seeks the Minister for Lands in-principle approval to the **enclosed draft Lease**.

If you have any queries in respect of the above or require any further information, please do not hesitate to contact Leah Christie of this office.

Yours faithfully

Contact: Leah Christie  
Email: [lchristie@mcleods.com.au](mailto:lchristie@mcleods.com.au)  
Partner responsible: Fiona Grgich

Encl: Draft Lease

COPY



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MIDLAND OFFICE: 35 SPRING PARK ROAD, MIDLAND  
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**DRAFT**

**Lease – Portion of Reserve  
6929, 30 Loch Street, Derby**

---

Shire of Derby/West Kimberley

Derby Visitor Centre Inc.



**McLEODS**

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# Tenant Guide

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FORM6

*Commercial Tenancy (Retail Shops) Agreements Act 1985*

[section 6A]

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## TENANT GUIDE

FOR NEW RETAIL SHOP LEASES FROM 1 JULY 1999

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### TO THE NEW TENANT ("LESSEE")

Entering into a lease of retail shop premises for your business means you are entering into a contract that creates binding legal obligations between yourself and the Landlord ("Lessor").

Before you enter into a lease, you should fully understand your obligations, liabilities and rights under the lease.

The *Commercial Tenancy (Retail Shops) Agreements Act 1985* (and its amendments) contains provisions regulating retail shop leases, many of which will over-ride any contrary provision in a lease.

A lease provision that is contrary to the provisions of the Act has no effect ("void").
---

To make sure you understand your obligations, liabilities and rights before entering into the lease you should:

- carefully read this *Tenant Guide*,
- carefully read any *Disclosure Statement* provided by the landlord or the landlord's agent;
- carefully read any written lease document;
- obtain independent advice.

This Tenant Guide is merely a guide intended to help you to understand some of your legal obligations under a retail shop lease and, in particular, to understand your rights under the Act. You should not rely on this Guide as a substitute for reading the documents and obtaining independent advice before signing any Offer to Lease, Agreement to Lease, or any other related documents.

### ADVICE BEFORE ENTERING THE LEASE

The Act provides that your retail lease will "commence" either:

When you take possession of the keys to the shop premises; or  
When you commence paying rent; or

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When both parties sign the lease.

You should get independent advice before doing any of those things.

Experts in the fields of legal, financial, business, taxation and property matters will be able to help you make the decision to enter into a lease or an agreement to lease and the terms of the contract that should be negotiated.

For legal advice, you should consult a solicitor with experience in commercial property and preferably in retail shop leasing matters.

Industry advice is also available from experts in accounting and valuation as well as retail representative groups and tenant advocates. The Western Australia Government's Small Business Development Corporation (SBDC) is also a source of guidance to prospective tenants.

You should understand the terms of the lease before signing it.

All elements in a lease agreement eg. rent, term, options, outgoings and related costs such as documenting the lease need to be understood by you. These matters are open to negotiation with the Lessor but the basis of your agreement is subject to the provisions of the Act

#### **DISCLOSURE STATEMENT (S.6)**

The Lessor must provide you with a "*Disclosure Statement*" before you enter a new retail shop lease.

You can terminate the lease at any time up to 60 days after the lease was "entered into" –

- if the *Disclosure Statement* is not given to you at least seven days before the lease is "entered into"; or
- if the *Disclosure Statement* contains false or misleading information.

You can go to the State Administrative Tribunal and get an order for compensation for any pecuniary loss suffered as a result of :

- not being given a *Disclosure Statement*, or
- false or misleading information contained in a *Disclosure Statement*.

The *Disclosure Statement* is to be in a prescribed form (Regulation 4 Form 1) and is to contain all oral and written agreements and representations made by the Lessor or through his/her agent(s) in negotiations together with relevant information including but not limited to:

- details of the Lessor's property such as the total lettable area, tenancy mix and lettings, support services and management practices;
- details of the shop premises location, area and services together with the terms and conditions of the commercial tenancy such as asking rent, period of lease plus any options to extend the agreement and rent review periods and basis for the review;

- contributions to the landlord's expenses (operating expenses); the Lessor's interest in the shopping centre or building; and – any additional charges payable by the Lessee such as shop fitout or contributions to marketing and sinking funds.

In turn, the Lessor may ask for details of your retailing experience and of your financial capacity to establish and trade profitably and professionally. This may involve you presenting a satisfactory business plan to the Lessor.

If you require any special fitout or services for your tenancy, you will certainly need to formally disclose these to the Lessor along with any other evidence to support your case.

The Lessor doesn't have to lease the shop premises if it appears that a business will not add value to the property investment. Your disclosure, like the Lessor's, must be correct and contain no misleading information. Otherwise, the Lessor could institute legal proceedings against you outside the provisions of the Act.

**You should understand the "Disclosure Statement" before signing it.**

In signing the *Disclosure Statement* you are acknowledging you understand the basis for the retail lease with the Lessor. It is vital that you satisfy yourself, through prior enquiry, particularly taking appropriate legal and expert advice on all relevant information regarding the retail shop and (where applicable) the shopping centre building and property.

#### **TENANT GUIDE (S.6A)**

A new retail shop lease must include this "*Tenant Guide*" at the front of the lease.

You can terminate the lease at any time up to 60 days after the lease was "entered into" if there was no "*Tenant Guide*" provided with the lease.

You can go to the State Administrative Tribunal and get an order for compensation for any pecuniary loss suffered as a result of not being given a "*Tenant Guide*".

#### **PREMISES COVERED BY THE ACT (S.3)**

##### **Generally**

- The Act covers a retail shop where the premises are being used wholly or predominantly for a business involving the sale of goods by retail. However other premises trading in a retail shopping centre (where there are 5 or more retail shops) are also covered by the Act.
- The Act and its requirements only apply to retail shop leases when the shops have a retail floor area that does not exceed 1,000m<sup>2</sup>.

**A prospective retail tenant should establish the area under the lease and have this surveyed (if none is available) as early as possible in the agreement – especially in preparation for a net rent lease.**

**Specifically**

Certain types of specified business are also covered including drycleaning, hairdressing, beauty therapy, shoe repair and video stores and some petrol station agreements.

**If you are not sure whether your business is covered by the Act, get advice.**

**TERM OF THE RETAIL SHOP LEASE (S.13)****Minimum of 5 years**

If you are entering a new retail shop lease for the first time, the Act provides you with a right to a minimum of a 5 year lease to help you establish and develop your business. This can be a combination of term and options to extend your lease to the 5 year period (Regulation 6 Form 3).

**Can be longer ... or shorter**

The tenure you negotiate can be greater than five years. Under some circumstances, you can also agree with the Lessor to a term shorter than five years but this must be *your* decision. (The approval of the State Administrative Tribunal should be sought in these circumstances). It would be prudent to take expert advice on the implications for your business if you do not take up the Act's 5 years' tenancy right.

**Fixed period**

A lease is for a fixed period.

**At the end of the lease**

At the end of the current term and your use of any options, the Lessor does not have to renew the agreement and the Lessee has no further rights to occupy the premises. All outstanding obligations under the lease should have been satisfied at this time. After the expiry of the lease agreement your continued occupancy of the premises will be at the Lessor's sole discretion. This interim period may be on a month to month basis.

**Options in the lease**

It is in your commercial interests to ensure that any options you hold to extend your occupancy are recorded by you allowing a sufficient lead time to exercise the option by the date set out in the terms of the lease. That option will lapse unless you inform the Lessor that you wish to renew your lease (exercising your option) in the manner and timeframe as set out in the lease document.

**STRUCTURING YOUR LEASE****Assume you won't be able to renew**

You should not rely on a new lease being entered into at the end of the lease period.

Therefore you should:

- Base your cashflows on the assumption that the lease will probably not be renewed.

- Adopt a prudent business practice, which amortizes the costs of your business, and the cost of the goodwill, if you purchased the business, over the period of the lease.
- Recognise the worth or value of the goodwill of your retail business is directly related to the tenure you hold. The balance of the current lease term and any options are prime factors that the market will assess in determining the goodwill attached to your business.
- Decide on the level of profit that you expect to achieve over the period of the lease.

#### **Does the lease include redevelopment or relocation clauses?**

Commercial and retail property investments need to be constantly promoted. This can involve redevelopment of premises with works by the Lessor that can significantly impact on your retail business. To safeguard your interests you will need to carefully consider any redevelopment or relocation clause in the proposed lease. If you agree to such a clause you should negotiate to ensure that your retail business will not be in any worse situation as a result of the Lessor's capital works initiatives. This clause could provide you with a commitment from the Lessor for a new shop in the redevelopment. This could also provide for a new location and rental levels comparable with your current position.

Compensation issues also need to be specified in cases where your trade will be affected due to a less favourable shop location or higher rental structure or no new shop can be provided for your business.

#### **Can the Act help?**

The Act empowers the Registrar of the State Administrative Tribunal to consider special circumstances in approving redevelopment and relocation applications by the Lessor. The interests of both Lessee and Lessor are considered in these cases but may not meet all your requirements that you have negotiated earlier in establishing the lease terms and conditions.

#### **RENT REVIEW (S.11)**

##### **Only use one method of review at a time**

If you have agreed to a review of your shop rental, then at each review time a single basis of rent review is to apply. For example, this single basis to be specified in the **Disclosure Statement** (Regulation 4 Form 1) can include, but is not limited to:

- Market Rent.
- Consumer Price Index (CPI).
- Percentage increase.
- An agreed formula or combination, eg. CPI + 10%.

The lease, however, cannot give the Lessor the right to choose the greatest return from a range of rent types at any one review.

##### **Can use a different method next time**

The types of review may vary over the life of the lease, for example Year 1 CPI, Year 2 Market rent, Year 3 a fixed increase then a higher rate if turnover exceeds an agreed level, Year 4 Market rent, year 5 CPI + a percentage increase.

**No “ratchet” clauses**

In a rent review your rent can not be held above the current market level (via a ratchet clause) such that the rent can never fall or go below a fixed level. The lease must allow your rent to rise or fall to a level supported by market evidence.

**The role of the Act and the State Administrative Tribunal**

In a market rent review, the Act provides that both parties can:

- (i) initiate the market rent review process;
- (ii) appoint a single licensed valuer to determine the new rental; or
- (iii) each appoint a valuer to represent their interests.

In the case of disagreement the new rent may be referred to the State Administrative Tribunal for determination.

Until both parties agree to the new rent level or the Tribunal determines the new rent, the current rent will continue to apply. Once the higher or lower rent is agreed, adjustments will be backdated to the review date. The rate of repayment between the parties can be varied at the Tribunal's discretion if the Tribunal has determined the rent.

**RENT BASED ON TURNOVER (S.7 AND S.8)****Steps needed to base the rent on turnover**

The Act provides that if you have agreed to a rent based on the turnover of your business then that agreement must be based on an agreed formula and must be formalised in writing on a prescribed form (Regulation 5 Form 2).

The Act also recognises the confidentiality of such figures to a retail business and limits the release and use of this information strictly in accordance with your agreement with the Lessor.

**CONTRIBUTION TO LANDLORD EXPENSES (S.12)****Only “operating” expenses not “capital” expenses**

The landlord's expenses are described in the Act as operating expenses. Leases can also refer to them as “outgoings or variable outgoings”. They are costs in operating, repairing or maintaining the Lessor's premises including any building common areas. Typically these costs are the rates and taxes, cleaning, air conditioning, security, insurances and other valid expenses of running the property. No capital expenditures (eg. asset replacement) are recoverable operating expenses.

Operating expenses and their payment are to be set out in the *Disclosure Statement* (Regulation 4 Form 1) and the budget attached to the lease provided by the Lessor.

**You can not be asked to pay management fees** – these are costs to the Lessor that are not recoverable from retail tenants.

**Contributions are negotiable, but not to exceed your “relevant proportion”**

Your contributions to landlord expenses are negotiable. Whilst you may agree to a different form of contribution, the Act provides that the upper limit of the operating expenses that you can be reasonably asked to contribute to is your relevant proportion.

---

This share at the start of the accounting year is represented by the area of your shop's retail floor area in relation to the total lettable area of the shopping centre or cluster of shops.

ie: 
$$\frac{\text{retail floor area in shop}}{\text{total lettable area}} = \text{relevant proportion}$$

The State Administrative Tribunal can decide on any disagreements in these matters and in certain circumstances can vary the relevant proportion during the year.

Other expenses directly attributable to your business (called "referable" expenses) for example, specialised cleaning incurred by only a few tenants, are subject to the relevant proportion limit of the shops incurring those costs.

**NOTE** : Rental agreements are generally –

on a "net" basis (rent plus a contribution to operating expenses); or

on a "gross" basis (an all inclusive payment for all your shop occupancy costs); or

another similar version.

**You should seek expert advice as to the basis that best suits your business operations.**

#### **Audit and accounting standards – Lessor's obligations**

The Lessor is obliged to comply with audit and accounting standards and timetables for preparing budgets, providing end of financial year expenditure statements and distributing audit costs particularly on net rental agreements.

#### **Lessor to provide estimates and statements**

In "net" lease arrangements, the Act provides that you will not have to pay a contribution to the Lessor's operating expenses until one month after the Lessor provides you with an annual estimate of expenditure for each operating expense.

The Lessor is also required to supply you with an audited operating expenses statement within 3 months after the previous accounting period has ended. If this is not done you do not have to contribute to the Lessor's operating expenses until you have received the audited statement.

#### **SINKING FUNDS (S.12A)**

#### **Act protects your contributions**

If your retail shop is in a shopping centre and you have agreed to contribute to a fund for major repair and maintenance works, your contributions are protected under the Act. These moneys are subject to accounting and audit provisions with no funds being able to be expended on capital works. These are the rightful responsibility of the Lessor and would include the construction of new extensions and the replacement of major plant and equipment.



**OTHER FUNDS AND RESERVES (S.12B)****Other contributions are also protected**

The Act also extends protection to any other fund and reserves that you agree to contribute to for specific or marketing or promotion purposes. Again the Lessor is required to properly account for the collection, administration, expenditure and auditing of these funds.

**HOURS OF OPERATING (S.12C)****Your opening hours are flexible**

A provision in a retail shop lease which requires you to open your premises at specified hours or times is invalid (void) under the Act.

As you have the discretion to open (or close) your business at times of your choice the Lessor can not refuse to renew your lease because of your actions. If in the future you believe this to be the reason that your lease was not renewed you may apply in writing to the State Administrative Tribunal for compensation.

**STANDARD TRADING HOURS AND THE COSTS OF OPERATION**

Your retail business will be responsible for a share (limited to the "relevant proportion") of agreed operating expenses arising from trading within standard trading house.

**NOTE** : "Standard Trading Hours" are prescribed as -

- (a) 8.00am to 6.00pm Monday, Tuesday, Wednesday and Friday;
- (b) 8.00am to 9.00pm Thursday; and
- (c) 8.00am to 5.00pm Saturday.

(see Regulation 5A).

If your retail shop is enclosed in a shopping centre then for practical reasons the opening and closing times (core hours) for the centre may be less than the standard trading hours. These matters will need to be clarified in disclosure by the Lessor.

If you do not open outside standard trading hours, you can not be required to make a contribution to the expenses related to the extended hours.

If you open outside the standard trading hours, you will be charged a contribution to the expenses related to the extended hours. These are referable expenses and are limited to the relevant proportion of those shops which open during the extended hours.

**ASSIGNMENT AND SUB-LEASING (S.10)****Your responsibilities if you sell or sub-lease your business**

If you choose to sell your business during the term of your lease, you (as the Assignor) and any guarantor to your lease can not be held liable for the performance of the ingoing tenant

(the Assignee) or for any moneys including any rent owed by the ingoing tenant from the assignment date.

The Lessor can not withhold consent to an assignment, except on reasonable grounds. The Lessor may however recoup reasonable expenses in investigating the proposed assignee for your lease.

You are entitled to assume the Lessor's approval to the assignment if you have not received a reply within 28 days after seeking that approval in writing.

If you choose to sub-lease part of your premises you will be required to seek the Lessor's approval and also provide a **tenant Guide** and **Disclosure Statement** to your Lessee. The sub-lease will not exclude you from you existing liabilities to the Lessor.

**VOID CLAUSES (S.15)**

Lease provisions and other oral and written agreements cannot include clauses that are contrary to any provision in the Act.

In addition, the lease or other side agreements or oral agreements can not –

- require you to pay key money (s.9), which is any moneys or other benefits in addition to rent paid to the Lessor or others for the right to lease retail shop premises;
- require you to disclose your turnover figures to the Lessor unless you agree on turnover as a basis for your rent assessment (s.7) and have completed Regulations 5 Form 2;
- prevent you from choosing to disclose the rent you have agreed to third parties (s.11) such as other retail tenants or their Valuers; or
- require you to contribute to any fund that applies those moneys to capital expenditure (s.12) such as new building works in shopping centres.

Some clauses may appear to create or limit aspects of the lease in an unfair or "unfriendly" way. If you are uncomfortable with the effect of any clauses in the lease, seek expert advice.

**COMPENSATION BY LANDLORD (S.14)**

The Act provides that, for shopping centre properties, the Lessor can not adversely affect your retail business trading in a retail shopping centre through action or inaction in:

- inhibiting your access and that of customers to your shop premises;
- disrupting trading conditions causing loss of profits to your business; or
- not properly repairing, maintaining or cleaning the shopping centre premises or common areas.

You should keep in mind the type and quality of services provided by the Lessor in relation to your contributions and those of all tenants in the centre. A Merchants Association can assist in co-ordinating the interests of all retail tenants to ensure the quality of management, cleaning and other property services support your retail business.

Only after your written request and a reasonable time has been given to the Lessor to correct the problems should you take your grievance to the State Administrative Tribunal. To support a claim, you need to demonstrate to the Tribunal that your business sales, gross profits, expenses and net profits have been adversely affected by the Lessor.

#### **DISPUTES BETWEEN THE LESSEE (TENANT) AND LESSOR (LANDLORD)**

##### **The Act may be able to help ....**

If you cannot resolve a dispute over any aspect of your retail shop lease with the Lessor or through the Lessor's property agents, the Act authorises the State Administrative Tribunal to deal with these disputes as "a question arising". Either the lessee or the lessor may initiate this action with the Tribunal by making an application to the Tribunal and paying the appropriate fee. A matter or question may be dealt with through a compulsory conference or mediation process under the *State Administrative Tribunal Act 2004*.

Advice in such matters can be obtained from solicitors with property experience, the SBDC, industry sources, tenant advocates and retail representative groups.

##### **To avoid disputes, get everything in writing**

To reduce the possibility of a dispute, before entering a lease you should obtain confirmation in writing of any oral representations made during the negotiations. These representations should be included in the *Disclosure Statement* and might include:

- customer traffic numbers;
- exclusive rights to sell product lines;
- other tenancies as competitors;
- the existence and continuance of major tenants in the centre; and
- marketing support by the Lessor and related costs.

# Table of Contents

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<b>Copyright notice</b>	<b>i</b>
<b>Tenant Guide</b>	<b>ii</b>
<b>Details</b>	<b>1</b>
<b>Agreed terms</b>	<b>1</b>
1. <b>Grant of Lease</b>	<b>1</b>
2. <b>Defined terms and interpretation</b>	<b>1</b>
2.1 Defined terms	1
2.2 Interpretation	3
2.3 Headings	4
2.4 Schedules etc	4
<b>Lessee's rights and obligations</b>	<b>5</b>
3. <b>Quiet enjoyment</b>	<b>5</b>
4. <b>Rent and other payments</b>	<b>5</b>
4.1 Rent	5
4.2 Outgoings	5
4.3 Interest	5
4.4 Costs	6
5. <b>Rent review</b>	<b>6</b>
6. <b>Accrual of amounts payable</b>	<b>6</b>
7. <b>Payment of money</b>	<b>6</b>
8. <b>Insurance</b>	<b>6</b>
8.1 Insurance required	6
8.2 Details and Receipts	7
8.3 Not to invalidate	7
8.4 Reports	7
8.5 Settlement of claim	7
8.6 Lessor as attorney	8
8.7 Lessee may be required to pay excess on insurances	8
8.8 Lessee's equipment and possessions	8
9. <b>Indemnity</b>	<b>8</b>
9.1 Lessee responsibilities	8
9.2 Indemnity	8
9.3 Obligations Continuing	9
9.4 No indemnity for Lessor's negligence	9
9.5 Release	9
10. <b>Use</b>	<b>10</b>
10.1 Restrictions on use	10
10.2 No warranty	11
10.3 Premises subject to restriction	11
10.4 Indemnity for costs	11
11. <b>Casual hire of Premises</b>	<b>11</b>

<b>12. Keys and access</b>	<b>12</b>
12.1 No additional copies without approval	12
12.2 Notify the Lessor of lost keys	12
12.3 No change of locks without approval	12
12.4 Cost of re-entry	12
<b>13. Maintenance, repair and cleaning</b>	<b>12</b>
13.1 Generally	12
13.2 Report major maintenance requirements	13
13.3 Cleaning	13
13.4 Repair Damage	13
13.5 Maintain surroundings	13
13.6 Pest control	13
13.7 Responsibility for securing the Premises	13
13.8 Comply with all reasonable conditions	14
13.9 Acknowledgement of state of repair of Premises	14
<b>14. Alterations</b>	<b>14</b>
14.1 Restriction	14
14.2 Consent	14
14.3 Cost of Works	14
14.4 Conditions	14
<b>15. Report to Lessor</b>	<b>15</b>
<b>16. Provision of information</b>	<b>15</b>
<b>17. No assignment, subletting and charging</b>	<b>15</b>
17.1 No assignment or sub-letting without consent	15
17.2 Lessor's Consent to Assignment and Sub-letting	15
17.3 Where sublessee is a community group	16
17.4 Consents of Assignee Supplementary	16
17.5 Property Law Act 1969	16
17.6 Costs for assignment and sub-letting	16
17.7 No mortgage or charge	16
17.8 Property Law Act 1969	16
17.9 No mortgage or charge	17
<b>18. No caveat or other interest</b>	<b>17</b>
18.1 No caveat or other interest	17
18.2 Removal of interest	17
18.3 Costs of removal, Indemnity and Ratification	17
<b>19. Statutory obligations and notices</b>	<b>17</b>
19.1 Comply with Statutes	17
19.2 Indemnity if fails to comply	18
<b>20. Obligations on expiry or termination of lease</b>	<b>18</b>
20.1 Restore Premises	18
20.2 Remove Lessee's property prior to termination	18
20.3 Lessor can remove Lessee's property on re-entry	18
20.4 Peacefully Surrender	18
20.5 Obligations to continue	18
<b>21. Incorporated Association</b>	<b>18</b>
<b>Lessor's rights and obligations</b>	<b>19</b>
<b>22. Provide keys</b>	<b>19</b>

<b>23. Lessor's right of entry</b>	<b>19</b>
23.1 Entry on reasonable notice	19
23.2 Costs of Rectifying Breach	19
<b>24. Limit of Lessor's liability</b>	<b>19</b>
24.1 No liability for loss on Premises	19
24.2 Limit on Liability for Breach of Lessor's obligations	19
<b>25. Building insurance</b>	<b>20</b>
 <b>Mutual agreements</b>	 <b>20</b>
<b>26. Damage or destruction of Premises</b>	<b>20</b>
26.1 Abatement of Rent	20
26.2 Dispute as to Abatement of Rent	20
26.3 Termination	20
<b>27. Lessor's right to terminate</b>	<b>21</b>
27.1 Lessor's right to terminate upon notice	21
27.2 Obligations upon termination	21
<b>28. Option to renew</b>	<b>21</b>
28.1 Exercise of option	21
<b>29. Holding over</b>	<b>21</b>
<b>30. No Fetter</b>	<b>21</b>
<b>31. Default</b>	<b>22</b>
31.1 Events of Default	22
31.2 Forfeiture	22
31.3 Lessor may remedy Lessee's default	22
31.4 Acceptance of Amount Payable By Lessor	23
31.5 Essential Terms	23
31.6 Breach of Essential Terms	23
<b>32. Disputes</b>	<b>24</b>
32.1 Appointment of arbitrator	24
32.2 Payment of amounts payable to date of award	24
<b>33. Consents</b>	<b>24</b>
<b>34. Goods and services tax</b>	<b>24</b>
<b>35. Additional terms and conditions</b>	<b>24</b>
 <b>General provisions</b>	 <b>25</b>
<b>36. Notice</b>	<b>25</b>
36.1 Form of delivery	25
36.2 Service of Notice	25
36.3 Signing of Notice	25
<b>37. Amendments to lease</b>	<b>25</b>
<b>38. Commercial Tenancy Act</b>	<b>25</b>
<b>39. Waiver</b>	<b>26</b>
39.1 No general waiver	26
39.2 Partial exercise of right power or privilege	26
<b>40. Acts by agents</b>	<b>26</b>

<b>41. Statutory powers</b>	<b>26</b>
<b>42. Further assurance</b>	<b>26</b>
<b>43. Severance</b>	<b>26</b>
<b>44. Moratorium</b>	<b>26</b>
<b>45. Governing law</b>	<b>26</b>
<b>Schedule</b>	<b>27</b>
<b>Signing page</b>	<b>29</b>
<b>Annexure 1 - Sketch of Premises</b>	<b>30</b>

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## Details

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### Parties

**Shire of Derby/West Kimberley**

PO Box 94, Derby, Western Australia  
(Lessor)

**Derby Visitor Centre Inc.**

of 30 Loch Street, Derby, Western Australia  
(Lessee)

### Background

- A The Lessor is the management body of the land described in **Item 1** of the Schedule under the Management Order.
- B Under the Management Order the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands first being obtained.
- C The Lessee has requested that the Lessor grant it a lease of that portion of the Land described in **Item 1** of the Schedule (**Premises**), and the Lessor has agreed subject to the Parties entering into this agreement.

## Agreed terms

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### 1. Grant of Lease

The Lessor leases to the Lessee the Premises for the Term subject to:

- (1) all Encumbrances;
- (2) the consent of the Minister for Lands under the *Land Administration Act 1997*;
- (3) payment of the Amounts Payable; and
- (4) performance of the Lessee's Obligations.

### 2. Defined terms and interpretation

#### 2.1 Defined terms

In this Lease, unless otherwise required by the context or subject matter -

**Amounts Payable** means the Rent and any other money payable by the Lessee under this Lease;

**Authorised Officer** means -

- (a) an agent, employee, licensee or invitee of the Lessor; and

- (b) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

**Authorised Person** means -

- (c) an agent, employee, licensee or invitee of the Lessee; and
- (d) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

**Basic Consideration** means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

**CEO** means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

**CPI** means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics or its equivalent determined in accordance with clause 5;

**Commencement Date** means the date of commencement of the Term specified in Item 4 of the Schedule;

**Encumbrance** means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

**Further Term** means each further term specified in Item 3 of the Schedule;

**Good Repair** means good and substantial tenantable repair and in clean, good working order and condition;

**GST** has the meaning that it bears in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

**GST Adjustment Rate** means the amount of any increase in the rate of tax imposed by the GST Law;

**GST Law** has the meaning that it bears in section 195-1 of the GST Act;

**GST Rate** means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

**Input Tax Credit** has the meaning that it bears in section 195-1 of the GST Act;

**Interest Rate** means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00, which rate cannot exceed the rate prescribed by, and imposed in accordance with, section 6.13 of the *Local Government Act 1995*;

**Land** means the land described at Item 1 of the Schedule;

**Lease** means this deed as supplemented, amended or varied from time to time;

**Lessee's Obligations** means the agreements and obligations set out or implied in this Lease or imposed by law to be performed by any person other than the Lessor;

**Lessor's Obligations** means the agreements and obligations set out or implied in this Lease, or imposed by law to be performed by the Lessor;

**Management Order** means a management order made under section 46 of the Land Administration Act 1997, under which the Land was vested in the Lessor to be held for the designated purpose of "Civic and Community Purposes";

**Notice** means each notice, demand, consent or authority given or made to any person under this Lease;

**Party** means the Lessor or the Lessee according to the context;

**Permitted Purpose** is described in **Item 6** of the Schedule;

**Premises** means the premises described at **Item 1** of the Schedule;

**Rent** means the rent specified in **Item 5** of the Schedule;

**Rent Review Date** means a date identified in **Item 8** of the Schedule;

**Schedule** means the Schedule to this Lease;

**Tax Invoice** has the meaning which it bears in section 195-1 of the GST Act;

**Taxable Supply** has the meaning which it bears in section 195-1 of the GST Act;

**Term** means the term of years specified in **Item 2** of the Schedule and any Further Term; and

**Termination** means expiry by lapse of time or sooner determination of the Term or any period of holding over.

## 2.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words using-
  - (i) the singular include the plural;
  - (ii) the plural include the singular; and
  - (iii) any gender includes each gender;
- (b) a reference to -
  - (i) a natural person includes a body corporate or local government; and
  - (ii) a body corporate or local government includes a natural person;
- (c) a reference to a professional body includes a successor to or substitute for that body;
- (d) a reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory

instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;

- (f) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) a reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) a reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to -
  - (i) both express and implied provisions and terms; and
  - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) if a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them; and
- (l) the agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include -
  - (i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
  - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done.

### 2.3 Headings

Headings do not affect the interpretation of this Agreement.

### 2.4 Schedules etc

Each Schedule (and an Annexure or document incorporated by reference, if any) forms part of this Agreement. In the event of any conflict or inconsistency between any part of -

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) a Schedule;
- (c) an Annexure, if any; and
- (d) a document incorporated by reference, if any,

the material mentioned in any one of paragraph (a)-(d) of this clause 2.4 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

## Lessee's rights and obligations

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### 3. Quiet enjoyment

Except as provided in the Lease, subject to the performance of the Lessee's Obligations the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

### 4. Rent and other payments

The Lessee AGREES with the Lessor -

#### 4.1 Rent

To pay to the Lessor the Rent in the amount and manner set out at Item 5 of the Schedule from the Commencement Date clear of any deductions whatsoever.

#### 4.2 Outgoings

- (a) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises -
- (i) local government services and other charges, including but not limited to rubbish collection charges;
  - (ii) charges for disposal of stormwater, meter rent and excess water charges;
  - (iii) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection;
  - (iv) premiums and other costs arising from the insurance obtained by the Lessor pursuant to clause 25. For the avoidance of doubt, the parties agree:
    - (A) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Lessee must pay a proportionate part of such premium or cost determined by the Lessor acting reasonably; and
    - (B) such insurance will include insurance for the full replacement value of buildings; and
  - (v) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (b) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in clause 4.2(a) being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

#### 4.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 35 days computed from

the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

#### 4.4 Costs

- (a) To pay to the Lessor on demand -
  - (i) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
  - (ii) all registration fees in connection with this Lease; and
  - (iii) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (b) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to -
  - (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
  - (ii) any breach of an obligation or agreement by the Lessee or an Authorised Person;
  - (iii) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
  - (iv) any work done at the Lessee's request; and
  - (v) any action or proceedings arising out of or incidental to any matters referred to in this clause 4.4 or any matter arising out of this Lease.

#### 5. Rent review

The Rent will be reviewed in accordance with the Lessor's Community Group Policy as varied from time to time.

#### 6. Accrual of amounts payable

Amounts Payable accrue on a daily basis.

#### 7. Payment of money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

#### 8. Insurance

##### 8.1 Insurance required

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being-

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) insurance against all risks as the Lessor may require, of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value; and
- (c) insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

## **8.2 Details and Receipts**

In respect of the insurances required by **clause 8.1** the Lessee must -

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately -
  - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
  - (ii) when a policy of insurance is cancelled.

## **8.3 Not to invalidate**

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might;

- (a) render any insurance effected under **clause 8.1** on the Premises, or any adjoining premises, void or voidable; and
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

## **8.4 Reports**

Each party must report to the other promptly in writing and in an emergency verbally -

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person who is lawfully using or may lawfully use the Premises.

## **8.5 Settlement of claim**

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by **clause 8.1**.



**8.6 Lessor as attorney**

The Lessee appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 8.1**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 8.1**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

**8.7 Lessee may be required to pay excess on insurances**

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 8.1**.

**8.8 Lessee's equipment and possessions**

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

**9. Indemnity****9.1 Lessee responsibilities**

The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

**9.2 Indemnity**

The Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor and/or the Minister for Lands, or brought, maintained or made against the Lessor and/or the Minister for lands, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (d) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Premises;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;

- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (i) an act or omission of the Lessee.

**9.3 Obligations Continuing**

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 9.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

**9.4 No indemnity for Lessor's negligence**

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

**9.5 Release**

(1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor and the Minister for Lands from
  - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
  - (ii) loss of or damage to the Premises or personal property of the Lessee; and
  - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

(2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

## 10. Use

### 10.1 Restrictions on use

#### (1) Generally

The Lessee must not and must not suffer or permit a person to -

- (a) use the Premises or any part of it for any purpose other than for the purposes for which the Premises are held by the Lessee, as set out at **Item 6** of the Schedule; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, acts, statutes or any law relating to health.

#### (2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

#### (3) No nuisance

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

#### (4) No dangerous substances

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions -

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
- (c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

#### (5) No harm or stress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

#### (6) No signs

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

#### (7) No smoking

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises.

**(8) Consumption of alcohol**

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

**(9) Sale of Alcohol**

The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Licensing Regulations 1989* and any other relevant written laws that may be in force from time to time.

**(10) Removal of rubbish**

The Lessee must keep the Premises free from dirt and rubbish and to store and keep all trade waste and garbage in proper receptacles.

**(11) No pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

**(12) No personal profit**

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the personal profit of an individual person or persons.

**10.2 No warranty**

The Lessor gives no warranty -

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

**10.3 Premises subject to restriction**

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

**10.4 Indemnity for costs**

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause.

**11. Casual hire of Premises**

Not Applicable.

## 12. Keys and access

### 12.1 No additional copies without approval

Unless otherwise approved by the Lessor in writing, the Lessee must not have additional sets of keys copied or cut.

### 12.2 Notify the Lessor of lost keys

- (1) The Lessee must notify the Lessor of any loss of keys immediately.
- (2) To ensure all keys conform with the Lessor's master keys, the Lessor will arrange for replacement keys to be issued to the Lessee at the Lessee's cost.

### 12.3 No change of locks without approval

- (1) The Lessee must not change any of the Premises' locks, without the prior approval of the Lessor.
- (2) If the locks are changed the Lessee must provide the Lessor with keys to access all areas of the Premises.

### 12.4 Cost of re-entry

If the Lessor requires access to the Premises pursuant to its powers under this Lease, and is unable to access the Premises due to an unauthorised change in locks, the Lessor may take all such measures to enter the Premises and to re-secure the Premises, and the Lessee will bear all costs associated with such measures.

## 13. Maintenance, repair and cleaning

### 13.1 Generally

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's fixtures and fittings) clean and in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation -
  - (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any action or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); and
  - (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any action or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises.
- (2) For the avoidance of doubt, the Lessee is responsible for minor internal repairs to the Premises. For example, repair and replacement of door handles, door locks, light fittings, globe replacement, internal glass breakages and internal painting.
- (3) For the avoidance of doubt, the Lessor is responsible for all structural repairs, sewerage, plumbing, electrical, air-conditioning and external glass breakages to the Premises EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the

Lessee or the Lessee's Agents, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or the Lessee's Agents.

- (4) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing or repairing in or on the Premises -
  - (a) any electrical fittings and fixtures;
  - (b) any plumbing;
  - (c) any air-conditioning fittings and fixtures; and
  - (d) any gas fittings and fixtures,

use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

**13.2 Report major maintenance requirements**

The Lessee must report all major maintenance requirements above the value of \$1,500.00 to the Lessor.

**13.3 Cleaning**

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

**13.4 Repair Damage**

- (1) Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's fixtures and fittings which are or which become damaged.
- (2) For the avoidance of doubt, the Lessee is responsible for replacing and repairing any broken plate glass windows, doors and display show cases forming part of or within the Premises notwithstanding whether or not such breakage is the result of vandalism or the like.

**13.5 Maintain surroundings**

Not applicable.

**13.6 Pest control**

Not applicable.

**13.7 Responsibility for securing the Premises**

- (1) The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.
- (2) Subject to prior written approval from the Lessor, the Lessee may install a security system to the Premises, PROVIDED the Lessee -
  - (a) pays for all costs associated with the installation and ongoing monitoring of the security system; and
  - (b) provides the Lessor with access keys or alarm codes.

**13.8 Comply with all reasonable conditions**

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

**13.9 Acknowledgement of state of repair of Premises**

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

**14. Alterations****14.1 Restriction**

The Lessee must not without prior written consent from the Lessor or any other person from whom consent is required under this Lease or required under statute in force from time to time, including but not limited to the planning approval of the Lessor under a local or town planning scheme of the Lessor -

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (b) subject to the performance of the Lessee's obligations in clause 13, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

**14.2 Consent**

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in clause 14.1 the Lessor may -
  - (a) give such consent subject to conditions;
  - (b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
  - (c) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant.
- (2) If the Lessor consents to any matter referred to in clause 14.1 -
  - (a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
  - (b) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

**14.3 Cost of Works**

All works undertaken under this clause 14 will be carried out at the Lessee's expense.

**14.4 Conditions**

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either -



- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements.

## 15. Report to Lessor

The Lessee must immediately report to the Lessor -

### (1) **Vandalism**

Any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware.

### (2) **Pollution**

Any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment.

### (3) **Notices, etc**

All notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

### (4) **Defects**

Any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

## 16. Provision of information

The Lessee AGREES to provide to the Lessor, upon the Lessor's request, where applicable -

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders or its rules of association during the Term; and
- (c) any information on the Lessee's membership and other information on the Lessee reasonably required by the Lessor.

## 17. No assignment, subletting and charging

### 17.1 **No assignment or sub-letting without consent**

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

### 17.2 **Lessor's Consent to Assignment and Sub-letting**

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if -

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use for non-profit making community purposes;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by -
  - (i) the proposed assignee of a deed of assignment; or
  - (ii) the proposed sublessee of a deed of sublease,
 to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

### **17.3 Where sublessee is a community group**

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under clause 17.2(c).

### **17.4 Consents of Assignee Supplementary**

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

### **17.5 Property Law Act 1969**

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

### **17.6 Costs for assignment and sub-letting**

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to -

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting,

whether or not the assignment or sub-letting proceeds.

### **17.7 No mortgage or charge**

The Lessee must not mortgage nor charge the Premises.

### **17.8 Property Law Act 1969**

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

**17.9 No mortgage or charge**

The Lessee must not mortgage nor charge the leasehold interest in the Premises.

**18. No caveat or other interest****18.1 No caveat or other interest**

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat, subject to claim or any other interest including any lease, sublease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Lessor.

**18.2 Removal of interest**

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally-

- (a) for the Term;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination of this Lease,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate-

- (d) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease.

**18.3 Costs of removal, Indemnity and Ratification**

- (1) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.
- (2) The Lessee indemnifies the Lessor and the Minister for Lands against any loss arising from any act done under clause 18.

**19. Statutory obligations and notices****19.1 Comply with Statutes**

The Lessee must -

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at clause 10;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and

- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

**19.2 Indemnity if fails to comply**

The Lessee indemnifies the Lessor against -

- (a) failing to perform, discharge or execute any of the items referred to in **clause 19.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 19.1**.

**20. Obligations on expiry or termination of lease**

**20.1 Restore Premises**

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the performance by the Lessee of the Lessee's Obligations under this Lease fair wear and tear excepted.

**20.2 Remove Lessee's property prior to termination**

Prior to Termination, the Lessee must remove from the Premises all property of the Lessee including the Lessee's signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

**20.3 Lessor can remove Lessee's property on re-entry**

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing such property.

**20.4 Peacefully Surrender**

On Termination the Lessee must -

- (a) peacefully surrender and return to the Lessor the Premises in a condition consistent with the performance of the Lessee's Obligations under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

**20.5 Obligations to continue**

The Lessee's obligations under this clause will continue, notwithstanding the end or Termination of this Lease.

**21. Incorporated Association**

Where the Lessee is an incorporated Association, it must maintain its incorporation under the *Associations Incorporation Act 1987*.

## Lessor's rights and obligations

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### 22. Provide keys

The Lessor will provide the Lessee with one (1) set of keys for access to the Premises and all rooms therein upon the signing of the Lease.

### 23. Lessor's right of entry

#### 23.1 Entry on reasonable notice

The Lessee must permit entry by the Lessor or any Authorised Officer onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice -

- (a)
  - (i) at all reasonable times;
  - (ii) with or without workmen and others; and
  - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes -
  - (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
  - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
  - (iii) to comply with the Lessor's Obligations or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
  - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

#### 23.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at clause 23.1(b)(iv) together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

### 24. Limit of Lessor's liability

#### 24.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

#### 24.2 Limit on Liability for Breach of Lessor's obligations

- (1) The Lessor is only liable for breaches of the Lessor's Obligations set out in this Lease which occur while the Lessor is registered as the management body for the Land.

- (2) the Lessor will not be liable for any failure to perform and observe any of the Lessor's Obligations due to any cause beyond the Lessor's control.

## 25. Building insurance

- (1) The Lessor shall effect and keep effected policies of insurance in relation to any risk relating to the Lessor's ownership or interest in the Land and the Premises including, without limitation, insurance for fire, Lessor's fixtures and fittings and the Lessee will reimburse the Lessor for 50% of any of the premiums or other costs arising therefrom.
- (2) The Lessee will reimburse the Lessor for any premiums or other costs arising from any policies of insurance referred to in sub-clause (1) commencing on the date set out in Item 9 of the Schedule and continuing for the duration of the Term.
- (3) Any insurances referred to in sub-clause (1) will, be deemed to constitute an "insurance required" for the purposes of clause 8.1 of this Lease, except to the extent that clause 8.1 requires the Lessee to effect the insurance or produce receipts thereof.

## Mutual agreements

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### 26. Damage or destruction of Premises

#### 26.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee.

#### 26.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to clause 26.1 shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 1985* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the award appears to have been overpaid.

#### 26.3 Termination

In the event that fifty per cent (50%) or more of the gross lettable area of the Premises are damaged or destroyed by fire or any like casualty the Lessor will have the option to be exercised by notice in writing delivered to the Lessee within sixty (60) days of such occurrence, to elect to cancel and terminate this Lease. The Term will terminate upon the third date after such notice is given and the Lessee must vacate the Premises and surrender the same to the Lessor but such termination will be without prejudice to the Lessor's rights in respect of any antecedent breach of this Lease.

## 27. Lessor's right to terminate

### 27.1 Lessor's right to terminate upon notice

Where the Lessor wishes to redevelop the Premises, the Lessor may on six (6) months written notice to the Lessee terminate the Lease and the Lessee shall have no claim against the Lessor for any loss or damage arising from that termination.

### 27.2 Obligations upon termination

If this Lease is terminated in accordance with this clause, **clause 20** shall apply.

## 28. Option to renew

### 28.1 Exercise of option

If the Lessee at least one month, but not earlier than 6 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term as specified in Item 3 of the Schedule and -

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in -
  - (i) the payment of Amounts Payable; or
  - (ii) the performance or observance of the Lessee's Obligations,
- (c) the Lessor agrees to the grant

the Lessor may, in its sole discretion, grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions other than this **clause 28** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate

## 29. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

## 30. No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the Local Government Act 1995, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any written law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.



## 31. Default

### 31.1 Events of Default

A default occurs if -

- (a) the Lessee is in breach of any of the Lessee's Obligations for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 1987*, the association is wound up whether voluntarily or otherwise;
- (c) where the Lessee is an association which is incorporated under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

### 31.2 Forfeiture

On the occurrence of any of the events of default specified in clause 31.1 the Lessor may -

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under clause 29,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Obligations or releasing the Lessee from liability in respect of the Lessee's Obligations.

### 31.3 Lessor may remedy Lessee's default

If the Lessee -

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Obligations,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

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4 5 6 7 8

### 31.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers of the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

### 31.5 Essential Terms

Each of the Lessee's Obligations in clauses 4 (Rent and Other Payments), 8 and 25 (Insurance), 9 (Indemnity), 10 (Use), 13 (Maintenance, Repair and Cleaning), 17 (No Assignment, Subletting and Charging) and 34 (Goods and Services Tax) is an essential term of this Lease but this clause 30 does not mean or imply that there are no other essential terms in this Lease.

### 31.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor -

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee AGREES with the Lessor that if the Term is determined -
  - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
  - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the obligation set out in this clause 31.6(c) will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at clause 31.6(c) the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by lapse of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

## 32. Disputes

### 32.1 Appointment of arbitrator

Except as otherwise provided any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and the Lessor and the Lessee may each be represented by a legal practitioner.

### 32.2 Payment of amounts payable to date of award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

## 33. Consents

In the event that the Land is subject to the provisions of the *Land Administration Act 1997* the grant of this Lease is made expressly subject to and is conditional upon the consent of the Minister for Lands to this Lease.

## 34. Goods and services tax

### (1) Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Premises or any goods, services or other Taxable Supply supplied under this Lease then, unless the Lessor is liable for the payment of a given Taxable Supply, as from the date of any such introduction or application -

- (a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

### (2) Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with clause 34(1)(a).

### (3) GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to clause 34(2), the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

## 35. Additional terms and conditions

Each of the terms and conditions (if any) specified in Item 9 of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

## General provisions

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### 36. Notice

#### 36.1 Form of delivery

A Notice to a person must be in writing and may be given or made -

- (a) by a delivery to the person personally; or
- (b) by addressing it to the person and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by notice to the other.

#### 36.2 Service of Notice

A Notice to a person is deemed to be given or made -

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in clause 36.1, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in clause 36.1, on the second business day following the date of posting of the Notice.

#### 36.3 Signing of Notice

A Notice to a person may be signed -

- (a) if given by an individual by the person giving the Notice -
- (b) if given by a corporation by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

### 37. Amendments to lease

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the parties in writing.

### 38. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

## 39. Waiver

### 39.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

### 39.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

## 40. Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

## 41. Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

## 42. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

## 43. Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

## 44. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

## 45. Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.



## Schedule

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### Item 1 Land and Premises

#### Land

Reserve 6929 being land more particularly described as Lot 500 on Deposited Plan 70767 and being the whole of the land comprised in Crown Land Certificate of Title Volume LR 3159 Folio 977.

#### Premises

That portion of the Land together with all buildings and improvements located thereon, as hachured on the sketch annexed to this Lease as "Annexure A".

### Item 2 Term

Five (5) years.

### Item 3 Further term

Five (5) years.

### Item 4 Commencement date

1 October 2011

### Item 5 Rent

\$100 (One hundred dollars) per annum inclusive of GST, payable annually in advance in accordance with, and as reviewed or amended from time to time by, the Lessor's Community Group Policy.

### Item 6 Use

Office of Derby Visitors Centre.

### Item 7 Public liability insurance

\$10,000,000 (Ten Million Dollars)

### Item 8 Rent review dates

Not applicable.

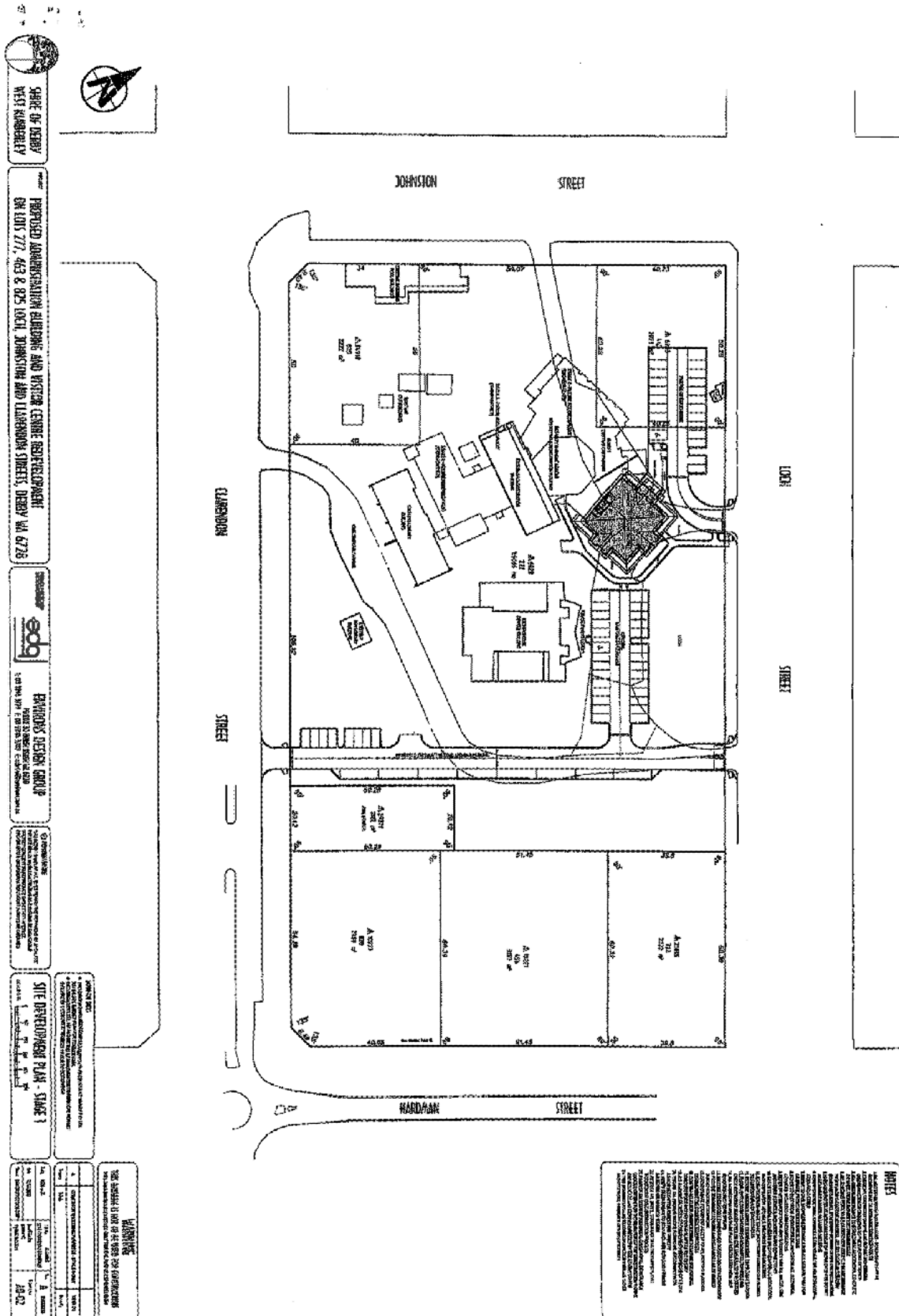
### Item 9 Building Insurance Premiums

1 July 2012.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

## Annexure 1 - Sketch of Premises





**12 CORPORATE SERVICES**

Nil

**13 TECHNICAL SERVICES****13.1 SHIRE CONTROLLED AERODROMES - ACCOUNTABLE MANAGER****File Number: 5410****Author: Wayne Neate, Director Technical and Development Services****Responsible Officer: Amanda Dexter, Chief Executive Officer****Authority/Discretion: Information****SUMMARY**

This item is requesting that Council note the administrative changes required under Part 139 Manual of Standards (MOS 139) and to appoint an “Accountable Manager” for it Aerodromes as part of the legislative changes to the MOS 139.

**DISCLOSURE OF ANY INTEREST**

The Director of Technical and Development Services (author of this report) is currently acting in the role of the “Accountable Manager”.

**BACKGROUND**

The MOS 139 has been reviewed over the last several years with several important changes being put forward by the Civil Aviation Safety Authority (CASA) in consultation with airport operators and their peak body Australian Airports Association for amendment. Some of these amendments include standardising components of airports (strip widths, line marking, lighting etc.) to bring them more into line with worldwide operating standards and others are about the day to day operation and management of airports.

One of the most significant changes is that all airports are required to appoint an “Accountable Manager” as a requirement of the MOS 139. This requirement has been bought in to make an individual person ultimately responsible for the day to day management and compliance of an aerodrome.

Depending on the size, structure and complexity of the organisation, the accountable manager should be a person at the highest level within the organisation that is responsible for the aerodrome certificate, and for aerodrome operations and developments.

The individual appointed as the accountable manager is required to have the necessary knowledge and appropriate level of authority to fulfil the role.

The accountable manager is best characterised by their authorities and responsibilities which may include (but is not limited to):

- full authority for human resources issues,
- authority for major financial decisions,
- direct responsibility of the affairs of the organisation,
- final authority over airside operations under the aerodrome certificate, and
- final responsibility over all safety issues.

The Accountable Manager is solely responsible and accountable should there be any reportable incident at an aerodrome. The Accountable Manager is the person who will be held to account in the event it is proven that the management of the aerodrome is deficient in some way.

This requirement was brought in to stop ‘blame shifting’ with boards and or elected members being held to account for something they had no knowledge about with the issues or problems occurring at the airport, but at the same time allowing the officer to be responsible and accountable for their Airport.

In other words it can be solely their choice to close an airport or declare portions unsafe if requirements of the MOS 139 are not met.

**STATUTORY ENVIRONMENT**

Civil Aviation Act 1988

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Part 139 Manual of Standards

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Legal &amp; Compliance:</b> It is a requirement to have an accountable manager appointed as per the MOS 139 – if this is not complied with fines do apply.	Unlikely	Major	Medium	Always have an appointed and adequately trained Accountable Manager
<b>Financial:</b> The Organisation and Council will need to recognise the responsibilities and accountabilities placed	Possible	Moderate	Medium	Ensure that adequate support and resourcing is provided to enable the safe operations of the Shires Aerodromes.

on the Manager in this role.				
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**CONSULTATION**

CASA consulted widely throughout the industry regarding the changes to MOS 139.

**COMMENT**

The change of the MOS 139 triggered the requirement for every aerodrome across Australia no matter of size or operation to appoint an Accountable Manager for the aerodrome. This initiative has been implemented around the world over the last 10 years. In simple terms the ‘buck stops’ with the Accountable Manager for all issues to do with the aerodrome they are responsible for.

Senior management discussed the matter and it was decided that the expertise for the Accountable Manager lay best with the Director of Technical and Development Services due to the current knowledge of the said staff member and the training he has attended in regards to airports. This includes completing two Aerodrome reporting officers’ courses (initial and refresher) and an Accountable Manager course.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

Nil

<p><b>RESOLUTION 166/21</b></p> <p><b>Moved: Cr Rowena Mouda</b></p> <p><b>Seconded: Cr Paul White</b></p> <p><b>That Council note the report and endorse the appointment of Wayne Neate the Director of Technical and Development Services as the Accountable Manager for all aerodromes controlled by the Shire of Derby/West Kimberley.</b></p> <p><u>In Favour:</u> Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie</p> <p><u>Against:</u> Nil</p> <p style="text-align: right;"><b>CARRIED 8/0</b></p>
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**14 DEVELOPMENT SERVICES****14.1 PROPOSED NEW PARKING LOCAL LAW****File Number:** LL/1**Author:** Kristy Chattaway, Development and Technical Services Project Officer**Responsible Officer:** Wayne Neate, Director Technical and Development Services**Authority/Discretion:** Legislative**SUMMARY**

This item is for Council to consider adopting the proposed new Parking Local Law 2021 to control parking throughout the towns and in particular parking on verges at the hospital.

**DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

**BACKGROUND**

During the Ordinary Council Meeting on 25 March 2021 (minute number 23/21), Council instructed the Chief Executive Officer to develop Parking Local Laws as the Shire does not currently have any or any means for penalising someone for parking on the verges rather than a carpark.

**RESOLUTION 23/21****Moved:** Cr Paul White**Seconded:** Cr Andrew Twaddle**That Council;**

- 1. Endorse the plan to convert the grassed areas of verge into mulched garden beds with strategically placed rocks to prevent the issues of parking on the verge.**
- 2. Advise the Western Australian Country Health Service of the intention to convert the grassed areas to garden beds.**
- 3. Instruct the Chief Executive Officer to work with the Derby Landcare group to undertake planting of the verge areas with local native plants suitable to not cause sight issues for traffic entering or exiting the various hospital entries.**
- 4. Instruct the Chief Executive Officer to develop Parking Local Laws as part of the overall review of Local Laws.**

**In Favour:** Crs Geoff Haerewa, Paul White, Geoff Davis, Chris Kloss, Andrew Twaddle, Rowena Mouda, Pat Riley and Keith Bedford

**Against:** Nil

**CARRIED 8/0**

The issue of parking on the verge around the hospital in particular, has been ongoing for several years and has been raised as an issue by the Derby Health Advisory Committee (DHAC) along with

the Shire Road Wise Committee. The issue of people parking on the verge becomes a hazard for any vehicles including the ambulances trying to exit the carparks and view oncoming traffic.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995 – S 3.12 Provision of Making Local Laws.*

**POLICY IMPLICATIONS**

There are no known policies or policy implications relating to this item.

**FINANCIAL IMPLICATIONS**

There will be costs associated with the preparation of the local law and required publication in the Government Gazette, with total costs estimated to be \$3,209.13.

- Public notice - Western Australian - \$437.13
- Public notice - Broome Advertiser - \$262.90
- Published in the Government Gazette - \$2,509.10

**STRATEGIC IMPLICATIONS**

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.1 Collaboration and partnership	1.1.1 Engage with our communities 1.3.2 Listen to and respond to the needs of our communities
2. Community	2.1 Safe Communities	2.4.2 Collaborate with key agencies, groups and service providers to improve community services, programs and facilities
3. Economy	3.1 Industry and business development and growth	3.1.4 Support industries, service providers and businesses in attracting and retaining workers and their families 3.2.1 Recognise and promote the economic potential of the district
4. Environment	4.2 Liveable Communities	4.2.3 Encourage and facilitate the maintenance and development of infrastructure that connects our communities

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Legal &amp; Compliance:</b> Minor legal	Unlikely	Minor	Low	Council to ensure that the draft Local Laws are consistent with standard



implications, non-compliance and breach of regulations.				permission similar to other Local Governments
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**CONSULTATION**

Local laws from similar local governments were reviewed. Some of these include the Shire of Broome, City of Karratha, Shire of Carnarvon, Shire of Port Headland and the City of Vincent.

The Shire is required to advertise locally and state-wide inviting submissions from the public. Any submissions received within the six week advertising period will be considered and alterations may be made.

The results of the community consultation and feedback from the Minister are to be considered by Council before it makes the local law.

**COMMENT**

The local law draws heavily on the provisions of the Road Traffic Code, particular with respect to how certain matters are defined and applied in thoroughfares. In summary, the draft local law has sufficient scope to deal with any parking issues that may arise in the Shire. In addition, the draft contains provisions which relate to paid parking. This does not mean the Shire must establish paid parking or metered zones; simply that it has the ability to do so in the future.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Proposed SDWK Parking Local Law 2021**  

<p><b>RESOLUTION 167/21</b></p> <p><b>Moved: Cr Paul White</b>  <b>Seconded: Cr Linda Evans</b></p> <p><b>That Council;</b></p> <ol style="list-style-type: none"> <li>1. <b>In accordance with sections 3.12(3)(a) and (3a) of the Local Government Act 1995, State wide and local public notice be given stating that;</b> <ol style="list-style-type: none"> <li>(a) <b>It is proposed to make a Shire of Derby/West Kimberley Parking Local Law, and a summary of its purpose and effect;</b></li> <li>(b) <b>Copies of the proposed local law may be inspected at the Shire offices and website;</b></li> <li>(c) <b>Submissions about the proposed local law may be made to the Shire within a period of not less than six weeks after the notice is given;</b></li> </ol> </li> <li>2. <b>In accordance with s3.12(3)(b) of the Act, as soon as the notice is given, a copy of the proposed local law be sent to the Minister for Local Government;</b></li> <li>3. <b>In accordance with s3.12(3)(c) of the Act, a copy of the proposed local law be supplied to any person requesting it; and</b></li> <li>4. <b>The results of the public consultation be presented to Council for consideration of any submissions received.</b></li> </ol>
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In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**

## LOCAL GOVERNMENT ACT 1995

## SHIRE OF DERBY / WEST KIMBERLEY

## PARKING LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Derby/West Kimberley resolved on [date 25 November 2021] to make the following local law.

## PART 1—DEFINITIONS AND OPERATION

**1.1 Citation**

This local law may be cited as the *Shire of Derby/West Kimberley Parking Local Law 2021*.

**1.2 Application**

- (1) Subject to subclause (2), this local law applies throughout the district.
- (2) This local law does not apply to a parking facility or a parking station that is not occupied by the Shire, unless the Shire and the owner or occupier of that facility or station have agreed in writing that this local law will apply to that facility or station.
- (3) The agreement referred to in subclause (2) may be made on such terms and conditions as the parties may agree.

**1.3 Commencement**

This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

**1.4 Interpretation**

In this local law unless the context otherwise requires:

**Act** means the *Local Government Act 1995*;

**authorised person** means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

**authorised vehicle** means a vehicle authorised by the local government, Chief Executive Officer, authorised person or by any written law to park on a thoroughfare or parking facility;

**bicycle** has the meaning given to it by the Code;

**bicycle lane** has the meaning given to it by the Code

**bicycle path** has the meaning given to it by the Code;

**bus** has the meaning given to it by the Code;

**bus embayment** has the meaning given to it by the Code;

**bus stop** has the meaning given to it by the Code;

**bus zone** has the meaning given to it by the Code;

**caravan** has the meaning given to it by the *Caravans Parks and Camping Grounds Act 1995*;

**carriageway** has the same meaning given to it in the Code;

**centre in relation to a carriageway**, means a line or a series of lines, marks or other indications:

- (a) for a two-way carriageway—placed so as to delineate vehicular traffic travelling in different directions; or
- (b) in the absence of any such lines, marks or other indications—the middle of the main, travelled portion of the carriageway;

**childrens crossing** has the meaning given to it by the Code;

**CEO** means the Chief Executive Officer of the local government;

**Code** means the Road Traffic Code 2000;

**commercial vehicle** means a motor vehicle constructed for the conveyance of goods or merchandise, or for the conveyance of materials used in any trade, business, industry or work whatsoever, other than a motor vehicle for the conveyance of passengers, and includes any motor

vehicle that is designed primarily for the carriage of persons, but which has been fitted or adapted for the conveyance of the goods, merchandise or materials referred to, and is in fact being used for that purpose;

**disability parking permit** has the meaning given to it in the *Local Government (Parking for People with Disabilities) Regulations 2014*. A current document issued by National Disability Services Limited (CAN 008 445 485), consisting of:

- (a) an Australian Disability Parking Permit; and
- (b) an ACROD (Australian Council for Rehabilitation of Disabled) Parking Program Card

**district** means the district of the local government;

**driver** means any person driving or in control of a vehicle;

**edge line** for a carriageway means a line marked along the carriageway at or near the far left or the far right of the carriageway;

**emergency vehicle** has the meaning given to it by the Code;

**footpath** has the meaning given to it by the Code;

**GVM** (which stands for gross vehicle mass) has the meaning given to it by the Code;

**loading zone** means a parking stall which is set aside for use by commercial vehicles if there is a sign referable to that stall marked loading zone;

**local government** means the Shire of Derby/West Kimberley;

**mail zone** has the meaning given to it by the Code;

**median strip** has the meaning given to it by the Code;

**metered space** means a section or part of a metered zone that is adjacent to a parking meter and that is marked or defined by painted lines or by metallic studs or similar devices for the purpose of indicating where a vehicle may be parked on payment of a fee or charge;

**metered zone** means any thoroughfare or reserve, or part of any thoroughfare or reserve, in which parking meters regulate the parking of vehicles;

**motorcycle** has the meaning given to it by the Code;

**motor vehicle** means a self-propelled vehicle that is not operated on rails; and the expression includes a trailer, semi-trailer or caravan while attached to a motor vehicle, but does not include a power assisted pedal cycle;

**nature strip** has the meaning given to it by the Code;

**no parking area** has the meaning given to it by the Code;

**no parking sign** means a sign with the words no parking in red letters on a white background, or the letter P within a red annulus and a red diagonal line across it on a white background;

**no stopping area** has the meaning given to it by the Code;

**no stopping sign** means a sign with the words no stopping or no standing in red letters on a white background or the letter S within a red annulus and a red diagonal line across it on a white background;

**obstructing** means causing or allowing a motor vehicle, trailer, or other object to stand on a road in such a way that it is likely to impede other road users;

**occupier** has the meaning given to it by the Act;

**owner:**

- (a) where used in relation to a vehicle licensed under the *Road Traffic Act 1974*, means the person in whose name the vehicle has been registered under that Act;
- (b) where used in relation to any other vehicle, means the person who owns, or is entitled to possession of that vehicle; and
- (c) where used in relation to land, has the meaning given to it by the Act;

**painted island** has the meaning given to it by the Code;

**park** has the meaning given to it by the Code;

**parking area** has the meaning given to it by the Code;

**parking control sign** has the same meaning given it by the Code;

**parking facility** includes land, buildings, shelters, metered zones, metered spaces, parking stalls and other facilities open to the public generally for the parking of vehicles with or without charge and signs, notices and facilities used in connection with the parking of vehicles;

**parking meter** includes the stand on which the meter is erected and a ticket issuing machine;

**parking region** means the whole of the district except:

- (a) the approach and departure prohibition areas of all existing and future traffic control signal installations as determined by the Commissioner of Main Roads;
- (b) prohibition areas applicable to all existing and future bridges and subways as determined by the Commissioner of Main Roads; and
- (c) any road which comes under the control of the Commissioner of Main Roads unless the control of parking and parking facilities on that road is carried out subject to the control and direction of the Commissioner of Main Roads or has been delegated by the Commissioner to the Shire;

**parking stall** means a section or part of a thoroughfare or of a parking station which is marked or defined by painted lines, metallic studs, coloured bricks or pavers or similar devices for the purpose of indicating where a vehicle may be parked, but does not include a metered space;

**parking station** means any land, or structure provided for the purpose of accommodating vehicles with or without charge, but does not include a metered zone or metered space;

**path** has the same meaning given to it by the Code;

**pedestrian crossing** has the meaning given to it by the Code;

**public bus** has the same meaning given to it by the Code;

**public place** means any place to which the public has access whether or not that place is on private property;

**reserve** means any land:

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an otherwise vested facility within section 3.53 of the Act;

**road** means a highway, road, street, lane, thoroughfare, way or similar place within the parking region which the public is allowed to use and includes the road verge and any footway within it;

**Road Traffic Act** means the *Road Traffic Act 1974*;

**Schedule** means a Schedule to this local law;

**shared zone** has the meaning given to it by the Code;

**sign** includes a traffic sign, inscription, road marking, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a parking station or reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;

**special purpose vehicle** has the meaning given to it by the Code;

**stop** in relation to a vehicle means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic or of complying with the provisions of any law;

**symbol** includes any symbol specified by Australian Standard 1742.11-1989 and any symbol specified from time to time by Standards Australia for use in the regulation of parking and any reference to the wording of any sign in this local law shall be also deemed to include a reference to the corresponding symbol;

BI means a taxi within the meaning of the *Road Traffic Code 2000*;

**taxi zone** has the meaning given to it by the Code;

**thoroughfare** has the meaning given to it by the Act;

**ticket issuing machine** means a parking meter which issues, as a result of money being inserted in the machine or such other form of payment as may be permitted to be made, a ticket showing the period during which it shall be lawful to remain parked in a metered space to which the machine is referable;

**traffic island** has the meaning given to it by the Code;

**trailer** has the meaning given to it by the Code;

**vehicle** has the meaning given to it by the Code; and

**verge** has the same meaning as nature strip.

**1.6 Application of particular definitions**

- (1) For the purposes of the application of the definitions 'no parking area' and 'parking area' an arrow inscribed on a traffic sign erected at an angle to the boundary of the carriageway is deemed to be pointing in the direction in which it would point, if the signs were turned at an angle of less than 90 degrees until parallel with the boundary.
- (2) Unless the context otherwise requires, where a term is used, but not defined, in this local law, and that term is defined in the *Road Traffic Act 1974* or in the Code, then the term shall have the meaning given to it in that Act or the Code.

**1.7 Application and pre-existing signs**

- (1) Subject to subclause (2), this local law applies to the parking region.
- (2) This local law does not apply to a parking facility or a parking station that is not occupied by the local government, unless the local government and the owner or occupier of that facility or station have agreed in writing that this local law will apply to that facility or station.
- (3) The agreement referred to in subclause (2) may be made on such terms and conditions as the parties may agree.
- (4) A sign that:
  - (i) was erected by the local government or the Commissioner of Main Roads prior to the coming into operation of this local law; and
  - (ii) relates to the parking of vehicles within the parking region, shall be deemed for the purposes of this local law to have been erected by the local government under the authority of this local law.
- (5) An inscription or symbol on a sign referred to in subclause (5) operates and has effect according to its tenor, and where the inscription or symbol relates to the stopping of vehicles, it shall be deemed for the purposes of this local law to operate and have effect as if it related to the parking of vehicles.
- (6) The provisions of Parts 2, 3, 4 and 5 do not apply to a bicycle parked at a bicycle rail or bicycle rack.

**1.8 Classes of vehicles**

For the purpose of this local law, vehicles are divided into classes as follows:

- (a) buses;
- (b) commercial vehicles;
- (c) motorcycles and bicycles;
- (d) taxis; and
- (e) all other vehicles.

**1.9 Part of thoroughfare to which sign applies**

Where under this local law the parking of vehicles in a thoroughfare is controlled by a sign, the sign shall be read as applying to that part of the thoroughfare which:

- (a) lies beyond the sign;
- (b) lies between the sign and the next sign beyond that sign; and
- (c) is on that side of the thoroughfare nearest to the sign.



**1.10 Powers of the local government**

The local government may, by resolution, prohibit or regulate by signs or otherwise, the stopping or parking of any vehicle or any class of vehicles in any part of the parking region but must do so consistently with the provisions of this local law.

**PART 2—METERED ZONES****2.1 Determination of metered zones**

- (1) The local government may by resolution, constitute, determine and vary and also indicate by signs, metered spaces and metered zones.
- (2) In respect of metered spaces and metered zones the local government may determine, and may indicate by signs:
  - (a) permitted times and conditions of parking depending on and varying with the locality;
  - (b) classes of vehicles which are permitted to park;
  - (c) the amount payable for parking; and
  - (d) the manner of parking.
- (3) Where the local government makes a determination under subsections (1) or (2) it shall erect signs to give effect to the determination.

**2.2 Parking fee to be paid**

Subject to clause 2.5, a person shall not park a vehicle in a metered space unless the appropriate fee as indicated by a sign on the parking meter referable to the space is inserted into the parking meter.

**2.3 Limitation on parking in metered space**

The payment of a fee under clause 2.2 shall entitle a person to park the vehicle in a metered space for the period shown on the parking meter, but does not authorise the parking of the vehicle during any time when parking in that space may be prohibited in accordance with this local law.

**2.4 No parking when meter is expired**

Subject to clause 2.5, a person shall not leave or permit a vehicle to remain parked in a metered space during the hours when a fee is payable to park the vehicle in the space when the parking meter referable to that space exhibits the sign 'Expired' or a negative time.

**2.5 Suspension of requirement to pay fee**

- (1) The local government may, by resolution, declare that the provisions of clauses 2.2 and 2.4 shall not apply during the periods and days specified.
- (2) Where the local government makes a determination under subsection (1) it shall erect signs to give effect to the determination.

**2.6 Vehicles to be within metered space**

Subject to subclause (b):

- (a) A person shall not park a vehicle in a metered space in a thoroughfare otherwise than parallel to and as close to the kerb as practicable and wholly within the space, provided that where a metered space is set out otherwise than parallel to the kerb the vehicle need only park wholly within the space.



- (b) If a vehicle is too long or too wide to fit completely within a single metered space then the person parking the vehicle shall do so within the minimum number of metered spaces needed to park that vehicle.
- (c) A person shall not park a vehicle partly within and partly outside a metered zone.

#### **2.7 Permitted insertions in parking meters**

- (1) A person shall not insert into a parking meter anything other than the designations of coin or banknote or such other permitted form of payment indicated by a sign on the parking meter.
- (2) The insertion of a coin or banknote into any parking meter or the making of payment in such other form as may be permitted shall be effected only in accordance with the instructions printed on that particular meter.

#### **2.8 Parking ticket to be clearly visible**

A driver of a vehicle left parked in a metered zone which is regulated by a ticket issuing machine shall on purchasing a ticket from the machine for a period of parking, place the ticket inside the vehicle in such a position that the ticket is clearly visible to and the expiry time or time for which the ticket remains valid is able to be read by an authorised person examining the ticket from outside the vehicle.

#### **2.9 One vehicle per metered space**

A person shall not park or attempt to park a vehicle in a metered space in which another vehicle is parked.

#### **2.10 No parking when hood on meter**

Notwithstanding any other provision of this local law and notwithstanding any other sign or notice, a person shall not park a vehicle in a metered space if the parking meter referable to such metered space has a hood marked 'No Parking', 'Reserved Parking' or 'Temporary Bus Stand' or equivalent symbols depicting these purposes except with the permission of the local government or an authorised person.

### **PART 3—PARKING STALLS AND PARKING STATIONS**

#### **3.1 Determination of parking stalls and parking stations**

- (1) The local government may, by resolution, constitute, determine and vary:
  - (a) parking stalls;
  - (b) parking stations;
  - (c) permitted time and conditions of parking in parking stalls and parking stations which may vary with the locality;
  - (d) permitted classes of vehicles which may park in parking stalls and parking stations;
  - (e) permitted classes of persons who may park in specified parking stalls or parking stations;  
and
  - (f) the manner of parking in parking stalls and parking stations.
- (2) Where the local government makes a determination under subsection (1) it shall erect signs to give effect to the determination

**3.2 Vehicles to be within parking stall on thoroughfare**

- (1) Subject to subclause (2), (3) and (4), a person shall not park a vehicle in a parking stall in a thoroughfare otherwise than:
  - (a) parallel to and as close to the kerb as is practicable;
  - (b) wholly within the stall; and
  - (c) headed in the direction of the movement of traffic on the side of the thoroughfare in which the stall is situated.
- (2) Subject to subclause (3) where a parking stall in a thoroughfare is set out otherwise than parallel to the kerb, then a person must park a vehicle in that stall wholly within it.
- (3) If a vehicle is too long or too wide to fit completely within a single parking stall then the person parking the vehicle shall do so within the minimum number of parking stalls needed to park that vehicle.
- (4) A person shall not park a vehicle partly within and partly outside a parking area.

**3.3 Payment of fee to park in parking station**

A person shall not park a vehicle or permit a vehicle to remain parked in any parking station during any period for which a fee is payable unless:

- (a) in the case of a parking station having an authorised person on duty, the appropriate fee is paid when demanded; or
- (b) in the case of a parking station equipped with parking meters, the appropriate fee is inserted in the meter or the required payment is made in such other form as may be permitted.

**3.4 Suspension of parking station restrictions**

- (1) The local government may, by resolution, declare that the provisions of clause 3.3 do not apply during periods on particular days in relation to particular parking stations as specified.
- (2) Where the local government makes a determination under subsection (1) it shall erect signs to give effect to the determination.

**3.5 Vehicle not to be removed until fee paid**

A person shall not remove a vehicle which has been parked in a parking station until the fee associated with parking that vehicle in the parking station has been paid in full.

**3.6 Entitlement to receipt**

A person paying a fee at a parking station is to be entitled to receive a receipt on demand showing the period of parking covered by such payment and the amount of the fee paid.

**3.7 Parking ticket to be clearly visible**

A driver of a vehicle in a parking station which is equipped with a ticket issuing machine shall on purchasing a ticket from the machine for a period of parking, place the ticket inside the vehicle in such a position that the ticket is clearly visible to and the expiry time or time for which the ticket remains valid is able to be read by an authorised person examining the ticket from outside the vehicle.

**3.8 Parking prohibitions and restrictions**

- (1) A person shall not:
  - (a) park a vehicle so as to obstruct an entrance to, or an exit from a parking station, or an access way within a parking station;
  - (b) except with the permission of the local government or an authorised person park a vehicle on any part of a parking station contrary to a sign referable to that part;

- (c) permit a vehicle to park on any part of a parking station, if an authorised person directs the driver of such vehicle to move the vehicle; or
  - (d) park or attempt to park a vehicle in a parking stall in which another vehicle is parked but this paragraph does not prevent the parking of a motorcycle and a bicycle together in a stall marked 'M/C', if the bicycle is parked in accordance with subclause (2).
- (2) No person shall park any bicycle:
- (a) in a parking stall other than in a stall located against a kerb and marked 'M/C'; and
  - (b) in such stall other than parked against the kerb.
- (3) Notwithstanding the provisions of subclause (1)(b) a driver may park a vehicle in a permissive parking stall or station (except in a parking area for people with disabilities) for twice the length of time allowed, provided that:
- (a) the driver's vehicle displays a valid disability parking permit;
  - (b) a person with disabilities to which that permit relates is either the driver of or a passenger in the vehicle; and
  - (c) any disability permit displayed must be clearly displayed from inside the vehicle in such a position that the permit is clearly visible to, and in a manner that enables the expiry date and permit number to be clearly visible to an authorised person examining the permit from outside the vehicle.

#### **PART 4—PARKING GENERALLY**

##### **4.1 Restrictions on parking in particular areas**

- (1) Subject to subclause (2), a person shall not park a vehicle in a thoroughfare or part of a thoroughfare, or part of a parking station:
- (a) if by a sign it is set apart for the parking of vehicles of a different class;
  - (b) if by a sign it is set apart for the parking of vehicles by persons of a different class; or
  - (c) during any period when the parking of vehicles is prohibited by a sign.
- (2) (a) This subclause applies to a driver if:
- (i) the driver's vehicle displays a Disability Parking Permit; and
  - (ii) a disabled person to which the Disability Parking Permit relates is either the driver of the vehicle or a passenger in the vehicle.
- (b) The driver may park a vehicle in a thoroughfare or a part of a thoroughfare or part of a parking station, except in a thoroughfare or a part of a thoroughfare or part of a parking station to which a disability parking permit sign relates for twice the period indicated on the sign.
- (3) A person shall not park a vehicle:
- (a) in a no parking area; or
  - (b) in a parking area, except in accordance with signs associated with the parking area and with this local law.
- (4) A person shall not, without the prior permission of the local government, the CEO, or an authorised person, park a vehicle in an area designated by a sign stating 'Authorised Vehicles Only'.

**4.2 Parking vehicle on a carriageway**

- (1) A person parking a vehicle on a carriageway other than in a parking stall shall park it:
  - (a) in the case of a two-way carriageway, so that it is as near as practicable to and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
  - (b) in the case of a one-way carriageway, so that it is as near as practicable to and parallel with either boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
  - (c) so that at least 3 metres of the width of the carriageway lies between the vehicle and the farther boundary of the carriageway, or any continuous line or median strip, or between the vehicle and a vehicle parked on the farther side of the carriageway;
  - (d) so that the front and the rear of the vehicle respectively is not less than 1 metre from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this local law; and
  - (e) so that it does not obstruct any vehicle on the carriageway, unless otherwise indicated on a parking regulation sign or markings on the roadway.
- (2) In this clause, 'continuous dividing line' means:
  - (a) a single continuous dividing line only;
  - (b) a single continuous dividing line to the left or right of a broken dividing line; or
  - (c) 2 parallel continuous dividing lines.

**4.3 When parallel and right-angled parking apply**

Where a traffic sign associated with a parking area is not inscribed with the words 'angle parking' (or with an equivalent symbol depicting this purpose), then unless a sign associated with the parking area indicates, or marks on the carriageway indicate, that vehicles have to park in a different position, where the parking area is:

- (a) adjacent to the boundary of a carriageway, a person parking a vehicle in the parking area shall park it as near as practicable to and parallel with that boundary; and
- (b) at or near the centre of the carriageway, a person parking a vehicle in that parking area shall park it at approximately right angles to the centre of the carriageway in a manner that does not obstruct the carriageway.

**4.4 When angle parking applies**

- (1) This clause does not apply to:
  - (a) a passenger vehicle or a commercial vehicle with a mass including any load, of over three tonnes; or
  - (b) a person parking either a motor cycle without a trailer or a bicycle.
- (2) Where a sign associated with a parking area is inscribed with the words 'angle parking' (or with an equivalent symbol depicting this purpose), a person parking a vehicle in the area shall park the vehicle at an angle of approximately 45 degrees to the centre of the carriageway unless otherwise indicated by the inscription on the parking sign or by marks on the carriageway.

**4.5 General prohibitions on parking**

- (1) (a) This clause does not apply to a vehicle parked in a parking stall nor to a bicycle in a bicycle rack.  
(b) Subclauses (2)(c), (e) and (g) do not apply to a vehicle which parks in a bus embayment.
- (2) Subject to any law relating to intersections with traffic control signals, a person shall not park a vehicle so that any portion of the vehicle is:
  - (a) on or adjacent to a median strip or painted island;
  - (b) obstructing a right of way, private drive or carriageway or so close as to deny a vehicle reasonable access to or egress from the right of way, private drive or carriageway;
  - (c) alongside or opposite any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;
  - (d) on or within 10 metres of any portion of a carriageway bounded by a traffic island;
  - (e) on any portion of a footpath or pedestrian crossing;
  - (f) between the boundaries of a carriageway and any double longitudinal line consisting of two continuous lines or between a double longitudinal line consisting of a continuous line and a broken or dotted line and the boundary of a carriageway nearer to the continuous line, unless there is a distance of at least 3 metres clear between the vehicle and the double longitudinal line;
  - (g) on an intersection, except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;
  - (h) within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug;
  - (i) within 3 metres of a public letter box, unless the vehicle is being used for the purposes of collecting postal articles from the pillar box; or
  - (j) within 10 metres of the nearer property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked unless a sign or markings on the carriageway indicate otherwise.
- (3) A person shall not park a vehicle so that any portion of the vehicle is within 10 metres of the departure side of:
  - (a) a sign inscribed with the words 'Bus Stop' or 'Hail Bus Here' (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers; or
  - (b) a children's crossing or pedestrian crossing.
- (4) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of the approach side of:
  - (a) a sign inscribed with the words 'Bus Stop' or 'Hail Bus Here' (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers;
  - (b) a children's crossing or pedestrian crossing.
- (5) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of either the approach side or the departure side of the nearest rail of a railway level crossing.



**4.6 Authorised person may order vehicle on thoroughfare to be moved**

The driver of a vehicle shall not park that vehicle on any part of a thoroughfare in contravention of this local law after an authorised person has directed the driver to move it.

**4.7 Authorised person may mark tyres**

- (1) An authorised person may mark the tyres of a vehicle parked in a parking facility with chalk or any other non-indelible substance for a purpose connected with or arising out of his or her duties or powers.
- (2) A person shall not remove a mark made by an authorised person so that the purpose of the affixing of such a mark is defeated or likely to be defeated.

**4.8 No movement of vehicles to avoid time limitation**

- (1) Where the parking of vehicles in a parking facility is permitted for a limited time, a person shall not move a vehicle within the parking facility so that the total time of parking exceeds the maximum time allowed for parking in the parking facility.
- (2) Where the parking of vehicles in a thoroughfare is permitted for a limited time, a person shall not move a vehicle along that thoroughfare so that the total time of parking exceeds the maximum time permitted, unless the vehicle has first been removed from the thoroughfare for at least two hours.

**4.9 No parking of vehicles exposed for sale and in other circumstances**

A person shall not park a vehicle on any portion of a thoroughfare:

- (a) for the purpose of exposing it for sale;
- (b) if that vehicle is not licensed under the Road Traffic Act;
- (c) if that vehicle is a trailer or a caravan unattached to a motor vehicle; or
- (d) for the purpose of effecting repairs to it, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.

**4.10 Parking on private land**

- (1) In this clause a reference to 'land' does not include land:
  - (a) which belongs to the local government;
  - (b) of which the local government is the management body under the *Land Administration Act 1997*;
  - (c) which is an 'otherwise unvested facility' within section 3.53 of the Act; or
  - (d) which is the subject of an agreement referred to in clause 1.7(2).
- (2) A person shall not park a vehicle on land without the consent of the owner or occupier of the land on which the vehicle is parked.
- (3) Where the owner or occupier of the land, by a sign referable to that land or otherwise, consents to the parking of vehicles of a specified class or classes on the land for a limited period, a person shall not park a vehicle on the land otherwise than in accordance with the consent.

**4.11 Parking on reserves**

No person other than an employee of the local government in the course of his or her duties or a person authorised by the local government shall drive or park a vehicle upon or over any portion of a reserve other than upon an area specifically set aside for that purpose.

**4.12 Suspension of parking limitations for urgent, essential or official duties**

- (1) Where by a sign the parking of vehicles is permitted for a limited time on a portion of a thoroughfare or parking facility, the local government, the CEO or an authorised person may, subject to the Code, permit a person to park a vehicle in that portion of the thoroughfare or parking facility for longer than the permitted time in order that the person may carry out urgent, essential or official duties.
- (2) Where permission is granted under subclause (1), the local government, the CEO or an authorised person may prohibit the use by any other vehicle of that portion of the thoroughfare or parking facility to which the permission relates, for the duration of that permission.

**PART 5—PARKING AND STOPPING GENERALLY****5.1 No stopping and no parking signs, and yellow edge lines**

- (1) A driver shall not stop on a length of carriageway, or in an area, to which a 'no stopping' sign applies.
- (2) A driver shall not stop on a length of carriageway or in an area to which a 'no parking' sign applies, unless the driver:
  - (a) is dropping off, or picking up, passengers or goods;
  - (b) does not leave the vehicle unattended so that the driver is more than 3 metres from the closest point of the vehicle;
  - (c) completes the dropping off, or picking up, of the passengers or goods within 2 minutes of stopping and drives on.
- (3) A driver shall not stop at the side of a carriageway marked with a continuous yellow edge line.

**PART 6—STOPPING IN ZONES FOR PARTICULAR VEHICLES****6.1 Stopping in a loading zone**

A person shall not stop a vehicle in a loading zone unless it is:

- (a) a motor vehicle used for commercial or trade purposes engaged in the picking up or setting down of goods; or
- (b) a motor vehicle taking up or setting down passengers,

but, in any event, shall not remain in that loading zone:

- (c) for longer than a time indicated on the 'loading zone' sign; or
- (d) longer than 30 minutes (if no time is indicated on the sign).

**6.2 Stopping in a taxi zone or a bus zone**

- (1) A driver shall not stop in a taxi zone, unless the driver is driving a taxi.
- (2) A driver shall not stop in a bus zone unless the driver is driving a public bus, or a bus of a type that is permitted to stop at the bus zone by information on or with the 'bus zone' sign applying to the bus zone.

**6.3 Stopping in a mail zone**

A person shall not stop a vehicle in a mail zone.



**6.4 Other limitations in zones**

A person shall not stop a vehicle in a zone to which a traffic sign applies if stopping the vehicle would be contrary to any limitation in respect to classes of persons or vehicles, or specific activities allowed, as indicated by additional words on a traffic sign that applies to the zone.

**PART 7—OTHER PLACES WHERE STOPPING IS RESTRICTED****7.1 Stopping in a shared zone**

A driver shall not stop in a shared zone unless:

- (a) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law;
- (b) the driver stops in a parking bay and the driver is permitted to stop in the parking bay under this local law;
- (c) the driver is dropping off, or picking up, passengers or goods; or
- (d) the driver is engaged in door-to-door delivery or collection of goods, or in the collection of waste or garbage.

**7.2 Double parking**

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is between any other stopped vehicle and the centre of the carriageway.
- (2) This clause does not apply to:
  - (a) a driver stopped in traffic; or
  - (b) a driver angle parking on the side of the carriageway or in a median strip parking area, in accordance with this local law.

**7.3 Stopping near an obstruction**

A driver shall not stop on a carriageway near an obstruction on the carriageway in a position that further obstructs traffic on the carriageway.

**7.4 Stopping on a bridge or in a tunnel, etc.**

- (1) A driver shall not stop a vehicle on a bridge, causeway, ramp or similar structure unless:
  - (a) the carriageway is at least as wide on the structure as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
  - (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.
- (2) A driver shall not stop a vehicle in a tunnel or underpass unless:
  - (a) the carriageway is at least as wide in the tunnel or underpass as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
  - (b) the driver of a motor vehicle stops at a bus stop, or in a bus zone or parking area marked on the carriageway, for the purpose of setting down or taking up passengers.

**7.5 Stopping on crests, curves, etc.**

- (1) Subject to subclause (2), a driver shall not stop a vehicle on, or partly on, a carriageway, in any position where it is not visible to the driver of an overtaking vehicle, from a distance of 80 metres within a built-up area, and from a distance of 150 metres outside a built-up area.

- (2) A driver may stop on a crest or curve on a carriageway that is not in a built-up area if the driver stops at a place on the carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

#### **7.6 Stopping near a fire hydrant etc.**

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is within one metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug, unless:
- (a) the driver is driving a public bus, and the driver stops in a bus zone or at a bus stop and does not leave the bus unattended; or
  - (b) the driver is driving a taxi, and the driver stops in a taxi zone and does not leave the taxi unattended.
- (2) In this clause a driver leaves the vehicle 'unattended' if the driver leaves the vehicle so the driver is over 3 metres from the closest point of the vehicle.

#### **7.7 Stopping at or near a bus stop**

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is within 20 metres of the approach side of a bus stop, or within 10m of the departure side of a bus stop, unless:
- (a) the vehicle is a public bus stopped to take up or set down passengers; or
  - (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.
- (2) In this clause:
- (a) distances are measured in the direction in which the driver is driving; and
  - (b) a trailer attached to a public bus is deemed to be a part of the public bus.

#### **7.8 Stopping on a path, median strip, or traffic island or painted island**

The driver of a vehicle (other than a bicycle or an animal) shall not stop so that any portion of the vehicle is on a path, traffic island, painted island, or median strip, unless the driver stops in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

#### **7.9 Stopping on verge**

- (1) A person shall not:
- (a) stop a vehicle (other than a bicycle);
  - (b) stop a commercial vehicle or bus, or a trailer or caravan unattached to a motor vehicle;
- or
- (c) stop a vehicle during any period when the stopping of vehicles on that verge is prohibited by a sign adjacent and referable to that verge or in contravention of clause 9.6,
- so that any portion of it is on a verge.
- (2) Subject to clause 9.6, subclause (1)(a) does not apply to the person if he or she is the owner or occupier of the premises adjacent to that verge, or is a person authorised by the occupier of those premises to stop the vehicle so that any portion of it is on the verge.

- (3) Subject to clause 9.6, subclause (1)(b) does not apply to a commercial vehicle when it is being loaded or unloaded with reasonable expedition with goods, merchandise or materials collected from or delivered to the premises adjacent to the portion of the verge on which the commercial vehicle is parked, provided no obstruction is caused to the passage of any vehicle or person using a carriageway or a path.

#### **7.10 Obstructing access to and from a path, driveway, etc.**

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is in front of a path, in a position that obstructs access by vehicles or pedestrians to or from that path, unless:
  - (a) the driver is dropping off, or picking up, passengers; or
  - (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under this local law.
- (2) A driver shall not stop a vehicle on or across a driveway or other way of access for vehicles travelling to or from adjacent land, unless:
  - (a) the driver is dropping off, or picking up, passengers; or
  - (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under this local law.

#### **7.11 Stopping near a public letter box**

A driver shall not stop a vehicle so that any portion of the vehicle is within 3 metres of a public letter box, unless the driver:

- (a) is dropping off, or picking up, passengers or mail; or
- (b) stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

#### **7.12 Stopping on a carriageway—heavy and long vehicles**

- (1) A person shall not park a vehicle or any combination of vehicles, that, together with any projection on, or load carried by, the vehicle or combination of vehicles, is 7.5 metres or more in length or exceeds a GVM of 4.5 tonnes:
  - (a) on a carriageway in a built-up area, for any period exceeding one hour, unless engaged in the picking up or setting down of goods; or
  - (b) on a carriageway outside a built-up area, except on the shoulder of the carriageway, or in a truck bay or other area set aside for the parking of goods vehicles.
- (2) Nothing in this clause mitigates the limitations or condition imposed by any other clause or by any local law or traffic sign relating to the parking or stopping of vehicles.

#### **7.13 Stopping on a carriageway with a bicycle parking sign**

The driver of a vehicle (other than a bicycle) shall not stop on a length of carriageway to which a 'bicycle parking' sign applies, unless the driver is dropping off, or picking up, passengers.

#### **7.14 Stopping on a carriageway with motor cycle parking sign**

The driver of a vehicle shall not stop on a length of carriageway, or in an area, to which a 'motor cycle parking' sign applies, or an area marked 'M/C' unless:

- (a) the vehicle is a motor cycle; or
- (b) the driver is dropping off, or picking up, passengers.

## PART 8 – PARKING PERMITS

### 8.1 Parking permit

- (1) A person may apply for a permit to park a vehicle on a thoroughfare if the person is:
  - (a) an occupier, owner or an employee of a lot fronting the thoroughfare; and
  - (b) the holder of the requisite vehicle licence under the *Road Traffic Act* for the vehicle.
- (2) An applicant for a permit may apply for a temporary permit by stating (by way of statutory declaration) on an application for such that he or she resides or owns that lot, or a letter from the employer that occupies that lot.
- (3) An application for a permit shall be made in the form determined by the local government.
- (4) The local government may in respect of an application for a permit for the purpose of subclause (1) or (2):
  - (a) approve it;
  - (b) approve it subject to such conditions as the local government considers appropriate; or
  - (c) refuse to approve it.
- (5) Where the local government makes a decision under subclauses (4)(a) or (b), it shall issue a permit in the form determined by it to the person who applied for the permit.
- (6) A temporary permit issued for the purpose of subclause (2):
  - (a) will expire 3 months after it is issued; and
  - (b) is not renewable.
- (7) A permit issued for the purpose of subclause (1) may be either:
  - (a) an annual permit, issued for a period not exceeding one year and expiring on 31 December in the year of issue; or
  - (b) a temporary permit, issued for a period not exceeding 6 months from the date of issue.
- (8) Every permit issued for the purpose of subclause (1) is to specify:
  - (a) a permit number;
  - (b) the registration number of the vehicle;
  - (c) the name of the thoroughfare to which the exemption granted by clause 8.2 applies; and
  - (d) the date on which it expires.

### 8.2 Conditions of exemption for parking permits

Where parking of a vehicle on any part of a thoroughfare within the district is prohibited for more than a specified time, or without an unexpired parking ticket being displayed within the vehicle, the holder of a permit issued under clause 8.1 is exempted from such prohibitions if:

- (a) the vehicle is parked on a thoroughfare specified in the permit, but not adjacent to retail premises where the parking of all vehicles is subject to a time restriction;
- (b) the permit is affixed to the windscreen of the vehicle in a prominent position;
- (c) the period in respect of which the permit was issued has not expired; and

- (d) if the holder of the permit at the time of parking the vehicle still resides, owns or works at the lot in respect of which the permit was issued.

### **8.3 Removal and cancellation of parking permit**

The holder of a permit issued under clause 8.1 who changes residence or employment shall remove the permit from the vehicle to which it is affixed, and the permit shall be deemed to be cancelled on and from the date the holder changes residence or employment.

## **PART 9—MISCELLANEOUS**

### **9.1 Removal of notices on vehicle**

A person, other than the driver of the vehicle or a person acting under the direction of the driver of the vehicle, shall not remove from the vehicle any notice put on the vehicle by an authorised person.

### **9.2 Unauthorised signs and defacing of signs**

A person shall not without the authority of the local government:

- (a) mark, set up or exhibit a sign purporting to be or resembling a sign marked, set up or exhibited by the local government under this local law;
- (b) remove, deface or misuse a sign or property, set up or exhibited by the local government under this local law or attempt to do any such act; or
- (c) affix a board, sign, placard, notice or other thing to or paint or write upon any part of a sign set up or exhibited by the local government under this local law.

### **9.3 Signs must be complied with**

An inscription or symbol on a sign operates and has effect according to its tenor and a person contravening the direction on a sign commits an offence under this local law.

### **9.4 General provisions about signs**

- (1) A sign marked, erected, set up, established or displayed on or near a thoroughfare is, in the absence of evidence to the contrary presumed to be a sign marked, erected, set up, established or displayed under the authority of this local law.
- (2) The first three letters of any day of the week when used on a sign indicate that day of the week.

### **9.5 Special purpose and emergency vehicles**

Notwithstanding anything to the contrary in this local law, the driver of:

- (1) a special purpose vehicle may, only in the course of his or her duties and when it is expedient and safe to do so, stop, or park the vehicle in any place, at any time; and
- (2) an emergency vehicle may, in the course of his or her duties and when it is expedient and safe to do so or where he or she honestly and reasonably believes that it is expedient and safe to do so, stop, or park the vehicle at any place, at any time.

### **9.6 Vehicles not to obstruct a public place**

- (1) A person shall not leave a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place without the permission of the local government or unless authorised under any written law.
- (2) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

**PART 10—PENALTIES**

**10.1 Offences and penalties**

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not less than \$1,000 and not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.
- (4) The amount appearing in the final column of Schedule 1 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

**10.2 Form of notices**

For the purposes of this local law:

- (a) the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1;
- (b) the form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in Schedule 1;
- (c) the form of the infringement notice referred to in section 9.17 of the Act which incorporates the notice referred to in section 9.13 of the Act, is that of Form 3 in Schedule 1; and
- (d) the form of the notice referred to in section 9.20 of the Act is that of Form 4 in Schedule 1.

**Schedule 1 - PRESCRIBED OFFENCES**

(Clause 10.1(4))

ITEM NO.	CLAUSE NO.	NATURE OF OFFENCE	MODIFIED PENALTY \$
1	2.2	Failure to pay fee for metered space	100
2	2.3	Parking in excess of period shown on metered space	100
3	2.4	Parking when meter has expired	100
4	2.6(a)	Failure to park wholly within metered space	100
5	2.6(c)	Parking outside metered zone	100
6	2.7	Non-permitted insertion in parking meter	100
7	2.8	Failure to display ticket clearly in metered zone	100
8	2.9	Parking or attempting to park a vehicle in a metered space occupied by another vehicle	100
9	2.10	Parking contrary to a meter hood	100
10	3.2	Failure to park wholly within parking stall	100
11	3.2(4)	Failure to park wholly within parking area	100



ITEM NO.	CLAUSE NO.	NATURE OF OFFENCE	MODIFIED PENALTY \$
12	3.3	Failure to pay parking station fee	100
13	3.5	Leaving without paying parking station fee	100
14	3.7	Failure to display ticket clearly in parking station	100
15	3.8(1)(a)	Causing obstruction in parking station	100
16	3.8(1)(b)	Parking contrary to sign in parking station	100
17	3.8(1)(c)	Parking contrary to directions of authorised person	100
18	3.8(1)(d)	Parking or attempting to park a vehicle in a parking stall occupied by another vehicle	100
19	4.1(1)(a)	Parking wrong class of vehicle	100
20	4.1(1)(b)	Parking by persons of a different class	100
21	4.1(1)(c)	Parking during prohibited period	100
22	4.1(3)(a)	Parking in no parking area	100
23	4.1(3)(b)	Parking contrary to signs or limitations	100
24	4.1(3)(b)	Parking vehicle in motor cycle only area	100
25	4.1(3)(b)	Parking motor cycle in stall not marked "M/C"	100
26	4.1(4)	Parking without permission in an area designated for "Authorised Vehicles Only"	100
27	4.2(1)(a)	Failure to park on the left of two-carriageway and against the flow of traffic	100
28	4.2(1)(b)	Failure to park on boundary of one-way carriageway and against the flow of traffic	100
29	4.2(1)(c)	Parking when distance from farther boundary less than 3 metres	100
30	4.2(1)(d)	Parking closer than 1 metre from another vehicle	100
31	4.2(1)(e)	Causing obstruction	100
32	4.3(b)	Failure to park at approximate right angle of 90 degrees	100
33	4.4(2)	Failure to park at approximate right angle of 45 degrees	100
34	4.5(2)(a)	Parking on or adjacent to a median strip or painted island	100
35	4.5(2)(b)	Denying access to private drive or right of way	100
36	4.5(2)(c)	Parking beside excavation or obstruction so as to obstruct traffic	100
37	4.5(2)(d)	Parking within 10 metres of traffic island	100
38	4.5(2)(e)	Parking on footpath/pedestrian crossing	100
39	4.5(2)(f)	Parking contrary to continuous line markings	100
40	4.5(2)(g)	Parking on intersection	100
41	4.5(2)(h)	Parking within 1 metre of fire hydrant or fire plug	100
42	4.5(2)(i)	Parking within 3 metres of public letter box	100
43	4.5(2)(j)	Parking within 10 metres of intersection	100
44	4.5(3)(a)	Parking vehicle within 10 metres of departure side of bus stop	100
45	4.5(3)(b)	Parking vehicle within 10 metres of departure side of children's crossing or pedestrian crossing	100



ITEM NO.	CLAUSE NO.	NATURE OF OFFENCE	MODIFIED PENALTY \$
46	4.5(4)(a)	Parking vehicle within 20 metres of approach side of bus stop	100
47	4.5(4)(b)	Parking vehicle within 20 metres of approach side of a children's or pedestrian crossing	100
48	4.5(5)	Parking vehicle within 20 metres of approach side or departure side of railway level crossing	100
49	4.6	Parking contrary to direction of authorised person	100
50	4.7(2)	Removing mark of authorised person	100
51	4.8	Moving vehicle to avoid time limitation	100
52	4.9(a)	Parking in thoroughfare for purpose of sale	100
53	4.9(b)	Parking unlicensed vehicle in thoroughfare	100
54	4.9(c)	Parking a trailer/caravan on a thoroughfare	100
55	4.9(d)	Parking in thoroughfare for purpose of repairs	100
56	4.10(1)or(2)	Parking on land that is not a parking facility without consent	100
57	4.10(3)	Parking on land not in accordance with consent	100
58	4.11	Driving or parking on reserve	100
59	5.1(1)	Stopping contrary to a "no stopping" sign	100
60	5.1(2)	Parking contrary to a "no parking" sign	100
61	5.1(3)	Stopping within continuous yellow lines	100
62	6.1	Stopping unlawfully in a loading zone	100
63	6.2	Stopping unlawfully in a taxi zone or bus zone	100
64	6.3	Stopping unlawfully in a mail zone	100
65	6.4	Stopping in a zone contrary to a sign	100
66	7.1	Stopping in a shared zone	100
67	7.2	Double parking on carriageway	100
68	7.3	Stopping near an obstruction	100
69	7.4	Stopping on a bridge or tunnel	100
70	7.5	Stopping on crests/curves	100
71	7.6	Stopping near fire hydrant	100
72	7.7	Stopping near bus stop	100
73	7.8	Stopping on path, median strip or traffic island	100
74	7.9	Stopping on verge	100
75	7.10	Obstructing path, a driveway	100
76	7.11	Stopping near public letter box	100
77	7.12	Stopping heavy or long vehicles on carriageway	100
78	7.13	Stopping in bicycle parking area	100
79	7.14	Stopping in motorcycle parking area	100
80	8.3	Failure to remove permit when residence changed	100
81	9.6	Leaving vehicle so as to obstruct a public place	100
82		All other offences not specified	100

Schedule 1 – FORMS
Local Government Act 1995
Local Government (Functions and General) Regulations 1996

[reg. 25]

FORM 1
PARKING LOCAL LAW 2021

NOTICE TO OWNER OF VEHICLE INVOLVED IN OFFENCE

Date ..... / ..... / .....

City/Town/Shire of.....
To: (1) .....
of: (2) .....
It is alleged that on ..... / ..... / ..... at (3) .....am/pm
at (4) .....;
your vehicle: (5).....;
was involved in the commission of the following offence -
contrary to regulation ..... of the Parking Local Law 2021.

You are required under section 9.13 of the Local Government Act 1995 to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless:

- (a) within 28 days after being served with this notice:
(i) you inform the Chief Executive Officer, or another authorised officer, of the local government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed;
(ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;
or
(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as is allowed.

(6).....
(7).....

Insert:

- (1) Name of owner or 'owner of (vehicle identification)'
(2) Address of owner (not required if owner not named)
(3) Time at which offence allegedly committed
(4) Location of alleged offence
(5) Vehicle identification
(6) Signature of authorised person
(7) Name and title of authorised person giving notice

Schedule 1 FORMS
Local Government Act 1995
Local Government (Functions and General) Regulations 1996

[reg. 26(1)]

FORM 2
PARKING LOCAL LAW 2021
INFRINGEMENT NOTICE

Serial No ..... Date ..... / ..... / .....
City/Town/Shire of.....
To: (1).....
of: (2) .....
It is alleged that on ..... / ..... / ..... at (3) .....
at (4).....
in respect of vehicle: make: ..... ; type: ..... ;
registration: ..... , you committed the following offence: .....
contrary to clause ..... of the Parking Local Law 2021.
The modified penalty for the offence is \$ .....
If you do not wish to have a complaint of the alleged offence heard and determined by a court, the
amount of the modified penalty may be paid to an authorised person at (5) .....
.....within a period of 28 days after the giving of this notice.

- Unless within 28 days after being served with this notice:
(a) you pay the modified penalty; or
(b) you:
(i) inform the Chief Executive Officer or another authorised officer of the local
government as to the identity and address of the person who was the driver or
person in charge of the above vehicle at the time the offence is alleged to have been
committed; or
(ii) satisfy the Chief Executive Officer that the above vehicle had been stolen or was
being unlawfully used at the time the offence is alleged to have been committed,
you will, in the absence of proof to the contrary, be deemed to have committed the
above offence and court proceedings may be instituted against you.

If you do not pay the modified penalty within 28 days after the date of this notice, you may be
prosecuted or enforcement action may be taken under the Fines, Penalties and Infringement Notices
Enforcement Act 1994. Under that Act, some or all of the following actions may be taken—

Your driver’s licence may be suspended, your vehicle licence may be suspended or cancelled, you
may be disqualified from holding or obtaining a driver’s licence or vehicle licence, your vehicle may
be immobilised or have its number plates removed, your details may be published on a website,
your earnings or bank accounts may be garnished, and your property may be seized and sold. If the
above address is not your current address, or if you change your address, it is important that you
advise us immediately. Failure to do so may result in your driver’s licence or any vehicle licence you
hold being suspended without your knowledge.

(6).....
(7).....

- Insert:
(1) Name of alleged offender or ‘the owner’ [“owner of (vehicle identification)” suffices if notice given
with no notice under section 9.13 of Act]
(2) Address of alleged offender [not required if notice given with a notice under section 9.13 of the Act]
(3) Time of alleged offence
(4) Location of alleged offence
(5) Place where modified penalty may be paid
(6) Signature of authorised person
(7) Name and title of authorised person giving notice

Schedule 1 FORMS  
Local Government Act 1995  
Local Government (Functions and General) Regulations 1996

[reg. 27(1)]

FORM 3  
PARKING LOCAL LAW 2021

NOTICE OF WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No .....

Date ..... / ..... / .....

City/Town/Shire of.....

To: (1).....

of: (2) .....

Infringement Notice No. .... dated ...../...../.....

for the alleged offence of:.....

.....

..... has been withdrawn.

The modified penalty of \$ .....

(a) has been paid and a refund is enclosed.

(b) has not been paid and should not be paid.

\* (delete as appropriate)

Name and title of authorised person giving this notice .....

Signature of authorised person.....

Insert:

(1) Name of alleged offender to whom infringement notice was given or 'the owner'.

(2) Address of alleged offender.



*Cr Rowena Mouda left the meeting at 6:14pm.*

*Cr Rowena Mouda returned to the meeting at 6:15pm.*

*Rob Paull and Alan Thornton left the meeting at 6:15pm.*

*Rob Paull and Alan Thornton returned to the meeting at 6:19pm.*

#### **14.2 FINALISED REQUEST TO CLOSE A PORTION OF BALANIJANGARRI ROAD, FITZROY CROSSING (MRWA REF. NO 30223)**

**File Number:** 8145

**Author:** Robert Paull, Manager Development Services

**Responsible Officer:** Wayne Neate, Director Technical and Development Services

**Applicant:** Marninwarntikura Woman's Resource Centre

**Owner:** State of Western Australia

**Proposal:** Permanently close a portion of Road Reserve

**Location:** Balanijangarri Road, Fitzroy Crossing (Main Roads Western Australia Ref. No 30223)

**Authority/Discretion:** Legislative

##### Summary

Council is requested to resolve under s58 (1) of the *Land Administration Act 1997 (LAA)* to request the Minister for Lands to permanently close a portion of Balanijangarri Road, Fitzroy Crossing (Main Roads Western Australia Ref. No 30223).

##### **DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

##### **BACKGROUND**

At the Ordinary Meeting of 29 July 2021, Council considered a request from Marninwarntikura Woman's Resource Centre (MWRC) to close a portion of Balanijangarri Road, Fitzroy Crossing that adjoined land occupied by MWRC being Lot 91L and resolved as follows:

*"That Council:*

- 1. Pursuant to Section 58 of the Land Administration Act 1997, support the permanent closure of a portion of Balanijangarri Road as outlined in this Report and expresses its preference that the closed portion be amalgamated with Lot 91L;*
- 2. Give notice of the proposed road closure in accordance with Land Administration Act 1978 allowing a minimum period of 35 days for people to lodge submissions from the date of the notice; and*
- 3. Request the Chief Executive Officer to advise the Marninwarntikura Woman's Resource Centre (MWRC) that whilst some costs associated with progressing a road closure can generally be absorbed by the Shire, specific costs for advertising a local newspaper and potentially surveying and the like will be the responsibility of MWRC.*

4. *At the conclusion of the submission period, that the Chief Executive Officer be requested to provide a further report addressing whether to proceed or not to proceed with the proposed road closure in light of any submissions”.*

With regard to the statutory processes referred to in this report and for clarity:

- Council’s role with the road closure application is to determine if the proposed road closure can be supported and, if so, to request the Minister for Lands to close it. To provide a context for this proposal, a plan of the area showing existing constructed road reserve to be closed is at **Attachment 1**.
- The Department of Lands (DoL) is responsible for administering the LAA, including road closure requests from local governments, and providing advice to the Minister for Lands.
- The Minister for Lands makes the final decision on road closure proposals.

Since Council’s 29 July 2021 resolution, the proposal was advertised in accordance with the requirements of the LAA and referred to relevant state agencies, service authorities and impact land owner (Wangki Yupurnanupurru Radio Station - adjoining land owner to Balanijangarri Road). The proposed road closure was advertised in the Broome Advertiser on 26 August 2021 and a 35 day minimum period for submissions (as required under LAA) was invited. One public submission in the form of the closure information was received by the Wangki Yupurnanupurru Radio Station. The application was referred to relevant agencies and service authorities as follows:

- Department Education WA – both Kimberley and Perth offices (adjoining land owner to Balanijangarri Road).
- MWRC (whilst the proponent, it was appropriate to notify them of the proposal).
- Department Aboriginal Affairs.
- Western Australian Land Authority (Development WA).
- Water Corporation.
- Horizon Power.
- Telstra Corporation.
- Department of Mines, Industry Regulation and Safety.
- Main Roads WA.
- Department of Primary industries and Regional Development.
- Department of Planning, Lands and Heritage.
- Department of Fire and Emergency Services.
- Western Australian Land Information Authority.

As an interested party, Bunuba Aboriginal Corporation was notified.

Five (5) submissions were received (4 from service authorities and one from adjoining landowner). A Schedule of Submissions and Officer comment is provided as **Attachment 2**. None of the submissions objected to the proposed road closure.



**STATUTORY ENVIRONMENT**

**Local Government Act 1995**

**Land Administration Act 1997**

Part 5, Division 1, Section 58 – Closing Roads:

- 1) *When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.*
- 2) *When a local government resolves to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.*
- 3) *A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.*

**POLICY IMPLICATIONS**

Council does not have a policy in relation to this item.

**FINANCIAL IMPLICATIONS**

As required by Council’s 29 July 2021 resolution, MWRC reimbursed the Shire for the cost advertising. Should the recommendation be followed and MWRC be responsible for all costs associated with the road closure, there are no known financial implications in relation to this item.

**STRATEGIC IMPLICATIONS**

GOAL	OUTCOME	STRATEGY
1. Leadership and Governance	1.1 Collaboration and Partnerships 1.2 Capable, inclusive and effective organisation 1.3 Effective Communication	1.1.1 Maximise local opportunities 1.2.4 Attract and effectively use resources to meet community needs 1.3.3 Listen to and respond to the needs of our communities

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Legal &amp; Compliance:</b> Council is obligated to consider closure of the portion of the road.	Unlikely	Minor	Low	Attention to process and procedure, awareness of legislation and vigilance.

**CONSULTATION**

Consultation has been carried out and five (5) responses received. A Schedule of Submissions along with Officer comment and recommendation is provided as **Attachment 2**.

**COMMENT**

Should Council resolve to proceed with the closure, a formal request would be lodged with the Minister for Lands under s.58(1) of the LAA to close the road and request that the road reserve be amalgamated into the adjoining land.

It is noted that Water Corp and Horizon Power will require certain works and actions of the closed road to be undertaken and which will need to be at the cost of MWRC.

It is anticipated that MWRC will need to clarify with Water Corp as to the specific infrastructure changes however, the Shire is more than willing to liaise with both parties to seek resolution. MWRC will also need to agree to accept all costs associated with the closure to ensure that there is no financial burden on the Shire.

Given that no objection was received, once MWRC advise that it accepts the cost burden of the road closure (in lieu of the Shire), it is considered appropriate for Council to:

- Request the Minister for Lands to permanently close the portion of close a portion of Balanijangarri Road, Fitzroy Crossing as provided in **Attachment 1**; and
- Express its preference that the closed portion be amalgamated with Lot 91L.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Attachment 1 - Road Closure Plan**  
2. **Attachment 2 - Schedule of Submissions**  

**RESOLUTION 168/21**

**Moved:** Cr Andrew Twaddle

**Seconded:** Cr Paul White

**That with respect to the finalised request to close a portion of Balanijangarri Road, Fitzroy Crossing (MRWA Ref. No 30223) that Council:**

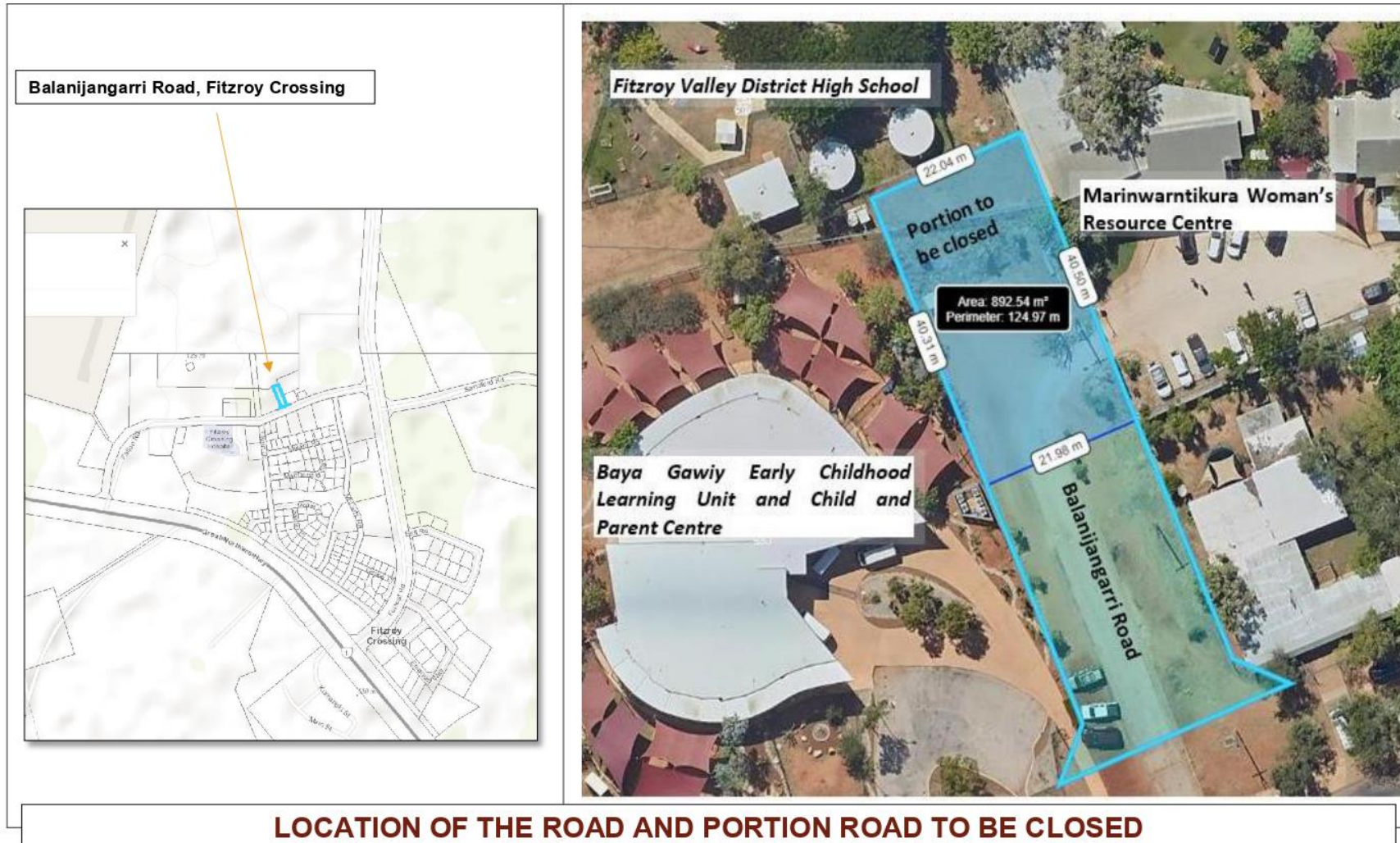
1. **Notes the Schedule of submissions and adopts the Officer recommendations as provided at Attachment 2.**
2. **Resolves that Marninwarntikura Woman's Resource Centre (MWRC) be responsible for any works, surveying, actions or other costs required to close portion of Balanijangarri Road, Fitzroy Crossing as provided for in Attachment 1.**
3. **Resolves under Section 58 (1) of the *Land Administration Act 1997* to request the Minister for Lands to permanently close the portion of close a portion of Balanijangarri Road, Fitzroy Crossing as provided in Attachment 1 and expresses its preference that the closed portion be amalgamated with Lot 91L.**
4. **The Chief Executive Officer be requested not to progress Resolution 2 until MWRC confirms in writing that it will accept responsibility for all associated costs (in lieu of the**

**Shire) in progressing the closure of portion Balanijangarri Road, Fitzroy Crossing.**

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**



**SCHEDULE OF SUBMISSIONS**

**CLOSURE OF A PORTION OF BALANIJANGARRI ROAD, FITZROY CROSSING (MAIN ROADS WESTERN AUSTRALIA REF. NO 30223)**

No.	NAME / ADDRESS	SUBMISSION	SHIRE COMMENT	SHIRE RECOMMENDATION
1	Retail & Community Manager Horizon Power 228 Messmate Way, Kununurra WA 6743	Our Asset Team have advised that we will still require access to the Horizon Power poles on this street, will you be creating an easement?	Should Council resolve to support the proposed closure, it is appropriate that a recommendation to the Minister for Lands be that appropriate easements for services be established.  In this regard, WMRC would need to accept any survey costs involved in finalising the plan for the closure and amalgamation.  The Submission from Horizon Power be noted and they advised of Council's resolution.	It is recommended that Council:  1. Note the submission from Horizon Power; 2. Advise WMRC that prior to progressing the road closure, that it accepts any survey costs involved in finalising the plan for the closure and amalgamation. 3. Once the acceptance for 2 above has been received in writing from MWRC, that Council recommend to the Minister for Lands that portion of Balanijangarri Road, Fitzroy Crossing be closed and appropriate easements for services be established on the closed portion; and 4. Advise Western Power and MWRA of Council's resolution.
2	Planning, Regulation and Extension Agriculture Resource Management and Assessment Sustainability and Biosecurity Department of Primary Industries and Regional Development 1 Verschuer Place, Bunbury WA 6230	Thank you for inviting the Department of Primary Industries and Regional Development (DPIRD) to comment on the above proposal. As Balanijangarri Road is located within Fitzroy Crossing and its proposed partial closure does not impact primary industries, DPIRD does not have any comments to make on the proposal.	The Submission from DPIRD be noted and they be advised of Council's resolution.	It is recommended that Council note the submission from DPIRD and advise them of Council's resolution.
3	Land Use Planning Minerals and Petroleum Resources Directorate Mineral House 100 Plain Street East Perth Western Australia 6004	The Department of Mines, Industry Regulation and Safety (DMIRS) has determined that this proposal raises no significant issues with respect to mineral and petroleum resources, geothermal energy, and basic raw materials.	The Submission from DMIRS be noted and they be advised of Council's resolution.	It is recommended that Council note the submission from DMIRS and advise them of Council's resolution.

No.	NAME / ADDRESS	SUBMISSION	SHIRE COMMENT	SHIRE RECOMMENDATION
4	<p>Land Servicing Advisor Development Services Water Corporation 629 Newcastle Street, Leederville WA 6007</p>	<p>The Water Corporation does have existing assets in the area to be closed, therefore before the amalgamation can go ahead, there are certain works that need to be carried out.</p> <p><b>Sewer</b> The existing sewer main can be left as it is, we won't ask for an easement in this instance. There is also a possibility to cut &amp; cap the existing sewer at the proposed front lot boundary. A new property connection can be arranged and the internal plumbing can then be relocated by a licenced plumber.</p> <p><b>Water</b> There is a DN100 reticulated water main within the proposed road closure. As water pipes are under constant pressure, they cannot be left within private properties. The main therefore has to be cut and capped and the existing services need to be relocated at the new front lot boundary. The proposed boundary also needs to be adjusted, as the current plan would cut off lot 284 from our services.</p> <p>I have attached a sketch showing the works required. (Note: <b>Attachment A</b>).</p> <p>Meter relocations can be arranged through our Building Services. The cut &amp; cap works by lodging a Works Request Form.</p>	<p>Should Council resolve to support the proposed closure, it is appropriate that a recommendation to the Minister for Lands be that appropriate easements for services be established.</p> <p>However, it is anticipated that the sewer and reticulated water main works will come at an expensive and should be a matter for MWRC to accept.</p> <p>In regard to the reference in Water Corporations correspondence that "the current plan would cut off lot 284 from our services" doesn't recognise that the intent of the road closure is to amalgamate the closed portion with lot 284 (91L). Accordingly, modification to the boundary is not considered necessary (Water Corporation to be advised).</p> <p>The Shire has advised Water Corporation that the intent of the road closure is to amalgamate the closed portion with lot 284 (91L) hence the modifications sought may not necessarily be necessary. However, this will require detailed assessment and should be undertaken in consultation with MWRC, Shire and Water Corporation once Council has agreed to support the closure of the road.</p>	<p>It is recommended that Council:</p> <ol style="list-style-type: none"> <li>1. Note the submission from Horizon Power;</li> <li>2. Advise MWRC that prior to progressing the road closure, that it accepts any survey costs and water and sewer infrastructure costs associated as required by Water Corporation with the involved in finalising the plan for the closure and amalgamation.</li> <li>3. Once the acceptance for 2 above has been received in writing from MWRC, that Council recommend to the Minister for Lands that portion of Balanijangarri Road, Fitzroy Crossing be closed and appropriate easements service and reticulated water and sewerage works be established on the closed portion; and</li> <li>4. Advise Water Corporation and MWRC of Council's resolution and for the Shire to seek to assist in mediating an appropriate outcome.</li> </ol>

No.	NAME / ADDRESS	SUBMISSION	SHIRE COMMENT	SHIRE RECOMMENDATION
5	Station Manager Wangki Yupurnanapuru Radio	<p>I'm just wondering what you can tell me about what seems to be a very abrupt decision to close this road. Depending on what is planned, this could have a big impact on me as the driveway into the back yard and carport for my house runs off this road.</p> <p>I received a letter from you in the mail today, when I opened it contained an aerial photo of my property and a highlighted section which was marked as proposed road closure. There was no letter included with it and absolutely no detail or information. There is no indication of whether you are suggesting it is going to be temporarily closed for works or shut permanently?</p> <p>Is it going to be removed and replaced with something else? If the land is to be sold and turned into another property or turned into a car park for Mannawantakurra or Baya Gawi then I'm going to need a driveway included so I can get into my backyard. Wangki is lucky at the moment because I don't have a private vehicle with me.</p> <p>If another manager comes in the future then they may need access to the backyard to keep their car off the street. As it is at the moment I need access to that gate if I have guests.</p>	<p>The correspondence provided to Wangki Yupurnanapuru Radio inadvertently omitted to include the plan showing the proposed closure. Once the submission was received, the Shire immediately provided a copy of the plan and follows:</p> <p><i>"On behalf of the Shire, I apologise for the correspondence received by Wangki Yupurnanapuru Radio in relation to the proposal to close a portion of Balanijangarri Road. In preparing the correspondence, it would appear that we unfortunately omitted to include the original letter. I have attached the correct correspondence and would be happy to provide a 'hard copy' if required. As background, the Marninwarntikura Woman's Resource Centre (MWRC) requested the Shire to consider closing a portion of Balanijangarri Road as follows:</i></p> <p><i>"Our organisation has outgrown our current facility and we are seeking space where we can extend the services that we offer to Fitzroy Valley women and to create a space where the public can meet local women.</i></p> <p><i>To do this we need to ensure that we reduce any additional traffic passing through the office and admin building as this is always a busy and often congested space. The Marnin Studio, a lively space where women come to heal and thrive through art making, is located at the back of our main building.</i></p>	<p>It is recommended that Council note the submission from Wangki Yupurnanapuru Radio along with the Shire's response and advise them of Council's resolution.</p>



No.	NAME / ADDRESS	SUBMISSION	SHIRE COMMENT	SHIRE RECOMMENDATION
			<p><i>We now need a place where the public can meet the artists and purchase their work, preferably without having to cut through our offices. Marninwarntikura also ran a campaign during Covid where we called for donations of dresses. Its success exceeded our wildest expectations with a steady stream of donations still arriving daily. We want to set up shipping containers where we can run an extension of Marnin Studio and to provide a place to distribute the dresses to local women. The site as shown below is nestled between the Early Learning Unit Centre and the main building. A pedestrian gate from the main site into to this small area would allow staff safer transit between the studio, the admin building and Baya Gaway Early Childhood Learning Unit and Child and Parent Centre...."</i></p> <p><i>The portion sought for road closure comprises an area of approximately 892m2; commencing in line with MWRC's boundary for approximately 40m to the northern boundary of the Balanijangarri road reserve. The following seeks to clarify the portion to be closed and remain open.</i></p>	

No.	NAME / ADDRESS	SUBMISSION	SHIRE COMMENT	SHIRE RECOMMENDATION
			<p><i>It is not Council's or MWRC's intention that the portion of Balanjangarri Road to be closed would limit or restrict access to Wangki Yupurnanapuru Radio. As noted in the attached correspondence, if there are any matters that you consider may impact Wangki Yupurnanapuru Radio, you are invited to lodge a submission in writing."</i></p> <p>No further response or submission was received from Wangki Yupurnanapuru Radio. The Submission from Wangki Yupurnanapuru Radio be received and advised of Council's resolution.</p>	

### 14.3 MOWANJUM ABORIGINAL COMMUNITY WASTEWATER TREATMENT PLANT - REQUEST EXCISE PART LOT 501 FROM RESERVE 1326 TO WATER CORPORATION

**File Number:** 7060; A102755; I51016

**Author:** Robert Paull, Manager Development Services

**Responsible Officer:** Wayne Neate, Director Technical and Development Services

**Authority/Discretion:** Administrative

#### SUMMARY

Council is requested to support the request from Water Corporation (WaterCorp) to excise part Lot 501 from Reserve 1326 for amalgamation with part Lot 85 owned in Freehold by Mowanjum Aboriginal Community and transferred to Water Corporation as one lot.

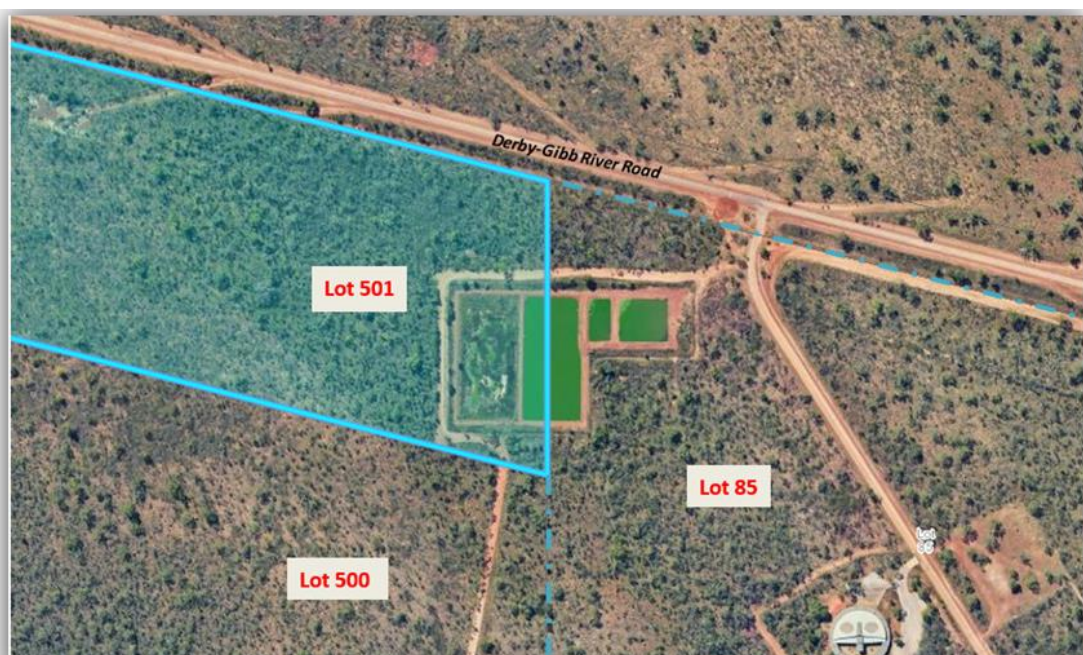
#### DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

#### BACKGROUND

WaterCorp has advised that as part of its 'Essential and Municipal Services Upgrades Program' (EMSUP), it has been engaged as the water service providers for Mowanjum Aboriginal Community to upgrade and operate water and sewerage services within the community. The Wastewater Treatment Plant (WWTP) is constructed over two parcels of land:

- Reserve 1326; Lot 501 on DP 49870 LR3156-329 with Management Order to Shire on the western portion of the WWTP; and
- Freehold (conditional Crown Grant in Trust) for Aboriginal Purposes Lot 85 on DP213679 owned by Mowanjum Aboriginal Corporation on the eastern portion of the WWTP.



The Remote Essential Municipal Services program on behalf of the State of Western Australia, funds municipal service delivery (and associated infrastructure management) and environmental management to Remote Aboriginal Settlements across WA.

It is WaterCorp’s preference to have tenure over the Wastewater Treatment Plant for future security and access. By correspondence to the Shire dated 12 November 2021, Water Corp advise:

*“We are currently working with the EMSUP team and Mowanjum Aboriginal Community to obtain tenure over water and sewer assets within Freehold Lot 85, a decision has not been made as to how the tenure will be taken over the WWTP, Freehold or Reserve. There are several factors that affect tenure within both parcels which we are currently working through with Department of Planning Lands and Heritage & Native Title Legal advice.”*

**(Attachment 1 - Water Corp Request)**

**STATUTORY ENVIRONMENT**

***Land Administration Act 1997***

***Water Corporations Act 1995***

**POLICY IMPLICATIONS**

There are no known policy implications associated with this Item.

**FINANCIAL IMPLICATIONS**

There are no known financial implications associated with this Item. All costs with the transfer of the land are to be borne by the WaterCorp.

**STRATEGIC IMPLICATIONS**

<b>GOAL</b>	<b>OUR PRIORITIES</b>	<b>WE WILL</b>
1. Leadership and Governance	2.2 Healthy Communities	2.2.3 Provide access to a range of places and spaces where people can meet, recreate, socialise, learn and connect

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
Reputation: The failure to support the request to excise part Lot 501 may result in a deterioration of sewerage services within the Mowanjum Aboriginal Community.	Almost Certain	Moderate	High	Council’s position will influence the upgrade and operation of water and sewerage services within the Mowanjum Aboriginal Community.

**CONSULTATION**

No external consultation is required in consideration of this Item.

**COMMENT**

The request from WaterCorp to excise part Lot 501 from Reserve 1326 for amalgamation with part Lot 85 owned in Freehold by Mowanjum Aboriginal Community and transferred to Water Corporation as one lot is considered reasonable. Provided there is support from the Mowanjum Aboriginal Community, no objection is recommended.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Attachment 1 - Water Corp Request**  

**RESOLUTION 169/21**

**Moved:** Cr Rowena Mouda

**Seconded:** Cr Andrew Twaddle

**That with respect to Mowanjum Aboriginal Community Wastewater Treatment Plant - Request Excise Part Lot 501 From Reserve 1326 to Water Corporation, Council:**

1. **Note the Report; and**
2. **Subject to support being provided from the Mowanjum Aboriginal Community, offer no objection to part Lot 501 being excised from Reserve 1326 for amalgamation with part Lot 85 owned in Freehold by Mowanjum Aboriginal Community and transferred to Water Corporation as one lot.**

**In Favour:** Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

**Against:** Nil

**CARRIED 8/0**

629 Newcastle Street  
Leederville WA 6007

PO Box 100  
Leederville 6902

T (08) 9420 2420



12 November 2021

Mr Robert Paull  
Manager Development Services  
Shire of Derby West-Kimberly  
30 Lock Street  
DERBY WA 6728

Dear Robert

**MOWANJUM ABORIGINAL COMMUNITY WASTEWATER TREATMENT PLANT (WWTP)  
CHANGE IN TENURE**

As part of the Essential and Municipal Services Upgrades Program, Water Corporation have been engaged as the water service providers for Mowanjum Aboriginal Community to upgrade and operate water and sewerage services within the community.

The Wastewater Treatment Plant is constructed over two parcels of land:

- Reserve 1326; Lot 501 on DP 49870 LR3156-329 with Management Order to Shire of Derby West-Kimberley on the western portion of the WWTP; and
- Freehold (conditional Crown Grant in Trust) for Aboriginal Purposes Lot 85 on DP213679 owned by Mowanjum Aboriginal Corporation on the eastern portion of the WWTP.

Both of which have Native Title claims in the Federal Court No: WAD258/2012; WAD598/2016 NT Claim - Claim - Warrwa Combined; Claim Booroola Moorrool Moorrool

It is the Corporation's preference to have tenure over the Wastewater Treatment Plant for future security and access.

We are currently working with the EMSUP team and Mowanjum Aboriginal Community to obtain tenure over water and sewer assets within Freehold Lot 85, a decision has not been made as to how the tenure will be taken over the WWTP, Freehold or Reserve. There are several factors that affect tenure within both parcels which we are currently working through with DPLH & NT Legal advice.

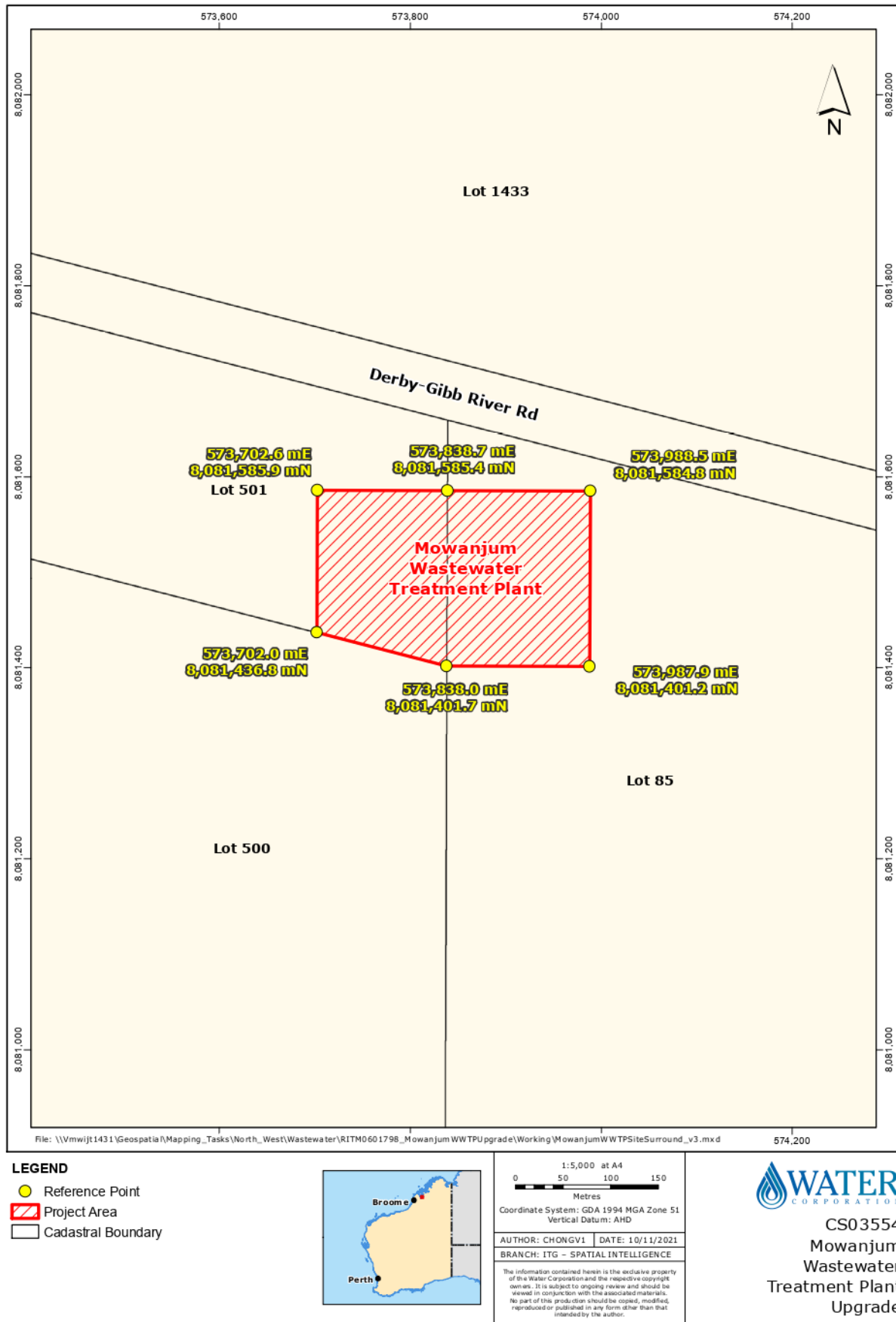
For the portion of the wastewater treatment plant in Reserve 1326 we seek the Shire of Derby West-Kimberley's consent to excise part Lot 501 from Reserve 1326 for amalgamation with part Lot 85 owned in Freehold by Mowanjum Aboriginal Community and transferred to Water Corporation as one lot.

We attached a plan showing the proposed excision area and seek your comments and support.

Should you require any further information please do not hesitate to contact me.

Yours sincerely

Marion Morton  
Advisor Property Acquisition  
Procurement & Property





**14.4 DRAFT SHIRE OF DERBY/WEST KIMBERLEY LOCAL PLANNING SCHEME NO.9 – RESOLUTION TO ADVERTISE**

**File Number:** 7060  
**Author:** Robert Paull, Manager Development Services  
**Responsible Officer:** Wayne Neate, Director Technical and Development Services  
**Applicant:** Shire of Derby/West Kimberley  
**Owner:** N/A  
**Proposal:** Preparation of a new local planning scheme  
**Location:** Whole of Shire  
**Authority/Discretion:** Legislative

**SUMMARY**

Draft Local Planning Scheme No.9 (LPS No. 9) is presented to Council to replace the existing Local Planning Scheme No.5 (LPS No. 5), Local Planning Scheme No.7 (LPS No. 7), and Interim Development Order No. 9 (IDO No. 9).

Following consultation with Councillors, the Department of Planning, Lands and Heritage (DPLH) and other Agencies, Council is requested to authorise the Chief Executive Officer to refer draft LPS No. 9 documents to the Western Australian Planning Commission (WAPC) Environmental Protection Authority (EPA) for certification ahead of public advertising.

**DISCLOSURE OF ANY INTEREST**

Director Technical and Development Services - owns property in scheme area of LPS No. 5 and draft LPS No. 9.

Manager Development Services – Nil.

**BACKGROUND****22 April 2021**

Initial Council Briefing concerning draft LPS No. 9.

**22 July 2021**

Second Council Briefing on draft LPS No. 9. The Briefing discussed the need to replace LPS No. 5, LPS No. 7, and IDO No. 9 with draft LPS No. 9 in order to:

- meet a statutory requirement to review Schemes regularly;
- ensure compliance with the Model Scheme Text and new planning regulations;
- reflect local and regional planning outcomes;
- align with the Shire of Derby West Kimberley Local Planning Strategy;
- improve planning outcomes; and
- improve assessment efficiencies.

It was also generally agreed that draft LPS No. 9 would be 'policy-neutral' LPS that would:

- reflect the Model Scheme Text;

- reflect the existing state, regional and local strategic planning framework and existing planning strategies;
- not propose radical rezoning and/or identification of new investigation areas for new urban or rural residential development except to ensure consistency with state, regional or local strategies or policies;
- not propose dramatic changes to anticipated land use and/or development control;
- reduce the number of prohibited land uses in the 'use class table'; and
- retain provisions that are unique to and within the Shire of Derby/West Kimberley.

Draft LPS No.9 Text and Maps are included as **Attachments 1** and **2** respectively.

### **26 August 2021**

In relation to draft LPS No. 9, Council resolved as follows:

*"That Council:*

- 1. Resolves pursuant to Clause 21 of the Planning and Development (Local Planning Schemes) Regulations 2015 not to proceed with Local Planning Scheme No.8 which was initiated at the Ordinary Council Meeting held on 26th February 2015 and advise the Western Australian Planning Commission that all actions pertaining to Local Planning Scheme No. 8 have ceased.*
- 2. Resolves pursuant to section 72 of the Planning and Development Act 2005 to prepare Local Planning Scheme No. 9 with reference to the entire area within the Shire of Derby-West Kimberley as shown in Attachment 1 with the inclusion of draft aims as shown in Attachment 2.*
- 3. Authorises the Chief Executive Officer to carry out notification of the resolution in accordance with Clause 20 of the Planning and Development (Local Planning Schemes) Regulations 2015."*

Council will recall that Draft LPS No. 8 was initiated by Council at the Ordinary Meeting of Council held on 26th February 2015. Due to the passage of time it was considered beneficial to restart the process so that the scheme remains a contemporary, up to date document and a reflection of the current Local and State Government policy and legislation.

### **21 September 2021**

Publication of notice of resolution to prepare draft LPS No. 9 in accordance with regulation 20 of the *Planning and Development (Local Planning Schemes) Regulations 2015* issued to 16 Agencies/Corporations and 4 adjoining local governments.

### **STATUTORY ENVIRONMENT**

The process for the preparation, advertising, modification and approval of a local planning scheme is set out in the *Planning and Development Act 2005 (Act)* and *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations)*. The Shire's current operational Planning Schemes are:

- Local Planning Scheme No.5 (Derby townsite) – Gazetted 25 September 2001;
- Local Planning Scheme No.7 (Birdwood Rise) – Gazetted 14 July 1998; and
- Interim Development Order No. 9 (remainder of the Shire) – Gazetted 17 November 2020.

Table 1 below lists the applicable sections of the Act and regulations and the legislative requirements or actions specific to the development of LPS No. 9, along with the date any actions were (and are likely to be) undertaken. It is estimated that LPS No.9 could be gazetted and the

process completed by late 2022.

**Table 1: Local Planning Scheme statutory process**

Section / Regulation	Requirement / Action	Date undertaken
s.72(1)(a) / r.19(1)	Council resolution to prepare LPS No. 9.	26/08/2021
r.20(1)	Council to notify of resolution to prepare scheme by publishing a notice in a newspaper and providing copies of notice to relevant public authorities	21/09/2021
s.81(a)	Council notification of resolution to prepare Scheme referred to Environmental Protection Authority	21/09/2021
s.69(1)	Requirements for general objects of LPS No. 9.	N/A
s.73(1)	Requirements for contents of LPS No. 9.	N/A
	Preparation of draft LPS No. 9.	February 2021 to November 2021
<b>r.21(1)</b>	<b>Council resolution to advertise draft Scheme 8</b>	<b>09/12/2021</b>
r.21.(2)	Local government to provide 2 copies of draft LPS No. 9 to WAPC within 21 days of Council resolution	TBC
s.81(b) / s.82	Requirement for draft LPS No. 9 to be referred to Environmental Protection Authority and await advice if environmental review is required	TBC
r.21(3)	WAPC assesses draft LPS No. 9 and advises local government if draft Scheme 8 is suitable for advertising	TBC
s.84 / r.22(1)	Local government to prepare notice of scheme advertisement	TBC
r.22(2)	Local government advertises draft LPS No. 9 by publishing notice in a newspaper, displaying draft LPS No. 9 in Shire offices, giving a copy to relevant public authorities, publishing draft Scheme 8 on Shire website and advertising in other ways considered appropriate.	TBC
r.22(4)	Draft LPS No. 9 to be advertised for a minimum of 90 days	TBC
r.25(2)	Local government to consider submissions made	TBC
r.25(3)	Council resolves to support or not support draft scheme with or without modification	TBC
r.28	Following resolution, local government to provide documentation to WAPC	TBC
s.87(1) / r.29	WAPC to consider documentation and make recommendation to Minister	TBC

Section / Regulation	Requirement / Action	Date undertaken
s.87(2) / r.31	Minister to approve with or without conditions or refuse to approve LPS No. 9.	TBC
s.87(3) / r.32	Minister to endorse final Scheme 8 and publish in the Local Government Gazette.	TBC
s.87(4B) / r.33	Local government to publish notice of approval of Scheme 8 in newspaper and also notify submitters	TBC

### POLICY IMPLICATIONS

Draft LPS No. 9 is required to be consistent with a wide range of state policies and guidelines and are also based on a range of regional and local strategies, structure plans, policies, etc. As noted, draft LPS No. 9 is essentially 'policy-neutral' reflecting the existing state, regional and local strategic planning framework and existing planning strategies. The Shire 'strategies' relevant are as follows:

#### ***Fitzroy Futures Town Plan (March 2009)***

The *Fitzroy Futures Town Plan* was prepared by the Department for Planning and Infrastructure on behalf of the WAPC in conjunction with the Shire of Derby–West Kimberley and BDAC. The *Fitzroy Futures Town Plan* was published for public comment in December 2004.

Following the amendment of the document in accordance with the comment received, a *Final Fitzroy Futures Town Plan* was produced in November 2005 and endorsed by the Shire of Derby–West Kimberley. An updated document was endorsed by the Western Australian Planning Commission (WAPC) in March 2009.

#### ***Shire of Derby/West Kimberley Local Planning Strategy (2013)***

The *Local Planning Strategy* provides the vision and a framework for long-term planning and development in the Shire over the next 15 years and provides the basis for the zoning and reservation of land in the draft LPS No.9. It is based on community needs and aspirations as expressed in the Shire's Strategic Community Plan through the five key focus areas of Leadership, Community, Economy, Environment and Infrastructure.

The *Local Planning Strategy* comprises two parts:

Part 1 – The Strategy summarises the Shire's key planning and development issues, sets the vision and strategic objectives for land use and development, and sets out individual strategies and actions required to achieve the vision over 15 years. The *Local Planning Strategy* depicts land use, development, environmental assets and other key issues in a visual form; and

Part 2 – Background Information and Analysis includes the detailed information and maps, along with the identification of key issues which help to support the high level strategies, actions and plans in Part 1. The *Local Planning Strategy* forms the interface between regional and local planning, and provides a strategic basis and rationale for the land use and development controls in draft LPS No. 9.

### FINANCIAL IMPLICATIONS

The Shire will incur minor administrative costs in publishing the notice of intent to prepare draft LPS No. 9 as required under the Regulations.

**STRATEGIC IMPLICATIONS**

GOAL	OUTCOME	STRATEGY
<b>Priority 1: Leadership and Governance</b>	1.1 Collaboration and Partnerships 1.2 Capable, inclusive and effective organisation 1.3 Effective Communication	1.1.1 Maximise local opportunities 1.2.4 Attract and effectively use resources to meet community needs 1.3.3 Listen to and respond to the needs of our communities.

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Legal &amp; Compliance:</b> Council is obligated to progress a review of its planning Schemes and IDO.	Unlikely	Moderate	Low	Staff will follow the procedures established by Statutory Agencies in particular, the Department of Planning, Lands and Heritage.

**CONSULTATION**

*Internal*

Councillors and Executive team

*External Agencies*

External agency consultation will occur extensively in later stages of the process.

*Community*

Community consultation will occur extensively in later stages of the process. Should Council resolve to advertise draft LPS No. 9, the Shire will undertake the following community consultation:

- Publishing notice in Broome Advertiser;
- Publishing notice in Babbling Boabs;
- Displaying draft LPS No. 9 in Shire offices/and notices on Public Notice Boards;
- Publishing draft Scheme 8 on Shire website;
- Establish an ‘Information morning/afternoon (twice) at the Civic Centre (Derby) and Visitors Centre (Fitzroy Crossing) to enable the public to discuss planning matters and the submission process with Shire Staff;
- Notify the community about draft LPS No. 9 via Facebook.

To acknowledge the movement of the community over the Wet Season, any advertising/communication will take place after mid-February 2022.

**COMMENT**

Draft LPS No. 9 has been prepared with the draft Text provided as **Attachment 1** and draft LPS No. 9 as **Attachment 2**. Draft LPS No. 9 includes the following Local Reserves (and Objectives) which restrict the use of land in the Shire for specific public purposes:

Reserve name	Objectives
Public Open Space	<ul style="list-style-type: none"> <li>• To set aside areas for public open space, particularly those established under the <i>Planning and Development Act 2005</i> s. 152.</li> <li>• To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.</li> </ul>
Environmental conservation	<ul style="list-style-type: none"> <li>• To identify areas with biodiversity and conservation value, and to protect those areas from development and subdivision.</li> <li>• To identify and protect areas of biodiversity conservation significance within National Parks and State and other conservation reserves.</li> </ul>
Civic and Community	<ul style="list-style-type: none"> <li>• To provide for a range of community facilities which are compatible with surrounding development.</li> <li>• To provide for public facilities such as halls, theatres, art galleries, educational, health and social care facilities, accommodation for the aged, and other services by organisations involved in activities for community benefit.</li> </ul>
Social Care Facilities	<ul style="list-style-type: none"> <li>• Civic and Community which specifically provide for a range of essential social care facilities.</li> </ul>
Cultural Facilities	<ul style="list-style-type: none"> <li>• Civic and Community which specifically provide for a range of essential cultural facilities.</li> </ul>
Public Purposes	<ul style="list-style-type: none"> <li>• To provide for a range of essential physical and community infrastructure.</li> </ul>
Medical Services	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of essential medical services.</li> </ul>
Infrastructure Services	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of essential infrastructure services.</li> </ul>
Education	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of essential education facilities.</li> </ul>
Emergency Services	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of essential emergency services.</li> </ul>
Heritage	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of heritage purposes.</li> </ul>
Government Services	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of government services.</li> </ul>
Recreational	<ul style="list-style-type: none"> <li>• Public Purposes which specifically provide for a range of public recreational facilities.</li> </ul>
Cemetery	<ul style="list-style-type: none"> <li>• To set aside land required for a cemetery.</li> </ul>
Drainage / Waterway	<ul style="list-style-type: none"> <li>• To set aside land required for significant waterways and drainage.</li> </ul>
Primary Distributor Road	<ul style="list-style-type: none"> <li>• To set aside land required for a primary distributor road being a road classified as a Regional Distributor or Primary Distributor under the Western Australian Road Hierarchy.</li> </ul>
Local Distributor Road	<ul style="list-style-type: none"> <li>• To set aside land required for a local distributor road being a road classified as a Local Distributor under the Western Australian Road Hierarchy.</li> </ul>
Local Road	<ul style="list-style-type: none"> <li>• To set aside land required for a local road being a road classified as an Access Road under the Western Australian Road Hierarchy.</li> </ul>

<b>Reserve name</b>	<b>Objectives</b>
Strategic infrastructure	<ul style="list-style-type: none"> <li>• To set aside land required for port or airport facilities.</li> </ul>
Special Purpose	<ul style="list-style-type: none"> <li>• To set aside land for a special purpose.</li> <li>• Purposes that do not comfortably fit in any other reserve classification.</li> </ul>

The following Local Zones (and Objectives) are proposed in draft LPS No. 9 which identify land in the Shire for a range of uses that will help meet the strategic objectives set out in the Local Planning Strategy:

<b>Zone name</b>	<b>Objectives</b>
Residential	<ul style="list-style-type: none"> <li>• To provide for a range of housing and a choice of residential densities to meet the needs of the community.</li> <li>• To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.</li> <li>• To provide for a range of non-residential uses, which are compatible with and complementary to residential development.</li> </ul>
Urban Development	<ul style="list-style-type: none"> <li>• To provide an intention of future land use and a basis for more detailed structure planning in accordance with the provisions of this Scheme.</li> <li>• To provide for a range of residential densities to encourage a variety of residential accommodation.</li> <li>• To provide for the progressive and planned development of future urban areas for residential purposes and for commercial and other uses normally associated with residential development.</li> <li>• To provide an intermediate transitional zone following the lifting of an urban deferred zoning</li> <li>• To identify areas where a structure plan, activity centre plan or local development plan are required.</li> </ul>
Settlement	<ul style="list-style-type: none"> <li>• To identify existing and proposed Aboriginal settlements and to collaboratively plan for the orderly and proper development of those places by — <ul style="list-style-type: none"> <li>(a) requiring preparation and endorsement of a layout plan in accordance with State Planning Policy 3.2; and</li> <li>(b) ensuring that development accords with a layout plan.</li> </ul> </li> </ul>



Zone name	Objectives
Rural	<ul style="list-style-type: none"> <li>• To provide for the maintenance or enhancement of specific local rural character.</li> <li>• To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use.</li> <li>• To maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage.</li> <li>• To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the Rural zone.</li> <li>• To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.</li> </ul>
Rural Residential	<ul style="list-style-type: none"> <li>• To provide for lot sizes in the range of 1 ha to 4 ha.</li> <li>• To provide opportunities for a range of limited rural and related ancillary pursuits on rural-residential lots where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.</li> <li>• To set aside areas for the retention of vegetation and landform or other features which distinguish the land.</li> </ul>
Rural Smallholdings	<ul style="list-style-type: none"> <li>• To provide for lot sizes in the range of 4 ha to 40 ha.</li> <li>• To provide for a limited range of rural land uses where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.</li> <li>• To set aside areas for the retention of vegetation and landform or other features which distinguish the land.</li> </ul>
Rural Townsite	<ul style="list-style-type: none"> <li>• To provide for a range of land uses that would typically be found in a small country town.</li> </ul>

Zone name	Objectives
Cultural and Natural Resource	<ul style="list-style-type: none"> <li>• Provide for development associated with the extraction of mineral and natural resources.</li> <li>• Ensure the preservation of Aboriginal heritage and culturally significant areas.</li> <li>• Provide for the conservation of significant landscape and environmental areas and values.</li> <li>• Allow for low impact tourism development including limited tourist accommodation and camping areas.</li> <li>• Allow land uses associated with Aboriginal heritage, traditional law and culture.</li> </ul>
Light Industry	<ul style="list-style-type: none"> <li>• To provide for a range of industrial uses and service industries generally compatible with urban areas, that cannot be located in commercial zones.</li> <li>• To ensure that where any development adjoins zoned or developed residential properties, the development is suitably set back, screened or otherwise treated so as not to detract from the residential amenity.</li> </ul>
General Industry	<ul style="list-style-type: none"> <li>• To provide for a broad range of industrial, service and storage activities which, by the nature of their operations, should be isolated from residential and other sensitive land uses.</li> <li>• To accommodate industry that would not otherwise comply with the performance standards of light industry.</li> <li>• Seek to manage impacts such as noise, dust and odour within the zone.</li> </ul>
Commercial	<ul style="list-style-type: none"> <li>• To provide for a range of shops, offices, restaurants and other commercial outlets in defined townsites or activity centres.</li> <li>• To maintain the compatibility with the general streetscape, for all new buildings in terms of scale, height, style, materials, street alignment and design of facades or improve the existing streetscape.</li> <li>• To ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality.</li> </ul>
Mixed Use	<ul style="list-style-type: none"> <li>• To provide for a wide variety of active uses on street level which are compatible with residential and other non-active uses on upper levels.</li> <li>• To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres, eating establishments and appropriate industrial activities which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.</li> </ul>

Zone name	Objectives
Tourism	<ul style="list-style-type: none"> <li>• To promote and provide for tourism opportunities.</li> <li>• To provide for a variety of holiday accommodation styles and associated uses, including retail and service facilities where those facilities are provided in support of the tourist accommodation and are of an appropriate scale where they will not impact detrimentally on the surrounding or wider area.</li> <li>• To allow limited residential uses where appropriate.</li> <li>• To encourage the location of tourist facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities.</li> </ul>
Service Commercial	<ul style="list-style-type: none"> <li>• To accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites.</li> <li>• To provide for a range of wholesale sales, showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.</li> </ul>
Special Use	<ul style="list-style-type: none"> <li>• To facilitate special categories of land uses which do not sit comfortably within any other zone.</li> <li>• To enable the Council to impose specific conditions associated with the special use.</li> </ul>

The land uses and development types that are permitted within each Zone are set out in the Zoning Table. This controls what development can happen and where and provides the basis for how Council will deal with applications for development.

In the Councillor Briefings, it was made clear that Councillors sought to remove some areas of 'prohibition' and the draft LPS No. 9 reflects to this direction.

Draft LPS No. 9 also proposes a number of Special Control Areas which will help to control development in a variety of ways for specific purposes (such as achieving better development outcomes, public health and safety and natural resource management).

There is currently one (1) Special Control Area in LPS No.5 which is due to be replaced by four (4) in LPS No. 9 as follows:

- SCA1 – Special Control Area - Public Drinking Water Source Area (Priority 1);
- SCA2 – Special Control Area – Infrastructure (Sewer Treatment Plant Odour Buffer);
- SCA3 – Special Control Area – Environment (Coastal Hazard Risk Area); and
- SCA4 – Special Control Area – Environment (Groundwater Protection Area).

It is noted that SCA3 reflects the Coastal Processes Setback mapping as an outcome from the Coastal hazard risk management and adaptation planning guidelines undertaken by the Shire in 2016/17.

The Reserves, Zones, Special Control Areas etc. are identified on the draft Scheme map and are written to reflect the individual strategies and actions from the Local Planning Strategy.

Draft LPS No. 9 is also drafted to retain specific provisions aimed at meeting other strategies and actions such as the protection of Boab Trees, reference to past scheme amendments, special rural provisions and building height limitations.

Essentially, draft LPS No. 9 continues the planning work undertaken by Council in the original but now defunct draft LPS No.8 however with more built in land use flexibility.

One other aspect of draft LPS No. 9 that differs from draft LPS No. 8 is that due to the planning complexities of Fitzroy Crossing, that town is to be zoned 'Rural Townsite' with planning direction guided by the *Fitzroy Futures Town Plan*. Draft LPS No. 8 sought to define Fitzroy Crossing in a traditional zoning pattern of 'residential, commercial, industrial etc. However, a 'Rural Townsite' zone provides a far more flexibility in the zoning and development potential for development in Fitzroy Crossing.

#### *General development standards and requirements*

It is noted that the original draft provided by the Department of Planning Lands and Heritage included the following provision

#### *"Schedule 3 - General development standards and requirements*

##### *(11) Declared rare flora*

- (a) Prior to the subdivision or development of any lot where there is remnant native vegetation, the local government may seek advice from the Department of Biodiversity, Conservation and Attractions as to whether any declared rare flora will be affected by the proposal, and shall take appropriate action if the lot contains such flora".*

It is considered that this provision is unreasonably onerous for the Shire as it would need to ascertain whether a parcel of land within its 118,560 square kilometres has "...declared rare flora...".

Whilst the Shire acknowledges the importance of protecting declared rare fauna, it is respectfully suggested that under the *Biodiversity Conservation Act 2016*, it is the responsibility of the Department of Biodiversity, Conservation and Attractions to manage declared rare flora. In addition, 'subdivision is the responsibility of the WAPC. Accordingly, draft LPS No. 9 removes this provision from draft before Council. It is possible that the WAPC may require the above provision (or similar) to be included in draft LPS No.9. If this is the case, it is anticipated that the matter would be referred back to Council for consideration.

#### **VOTING REQUIREMENT**

Simple majority

#### **ATTACHMENTS**

- 1.Attachment 1 Draft LPS No. 9 (Text)**  

**RESOLUTION 170/21****Moved: Cr Andrew Twaddle****Seconded: Cr Rowena Mouda****That Council defer consideration of draft LPS No.9 to the February 2022 meeting of Council where the draft Scheme Maps can be considered in association with text.**

**The reason for change:** The Manager Development Services advised that due to technical issues, the Department of Planning, Lands and Heritage were unable to provide the draft LPS No. 9 in time for the Council meeting. Hence, the item should be deferred to the next meeting of Council.

**In Favour:** Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

**Against:** Nil

**CARRIED 8/0**

# SHIRE OF DERBY/WEST KIMBERLEY

## LOCAL PLANNING SCHEME NO. 9

DRAFT

### DISCLAIMER

This is a copy of the Local Planning Scheme produced from an electronic version of the Scheme held and maintained by the Department of Planning. Whilst all care has been taken to accurately portray the current Scheme provisions, no responsibility shall be taken for any omissions or errors in this documentation.

Consultation with the respective Local Government Authority should be made to view a legal version of the Scheme.

Please advise the Department of Planning of any errors or omissions in this document.

**LOCAL PLANNING SCHEME GAZETTAL DATE: [INSERT DATE]**

**SHIRE OF DERBY/WEST KIMBERLEY LOCAL PLANNING SCHEME NO. 9 -  
AMENDMENTS**

AMD NO.	GAZETTAL DATE	UPDATED		DETAILS
		WHEN	BY	

**DRAFT**



## SCHEME DETAILS

### **SHIRE OF DERBY/WEST KIMBERLEY** **LOCAL PLANNING SCHEME NO. 9**

The Shire of **Derby/West Kimberley** under the powers conferred by the *Planning and Development Act 2005* makes the following Local Planning Scheme.

DRAFT

**TABLE OF CONTENTS**

**Part 1 - Preliminary**

- 1.1 Citation
- 1.2 Commencement
- 1.3 Schemes Revoked
- 1.4 Notes Do Not Form Part Of Scheme
- 1.5 Responsibility For Scheme
- 1.6 Scheme Area
- 1.7 Contents Of Scheme
- 1.8 Purposes Of Scheme
- 1.9 Aims Of Scheme
- 1.10 Relationship With Local Laws
- 1.11 Relationship With Other Local Planning Schemes
- 1.12 Relationship With Region Planning Scheme

**Part 2 - Reserves**

- 2.1 Regional Reserves
- 2.2 Local Reserves
  - Table 1 - Reserve Objectives*
- 2.3 Additional Uses For Local Reserves

**Part 3 - Zones And The Use Of Land**

- 3.1 Zones
  - Table 2 - Zone Objectives*
- 3.2 Zoning Table
  - Table 3 - Zoning Table*
- 3.3 Interpreting Zoning Table
- 3.4 Additional Uses
  - Table 4 - Specified Additional Uses For Zoned Land In Scheme Area*
- 3.5 Restricted Uses
  - Table 5 - Restricted Uses For Land In Scheme Area*

3.6 Special Use Zones

*Table 6 - Special Use Zones In Scheme Area*

3.7 Non-Conforming Uses

3.8 Changes to Non-Conforming Use

3.9 Register Of Non-Conforming Uses

**Part 4 - General Development Requirements**

4.1 R-Codes

4.2 Modification Of R-Codes

4.3 State Planning Policy 3.6 To Be Read As Part Of Scheme

4.4 Modification Of State Planning Policy 3.6

4.5 Other State Planning Policies To Be Read As Part Of Scheme

4.6 Modification Of State Planning Policies

4.7 Environmental Conditions

4.8 General Development Standards And Requirements

4.9 Site Specific Development Standards And Requirements

4.10 Variations To Site And Development Requirements

4.11 Restrictive Covenants

**Part 5 - Special control areas**

5.1 Special Control Areas

*Table 7 - Special Control Areas In Scheme Area*

**Part 6 - Terms referred to in Scheme**

Division 1 - General Definitions Used In Scheme

6.1 Terms Used

Division 2 - Land Use Terms Used In Scheme

6.2 Land Use Terms Used

**Schedules**

**Schedule A - Supplemental Provisions To The Deemed Provisions**

**Schedule 1 - Car Parking Requirements**

**Schedule 2 - Signage And Advertisements For Which Development Approval Not Required**

**Schedule 3 - General Development Standards And Requirements**

*Table 8 - Zone Development Requirements*

**Schedule 4 - Minimum Setback Requirements From Boundaries**

**Adoption Page**

DRAFT

## Part 1 - Preliminary

### 1.1 Citation

This local planning scheme is the Shire of Derby/West Kimberley Scheme No.9

### 1.2 Commencement

Under section 87(4) of the Act, this local planning scheme comes into operation on the day on which it is published in the *Gazette*.

### 1.3 Schemes revoked

The following local planning schemes are revoked -

Shire of Derby/West Kimberley Town Planning Scheme No.5 – Derby  
Gazettal date 25 September 2001

Shire of Derby/West Kimberley Town Planning Scheme No.7 – for a Special Rural  
Zone: Birdwood Rise & A Rural Zone  
Gazettal date 14 July 1998

Shire of Derby/West Kimberley Interim Development Order No.9  
Gazettal date 17 November 2020

### 1.4 Notes do not form part of Scheme

Notes, and instructions printed in italics, do not form part of this Scheme.

Note: *The Interpretation Act 1984* section 32 makes provision in relation to whether headings form part of the written law.

### 1.5 Responsibility for Scheme

The Shire of Derby/West Kimberley is the local government responsible for the enforcement and implementation of this Scheme and the execution of any works required to be executed under this Scheme.

### 1.6 Scheme area

This Scheme applies to the area shown on the Scheme Maps.

### 1.7 Contents of Scheme

1.7.1 In addition to the provisions set out in this document (the ***scheme text***), this Scheme includes the following -

- (a) the deemed provisions (set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2);

- (b) the supplemental provisions to the deemed provisions contained in Schedule A of the scheme (if any);
- (c) the Scheme Maps (sheets 1 to 15); and
- (d) the Subdivision Guide Plan of Birdwood Rise (Schedule 5).

1.7.2 This Scheme is to be read in conjunction with any local planning strategy for the Scheme area.

## 1.8 Purposes of Scheme

The purposes of this Scheme are to -

- (a) set out the local government's planning aims and intentions for the Scheme area; and
- (b) set aside land as local reserves for public purposes; and
- (c) zone land within the Scheme area for the purposes defined in this Scheme; and
- (d) control and guide development including processes for the preparation of structure plans, activity centre plans and local development plans; and
- (e) set out procedures for the assessment and determination of development applications; and
- (f) set out procedures for contributions to be made for the costs of providing infrastructure in connection with development through development contribution plans; and
- (g) make provision for the administration and enforcement of this Scheme; and
- (h) address other matters referred to in Schedule 7 of the Act.

## 1.9 Aims of Scheme

The aims of this Scheme are -

- To encourage an appropriate balance between economic and social development, conservation of the natural environment, provision of infrastructure and services, and improvements in lifestyle and amenity;
- To recognise and provide for the cultural practices and traditions of the traditional owners in the local government;
- To provide sufficient zoned land for residential, commercial, retail, industrial, rural and civic uses, suitable to service the long term growth of the local government;
- To implement strategic planning for the municipality, including the recommendations of the local government's Local Planning Strategy, Fitzroy Futures Town Plan, WAPC adopted Aboriginal Community Layout plans, relevant regional plans and policies including the State Planning Strategy;

- To reserve certain portions of land required for public purposes;
- To zone the balance of the land within the Scheme Area for purposes described in the Scheme as recommended by the Shire's local planning strategy;
- To encourage development within the Fitzroy Crossing Townsite to reflect the
- To define the uses and types of development to be permitted on land within the Scheme Area; and
- To control and regulate the development and use of land throughout the Shire.

#### **1.10 Relationship with local laws**

Where a provision of this Scheme is inconsistent with a local law, the provision of this Scheme prevails to the extent of the inconsistency.

#### **1.11 Relationship with other local planning schemes**

There are no other local planning schemes of the Shire of Derby/West Kimberley which apply to the Scheme area.

#### **1.12 Relationship with region planning scheme**

There are no region planning schemes which apply to the Scheme area.



## Part 2 - Reserves

### 2.1. Regional Reserves

There are no regional reserves in the Scheme area.

Note: The process of reserving land under a regional planning scheme is separate from the process of reserving land under the *Land Administration Act 1997* section 41.

### 2.2 Local reserves

2.2.1 In this clause -

**Department of Main Roads** means the department principally assisting in the administration of the *Main Roads Act 1930*;

**Western Australian Road Hierarchy** means the document of that name available on the website maintained by the Department of Main Roads.

2.2.2 Local reserves are shown on the Scheme Map according to the legend on the Scheme Map.

2.2.3 The objectives of each local reserve are as follows -

**Table 1 - Reserve objectives**

Reserve name	Objectives
Public Open Space	<ul style="list-style-type: none"> <li>To set aside areas for public open space, particularly those established under the <i>Planning and Development Act 2005</i> s. 152.</li> <li>To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.</li> </ul>
Environmental conservation	<ul style="list-style-type: none"> <li>To identify areas with biodiversity and conservation value, and to protect those areas from development and subdivision.</li> <li>To identify and protect areas of biodiversity conservation significance within National Parks and State and other conservation reserves.</li> </ul>
Civic and Community	<ul style="list-style-type: none"> <li>To provide for a range of community facilities which are compatible with surrounding development.</li> <li>To provide for public facilities such as halls, theatres, art galleries, educational, health and social care facilities, accommodation for the aged, and other services by organisations involved in activities for community benefit.</li> </ul>
Social Care Facilities	<ul style="list-style-type: none"> <li>Civic and Community which specifically provide for a range of essential social care facilities.</li> </ul>
Cultural Facilities	<ul style="list-style-type: none"> <li>Civic and Community which specifically provide for a range of essential cultural facilities.</li> </ul>

Reserve name	Objectives
Public Purposes	<ul style="list-style-type: none"> <li>To provide for a range of essential physical and community infrastructure.</li> </ul>
Medical Services	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of essential medical services.</li> </ul>
Infrastructure Services	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of essential infrastructure services.</li> </ul>
Education	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of essential education facilities.</li> </ul>
Emergency Services	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of essential emergency services.</li> </ul>
Heritage	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of heritage purposes.</li> </ul>
Government Services	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of government services.</li> </ul>
Recreational	<ul style="list-style-type: none"> <li>Public Purposes which specifically provide for a range of public recreational facilities.</li> </ul>
Cemetery	<ul style="list-style-type: none"> <li>To set aside land required for a cemetery.</li> </ul>
Drainage / Waterway	<ul style="list-style-type: none"> <li>To set aside land required for significant waterways and drainage.</li> </ul>
Primary Distributor Road	<ul style="list-style-type: none"> <li>To set aside land required for a primary distributor road being a road classified as a Regional Distributor or Primary Distributor under the Western Australian Road Hierarchy.</li> </ul>
Local Distributor Road	<ul style="list-style-type: none"> <li>To set aside land required for a local distributor road being a road classified as a Local Distributor under the Western Australian Road Hierarchy.</li> </ul>
Local Road	<ul style="list-style-type: none"> <li>To set aside land required for a local road being a road classified as an Access Road under the Western Australian Road Hierarchy.</li> </ul>
Strategic infrastructure	<ul style="list-style-type: none"> <li>To set aside land required for port or airport facilities.</li> </ul>
Special Purpose	<ul style="list-style-type: none"> <li>To set aside land for a special purpose.</li> <li>Purposes that do not comfortably fit in any other reserve classification.</li> </ul>

**2.3 Additional uses for local reserves**

2.3.1 There are no additional uses for land in local reserves that apply to this Scheme.

**Part 3 - Zones and use of land**

**3.1 Zones**

3.1.1 Zones are shown on the Scheme Map according to the legend on the Scheme Map.

3.1.2 The objectives of each zone are as follows -

**Table 2 Zone objectives**

Zone name	Objectives
Residential	<ul style="list-style-type: none"> <li>• To provide for a range of housing and a choice of residential densities to meet the needs of the community.</li> <li>• To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.</li> <li>• To provide for a range of non-residential uses, which are compatible with and complementary to residential development.</li> </ul>
Urban Development	<ul style="list-style-type: none"> <li>• To provide an intention of future land use and a basis for more detailed structure planning in accordance with the provisions of this Scheme.</li> <li>• To provide for a range of residential densities to encourage a variety of residential accommodation.</li> <li>• To provide for the progressive and planned development of future urban areas for residential purposes and for commercial and other uses normally associated with residential development.</li> <li>• To provide an intermediate transitional zone following the lifting of an urban deferred zoning</li> <li>• To identify areas where a structure plan, activity centre plan or local development plan are required.</li> </ul>
Settlement	<ul style="list-style-type: none"> <li>• To identify existing and proposed Aboriginal settlements and to collaboratively plan for the orderly and proper development of those places by —                         <ul style="list-style-type: none"> <li>(a) requiring preparation and endorsement of a layout plan in accordance with State Planning Policy 3.2; and</li> <li>(b) ensuring that development accords with a layout plan.</li> </ul> </li> </ul>

Zone name	Objectives
Rural	<ul style="list-style-type: none"> <li>• To provide for the maintenance or enhancement of specific local rural character.</li> <li>• To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use.</li> <li>• To maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage.</li> <li>• To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the Rural zone.</li> <li>• To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.</li> </ul>
Rural Residential	<ul style="list-style-type: none"> <li>• To provide for lot sizes in the range of 1 ha to 4 ha.</li> <li>• To provide opportunities for a range of limited rural and related ancillary pursuits on rural-residential lots where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.</li> <li>• To set aside areas for the retention of vegetation and landform or other features which distinguish the land.</li> </ul>
Rural Smallholdings	<ul style="list-style-type: none"> <li>• To provide for lot sizes in the range of 4 ha to 40 ha.</li> <li>• To provide for a limited range of rural land uses where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.</li> <li>• To set aside areas for the retention of vegetation and landform or other features which distinguish the land.</li> </ul>
Rural Townsite	<ul style="list-style-type: none"> <li>• To provide for a range of land uses that would typically be found in a small country town.</li> <li>• Where land is in within the Fitzroy Crossing townsite, subdivision and development is in accordance with the local government's Local Planning Strategy and Fitzroy Futures Town Plan.</li> </ul>

Zone name	Objectives
Cultural and Natural Resource	<ul style="list-style-type: none"> <li>• Provide for development associated with the extraction of mineral and natural resources.</li> <li>• Ensure the preservation of Aboriginal heritage and culturally significant areas.</li> <li>• Provide for the conservation of significant landscape and environmental areas and values.</li> <li>• Allow for low impact tourism development including limited tourist accommodation and camping areas.</li> <li>• Allow land uses associated with Aboriginal heritage, traditional law and culture.</li> </ul>
Light Industry	<ul style="list-style-type: none"> <li>• To provide for a range of industrial uses and service industries generally compatible with urban areas, that cannot be located in commercial zones.</li> <li>• To ensure that where any development adjoins zoned or developed residential properties, the development is suitably set back, screened or otherwise treated so as not to detract from the residential amenity.</li> </ul>
General Industry	<ul style="list-style-type: none"> <li>• To provide for a broad range of industrial, service and storage activities which, by the nature of their operations, should be isolated from residential and other sensitive land uses.</li> <li>• To accommodate industry that would not otherwise comply with the performance standards of light industry.</li> <li>• Seek to manage impacts such as noise, dust and odour within the zone.</li> </ul>
Commercial	<ul style="list-style-type: none"> <li>• To provide for a range of shops, offices, restaurants and other commercial outlets in defined townsites or activity centres.</li> <li>• To maintain the compatibility with the general streetscape, for all new buildings in terms of scale, height, style, materials, street alignment and design of facades or improve the existing streetscape.</li> <li>• To ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality.</li> </ul>
Mixed Use	<ul style="list-style-type: none"> <li>• To provide for a wide variety of active uses on street level which are compatible with residential and other non-active uses on upper levels.</li> <li>• To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres, eating establishments and appropriate industrial activities which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.</li> </ul>

Zone name	Objectives
Tourism	<ul style="list-style-type: none"> <li>• To promote and provide for tourism opportunities.</li> <li>• To provide for a variety of holiday accommodation styles and associated uses, including retail and service facilities where those facilities are provided in support of the tourist accommodation and are of an appropriate scale where they will not impact detrimentally on the surrounding or wider area.</li> <li>• To allow limited residential uses where appropriate.</li> <li>• To encourage the location of tourist facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities.</li> </ul>
Service Commercial	<ul style="list-style-type: none"> <li>• To accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites.</li> <li>• To provide for a range of wholesale sales, showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.</li> </ul>
Special Use	<ul style="list-style-type: none"> <li>• To facilitate special categories of land uses which do not sit comfortably within any other zone.</li> <li>• To enable the Council to impose specific conditions associated with the special use.</li> </ul>

3.2 Zoning table

The zoning table for this Scheme is as follows -

Table 3 - Zoning Table

USE and DEVELOPMENT CLASS	ZONE															
	Residential	Urban Development	Settlement	Rural	Rural Residential	Rural Smallholdings	Rural Townsite	Cultural and Natural Resource Use	Light industry	General Industry	Commercial	Mixed Use	Service Commercial	Tourism	Special Use Zone	
abattoir	X	All development in the Urban Development Zone shall be in accordance with a Structure Plan prepared in accordance with the provisions of Part 4 of the deemed provisions.  In the event that an approved Layout Plan has not been prepared in accordance with State Planning Policy No. 3.2 – Aboriginal Settlements, assessment and consideration is to be carried out based upon the objectives and intentions of this scheme		A	X	X	X	D	X	X	X	X	X	X	Development in the Special Use Zone shall be in accordance with Table 6 and the objectives for that zone as outlined in Part 3.	
agriculture – extensive	X			P	X	X	X	P	X	X	X	X	X	X		X
agriculture – intensive	X			P	X	X	X	P	X	X	X	X	X	X		X
amusement parlour	X			X	X	X	A	X	X	X	A	A	X	X		X
ancillary dwelling	P			D	D	D	P	D	X	X	X	D	X	X		X
animal establishment	X			D	D	D	X	A	D	D	X	X	X	X		X
animal husbandry – intensive	X			A	X	X	X	A	X	X	X	X	X	X		X
art gallery	X			D	X	X	D	D	D	D	X	D	D	D		D
bed and breakfast	A			A	A	A	A	A	X	X	X	A	A	A		A
betting agency	X			X	X	X	D	D	X	X	D	D	X	D		D
brewery	X			D	X	X	D	D	D	D	D	A	D	D		D
bulky goods showroom	X			X	X	X	D	X	P	X	D	X	P	X		X
caravan park	X			A	X	X	A	P	X	X	X	X	X	P		P
caretaker's dwelling	X			D	X	D	D	D	D	D	D	D	D	D		D



USE and DEVELOPMENT CLASS	ZONE															
	Residential	Urban Development	Settlement	Rural	Rural Residential	Rural Smallholdings	Rural Townsite	Cultural and Natural Resource Use	Light Industry	General Industry	Commercial	Mixed Use	Service Commercial	Tourism	Special Use Zone	
car park	I	All development in the Urban Development Zone shall be in accordance with a Structure Plan prepared in accordance with the provisions of Part 4 of the deemed provisions.	In the event that an approved Layout Plan has not been prepared in accordance with State Planning Policy No. 3.2 – Aboriginal Settlements, assessment and consideration is to be carried out based upon the objectives and intentions of this scheme	X	X	X	P	X	P	P	P	D	P	D	Development in the Special Use Zone shall be in accordance with Table 6 and the objectives for that zone as outlined in Part 3.	
child care premises	A			A	A	A	A	A	A	X	D	D	A	D		
cinema/theatre	X			X	X	D	D	D	X	P	D	X	P	X		P
civic use	D			D	X	X	P	D	A	A	P	P	A	P		
club premises	X			X	A	A	P	D	A	X	D	D	D	D		
commercial vehicle parking	X			A	D	D	A	D	D	D	D	D	D	D		
community purpose	D			D	A	A	A	D	D	X	P	D	D	D		
consulting rooms	X			X	X	X	P	D	X	X	P	P	X	X		
convenience store	A			D	X	X	P	X	D	X	P	P	P	P		
corrective institution	X			A	X	X	X	X	X	X	X	X	X	X		X
dwelling - single	P			P	P	P	P	P	X	X	X	D	X	D		
dwelling - grouped	D			X	X	X	D	P	X	X	X	D	X	X		
dwelling - multiple	D			X	X	X	D	P	X	X	X	D	X	X		
education establishment	A			A	X	X	A	A	X	X	A	A	A	A		X
exhibition centre	X			D	X	X	D	D	D	X	D	D	D	D		
family day care	A			A	A	X	A	A	A	X	D	D	A	D		
fast food outlet	X			X	X	X	A	A	D	D	D	D	D	D		
fuel depot	X			A	X	X	A	X	A	A	X	X	X	X		
funeral parlour	X			X	X	X	A	X	A	A	A	A	A	A		X
garden centre	X			P	A	A	D	D	D	D	A	A	D	A		

USE and DEVELOPMENT CLASS	ZONE															
	Residential	Urban Development	Settlement	Rural	Rural Residential	Rural Smallholdings	Rural Townsite	Cultural and Natural Resource Use	Light Industry	General Industry	Commercial	Mixed Use	Service Commercial	Tourism	Special Use Zone	
holiday accommodation	A	All development in the Urban Development Zone shall be in accordance with a Structure Plan prepared in accordance with the provisions of Part 4 of the deemed provisions.	In the event that an approved Layout Plan has not been prepared in accordance with State Planning Policy No. 3.2 - Aboriginal Settlements, assessment and consideration is to be carried out based upon the objectives and intentions of this scheme	A	A	A	A	A	X	X	A	A	X	A	Development in the Special Use Zone shall be in accordance with Table 6 and the objectives for that zone as outlined in Part 3.	
holiday house	A			A	A	A	A	A	A	X	X	A	A	X		A
home business	A			P	A	A	A	A	A	A	A	A	A	A		A
home occupation	A			P	A	A	A	A	A	A	A	A	A	X		X
home office	P			P	P	P	P	P	A	A	A	A	P	A		A
home store	A			A	A	A	A	A	X	X	X	X	A	X		X
hospital	X			D	X	X	D	D	X	X	P	D	X	X		X
hotel	X			X	X	X	A	A	X	X	A	A	X	X		P
industry	X			D	A	A	A	X	A	P	A	A	A	A		X
industry – extractive	X			A	X	X	X	A	A	A	X	X	X	X		X
industry – light	X			X	X	X	A	A	P	P	X	X	A	A		X
industry – primary production	X			P	X	X	A	D	D	D	X	X	X	X		X
liquor store – large	X			X	X	X	D	X	X	X	D	D	X	X		X
liquor store – small	X			X	X	X	D	X	X	X	D	D	X	D		D
lunch bar	A			X	X	X	D	X	D	X	P	D	A	P		P
market	X			D	X	D	D	A	D	X	A	X	D	D		D
medical centre	X			X	X	X	D	X	X	X	P	D	A	X		X
mining operations	D			D	D	D	A	D	D	D	D	D	D	D		D
motel	X	X	X	X	D	X	X	X	D	D	D	D	P			

USE and DEVELOPMENT CLASS	ZONE													
	Residential	Urban Development	Settlement	Rural	Rural Residential	Rural Smallholdings	Rural Townsite	Cultural and Natural Resource Use	Light Industry	General Industry	Commercial	Mixed Use	Service Commercial	Tourism
motor vehicle, boat or caravan sales	X	All development in the Urban Development Zone shall be in accordance with a Structure Plan prepared in accordance with the provisions of Part 4 of the deemed provisions.	In the event that an approved layout Plan has not been prepared in accordance with State Planning Policy No. 3.2 – Aboriginal Settlements, assessment and consideration is to be carried out based upon the objectives and intentions of this scheme	X	X	X	D	X	P	X	A	X	P	X
motor vehicle repair	X			X	X	X	D	D	P	P	A	X	P	X
motor vehicle wash	X			X	X	X	D	X	P	P	A	A	P	X
nightclub	X			X	X	X	D	X	X	X	D	X	X	X
office	X			X	X	X	D	X	I	I	P	D	I	D
park home park	X			X	X	X	D	X	X	X	X	X	X	D
place of worship	A			D	A	A	A	A	D	X	D	A	D	X
reception centre	X			A	X	X	A	D	X	X	D	D	A	D
recreation – private	X			D	X	A	A	D	A	X	D	D	D	D
renewable energy facility	X			D	X	X	D	D	D	D	X	X	D	X
repurposed dwelling	D			D	D	D	D	D	D	D	D	D	D	D
residential aged care facility	D			X	X	X	D	D	X	X	A	A	X	X
residential building	A			D	D	X	A	D	X	X	A	A	X	X
resource recovery centre	X			X	X	X	D	X	D	D	X	X	D	X
restaurant/café	X			D	A	X	A	D	X	X	P	D	X	D
restricted premises	X			X	X	X	A	X	X	X	A	A	X	X
road house	X			A	X	X	A	A	X	X	X	X	X	X
rural home business/industry cottage	X			D	A	A	X	X	X	X	X	X	X	X

Development in the Special Use Zone shall be in accordance with Table 6 and the objectives for that zone as outlined in Part 3.

USE and DEVELOPMENT CLASS	ZONE														
	Residential	Urban Development	Settlement	Rural	Rural Residential	Rural Smallholdings	Rural Townsite	Cultural and Natural Resource Use	Light Industry	General Industry	Commercial	Mixed Use	Service Commercial	Tourism	Special Use Zone
rural pursuit/hobby farm	X	All development in the Urban Development Zone shall be in accordance with a Structure Plan prepared in accordance with the provisions of Part 4 of the deemed provisions.	In the event that an approved Layout Plan has not been prepared in accordance with State Planning Policy No. 3.2 - Aboriginal Settlements, assessment and consideration is to be carried out based upon the objectives and intentions of this scheme	P	D	P	X	D	X	X	X	X	X	X	
secondhand dwelling	D			D	D	D	D	X	X	X	D	X	A		
serviced apartment	A			X	X	X	A	D	X	X	A	D	A	D	
service station	X			X	X	X	D	X	D	D	A	A	D	A	
shop	X			X	X	X	P	D	I	I	P	A	I	D	
small bar	X			X	X	X	A	X	X	X	A	A	X	A	
tavern	X			X	X	X	A	X	X	X	A	A	A	A	
telecommunications infrastructure	A			D	A	A	A	D	D	D	A	A	A	A	
tourist development	X			D	X	X	D	D	X	X	D	A	X	P	
trade display	X			X	X	X	A	X	D	D	X	X	A	X	
trade supplies	X			X	X	X	D	X	D	D	D	X	D	X	
transport depot	X			X	X	X	A	D	P	P	X	X	D	X	
tree farm	X			D	X	D	X	D	X	X	X	X	X	X	
veterinary centre	X			D	A	A	D	D	A	X	D	X	A	X	
warehouse/storage	X			X	X	X	D	D	P	P	X	A	P	X	
waste disposal facility	X			A	X	X	X	X	X	X	X	X	X	X	
waste storage facility	X			A	X	X	X	X	A	A	X	X	X	X	
winery	X			A	A	A	X	X	D	X	X	X	X	A	
workforce accommodation	A			A	X	X	A	X	A	X	A	A	A	A	

Development in the Special Use Zone shall be in accordance with Table 6 and the objectives for that zone as outlined in Part 3.

### 3.3 Interpreting zoning table

3.3.1 The permissibility of uses of land in the various zones in the Scheme area is determined by cross-reference between the list of use classes on the left hand side of the zoning table and the list of zones at the top of the zoning table.

3.3.2 The symbols used in the zoning table have the following meanings -

P means that the use is permitted if it complies with all relevant development standards and requirements of this Scheme as it relates to the use of the land

I means that the use is permitted if it is consequent on, or naturally attaching, appertaining or relating to the predominant use of the land and it complies with all relevant development standards and requirements of this Scheme as it relates to the use of the land;

D means that the use is not permitted unless the local government has exercised its discretion by granting development approval;

A means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions;

X means that the use is not permitted by this Scheme.

Note: 1. *The development approval of the local government may be required to carry out works on land in addition to any approval granted for the use of land. In normal circumstances one application is made for both the carrying out of works on, and the use of, land. For development on land that does not require development approval see clause 61 of the deemed provisions.*

2. *In considering an application for development approval, the local government will have regard to clause 67 of the deemed provisions.*

3. *If a proposed development is identified as a 'P' use in the zoning table, but the proposed development does not comply with all of the development standards and requirements of the scheme, then it is to be treated as a 'D' use.*

3.3.3 A specific use class referred to in the zoning table is excluded from any other use class described in more general terms.

3.3.4 The local government may, in respect of a use that is not specifically referred to in the zoning table and that cannot reasonably be determined as falling within a use class referred to in the zoning table -

(a) determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the local government; or

- (b) determine that the use may be consistent with the objectives of a particular zone and give notice under clause 64 of the deemed provisions before considering an application for development approval for the use of the land; or
- (c) determine that the use is not consistent with the objectives of a particular zone and is therefore not permitted in the zone.

3.3.5 If a use of land is identified in a zone as being a class P or class I use, the local government may not refuse an application for development approval for that use in that zone but may require works that are to be undertaken in connection with that use to have development approval.

3.3.6 If a use of land is identified in a zone as being a class X use, the local government must refuse an application for development approval for that use in that zone unless -

- (a) the development approval application relates to land that is being used for a non-conforming use; and
- (b) the local government considers that the proposed use of the land would be less detrimental than the non-conforming use.

3.3.7 If the zoning table does not identify any permissible uses for land in a zone the local government may, in considering an application for development approval for land within the zone, have due regard to any of the following plans that apply to the land -

- (a) a structure plan;
- (b) an activity centre plan;
- (c) a local development plan;
- (d) a community layout plan;
- (e) the objectives of the zone.

#### **3.4 Additional uses**

3.4.1 Table 4 sets out -

- (a) classes of use for specified land that are additional to the classes of use that are permissible in the zone in which the land is located; and
- (b) the conditions that apply to that additional use.

**Table 4 - Specified additional uses for zoned land in Scheme area**

No.	Description of land	Additional use	Conditions
A1	Lot 1 Derby Highway, Derby	Tearooms and Nursery	As determined by the local government
A2	Lot 170 Windjana Road, Derby	Dog Kennels (Boarding and Breeding)	As determined by the local government
A3	Pt of Derby Lot 24 Fitzroy Street, Derby	Bus Depot	As determined by the local government
A4	Lot 399 Clarendon Street, Derby	Nursery	As determined by the local government

3.4.2 Despite anything contained in the zoning table, land that is specified in Table 4 to subclause 3.4.1 may be used for the additional class of use set out in respect of that land subject to the conditions that apply to that use.

**3.5 Restricted uses**

3.5.1 Table 5 sets out -

- (a) restricted classes of use for specified land that apply instead of the classes of use that are permissible in the zone in which the land is located; and
- (b) the conditions that apply to that restricted use.

**Table 5 - Restricted uses for land in Scheme area**

No.	Description of land	Restricted use	Conditions
R1	Birdwood Rise, Derby  (Schedule 5)	As a 'P' use: <ul style="list-style-type: none"> <li>• Agriculture - Intensive</li> <li>• Caretaker's Dwelling</li> <li>• Dwelling - single</li> <li>• Rural Pursuit/Hobby Farm</li> <li>• Home Occupation</li> <li>• Industry-Cottage</li> <li>• Industry- Rural Industry- Primary Production</li> <li>• Public Utility</li> </ul> <p>Uses not listed may be deemed to be prohibited within this zone</p>	<p><b>Objective</b></p> <p>To allow the closer subdivision of land in a rural setting that may be used for rural residential living with limited rural pursuits and retention of rural landscape.</p> <p><b>Provisions</b></p> <p>1. Within the zone no building may be erected closer than:</p> <ul style="list-style-type: none"> <li>a) 20m (twenty metres) to the road frontage of the lot; and</li> <li>b) 15m (fifteen metres) to the side and rear boundaries of the lot.</li> </ul> <p>2. Not more than one private dwelling house and a caretaker's house will be permitted to be erected on a lot.</p>

			<p>3. Within the zone a building may not be occupied as a residence unless the building has been approved by the local government in conformity with the Building Code of Australia and the provisions of this Scheme and is connected to an adequate supply of potable water.</p> <p>4. Noise emitted from electricity generators and engine driven bore pumps shall comply with maximum noise levels set by the Environmental Protection (Noise) Regulations 1997. Noise attenuation shall be achieved through the use of acoustic enclosures, earth mounds and separation from dwellings.</p> <p>5. Biodegradable waste may be composted onsite in a manner approved by the local government.</p> <p>6. No dumping or burning of waste materials permitted.</p> <p>7. Fire breaks are to be maintained in accordance with the directions of the Fire Control officer and the Bush Fires Board. These include observing prohibited burning times, obtaining permits for burning and immediate notification of any wildfires to the Fire Control Officer and Bush Fires Board.</p> <p>8. Any agricultural use must be in keeping with the principles of sound agricultural practice and in this respect the Council may request the advice of the Department of Agriculture before determining any application.</p> <p>9. No person shall use or permit to be used any lot for the grazing of animals at an intensity which would adversely affect the pastures of and other vegetation on the lot concerned, the neighbouring lots or be likely to result in soil erosion. Stocking rates shall be in accordance with those specified by the Department of Agriculture.</p> <p>10. In order to conserve the natural beauty of the locality, native trees including White Gums and Boabs are to be left standing. Bauhenia, Woollybutts, and Bloodwood trees can be removed only for direct home and outbuilding construction, and are otherwise to be retained. The Wattle Scrub tree may be removed.</p>
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			<p>11. No subdivision of lots shall be permitted.</p> <p>12. The land contained within the Scheme area is located within the proclaimed Canning/Kimberley Groundwater Area and therefore, the establishment of all wells and bores will be subject to the approval and licensing of the Department of Water and Environmental Regulation.</p> <p>13. The total water draw for each lot shall be subject to the approval of the Department of Water and Environmental Regulation and shall not in any case exceed a maximum of 40,000 litres per day.</p> <p>16. On-site effluent disposal shall be by a method approved by the Department of Health, Western Australia.</p> <p>17. Domestic water supply methods shall be in accordance with the Shire of Derby/West Kimberley Health Local Law 1998 and Shire of Derby/West Kimberley Health Amendment Local Law 2010.</p>
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3.5.2 Despite anything contained in the zoning table, land that is specified in Table 5 to subclause 3.5.1 may be used only for the restricted class of use set out in respect of that land subject to the conditions that apply to that use.

**3.6 Special use zones**

3.6.1 Table 6 sets out -

- (a) special use zones for specified land that are in addition to the zones in the zoning table; and
- (b) the classes of special use that are permissible in that zone; and
- (c) the conditions that apply in respect of the special uses.

**Table 6 - Special use zones in Scheme area**

No.	Description of land	Special use	Conditions
SU1	Lots 9 & 10 Derby Highway, Derby	Short Stay Accommodation	Development is subject to connection to town sewer system or other approved system and reticulated water supply.
SU2	Lot 84 Loch Street, Derby	Service Station Motor Repair Station Convenience Store	As determined by local government
SU3	Lots 538 & 1210 Macted Street, Derby	Tourism Accommodation Uses and Rural Residential	Development of the site may include: Caravan Park; Convenience Store; Museum; Art Gallery Gift Shop, Caretakers Dwelling; Backpackers Hostel; Cafe and Rural Residential subdivision.  Tourist accommodation development is subject to connection to the town sewer system or alternative as approved by the Health Department of WA.  Any development application is required to be advertised for public comment.
SU4	100 & 101 Lovegrove Street, Derby	Short stay Accommodation Rural Residential	Connection to reticulated water supply. Effluent disposal system subject to Department of Water and Health Department approval. Any development application is required to be advertised for public comment.

3.6.2 A person must not use any land, or any structure or buildings on land, in a special use zone except for a class of use that is permissible in that zone and subject to the conditions that apply to that use.

*Note: Special use zones apply to special categories of land use which do not comfortably sit within any other zone in the Scheme.*

**3.7 Non-conforming uses**

3.7.1 Unless specifically provided, this Scheme does not prevent -

- (a) the continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or
- (b) the carrying out of development on land if -
  - (i) before the commencement of this Scheme, the development was lawfully approved; and
  - (ii) the approval has not expired or been cancelled.

3.7.2 Subclause 3.7.1 does not apply if -

- (a) the non-conforming use of the land is discontinued; and
- (b) a period of 6 months, or a longer period approved by the local government, has elapsed since the discontinuance of the non-conforming use.

3.7.3 Subclause 3.7.1 does not apply in respect of a non-conforming use of land if, under Part 11 of the Act, the local government -

- (a) purchases the land; or
- (b) pays compensation to the owner of the land in relation to the non-conforming use.

### **3.8 Changes to non-conforming use**

3.8.1 A person must not, without development approval-

- (a) alter or extend a non-conforming use of land; or
- (b) erect, alter or extend a building used for, or in conjunction with, a non-conforming use; or
- (c) repair, rebuild, alter or extend a building used for a non-conforming use that is destroyed to the extent of 75% or more of its value; or
- (d) change the use of land from a non-conforming use to another use that is not permitted by the Scheme.

3.8.2 An application for development approval for the purposes of this clause must be advertised in accordance with clause 64 of the deemed provisions.

3.8.3 A local government may only grant development approval for a change of use of land referred to in subclause 3.8.1(d) if, in the opinion of the local government, the proposed use -

- (a) is less detrimental to the amenity of the locality than the existing non-conforming use; and
- (b) is closer to the intended purpose of the zone in which the land is situated.

### **3.9 Register of non-conforming uses**

3.9.1 The local government may prepare a register of land within the Scheme area that is being used for a non-conforming use.

3.9.2 A register prepared by the local government must set out the following -

- (a) a description of each area of land that is being used for a non-conforming use;
  - (b) a description of any building on the land;
  - (c) a description of the non-conforming use;
  - (d) the date on which any discontinuance of the non-conforming use is noted.
- 3.9.3 If the local government prepares a register under subclause 3.9.1 the local government -
- (a) must ensure that the register is kept up-to-date; and
  - (b) must make a copy of the register available for public inspection during business hours at the offices of the local government; and
  - (c) may publish a copy of the register on the website of the local government.
- 3.9.4 An entry in the register in relation to land that is being used for a non-conforming use is evidence of the matters set out in the entry, unless the contrary is proved.

#### **Part 4 - General development requirements**

##### **4.1 R-Codes**

- 4.1.1 The R-Codes, modified as set out in clause 4.2, are to be read as part of this Scheme.
- 4.1.2 The local government -
- (a) must make a copy of the R-Codes available for public inspection during business hours at the offices of the local government; and
  - (b) may publish a copy of the R-Codes on the website of the local government.
- 4.1.3 The coding of land for the purposes of the R-Codes is shown by the coding number superimposed on a particular area contained within the boundaries of the area shown on the Scheme Map.
- 4.1.4 The R-Codes apply to an area if the area has a coding number superimposed on the scheme map or in a provision of the scheme that applies the R-Codes.

## 4.2 Modification of R-Codes

The following variations to the R-Codes apply in the Scheme area:

- 4.2.1 Where a site has a dual coding specified on the Scheme Map, the local government may approve residential development to the higher code, providing the development is connected to a reticulated sewerage system and local government is satisfied that development proposals have been prepared which take into account:
- (a) the effect the proposal will have on the residential amenity of the locality with regard to streetscape, building form, servicing, privacy, overshadowing and traffic circulation both on and off site;
  - (b) any other matter to be considered under the provisions of the appropriate Residential Density Code.
- 4.2.2 Local government may permit Aged or dependent persons' dwelling in accordance with the R30 Code.
- 4.2.3 Any application for development approval for any residential building other than a single dwelling shall be accompanied by a landscape plan showing the proposed landscaping on the site.
- The landscape plan shall show:
- (a) the location and general nature of planted areas;
  - (b) the location and nature of materials to be used on non-planted areas;
  - (c) the location and size of any outbuildings or other minor proposed structures; and
  - (d) the implementation schedule of the landscape plan including, though not limited to, the applicant commencing the implementation of the landscape plan within six calendar months of the completion of all other approved works and the applicant completing the implementation of the landscape plan no later than six calendar months following approval to occupy any building.
- 4.2.4 Notwithstanding any other provision of the Scheme local government may:
- (a) where residential development is proposed as a component of a mixed use commercial development in the Town Centre Zone consent to the residential development at a density up to a maximum of R50 subject to the:
    - (i) residential component not occupying the ground floor at the street frontage; and
    - (ii) site area occupied by the commercial development shall be excluded from the site area used for the determination of residential unit yield;
  - (b) for residential development in the Town Centre Zone consent to the reduction of the front setback to nil where this is in the opinion of Local government consistent with the existing streetscape.

4.2.5 If a development, other than a residential development, the subject of an application for development approval, does not comply with a standard or requirement prescribed by the Scheme with respect to that development the local government may, notwithstanding that non-compliance, approve the application unconditionally or subject to such conditions as the Local government thinks fit. The power conferred by this clause may only be exercised if the Local government is satisfied that:

- (a) approval of the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenities of the locality;
- (b) the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality; and
- (c) the spirit and purpose of the Scheme Objectives, requirements or standards will not be unreasonably departed from thereby.

#### **4.3 State Planning Policy 3.6 to be read as part of Scheme**

4.3.1 *State Planning Policy 3.6 - Development Contributions for Infrastructure*, modified as set out in clause 4.4, is to be read as part of this Scheme.

4.3.2 The local government -

- (a) must make a copy of State Planning Policy 3.6 available for public inspection during business hours at the offices of the local government; and
- (b) may publish a copy of State Planning Policy 3.6 on the website of the local government.

#### **4.4 Modification of State Planning Policy 3.6**

There are no modifications to State Planning Policy 3.6.

#### **4.5 Other State planning policies to be read as part of Scheme**

4.5.1 There are no other State planning policies that are to be read as part of this Scheme.

#### **4.6 Modification of State planning policies**

There are no modifications to a State planning policy that, under clause 4.5 is to be read as part of the Scheme.

#### **4.7 Environmental conditions**

There are no environmental conditions imposed under the Environmental Protection Act 1986 that apply to this Scheme.

#### 4.8 Additional site and development requirements

- 4.8.1 Schedule 3 sets out requirements relating to development that are additional to those set out in the R-Codes, activity centre plans, local development plans or State or local planning policies.
- 4.8.2 To the extent that a requirement referred to in subclause 4.8.1 is inconsistent with a requirement in the R-Codes, an activity centre plan, a local development plan or a State or local planning policy the requirement referred to in subclause 4.8.1 prevails.

#### 4.9 Additional site and development requirements for areas covered by structure plan, activity centre plan or local development plan

There are no additional requirements that apply to this Scheme.

#### 4.10 Variations to site and development requirements

- 4.10.1 In this clause - **additional site and development requirements** means requirements set out in clauses 32 and 33.
- 4.10.2 The local government may approve an application for a development approval that does not comply with an additional site and development requirements.
- 4.10.3 An approval under subclause 4.10.2 may be unconditional or subject to any conditions the local government considers appropriate.
- 4.10.4 If the local government is of the opinion that the non-compliance with an additional site and development requirement will mean that the development is likely to adversely affect any owners or occupiers in the general locality or in an area adjoining the site of the development the local government must -
- (a) consult the affected owners or occupiers by following one or more of the provisions for advertising applications for development approval under clause 64 of the deemed provisions; and
  - (b) have regard to any expressed views prior to making its determination to grant development approval under this clause.
- 4.10.5 The local government may only approve an application for development approval under this clause if the local government is satisfied that -
- (a) approval of the proposed development would be appropriate having regard to the matters that the local government is to have regard to in considering an application for development approval as set out in clause 67 of the deemed provisions; and
  - (b) the non-compliance with the additional site and development requirement will not have a significant adverse effect on the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

#### 4.11. Restrictive covenants

4.11.1 A restrictive covenant affecting land in the Scheme area that would have the effect of limiting the number of residential dwellings which may be constructed on the land is extinguished or varied to the extent that the number of residential dwellings that may be constructed is less than the number that could be constructed on the land under this Scheme.

4.11.2 If subclause 4.11.1 operates to extinguish or vary a restrictive covenant

- (a) development approval is required to construct a residential dwelling that would result in the number of residential dwellings on the land exceeding the number that would have been allowed under the restrictive covenant; and
- (b) the local government must not grant development approval for the construction of the residential dwelling unless it gives notice of the application for development approval in accordance with clause 64 of the deemed provisions.



### Part 5 - Special control areas

#### 5.1 Special control areas

- 5.1.1 Special control areas are marked on the Scheme Map according to the legend on the Scheme Map.
- 5.1.2 The purpose, objectives and additional provisions that apply to each special control area is set out in Table 7
- 5.1.3 In respect of a Special Control Area shown on a Scheme Map, the objectives and additional provisions applying to the Special Control Area apply in addition to the provisions applying to any underlying zone or reserve and any other provisions of the Scheme.

**Table 7 - Special control areas in Scheme area**

Name of area	Purpose	Objectives	Additional provisions
Special Control Area - Public Drinking Water Source Area (Priority 1) (SCA 1)	Protection of Priority 1 Public Drinking Water Source Areas	<ul style="list-style-type: none"> <li>(i) provide a basis for the protection of public drinking water resources through the control of land use or development which has the potential to prejudice the quality of water supplies for public use;</li> <li>(ii) identify land that has been designated as a public drinking water resource;</li> <li>(iii) ensure that any land use does not detrimentally impact on a public drinking water resource;</li> <li>(iv) implement Scheme controls that are designed to mitigate any adverse effects on a public drinking water resource.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Despite any other provision of the Scheme development approval is required for all use and development within the Environment - Public Drinking Water Source Area – Priority 1 Special Control Area including a single house, removal of vegetation, earthworks or the use of land for the keeping of or grazing animals, and shall be subject to discretion of the local government, notwithstanding that the use may be designated as a ‘P’ use under the Scheme.</li> <li>(b) The local government may refuse any application for development approval or impose conditions on any development approval so as to –                         <ul style="list-style-type: none"> <li>(i) protect the groundwater resource; and</li> <li>(ii) require the registration of a notification under section 70A of the <i>Transfer of Land Act 1893</i> on the title to the land giving notice of any limitations or constraints associated with the protection of groundwater resources at the applicant’s cost.</li> </ul> </li> </ul> <p><i>Note: There will be a general presumption against development or use of land which involves a significant risk to the groundwater resource. The onus will be on the proponent of development to demonstrate that the proposed activity will not prejudice the groundwater resource.</i></p>

			<p>(c) The local government shall refer applications for development approval within the Environment - Public Drinking Water Source Area – Priority 1 Special Control Area to the Department of Water and Environmental Regulation, any other agency or organisation the local government deems necessary, and the local government shall have due regard to any advice received.</p> <p>(d) In addition to other provisions of the Scheme, in considering any application for rezoning, subdivision or development approval within the Environment - Public Drinking Water Source Area – Priority 1 Special Control Area, the local government is to have due regard to –</p> <ul style="list-style-type: none"> <li>(i) any water resource management plan, strategy or guideline of the Department of Water and Environmental Regulation, and any advice received from the Department of Water and Environmental Regulation;</li> <li>(ii) the potential impact of the proposal on the quality of the water resource;</li> <li>(iii) the practicability and cost of any ameliorative measures proposed for the protection of the resource;</li> <li>(iv) the existing level of protection of the resource provided, with reference to management of land and location of development;</li> <li>(v) the nature, location and performance of any existing or proposed effluent disposal system; and</li> <li>(vi) the drainage characteristics of the land, including surface and groundwater flow, and the adequacy of proposed measures to manage run-off and drainage.</li> </ul>
<p>Special Control Area – Infrastructure Treatment Plant Odour Buffer (SCA 3)</p>	<p>Protection of the Sewer Treatment Plant Odour Buffer</p>	<p>i) The objective of the Infrastructure - Sewer Treatment Plant Odour Buffer Special Control Area is to avoid the establishment of incompatible or odour-sensitive land uses or development within the buffer and protect the</p>	<p>(a) Notwithstanding any other provisions of the Scheme, a person must not commence or carry out any development or use of land within the Infrastructure - Sewer Treatment Plant Odour Buffer Special Control Area without first having applied for and obtained the development approval of the local government under Part 9 of the deemed provisions.</p> <p>(b) The local government in considering an application for development approval within the Infrastructure - Sewer</p>

		<p>long term operation of the Derby and Fitzroy Crossing Waste Water Treatment Plants.</p>	<p>Treatment Plant Odour Buffer Special Control Area is to have due regard to:</p> <ul style="list-style-type: none"> <li>(i) the compatibility of the use or development with wastewater treatment plant infrastructure with regard to potential odour and noise emissions from the waste water treatment plant;</li> <li>(ii) whether the use or development would have a detrimental impact on the long term operation of the waste water treatment plant;</li> <li>(iii) the advice and recommendations of the Water Corporation and the Department of Water and Environmental Regulation and any relevant policies of the Department of Water and Environmental Regulation and the Western Australian Planning Commission, including State Planning Policy 4.1 (State Industrial Buffer Policy).</li> </ul>
<p>Special Control Area – Environment (Coastal Hazard Risk Area) (SCA 3)</p>	<p>Reflect the Coastal Processes Setback from the Coastal hazard risk management and adaptation planning guidelines</p>	<ul style="list-style-type: none"> <li>i) To ensure land in the coastal zone is continuously provided for coastal foreshore management, public access, recreation and conservation.</li> <li>ii) To ensure public safety and reduce risk associated with coastal erosion and inundation.</li> <li>iii) To avoid inappropriate land use and development of land at risk from coastal erosion and inundation.</li> <li>iv) To ensure land use and development does not accelerate coastal erosion or inundation risks; or have a detrimental impact on the functions of public reserves.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Notwithstanding any other provisions of the Scheme, a person must not commence or carry out any development or use of land within the Coast Hazard Risk Area Special Control Area without first having applied for and obtained the development approval of the local government under Part 9 of the deemed provisions.</li> <li>(b) Notwithstanding the provisions of Clause 5.1.3 development approval is not required within SCA1 for the following development, if such development is otherwise exempt from requiring development approval under the Scheme:             <ul style="list-style-type: none"> <li>i) temporary or non-permanent structures not used for human habitation;</li> <li>ii) extensions to an existing single, grouped or multiple dwelling where the gross floor area of the proposed extensions is no more than 50m<sup>2</sup>; and</li> <li>iii) a change of use to a 'P' use where no new structures are proposed.</li> </ul> </li> </ul>

		<p>ii) To ensure that development addresses the Derby Townsite Coastal Hazard Risk Management and Adaptation Plan prepared in accordance with State Planning Policy No. 2.6 State Coastal Planning Policy (as amended) and any relevant local planning policy prepared in accordance with this Scheme.</p>	
<p>Special Control Area – Environment (Groundwater Protection Area) (SCA 4)</p>	<p>The purpose of identifying land on the scheme map as being within a Groundwater Protection Area is to control the development of certain land uses with the potential to contaminate water resources.</p>	<p>Prohibited Uses Notwithstanding any other provision of the scheme the development of land within a Groundwater Control Area for a Service Station, Motor Vehicle Repair Station or Motor Vehicle Wrecking is prohibited.</p>	<p>Restricted Uses Where the local government receives an application for consent for the carrying out of development within the Groundwater Protection Area of a type listed hereunder the application shall notwithstanding any other provision of the Scheme be dealt with as if it were an ‘A’ or ‘D’ use and shall be referred to the Department of Water for comment, and, in deciding whether to grant consent the local government shall take into account its comments:</p> <ul style="list-style-type: none"> <li>a) Rural Pursuit excluding broadacre agriculture and stables;</li> <li>b) Aircraft or Boat servicing;</li> <li>c) Caravan/trailer hire;</li> <li>d) Agricultural Service Industry;</li> <li>e) Veterinary Clinic;</li> <li>f) Cemeteries;</li> <li>g) General Industry;</li> <li>h) Light Industry;</li> <li>i) Power Station;</li> <li>j) Hospital;</li> <li>k) Mining -Mineral Processing;</li> <li>l) Extractive Industry;</li> <li>m) Mineral Exploration;</li> <li>n) Processing Foodstuffs and Animal Products;</li> <li>o) Storage of Toxic and Hazardous Substances;</li> <li>p) Caravan Park;</li> <li>q) Waste Disposal Sites;</li> <li>r) Refuse Transfer Station;</li> <li>s) Recycling Depot;</li> <li>t) Sewage Pump Station;</li> <li>u) Wastewater/Water Treatment Plant;</li> <li>v) Irrigated Recreation Areas;</li> <li>w) Motor Sport Facilities;</li> <li>x) Public Swimming Pool; and</li> <li>y) Transport Depot.</li> </ul>

## Part 6 - Terms referred to in Scheme

### Division 1 - General definitions used in Scheme

#### 6.1 Terms used

6.1.1 If a word or expression used in this Scheme is listed in this clause, its meaning is as follows -

<b>building envelope</b>	means the area of land within which all buildings and effluent disposal facilities on a lot must be contained.
<b>building height</b>	in relation to a building - (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the maximum vertical distance between the natural ground level and the finished roof height directly above, excluding minor projections as that term is defined in the R-Codes.
<b>cabin</b>	means a dwelling forming part of a tourist development or caravan park that is - (a) an individual unit other than a chalet; and (b) designed to provide short-term accommodation for guests.
<b>chalet</b>	means a dwelling forming part of a tourist development or caravan park that is - (a) a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and (b) designed to provide short-term accommodation for guests.
<b>commencement day</b>	means the day this Scheme comes into effect under section 87(4) of the Act.
<b>commercial vehicle</b>	means a vehicle, whether licenced or not, that has a gross vehicle mass of greater than 4.5 tonnes including - (a) a utility, van, truck, tractor, bus or earthmoving equipment; and (b) a vehicle that is, or is designed to be an attachment to a vehicle referred to in paragraph (a).
<b>floor area</b>	has meaning given in the Building Code.
<b>frontage</b>	in relation to a building - (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the road alignment at the front of a lot and, if a lot abuts 2 or more roads, the one to which the building or proposed building faces.
<b>incidental use</b>	means a use of premises which is consequent on, or naturally attaching, appertaining or relating to, the predominant use
<b>minerals</b>	has the meaning given in the <i>Mining Act 1978</i> section 8(1).

<b>net lettable area or nla</b>	means the area of all floors within the internal finished surfaces of permanent walls but does not include the following areas - (a) stairs, toilets, cleaner's cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas; (b) lobbies between lifts facing other lifts serving the same floor; (c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building; (d) areas set aside for the provision of facilities or services to the floor or building where those facilities are not for the exclusive use of occupiers of the floor or building.
<b>non-conforming use</b>	has the meaning given in the <i>Planning and Development Act 2005</i> section 172.
<b>plot ratio</b>	means the ratio of the floor area of a building to an area of land within the boundaries of the lot or lots on which the building is located.
<b>precinct</b>	means a definable area where particular planning policies, guidelines or standards apply.
<b>predominant use</b>	means the primary use of premises to which all other uses carried out on the premises are incidental.
<b>retail</b>	means the sale or hire of goods or services to the public.
<b>short-term accommodation</b>	means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12 month period.
<b>wall height</b>	in relation to a wall of a building – (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the vertical distance from the natural ground level of the boundary of the property that is closest to the wall to the point where the wall meets the roof or parapet.
<b>wholesale</b>	means the sale of goods or materials to be sold by others.

**6.1.2** A word or expression that is not defined in this Scheme -

- (a) has the meaning it has in the *Planning and Development Act 2005*; or
- (b) if it is not defined in that Act- has the same meaning as it has in the R-Codes.

## Division 2 - Land use terms used in Scheme

### 6.2 Land use terms used

If this Scheme refers to a category of land use that is listed in this provision, the meaning of that land use is as follows -

<b>abattoir</b>	means premises used commercially for the slaughtering of animals for the purposes of consumption as food products.
<b>aged care facility/nursing home</b>	means premises used to provide accommodation and personal or nursing care for the aged and may include recreational, health or laundry facilities and services for residents of the facility.
<b>agriculture - extensive</b>	means premises used for the raising of stock or crops including outbuildings and earthworks, but does not include agriculture - intensive or animal husbandry - intensive.
<b>agriculture - intensive</b>	means premises used for commercial production purposes, including outbuildings and earthworks, associated with any of the following - <ul style="list-style-type: none"> <li>(a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts;</li> <li>(b) the establishment and operation of plant or fruit nurseries;</li> <li>(c) the development of land for irrigated fodder production or irrigated pasture (including turf farms);</li> <li>(d) aquaculture.</li> </ul>
<b>amusement parlour</b>	means premises - <ul style="list-style-type: none"> <li>(a) that are open to the public; and</li> <li>(b) that are used predominantly for amusement by means of amusement machines including computers; and</li> <li>(c) where there are 2 or more amusement machines.</li> </ul>
<b>ancillary dwelling</b>	means ancillary dwelling as defined in the R-Codes
<b>animal establishment</b>	means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry - intensive or veterinary centre.
<b>animal husbandry - intensive</b>	means premises used for keeping, rearing or fattening of alpacas, beef and dairy cattle, goats, pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production), sheep or other livestock in feedlots, sheds or rotational pens. .
<b>art gallery</b>	means premises - <ul style="list-style-type: none"> <li>(a) that are open to the public; and</li> <li>(b) where artworks are displayed for viewing or sale.</li> </ul>
<b>bed and breakfast</b>	means a dwelling - <ul style="list-style-type: none"> <li>(a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and</li> <li>(b) containing not more than 2 guest bedrooms.</li> </ul>
<b>betting agency</b>	means an office or totalisator agency established under the <i>Racing and Wagering Western Australia Act 2003</i> .
<b>brewery</b>	means premises the subject of a producer's licence authorising the production of beer, cider or spirits granted under the <i>Liquor Control Act 1988</i> .

<b>bulky goods showroom</b>	<p>means premises -</p> <p>(a) used to sell by retail any of the goods and accessories of the following types (but not limited to) that are principally used for domestic purposes -</p> <ul style="list-style-type: none"> <li>(i) automotive parts and accessories;</li> <li>(ii) camping, outdoor and recreation goods;</li> <li>(iii) electric light fittings;</li> <li>(iv) animal supplies including equestrian and pet goods;</li> <li>(v) floor and window coverings;</li> <li>(vi) furniture, bedding, furnishings, fabrics, manchester and homewares;</li> <li>(vii) household appliances, electrical goods and home entertainment goods;</li> <li>(viii) party supplies;</li> <li>(ix) office equipment and supplies;</li> <li>(x) babies' and children's goods, including play equipment and accessories;</li> <li>(xi) sporting, cycling, leisure, fitness goods and accessories;</li> <li>(xii) swimming pools.</li> </ul> <p>(b) and used to sell goods and accessories by retail if -</p> <ul style="list-style-type: none"> <li>(i) a large area is required for the handling, display or storage of the goods; or</li> <li>(ii) vehicular access is required to the premises for the purpose of collection of purchased goods.</li> </ul>
<b>caravan park</b>	means premises that are a caravan park as defined in the <i>Caravan Parks and Camping Grounds Act 1995</i> section 5 (1).
<b>caretaker's dwelling</b>	means a dwelling on the same site as a building, operation or plant, and occupied by a supervisor of that building, operation or plant.
<b>car park</b>	means premises used primarily for parking vehicles whether open to the public or not but does not include -
	<ul style="list-style-type: none"> <li>(a) any part of a public road used for parking or for a taxi rank; or</li> <li>(b) any premises in which cars are displayed for sale.</li> </ul>
<b>child care premises</b>	means premises where -
	<ul style="list-style-type: none"> <li>(a) an education and care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> Section 5(1), other than a family day care service as defined in that section, is provided; or</li> <li>(b) a child care service as defined in the <i>Child Care Services Act 2007</i> section 4 is provided.</li> </ul>
<b>cinema/theatre</b>	means premises where the public may view a motion picture or theatrical production.
<b>civic use</b>	means premises used by a government department, an instrumentality of the State or the local government for administrative, recreational or other purposes.
<b>club premises</b>	means premises used by a legally constituted club or association or other body of persons united by a common interest.
<b>commercial vehicle parking</b>	means premises used for parking of one or 2 commercial vehicles but does not include -
	<ul style="list-style-type: none"> <li>(a) any part of a public road used for parking or for a taxi rank; or</li> <li>(b) parking of commercial vehicles incidental to the predominant use of the land.</li> </ul>
<b>community purpose</b>	means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit.



<b>consulting rooms</b>	means premises used by no more than 2 health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care.
<b>convenience store</b>	means premises - (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents; and (b) operated during hours which include, but may extend beyond, normal trading hours; and (c) the floor area of which does not exceed 300 m <sup>2</sup> net lettable area.
<b>corrective institution</b>	means premises used to hold and reform persons committed to it by a court, such as a prison or other type of detention facility.
<b>educational establishment</b>	means premises used for the purposes of providing education including premises used for a school, higher education institution, business college, academy or other educational institution.
<b>exhibition centre</b>	means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature including a museum.
<b>family day care</b>	means premises where a family day care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> is provided.
<b>fast food outlet</b>	means premises, including premises with a facility for drive-through service, used for the preparation, sale and serving of food to customers in a form ready to be eaten - (a) without further preparation; and (b) primarily off the premises.
<b>freeway service centre</b>	means premises that has direct access to a freeway and which provides all the following services or facilities and may provide other associated facilities or services but does not provide bulk fuel services - (a) service station facilities; (b) emergency breakdown repair for vehicles; (c) charging points for electric vehicles; (d) facilities for cyclists; (e) restaurant, café or fast food services, excluding the sale or consumption of alcohol under the <i>Liquor Licensing Act 1988</i> ; (f) take-away food retailing, without a drive-through facility; (g) public ablution facilities, including provision for disabled access and infant changing rooms; (h) parking for passenger and freight vehicles; (i) outdoor rest stop facilities such as picnic tables and shade areas; and (j) dump points for the disposal of black and/or grey water from recreational vehicles.
<b>fuel depot</b>	means premises used for the storage and sale in bulk of solid or liquid or gaseous fuel but does not include premises used - (a) as a service station; or (b) for the sale of fuel by retail into a vehicle for use by the vehicle.
<b>funeral parlour</b>	means premises used (a) to prepare and store bodies for burial or cremation; (b) to conduct funeral services.
<b>garden centre</b>	means premises used for the propagation, rearing and sale of plants, and the storage and sale of products associated with horticulture and gardens.

<b>holiday accommodation</b>	means 2 or more dwellings on one lot used to provide short term accommodation for persons other than the owner of the lot.
<b>holiday house</b>	means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.
<b>home business</b>	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or profession if the carrying out of the business, service or profession - (a) does not involve employing more than 2 people who are not members of the occupier's household; (b) will not cause injury to or adversely affect the amenity of the neighbourhood; (c) does not occupy an area greater than 50 m <sup>2</sup> ; (d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; (e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; (f) does not involve the presence, use or calling of a vehicle more than 4.5 tonnes tare weight; and (g) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located.
<b>home occupation</b>	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out an occupation if the carrying out of the occupation that - (a) does not involve employing a person who is not a member of the occupier's household; (b) will not cause injury to or adversely affect the amenity of the neighbourhood; (c) does not occupy an area greater than 20 m <sup>2</sup> ; (d) does not involve the display on the premises of a sign with an area exceeding 0.2 m <sup>2</sup> ; (e) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; (f) does not - (i) require a greater number of parking spaces than normally required for a single dwelling; or (ii) result in an increase in traffic volume in the neighbourhood; (g) does not involve the presence, use or calling of a vehicle more than 4.5 tonnes tare weight; (h) does not include provision for the fuelling, repair or maintenance of motor vehicles; and (i) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located.
<b>home office</b>	means a dwelling used by an occupier of the dwelling to carry out a home occupation if the carrying out of the occupation - (a) is solely within the dwelling; (b) does not entail clients or customers travelling to and from the dwelling; (c) does not involve the display of a sign on the premises; and (d) does not require any change to the external appearance of the dwelling.
<b>home store</b>	means a shop attached to a dwelling that - (a) has a net lettable area not exceeding 100 m <sup>2</sup> ; and (b) is operated by a person residing in the dwelling.

<b>hospital</b>	means premises that are a hospital within the meaning given in the <i>Health Services Act 2016</i> section 8(4).
<b>hotel</b>	means premises the subject of a hotel licence other than a small bar or tavern licence granted under the <i>Liquor Control Act 1988</i> including any betting agency on the premises.
<b>industry</b>	means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes facilities on the premises for any of the following purposes - (a) the storage of goods; (b) the work of administration or accounting; (c) the selling of goods by wholesale or retail; (d) the provision of amenities for employees; (e) incidental purposes.
<b>Industry - cottage</b>	means a trade or light industry producing arts and crafts goods which does not fall within the definition of a home occupation and which - (a) does not cause injury to or adversely affect the amenity of the neighbourhood; (b) where operated in a residential zone, does not employ any person other than a member of the occupier's household; (c) is conducted in an outbuilding which is compatible with the principal uses to which land in the zone in which it is located may be put; (d) does not occupy an area in excess of 50 square metres; and (e) does not display a sign exceeding 0.2 square metres in area.
<b>industry - extractive</b>	means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include facilities for any of the following purposes - (a) the processing of raw materials including crushing, screening, washing, blending or grading; and (b) activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration.
<b>industry - light</b>	means premises used for an industry where impacts on the amenity of the area in which the premises is located can be mitigated, avoided or managed.
<b>industry - primary production</b>	means premises used - (a) to carry out a primary production business as that term is defined in the <i>Income Tax Assessment Act 1997</i> (Commonwealth) section 995-1; or (b) for a workshop servicing plant or equipment used in primary production businesses.
<b>liquor store - large</b>	means premises the subject of a liquor store licence granted under the <i>Liquor Control Act 1988</i> with a net lettable area of more than 300 m <sup>2</sup> .
<b>liquor store - small</b>	means premises the subject of a liquor store licence granted under the <i>Liquor Control Act 1988</i> with a net lettable area of not more than 300 m <sup>2</sup> .
<b>lunch bar</b>	means premises or part of premises used for the sale of takeaway food (in a form ready to be consumed without further preparation) within industrial or commercial areas.

<b>marina</b>	means - (a) premises used for providing mooring, fuelling, servicing, repairing, storage and other facilities for boats, including the associated sale of any boating gear or equipment; and (b) all jetties, piers, embankments, quays, moorings, offices and storerooms used in connection with the provision of those services.
<b>marina filling station</b>	means premises used for the storage and supply of liquid fuels and lubricants for marine craft.
<b>market</b>	means premises used for the display and sale of goods from stalls by independent vendors.
<b>medical centre</b>	means premises other than a hospital used by 3 or more health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care.
<b>mining operations</b>	means premises where mining operations, as that term is defined in the <i>Mining Act 1978</i> section 8(1), is carried out.
<b>motel</b>	means premises, which may be licensed under the <i>Liquor Control Act 1988</i> -used to accommodate guests in a manner similar to a hotel; and (a) with specific provision for the accommodation of guests with motor vehicles.
<b>motor vehicle, boat or caravan sales</b>	means premises used to sell or hire motor vehicles, boats or caravans.
<b>motor vehicle repair</b>	means premises used for or in connection with - (a) electrical and mechanical repairs, or overhauls, to vehicles other than panel beating, spray painting or chassis reshaping of vehicles; or (b) repairs to tyres other than recapping or re-treading of tyres.
<b>motor vehicle wash</b>	means premises primarily used to wash motor vehicles.
<b>nightclub</b>	means premises the subject of a nightclub licence granted under the <i>Liquor Control Act 1988</i> .
<b>office</b>	means premises used for administration, clerical, technical, professional or similar business activities.
<b>park home park</b>	means premises used as a park home park as defined in the <i>Caravan Parks and Camping Grounds Regulations 1997</i>
<b>place of worship</b>	means premises used for religious activities such as a chapel, church, mosque, synagogue or temple.
<b>reception centre</b>	means premises used for hosted functions on formal or ceremonial occasions.
<b>recreation - private</b>	means premises that are - (a) used for indoor or outdoor leisure, recreation or sport; and (b) not usually open to the public without charge.
<b>renewable energy facility</b>	premises used to generate energy from a renewable energy source and includes any building or other structure used in, or in connection with, the generation of energy by a renewable resource. It does not include solar panels or a wind turbine located on a lot with a single house where the energy produced only supplies that house or private rural use or anemometers.

<b>repurposed dwelling</b>	means a building or structure not previously used as a single house which has been repurposed for use as a dwelling.
<b>resource recovery centre</b>	means premises other than a waste disposal facility used for the recovery of resources from waste.
<b>restaurant/cafe</b>	means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the <i>Liquor Control Act 1988</i> .
<b>restricted premises</b>	means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of - <ul style="list-style-type: none"> <li>(a) publications that are classified as restricted under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> (Commonwealth); and</li> <li>(b) materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity; or</li> <li>(c) smoking-related implements.</li> </ul>
<b>road house</b>	means premises that has direct access to a State road other than a freeway and which provides the services or facilities provided by a freeway service centre and may provide any of the following facilities or services - <ul style="list-style-type: none"> <li>(a) a full range of automotive repair services;</li> <li>(b) wrecking, panel beating and spray painting services;</li> <li>(c) transport depot facilities;</li> <li>(d) short-term accommodation for guests;</li> <li>(e) facilities for being a muster point in response to accidents, natural disasters and other emergencies; and</li> <li>(f) dump points for the disposal of black and/or grey water from recreational vehicles.</li> </ul>
<b>rural home business</b>	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or profession if the carrying out of the business, service or occupation - <ul style="list-style-type: none"> <li>(a) does not involve employing more than 2 people who are not members of the occupier's household; and</li> <li>(b) will not cause injury to or adversely affect the amenity of the neighbourhood; and</li> <li>(c) does not occupy an area greater than 200 m<sup>2</sup>; and</li> <li>(d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and</li> <li>(e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and</li> <li>(f) does not involve the presence, use or calling of more than 3 vehicles at any one time or of a vehicle more than 30 tonnes gross weight.</li> </ul>
<b>rural pursuit/hobby farm</b>	means any premises, other than premises used for agriculture - extensive or agriculture - intensive, that are used by an occupier of the premises to carry out any of the following activities if carrying out of the activity does not involve permanently employing a person who is not a member of the occupier's household - <ul style="list-style-type: none"> <li>(a) the rearing, agistment, stabling or training of animals;</li> <li>(b) the keeping of bees; and</li> <li>(c) the sale of produce grown solely on the premises.</li> </ul>

<b>second-hand dwelling</b>	means a dwelling that has been in a different location, and has been dismantled and transported to another location.
<b>serviced apartment</b>	means a group of units or apartments providing - (a) self-contained short-stay accommodation for guests; and (b) any associated reception or recreational facilities.
<b>service station</b>	means premises other than premises used for a transport depot, panel beating, spray painting, major repairs or wrecking, that are used for - (a) the retail sale of petroleum products, motor vehicle accessories and goods of an incidental or convenience nature; and/or (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles.
<b>shop</b>	means premises other than a bulky goods showroom, a liquor store large or a liquor store - small used to sell goods by retail, to hire goods, or to provide services of a personal nature, including hairdressing or beauty therapy services.
<b>small bar</b>	means premises the subject of a small bar licence granted under the <i>Liquor Control Act 1988</i> .
<b>tavern</b>	means premises the subject of a tavern licence granted under the <i>Liquor Control Act 1988</i> .
<b>telecommunications infrastructure</b>	means premises used to accommodate the infrastructure used by or in connection with a telecommunications network including any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure related to the network.
<b>tourist development</b>	means a building, or a group of buildings forming a complex, other than a bed and breakfast, a caravan park or holiday accommodation, used to provide - (a) short-term accommodation for guests; and (b) onsite facilities for the use of guests; and (c) facilities for the management of the development;
<b>trade display</b>	means premises used for the display of trade goods and equipment for the purpose of advertisement.
<b>trade supplies</b>	means premises used to sell by wholesale or retail, or to hire, assemble or manufacture any materials, tools, equipment, machinery or other goods used for any of the following purposes including goods which may be assembled or manufactured off the premises - (a) automotive repairs and servicing; (b) building including repair and maintenance; (c) industry; (d) landscape gardening; (e) provision of medical services; (f) primary production; and (g) use by government departments or agencies, including local government.
<b>transport depot</b>	means premises used primarily for the parking or garaging of 3 or more commercial vehicles including - (a) any ancillary maintenance or refuelling of those vehicles; and (b) any ancillary storage of goods brought to the premises by those vehicles; and (c) the transfer of goods or persons from one vehicle to another.

<b>tree farm</b>	means land used commercially for tree production where trees are planted in blocks of more than one hectare, including land in respect of which a carbon right is registered under the <i>Carbon Rights Act 2003</i> section 5.
<b>veterinary centre</b>	means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders.
<b>warehouse/ storage</b>	means premises including indoor or outdoor facilities used for (a) the storage of goods, equipment, plant or materials; or (b) the display or the sale by wholesale of goods.
<b>waste disposal facility</b>	means premises used - (a) for the disposal of waste by landfill; or (b) the incineration of hazardous, clinical or biomedical waste.
<b>waste storage facility</b>	means premises used to collect, consolidate, temporarily store or sort waste before transfer to a waste disposal facility or a resource recovery facility on a commercial scale.
<b>wind farm</b>	means premises used to generate electricity by wind force and any associated turbine, building or other structure but does not include anemometers or turbines used primarily to supply electricity for a domestic property or for private rural use.
<b>winery</b>	means premises used for the production of viticultural produce and associated sale of the produce.
<b>workforce accommodation</b>	means premises, which may include modular or relocatable buildings, used - (a) primarily for the accommodation of workers engaged in construction, resource, agricultural or other industries on a temporary basis; and (b) for any associated catering, sporting and recreation facilities for the occupants and authorised visitors.

### **Schedule A - Supplemental provisions to the deemed provisions**

These provisions are to be read in conjunction with the deemed provisions (Schedule 2) contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**Clause 61(1)(k)** (i) the erection or extension of a single house on a lot if a single house is a permitted ("P") use in the zone where the R Codes do not apply, in which that lot is located and where the development standards set out in the scheme for that particular zone (including boundary setbacks) are satisfied, unless the development is located in a place that is -entered in the State Register of Heritage Places under the *Heritage Act 2018*; or

(ii) the subject of an order under Part 4 of the *Heritage Act 2018 and Heritage Regulations 2019*; or(iii) included on a heritage list prepared in accordance with this Scheme; or(iv) within an area designated under the Scheme as a heritage area; or

(v) the subject of a heritage agreement entered into under the *Heritage Act 2018* section 90.

**Clause 61(1)(l)** the erection or extension of an ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool on the same lot as a single house if a single house is a permitted ("P") in the zone where the R Codes do not apply and where the development standards set out in the scheme for that particular zone (including boundary setbacks) are satisfied, unless the development is located in a place that is -

(i) entered in the State Register of Heritage Places under the *Heritage Act 2018*; or

(ii) the subject of an order under Part 4 of the *Heritage Act 2018 and Heritage Regulations 2019*; or

(iii) included on a heritage list prepared in accordance with this Scheme; or

(iv) within an area designated under the Scheme as a heritage area; or

(v) the subject of a heritage agreement entered into under the *Heritage Act 2018* section 90.

**Clause 61(1)(m)** The signage and advertisements contained in Schedule 2 of this Scheme do not require development approval.

**Clause 61(1)(n)** The erection of a boundary fence in a zone where the R Codes do not apply.

**Clause 61(1)(o)** The carrying out of works urgently necessary to ensure public safety, for the safety or security of plant or equipment or for the maintenance of essential services.



### Schedule 1 – Car Parking Requirements

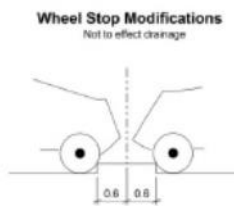
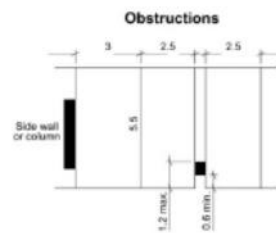
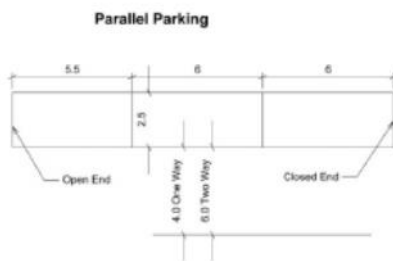
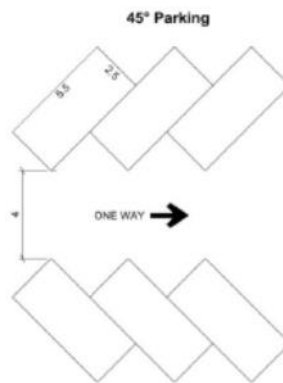
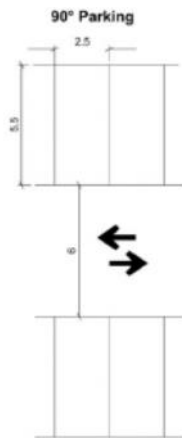
[Refer to Schedule 3 for further requirements]

USE	NUMBER OF CAR PARKING SPACES
Betting Agency	1 bay for every 10m <sup>2</sup> <u>NLA</u> floor area
Caravan parks / Camping grounds	1 bay per caravan site and 1 bay per 2 campsites plus 1 bay per 20 sites for visitor parking with a minimum of 2 provided
Child care premises / Family day care	1 bay per 4 patrons plus 1 bay for every person employed
Civic use / Community purpose	1 bay for every 35m <sup>2</sup> <u>NLA</u> floor area
Club Premises	1 bay for every 4 persons to be accommodated
Consulting rooms	4 bays per practitioner
Education establishment	1 car bay for every person employed plus adequate pickup / set down areas on site plus 2 bays for visitors
Fast food outlet / lunch bar	1 bay for every 10m <sup>2</sup> <u>NLA</u> floor area
Hospital	1 bay for every bed provided plus 1 bay for every person employed
Hotel	1 bay for every bedroom plus 1 bay for every 4m <sup>2</sup> of public bar / lounge <u>NLA</u> floor area
Industry - general	1 bay for every 100m <sup>2</sup> <u>NLA</u> floor area
Medical centre	3 bays for every consulting room
Motel	1 bay for every bedroom plus 1 bay for every 25m <sup>2</sup> gross floor area of service building
Motor repair / Service station	2 bays for every working bay plus 1 bay for every person employed
Office	1 bay for every 40m <sup>2</sup> <u>NLA</u> floor area
Place of worship	1 bay for every 4 persons to be accommodated
Residential building	1 bay for every bedroom plus 1 bay for every staff member
Restaurant	1 bay for every 4 persons to be accommodated
Shop	1 bay for every 15m <sup>2</sup> <u>NLA</u> floor area
Single house / Grouped dwelling / Multiple dwelling	As prescribed in the R-Codes
Tavern	1 bay for every 4m <sup>2</sup> of public floor area ( <u>NLA</u> ).
Warehouse / showroom	1 bay for every 100m <sup>2</sup> <u>NLA</u> floor area

### Schedule 1 – Car Parking Requirements

[Refer to Schedule 3 for further requirements]

#### CAR PARKING LAYOUTS



**Schedule 2 — Signage and advertisements for which development approval not required**

**(Schedule 2, cl.56(h) *Planning and Development (Local Planning Schemes) Regulations 2015*)**

LAND USE AND/OR DEVELOPMENT	EXEMPTED SIGN TYPE AND NUMBER (All non-illuminated signs unless otherwise stated)	MAXIMUM AREA OF EXEMPTED SIGN
Dwellings	One professional name plate as appropriate	0.2m <sup>2</sup>
Home Occupation	One advertisement describing the nature of the home occupation	0.2m <sup>2</sup>
Places of Worship, Meeting Halls and Place of Public Assembly	One advertisement detailing the function and/or the activities of the institution concerned.	0.2m <sup>2</sup>
Cinemas, Theatres and Drive-in Theatres	Two signs (illuminated or non-illuminated) detailing the entertainment being presented from time to time at the venue upon which the signs are displayed	Each advertisement sign not to exceed 5m <sup>2</sup>
Shops, Showrooms and other uses appropriate to a Shopping Area	All advertisements affixed to the building below the top of the awning or, in the absence of an awning, below a line measured at 5 metres from the ground floor level of the building subject to a compliance with the requirements of the Signs Hoarding and Bill Posting Bylaws.	N/A
Industrial and Warehouse Premises	<p>A maximum of 4 advertisements applied to or affixed to the walls of the building but not including signs which project above the eaves or the ridge of the roof of the building, and excluding signs projecting from a building whether or not those signs are connected to a pole, wall or other building.</p> <p>A maximum of two free-standing advertisement signs not exceeding 5m in height above ground level.</p>	<p>Total area of any such advertisements shall not exceed 15m<sup>2</sup></p> <p>Maximum permissible total area shall not exceed 10 m<sup>2</sup> and individual advertisement signs shall not exceed 6m<sup>2</sup></p>
Showroom, race courses, major racing tracks, sports stadia, major sporting grounds and complexes	All advertisements affixed to the building below the top of the awning or, in the absence of an awning, below a line measured at 5 metres from the ground floor level of the building subject to a compliance with the requirements of the Signs Hoarding and Bill Posting Bylaws.	N/A

**Schedule 2 — Signage and advertisements for which development approval not required**

**(Schedule 2, cl.56(h) *Planning and Development (Local Planning Schemes) Regulations 2015*)**

LAND USE AND/OR DEVELOPMENT	EXEMPTED SIGN TYPE AND NUMBER (All non-illuminated signs unless otherwise stated)	MAXIMUM AREA OF EXEMPTED SIGN
Public Place and Reserves	(a) Advertisement signs (illuminated or non-illuminated) relating to the functions of government, a public authority or local government of a municipality excluding those of a promotional nature constructed or exhibited by, or on behalf of any such body; and (b) Advertisement signs (illuminated or non-illuminated) required for the management or control of traffic on any public road, car park, cycleway, railway or waterway where such advertisement has been constructed or exhibited by or at the direction of a government department, public authority or the local government of a municipality; and (c) Advertisement signs (illuminated or non-illuminated) required to be exhibited by or pursuant to powers contained within a statute provided that any such advertisement is constructed and/or exhibited strictly in accordance with the requirements specified therein.	N/A
Railway Property and Reserves	Advertisement signs exhibited on such land provided that each such advertisement is directed only at persons at or upon a railway station.	No sign shall exceed 2m <sup>2</sup> in area
Advertisements within Buildings	All advertisements placed or displayed within buildings which cannot ordinarily be seen by a person outside of those buildings.	N/A
All classes of buildings other than single family dwellings	One advertisement sign containing the name, number and address of the building, the purpose for which the building is used or the name and address of the managing agent thereof.	0.2m <sup>2</sup>

TEMPORARY SIGNS	EXEMPTED SIGN TYPE AND NUMBER (All non-illuminated signs unless otherwise stated)	MAXIMUM AREA OF EXEMPTED SIGN
<p>Building Construction Sites (advertisement signs displayed only the duration of the construction as follows:</p> <p>(i) Dwellings</p> <p>(ii) Multiple Dwellings, Shops, Commercial &amp; Industrial projects</p> <p>(iii) Large development or redevelopment projects involving shopping centres, office or other buildings exceeding 3 storeys in height.</p>	<p>One advertisement per street frontage containing details of the project and the contractors undertaking the construction work.</p> <p>One sign as for (i) above.</p> <p>One sign as for (i) above.</p> <p>One additional sign showing the name of the project builder.</p>	<p>2m<sup>2</sup></p> <p>5m<sup>2</sup></p> <p>5m<sup>2</sup></p>
<p>Sales of Goods or Livestock</p>	<p>One sign per lot displayed for a period not exceeding 3 months advertising the sale of goods or livestock upon any land or within any building upon which the sign is exhibited provided that the land is not normally used for that purpose.</p>	<p>2m<sup>2</sup></p>
<p>Property Transactions Advertisement signs displayed for the duration of a period over which property transactions are offered and negotiated as follows:</p> <p>(a) Dwelling</p> <p>(b) Multiple dwellings, shops, Commercial &amp; Industrial Properties</p> <p>(c) Large properties comprised of shopping centres, buildings in excess of four storeys and rural properties in excess of 5ha</p>	<p>One sign per street frontage for each property relating to the sale, leasing or impending auction of the property.</p> <p>One sign as for (a) above.</p> <p>One sign as for (a) above.</p>	<p>Each sign shall not exceed an area of 2m<sup>2</sup></p> <p>Each sign shall not exceed an area of 5m<sup>2</sup></p> <p>Each sign shall not exceed an area of 10m<sup>2</sup></p>
<p>Display Homes</p> <p>Advertisement signs displayed or the period over which homes are on display for public inspection.</p>	<p>i) One sign as for each dwelling on display.</p> <p>ii) In addition to (i) above one sign for each group of dwellings displayed by a single project builder giving details of the project building company and details of the range of dwellings on display.</p>	<p>2m<sup>2</sup></p> <p>5m<sup>2</sup></p>

### Schedule 3 - General development standards and requirements

#### [cl. 32]

##### General Considerations

- (1) Development on land without constructed or dedicated road frontage or access
  - (a) Notwithstanding any other provision of the Scheme, development of the local government is required for any development on land abutting an unconstructed road, or a lot or location which does not have frontage to a constructed public road. In considering an application for the development of land abutting an unconstructed road or a lot which does not have frontage to a constructed road the local government may:
    - (i) Refuse the application until the road has been constructed or access by means of a constructed road is provided;
    - (ii) Grant approval to the application subject to a condition requiring the applicant to pay a sum of money in or towards payment of the cost or estimated cost of construction of the road or part thereof and any other conditions it thinks fit to impose; or
    - (iii) Grant approval to the application subject to the following conditions, or any other conditions the local government see fit to impose -
      - Arrangements are to be made for permanent access, to the satisfaction of the local government;
      - The location of any legal access shall be to the satisfaction of the local government;
      - Access must be constructed and maintained to the satisfaction of the local government; and
      - A notification is to be placed on the title of the land alerting landowners that the lot does not have access to a constructed public road and alternative access arrangements must be maintained, both physically and legally.
- (2) Site with frontage to more than one street
  - (a) Where a development site has frontage to more than one street (except in the 'Residential' zone or 'Urban Development' zone with an adopted Structure Plan), the local government may: –
    - (i) Designate one of the streets to be a primary street for the purpose of determining front setbacks;
    - (ii) Require that the specified front setbacks shall apply to each road;
    - (iii) Permit the setback on a secondary street to be reduced to half of the specified front setback or averaged unless the site is adjacent to a State Highway, Limited Access Road, Primary Distributor Road of Local Distributor Road unless other more specific provisions in the Scheme apply; or
    - (iv) Refuse vehicular access to one of the roads.
- (3) Setbacks requirements
  - (a) Schedule 4 sets out the minimum setback requirements for land in zones within the Scheme which may be supplemented by the local government's specific requirements.

- (b) The local government in determining applications for any development may require such development to comply generally with the minimum setbacks required for the zone as required in Schedule 4 to ensure that the scale, nature, design, general appearance and impact of such uses is compatible with the objectives of the zone in which the development is proposed and the general purposes and aims of the Scheme.
  - (c) The site and development requirements for development within zones not referred to in Schedule 4 shall be in accordance with the local government's specific requirements in each particular case.
- (4) Parking of Commercial Vehicles in Residential Areas
- (a) No person shall park within the Residential zone a commercial vehicle without the planning approval of the local government. Where the commercial vehicle parking use is proposed in the Residential zone it shall comply with the following:
    - (i) not more than one such vehicle is to be parked on a lot;
    - (ii) the vehicle is to form an essential part of the lawful occupation of an occupant of the dwelling and that occupation if carried on upon the lot does not contravene the Scheme;
    - (iii) the vehicle is to be parked behind the front building line and effectively screened from view from outside the lot;
    - (iv) no part of the vehicle is to be parked on any portion of a right-of-way or public road contiguous with the lot;
    - (v) the vehicle is not to exceed 3.0 metres in height or 8.0 metres in length;
    - (vi) no major/minor servicing of vehicles shall be undertaken on the lot; and
    - (vii) the vehicle is not brought to or taken from the lot between the hours of midnight and 6.00 am.
- (5) Car parking requirements
- (a) The minimum number and dimensions of car parking spaces to be provided on a residential lot shall be in accordance with the provisions of the R-Codes.
  - (b) Car parking bay dimensions for other uses shall be in accordance with Schedule 1. If a use is not listed in Schedule 1 then Car parking bay dimensions shall be in accordance with Australian Standard AS2890.1.
  - (c) A person shall not develop or use any land or erect, use or adopt any building unless car parking spaces specified by the local government are provided and such spaces are constructed and maintained in accordance with the Scheme.
  - (d) The car parking spaces required under the provisions of the Scheme shall measure not less than the dimensions specified by Schedule 1.
  - (e) All areas utilised for vehicle parking, manoeuvring, access, egress and storage are to be sealed, marked and formalised as per Australian Standard 2890.1-2004 as amended.
  - (f) Where the maximum dimension of any open car parking area exceeds twenty metres in length or width, one car parking space in ten shall be used for garden and tree planting to provide visual relief and so long as the garden and tree planting areas shall be maintained in good order, those car parking spaces shall be included in calculations as car parking and not as landscaping.

- (g) Where the owner can demonstrate to the satisfaction of the local government that there is not the demand for the number of parking spaces specified in subclauses (a) and (b), landscaping may be provided in lieu of car parking spaces not constructed and the said landscaping shall be included in the calculations as car parking but not as landscaping provided that the local government may from time to time require that the additional parking spaces be provided.
- (h) All areas utilised for storage in the General Industry zone may be constructed to a suitable unsealed standard that permits all-weather access by two-wheel drive vehicles and that does not result in gravel, sand or other forms of earth leaving the site.
- (i) In the 'Commercial' zone and 'Mixed Use' zone where a developer can satisfy the local government that the maximum car parking requirement cannot be provided on the site the local government may accept a cash payment in lieu of the provision of car parking spaces but subject to the requirements of this clause:
- (i) A cash-in-lieu payment shall be not less than the estimated cost to the owner of providing and constructing the parking spaces required by the Scheme, plus the value, as determined by either the Valuer-General or by a licensed valuer appointed by the local government, of the area of his land which would have been occupied by the parking spaces.
  - (ii) Before the local government agrees to accept a cash payment in lieu of the provision of car parking spaces, the local government must either have already provided a public car park nearby, or must have firm proposals for providing a public car park area nearby within a period of not more than eighteen (18) months from the time of agreeing to accept the cash payment.
  - (iii) Payments made under this clause shall be paid into a special purpose fund to be used for the provision of public carparking facilities and the local government may use this fund to provide or maintain public parking facilities anywhere within the 'Commercial' zone and 'Mixed Use' zone.
- (j) Where public off street parking facilities are located or are proposed to be located in the near vicinity of land or building being the subject of an application for development approval the local government may approve such application notwithstanding that the required number of car parking spaces are not to be provided on site subject to:
- (i) the local government being satisfied that off street parking facilities are sufficient to cater for the requirements of the land or buildings, and
  - (ii) the applicant entering into an agreement with the local government to pay for the cost of providing and maintaining the required number of car parking spaces as required.
- (k) Where the number of car parking spaces proposed to be provided on land or in a building the subject of an application for development approval is less than the number required to be provided pursuant to the Scheme, the local government may approve the application if it can be demonstrated that off street parking facilities in the near vicinity are available to cater for the requirements of the proposal and that arrangements to the satisfaction of the local government have been made to enable those facilities to be used for that purpose.



- (l) The owner or occupier of premises on which car parking spaces are provided shall ensure that the parking area is landscaped with shade trees, the car parking is laid out, drained and maintained in accordance with the approved plans relating thereto.
- (6) Development of land subject to dampness or flooding
- (a) Where, in the opinion of the local government, the dampness of the site on which a building is proposed to be constructed so warrants the local government may require that one or all of the following measures shall be carried out:
- (i) the subsoil shall be effectively drained;
- (ii) the surface of the ground beneath the building shall be regraded or filled and provided with adequate outlets to prevent any accumulation of water beneath the building;
- (iii) the surface of the ground beneath the building shall be covered with an approved damp-resisting material.
- (b) A building shall not be constructed upon any land defined by the local government as being liable to flooding or inundation.
- (7) Effluent Disposal
- Where access to a reticulated sewerage disposal system is demonstrated to not be available, on-site effluent disposal facilities are to be provided to treat and dispose of any effluent generated on the site in accordance with the Government Sewerage Policy 2019.
- (8) Building Height
- (a) The height limit of any building that is not industrial in nature or in the Residential, Commercial or Mixed Use zones shall be limited to 9 metres.
- (b) The height limit of any building that is industrial in nature shall be limited to 15 metres.
- (c) The height limit of any building that is in the Commercial or Mixed Use zones shall only be limited by plot ratio.
- (d) The height limit in subclauses (a), (b) or (c) shall not be exceeded unless considered in accordance with clause 64 of the deemed provisions.
- (9) Landscaping within the 'Mixed Use' zone
- (a) Access driveways between a street alignment and buildings may be included in any landscaping requirement of this Scheme but otherwise car parking areas and driveways shall not be included in this requirement.
- (b) The local government may in a landscaped area restrict the use of concrete, gravel, pebble and similar hard materials and require the planting of lawns, trees or shrubs in lieu thereof.
- (10) Disability services
- (a) The local government may require the provision of facilities for the disabled when considering applications for development approval.

(11) Declared rare flora

- (a) Prior to the subdivision or development of any lot where there is remnant native vegetation, the local government may seek advice from the Department of Biodiversity, Conservation and Attractions as to whether any declared rare flora will be affected by the proposal, and shall take appropriate action if the lot contains such flora.

(12) Caretaker's Dwellings

- (a) Where a caretaker's dwelling use is proposed it shall comply with the following:
- (i) A caretaker's dwelling must be incidental to the predominant use of the site.
  - (ii) Only one caretaker's dwelling is permitted on each lot.
  - (iii) The total floor area of a caretaker's dwelling does not exceed 100m<sup>2</sup>, measured from the external face of walls excluding verandahs and carports.
  - (iv) In industry zones, the caretaker's dwelling is not to consist of more than two bedrooms and a small office.
  - (v) Verandahs and carports may be permitted, but if enclosed will form part of the total calculated floor area.
  - (vi) The local government may consider the use of notifications on title to advise prospective purchasers of potential impacts from noise, dust, odour or amenity that may arise from the location of a caretaker's dwelling within the zone.
  - (vii) The local government will not consider applications for caretakers' dwellings prior to the primary site activity being either approved or constructed.
  - (viii) Where simultaneous approval has been granted by the local government for both a caretaker's dwelling and the main activity on the same lot, the main activity must be developed and operational prior to occupation of the dwelling.
  - (viii) Caretaker's dwellings should be carefully sited and constructed so the potential site (or estate) impacts from noise, dust, odour or amenity are minimised.
  - (ix) A caretaker's dwelling may only be occupied by the owner, manager, lessee or employee (and immediate family thereof) of the lawfully established or approved land use.
  - (x) Where the primary site activity has ceased the occupation of the caretaker's dwelling is to cease.

(13) Repurposed Dwelling Requirements

- (a) Where a repurposed dwelling use is proposed it shall comply with the following:
- (i) Within the Rural Residential zone only one repurposed dwelling may be approved on a lot.
  - (ii) The repurposed dwelling should be carefully sited and constructed so the potential impacts from noise, dust, odour or amenity are minimised.

- (iii) For the purposes of establishing whether a grouped dwelling is proposed a repurposed dwelling will count as one dwelling.
- (iv) Regardless of external wall materials, all roofs over the main portion of the repurposed dwelling are to have a pitch of 10° or greater.

(14) Second-hand Dwelling Requirements

- (a) Notwithstanding any other requirement of the Scheme, all second-hand dwellings require the planning approval of the local government.
- (b) Where a second-hand dwelling use is proposed it shall comply with the following in addition to any other relevant provision of the Scheme:
  - (i) A building that has a roof or wall sheeting or any other material such as sound proofing or insulation, that contains asbestos, is not permitted to be relocated until those materials containing asbestos are removed and disposed of in the appropriate manner, prior to transportation.
  - (ii) The void area between the floor and natural ground levels is to be enclosed with brickwork, battens or other suitable materials as approved by the local government.
- (c) When considering an application for planning approval for a second-hand dwelling, the local government may impose conditions concerning:
  - (i) The external appearance and material finishes, the screening of sub-floor spaces, the addition to or modification to the existing dwelling and the time frame imposed to complete specified work and connect the dwelling or building to lot services;
  - (ii) The provision of landscaping and/or screening of the building and/or site; and
  - (iii) The provision of a bond or bank guarantee in favour of the local government as surety for the completion of the building to a standard of presentation acceptable to the local government within a specified time.

Where the provision of a bond or bank guarantee is required, the local government shall refund the payment upon satisfactory completion of the necessary works.

(15) Bed and Breakfast

- (a) Bed and breakfast uses shall be permitted to be operated from single houses but only where the development is in the opinion of the local government:
  - (i) does not adversely affect the amenity of the area;
  - (ii) provides a tourist facility;
  - (iii) is in a location approved by the local government;
  - (iv) has been advertised for public comment in conformity with the advertising requirements specified in clause 64 of the deemed provisions and no significant objections have been received during the advertising period; and
  - (v) the proposal complies with all other Scheme requirements and any relevant local government policy.

(16) Tourist Facilities

- (a) In this clause the tourist facilities refers to the following uses defined in this Scheme:
- Caravan park
  - Holiday accommodation
  - Holiday house
  - Hotel
  - Motel
  - Park home park
  - Serviced apartment
  - Tourist development
- (b) The local government may approve tourist facilities in accordance with the zoning table but only where the development, in the opinion of the local government:
- (i) does not adversely affect the amenity of the area;
  - (ii) has no significant environmental impact;
  - (iii) complies with all other Scheme requirements and any relevant local government policy; and
  - (iv) has been advertised for public comment in conformity with the advertising requirements specified in clause 64 of the deemed provisions and no significant objections have been received during the advertising period.

(17) Unkempt land

- (a) On any land within the Scheme area, any undergrowth, refuse, rubbish or disused material which in the opinion of the local government is likely to adversely affect the health, comfort or convenience of the inhabitants thereof, the local government may cause a notice to be served on the owner or occupier of such land requiring that the land is cleared of trees, scrub, undergrowth, refuse or rubbish, or such refuse, rubbish or disused material is removed from such land within a specified period.
- (b) Where the owner or occupier does not clear the land or remove the refuse, rubbish or disused material as required by the notice, the local government may without payment or any compensation in respect thereof, clear or remove it and dispose of it at the expense of the owner or occupier to whom notice is given. Every owner or occupier of land upon whom a notice is served shall comply with such notice within the time period therein specified.
- (c) Failure to comply with a notice under this clause shall be a breach of the provisions of this Scheme.

(18) Vehicles, caravans, trailers in residential areas

- (a) Except as hereinafter provided, no person within any lot zoned Residential Zone may without the written approval of the local government:
- (i) allow any commercial vehicle or truck to remain or be parked for a period of more than forty eight hours consecutively;
  - (ii) repair, maintain, service or clean a commercial vehicle or truck;

- (iii) keep, park, repair or store any boat, trailer, caravan or any material not specifically for the immediate use by the occupant in front of the building setback line.
- (19) Derelict vehicles
- (a) Local government shall not permit the storage and/or wrecking of any vehicle on any street verge or on any lot between the front boundary and the front setback line within any Zone.
- (20) Home occupation / Industry-cottage
- (a) Local government shall not approve any Home Occupation or Industry - Cottage use unless:
- (i) development approval is granted in accordance with the Scheme. The local government may limit the period of validity of a permitted Industry-cottage and shall review the register from time to time as the local government deems fit;
- the applicant provides the following information;
  - location of the home occupation/industry;
  - the area of the floor space to be devoted to the activity;
  - the times and conditions of the operation;
  - demonstrate that there is a demand for the goods and services.
- (21) Rear access and loading docks
- (a) When considering any application for development approval the local government shall have regard to and may require the provision of loading docks or rear access. In particular, the local government may impose conditions concerning:
- (i) the size of loading docks
- (ii) the means of providing rear access of adequate width and design so as to ensure that transport vehicles shall be able to proceed in a forward direction.
- (22) Amenity
- (a) No building shall be so constructed, finished or left unfinished that its external appearance would significantly detract from the amenity of the locality or tend to depreciate the value of adjoining property. All land and buildings shall be so used and maintained as to preserve the local amenity.
- (b) No land, building or appliance shall be used in such a manner as to permit the escape therefrom of smoke, dust, fumes, odour, noise, glare, vibration or waste products in such quantity or extent or in such a manner as will create or be a nuisance to any inhabitant, or to traffic or persons using any land or roads in the vicinity.
- (c) If the local government forms the opinion that there has been a breach of the requirements of the preceding subclauses it may, by notice in writing, require the owner to make good the breach in the manner and within the time stated in the notice. The notice may be served on the owner personally or by posting it to the last address of the owner known to the local government, and if served by post, shall be deemed to have been served three (3) clear days after the date of posting.

- (d) Any person upon whom a notice is served pursuant to this clause may, within 28 days of the date of service of the notice on that person, appeal pursuant to Part 14 of the Act against the requirements of the notice and, where any such appeal is lodged the effect of the notice shall be suspended until a decision to uphold, quash or vary the notice has been made on the appeal or the appeal has been withdrawn, whereupon the time stated in the notice shall again begin to run.
  - (e) Failure to comply with a notice under this clause shall be a breach of the provisions of the Scheme.
- (23) Where a strata-titled development containing more than one unit is destroyed either wholly or partially that development may be rebuilt to the density existing before its destruction subject to compliance with the Building Code of Australia and issue of a development approval by local government and notwithstanding that a lower density may apply to the land under the scheme.
- (24) Where landscaping is required as a condition of development approval this shall be established in accordance with the approved landscape plan and shall be maintained thereafter in accord with the approved plan. Unless otherwise approved by local government a minimum of 10% of the site area of all commercial and industrial developments shall be landscaped.
- (25) To maintain and enhance the character of the Townsite of Derby, no person shall remove a Boab Tree from any land within the scheme area without the prior written consent of the local government. For the purpose of this Clause:
- (a) the consent of local government shall not be unreasonably withheld and shall be issued where the tree is dead, dying or dangerous;
  - (b) it shall be sufficient defence to show that a tree that has been removed was dead, dying or dangerous prior to its removal.
- (26) When considering an application for development approval the local government shall determine whether any Boab tree or other vegetation on the subject site has landscape or environmental significance and should be retained and in granting consent to an application may:
- (a) impose a condition on the development approval requiring the retention or relocation of the tree or trees;
  - (b) request a modification of the proposal; and/or
  - (c) permit a variation of the site development requirements to provide for retention of the tree or trees.

**Table 8 - Zone Development Requirements**

Development in all zones shall comply with the objectives and requirements set out in Part 3 - Zones and use of land.

Zone	Development Requirements
Commercial Zone	<ol style="list-style-type: none"> <li>1. Development in the Commercial zone shall not exceed two (2) storeys.</li> <li>2. Where the ground floor of a two-storey building is used for commercial purposes, the upper floors of such building may be used for such purposes as may be permitted by local government and may include shops, offices or residential development.</li> <li>3. Residential uses in such circumstances are to be confined to the upper storey only.</li> <li>4. Residential development within the Commercial zone shall conform to the standards prescribed for the Residential zone and the provisions of the R50 code of the R-Codes.</li> </ol>
Rural Townsite Zone	<ol style="list-style-type: none"> <li>1. Development in the Rural Townsite zone shall comply with the objective for that zone as outlined in Part 3, and with such requirements as the local government considers appropriate relative to the proposed use.</li> </ol>
Cultural and Natural Resource Use Zone	<ol style="list-style-type: none"> <li>1. Development will not be approved by the local government, and the local government will not support subdivision unless a structure plan or a layout plan has been approved for the relevant part of the zone.</li> <li>2. Development shall be in accordance with any adopted layout plan prepared in accordance with State Planning Policy No. 3.2 – Aboriginal Settlements.</li> <li>3. In the event that an approved Layout Plan has not been prepared in accordance with State Planning Policy No. 3.2 – Aboriginal settlements, assessment and consideration is to be carried out based upon the objectives and intentions of this Scheme.</li> </ol>
General Industry Zone	<ol style="list-style-type: none"> <li>1. Where a building is approved upon a lot and is set back from the front boundary of that lot local government shall require the provision of landscape treatment between the frontage of any building and the front boundary. Where a lot has frontage to two streets the local government may vary the landscaping requirement only where the setback is reduced in which case the whole of the setback so reduced shall be landscaped to the satisfaction of the local government.</li> <li>2. Such landscape treatment may include a car parking area. Implementation of an approved landscaped plan shall occur within six calendar months of:</li> </ol>

	<ul style="list-style-type: none"> <li>(i) the completion of any other approved works; or</li> <li>(ii) the date of occupancy, if occupancy commences prior to the completion of the development.</li> </ul> <p>3. All development in the General Industry zone shall be subject to the following requirements:</p> <ul style="list-style-type: none"> <li>(i) No building shall exceed two storeys in height without the consent of the Civil Aviation Safety Authority, and not to have highly reflective roofing material.</li> <li>(ii) Adequate screening of work, service and storage areas;</li> <li>(iii) All loading and unloading of materials, parking and the operation of all business associated with any industry shall take place within the boundaries of the site;</li> <li>(iv) Minimum fencing standard shall be 1.8m security fence unless otherwise approved by the local government; and</li> <li>(v) New buildings proposed adjacent to the Residential zone shall be compatible in scale, materials and appearance with any existing residential development.</li> </ul> <p>4. No dumping, storage of waste or materials, or construction, servicing or maintenance shall be carried out between the building line and the street frontage unless approved by the local government. This does not prohibit the display of finished goods or goods for sale or ready for delivery.</p> <p>5. The wrecking or storage of wrecked vehicles or parts thereof shall not be permitted in front of the building setback as prescribed in Schedule 4.</p> <p>6. The development of built strata lots, for the purpose of providing multiple factory units in one lot, shall not be permitted in the General Industry zone unless the following requirements are complied with:</p> <ul style="list-style-type: none"> <li>(i) all built strata lots shall have a floor area greater than 100m<sup>2</sup>.</li> <li>(ii) each built strata lot shall have a service yard appurtenant to it which shall be a minimum of 50% of the unit floor area.</li> <li>(iii) access to the office attached to each built strata lot and the major access to the built strata lot.</li> <li>(iv) off street parking may be provided as an overall area on site and shall provide for all employees with a minimum staff parking requirement of four bays per built strata lot. Customer parking shall be provided as an additional figure of one bay per built strata lot.</li> <li>(v) all facades of built strata lots are to be of masonry construction or other material approved by the local government.</li> </ul> <p>7. Local government may permit the development and occupancy of a single house upon a lot for the purposes of caretaker's dwelling .</p>
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<p>Mixed Use Zone</p>	<ol style="list-style-type: none"> <li>1. Side setbacks shall:             <ol style="list-style-type: none"> <li>(i) be a minimum of 5 metres on any one side to permit access to the rear of the lot; and</li> <li>(ii) on any other side, a minimum of 1.2 metres on any other side; or depending upon the building height and materials as prescribed in the Building Code of Australia; or zero in the case of a parapet wall with a satisfactory fire rating in accordance with the Building Code of Australia.</li> </ol> </li> <li>2. Minimum building setbacks shall be:             <ol style="list-style-type: none"> <li>(i) in accordance with R-Code R20 for residential development.</li> <li>(ii) for non-residential development the front setback shall be 9 metres; and</li> <li>(iii) the rear and side setbacks shall be as determined by the local government in accordance with the Building Code of Australia.</li> </ol> </li> <li>3. Development shall not exceed 2 storeys in height except where the local government considers that particular circumstances may warrant an exception being made and provided the 'Mixed Use' zone objectives are not compromised.</li> <li>4. Where a building is approved upon a lot and is set back from the front boundary of that lot local government shall require the provision of landscape treatment between the frontage of any building and the front boundary. Such landscape treatment may include a car parking area. Implementation of an approved landscaped plan shall occur within six calendar months of:             <ol style="list-style-type: none"> <li>(i) the completion of any other approved works; or</li> <li>(ii) the date of occupancy, if occupancy commences prior to the completion of the development.</li> </ol> </li> </ol>
<p>Residential Zone</p>	<ol style="list-style-type: none"> <li>1. No horse or other hoofed animal shall be kept on any lot in the Residential zone.</li> <li>2. Except as hereinafter provided, no person within any lot zoned Residential zone may without the written approval of the local government:             <ol style="list-style-type: none"> <li>(i) allow any commercial vehicle or truck to remain or be parked for a period of more than forty eight hours consecutively;</li> <li>(ii) repair, maintain, service or clean a commercial vehicle or truck;</li> </ol> </li> </ol>

	<p>(iii) keep, park, repair or store any boat, trailer, caravan or any material not specifically for the immediate use by the occupant in front of the building setback line.</p>
<p>Rural Zone</p>	<ol style="list-style-type: none"> <li>1. Development in the Rural zone shall comply with the requirements of Table 2 and the objectives for that zone as outlined in Part 3.</li> <li>2. No more than one single dwelling shall be permitted on any lot in the Rural zone unless the development approval of local government is granted.</li> <li>3. The maximum number of single dwellings (not including ancillary accommodation) which the local government may permit is restricted to two (2). The approval of the development of two dwellings on a Rural lot does not imply approval for subdivision of that lot.</li> <li>4. The construction of dams and the extraction of surface water from drainage lines requires development approval the local government where the local, government may request the advice of the Department of Water Environment and Regulation before determining any application.</li> <li>5. Animal Husbandry - Intensive uses are not permitted:             <ol style="list-style-type: none"> <li>(i) in the Rural zone where such use is proposed to be located within a five (5) kilometre radius of an established townsite;</li> <li>(ii) in the Rural zone unless such a use is proposed to be located more than five (5) kilometres from an established townsite and more than two (2) kilometres from an existing residential dwelling; and</li> <li>(iii) within two (2) kilometres of an existing neighbouring residential dwelling unless the local government has exercised its discretion by granting development approval after considering a site specific study provided by the applicant addressing the proximity of sensitive land uses and potential impacts, and giving notice in accordance with clause 64 of the deemed provisions.</li> </ol> </li> <li>6. Notwithstanding 4. Above or any other provision of the scheme the keeping of pigs on land within the Rural zone is prohibited.</li> </ol>
<p>Rural Residential Zone</p>	<ol style="list-style-type: none"> <li>1. Prior to the subdivision of land in the Rural Residential zone the local government shall require a Structure Plan.</li> <li>2. Notwithstanding 1. above, local government may approve any development within a Rural Residential zone consistent with the zoning of the land without the preparation of a Structure Plan, where in the opinion of local government the development will not adversely affect the future subdivision and development of the land.</li> </ol>

	<p>3. Lot sizes for land zoned Rural Residential should generally not be less than 2 hectares in area.</p> <p>4. All development in the Rural Residential zone shall comply with the following specific requirements:</p> <ul style="list-style-type: none"> <li>(i) not more than one (1) dwelling per lot shall be permitted but the local government may, at its discretion, permit an ancillary accommodation;</li> <li>(ii) in order to conserve the rural environment and features of natural beauty all trees shall be retained unless their removal is authorized by the local government;</li> <li>(iii) in order to enhance the rural amenity of the land in areas the local government considers deficient in tree cover it may require, as a condition of any development approval, the planting of such trees and groups of trees and species as specified by the local government;</li> <li>(iv) any person who keeps an animal or animals or who uses any land for the exercise or training of an animal or animals shall be responsible for appropriate measures to prevent noise, odour, or dust pollution or soil erosion to the satisfaction of the local government; and</li> <li>(v) with the intention of preventing overstocking, erosion and any other practice detrimental to the amenity of a Rural Residential zone, the local government may take any action which in the opinion of the local government is necessary to reduce or eliminate adverse effects on the environment caused wholly or partly by the stocking of animals and any costs incurred by the local government in taking such action shall be recoverable by the local government from the landowner.</li> </ul> <p>5. The construction of dams and the extraction of surface water from drainage lines requires development approval the local government where the local, government may request the advice of the Department of Water Environment and Regulation before determining any application.</p> <p>6. Except for:</p> <ul style="list-style-type: none"> <li>(i) the establishment of a firebreak required to comply with a regulation or by-law; or</li> <li>(ii) the provision of access to a building site; or</li> <li>(iii) the area of building; or</li> <li>(iv) cash crops;</li> </ul> <p>not more than 2,000m<sup>2</sup> on any lot shall be cleared of indigenous trees or substantial vegetation. If the local government is satisfied upon receipt of a submission the clearing of an area greater than 2,000m<sup>2</sup> will not adversely affect the amenity, character and landscape qualities of the locality it may approve such land to be cleared subject to conditions as may be required by the local government.</p>
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<p>Tourism Zone</p>	<p>A Local Development Plan prepared in accordance with the local development plan framework may be required in the Tourism zone.</p> <p>Local government may approve the use of a tourist site in the Tourism zone for permanent residential purposes to a maximum of 30% of the number of units, rooms or caravans/cabins approved for the site.</p>
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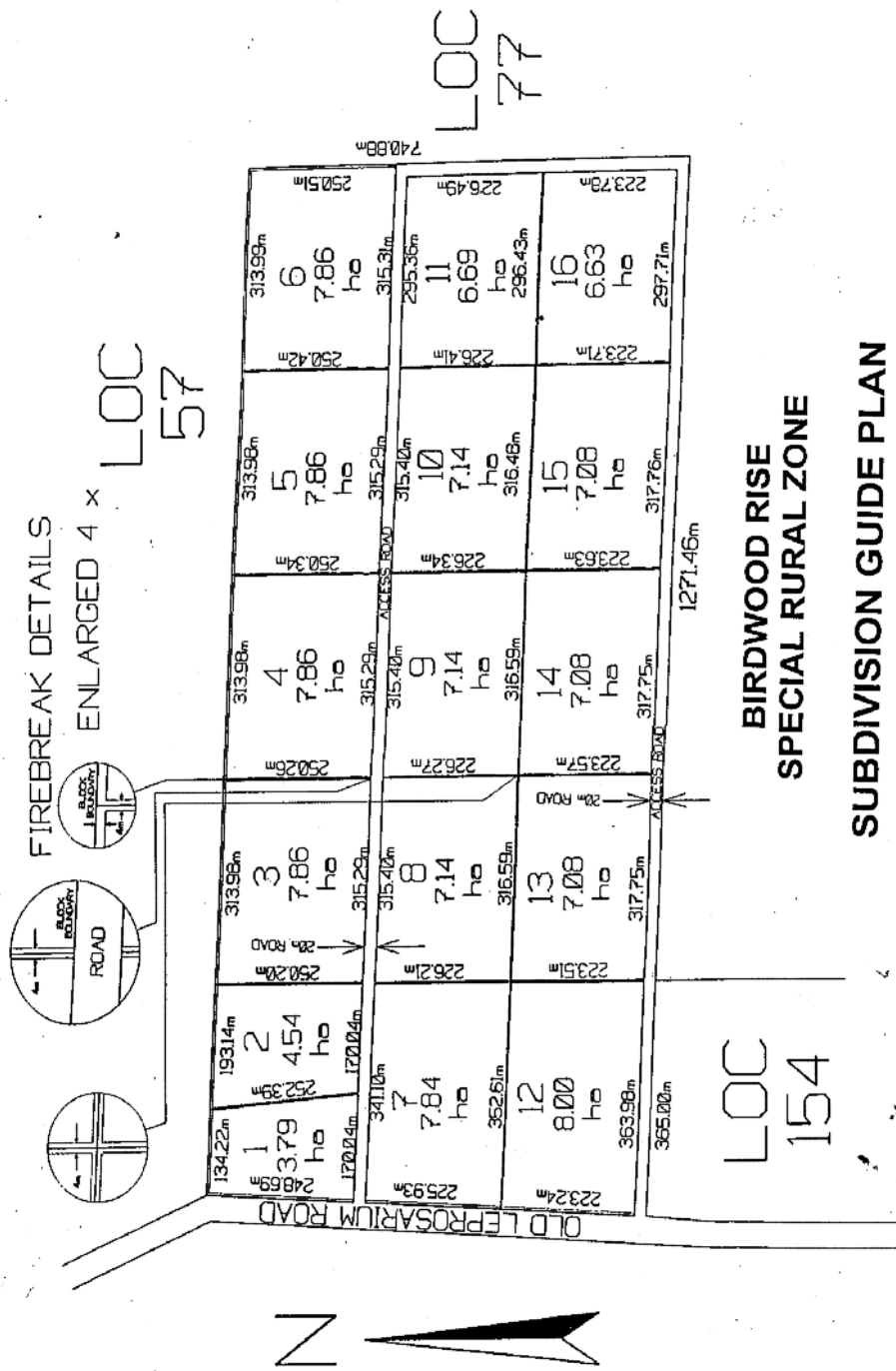
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**Schedule 4 — Minimum setbacks from boundaries**

<b>ZONE</b>	<b>STREET</b>	<b>REAR</b>	<b>SIDE</b>	<b>MINIMUM LANDSCAPING REQUIREMENT</b>
Commercial	Nil setback which may be varied at the discretion of the local government.	In accordance with the Building Code of Australia	In accordance with the Building Code of Australia	<ol style="list-style-type: none"> <li>1. Canopy shade trees at the rate of 1 tree for every 4 open air parking bays.</li> <li>2. Screen landscaping as required by the local government.</li> <li>3. Additional landscaping as required by the local government.</li> </ol>
Mixed Use	Nil to 3 metres at the discretion of local government.	*	*	<ol style="list-style-type: none"> <li>1. Canopy shade trees at the rate of 1 tree for every 4 open air parking bays.</li> <li>2. Screen landscaping as required by local government.</li> <li>3. Additional landscaping as required by the local government.</li> </ol>
Residential	To be assessed in accordance with the Residential Design Codes of Australia.			
General Industrial	7.5m	Subject to Building Code of Australia		3 metre landscape strip abutting all streets.
Light Industrial	7.5m	Subject to Building Code of Australia		3 metre landscape strip abutting all streets.
Rural Townsite	At the discretion of the local government.			
Rural	At the discretion of the local government.			
Rural-Residential	10m	10m	5m	At the discretion of the local government.

*Note - \*means to be setback from a common boundary with residential zoned land in accordance with the requirements of the applicable R-Code for that land. Otherwise in accordance with the Building Code of Australia.*

Schedule 5 — Birdwood Rise Special Rural Subdivision Guide Plan



**COUNCIL RESOLUTION TO ADVERTISE LOCAL PLANNING SCHEME**

Adopted by resolution of the Council of the **Shire of Derby/West Kimberley** at the **Ordinary Meeting of Council** held on the **[DATE]**

\_\_\_\_\_  
**CHIEF EXECUTIVE OFFICER**

\_\_\_\_\_  
**PRESIDENT**

DRAFT

**COUNCIL RESOLUTION TO SUPPORT / NOT SUPPORT\* SCHEME FOR APPROVAL**

Council resolved to **support / not support\*** approval of the draft Scheme of the **[INSERT LOCAL GOVERNMENT]** at the **[INSERT MEETING TYPE]** Meeting of Council held on the **[DATE]**

The Common Seal of the **[INSERT LOCAL GOVERNMENT]** was hereunto affixed by authority of a resolution of the Council in the presence of:

\_\_\_\_\_  
**CHIEF EXECUTIVE OFFICER**

\_\_\_\_\_  
**PRESIDENT/ MAYOR**

\*delete whichever is not applicable  
WAPC Recommended for Approval

\_\_\_\_\_  
**Delegated under S.16 of the Planning and Development Act, 2005**  
Date: \_\_\_\_\_

Approval Granted

\_\_\_\_\_  
**MINISTER FOR PLANNING**  
Date: \_\_\_\_\_



**14.5 DRAFT SHIRE OF DERBY WEST KIMBERLEY MOSQUITO MANAGEMENT PLAN-  
ENDORSEMENT BY COUNCIL**

**File Number:** 7175

**Author:** Evie Molson, Senior Environmental Health Officer

**Responsible Officer:** Robert Paull, Manager Development Services

**Authority/Discretion:** Advocacy

**SUMMARY**

The Mosquito Management Plan (MMP) provides an overview of mosquito management activities planned within the Shire of Derby West/Kimberley (SDWK) during the 2021-2025 seasons and seeks Council endorsement of the recommendations of the report.

Mosquito management undertaken by the Shire in conjunction with the Department of Health in recent times has been fairly relaxed and it is time to systematically and methodically monitor and manage nuisance mosquito numbers for the health and safety of our community and visitors to our region.

**DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

**BACKGROUND**

The development of a MMP is recommended for any local government that experiences recurring issues with mosquitoes. The development of a MMP is a mandatory requirement for local governments who form a Contiguous Local Authorities Group (CLAG) in order to access financial assistance from the Department of Health towards mosquito management.

**STATUTORY ENVIRONMENT**

*Health Act WA (miscellaneous provisions) 1911*

*Shire of Derby/West Kimberley Health Local Laws 1998*

**POLICY IMPLICATIONS**

There are no known policy implications for this item.

**FINANCIAL IMPLICATIONS**

The budget for the current financial year is \$11,655 which is indicative of what future years may be. The Shire has contributed 50% of the allocation along with the Department of Health (50%) via CLAG fund.

**STRATEGIC IMPLICATIONS**

GOAL	OUR PRIORITIES	WE WILL
4. Environment	2.1 Safe Communities	1.3.2 Listen to and respond to the needs of our communities

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<p><b>Environment:</b> Other non-target insects being harmed by chemical controls used in the Mosquito Management plan</p>	Possible	Moderate	Medium	<p>Manage mosquitos via controls other than chemical such as drainage and built environment. Educate residents on mosquito harbourage prevention in the home and commercial settings by eliminating breeding sites.</p> <p>Select chemical controls based on evidenced-based advice from Department of Health of similar authority only.</p> <p>Use species targeted chemical controls that do not interfere with non-target species.</p> <p>Monitor mosquito activity and only use chemical management when necessary.</p> <p>Educate the public on safe use of self-managed mosquito controls.</p> <p>Refer to SDS at all times when using products including wind direction and application effect on environment.</p>
<p><b>People Health &amp; Safety:</b> Risk to health of those implementing the MMP</p>	Possible	Minor	Low	<p>Ensure staff are appropriately trained in safe use of chemicals and product application.</p> <p>Ensure SDS for all products used are readily available and understood by users.</p>

				<p>Ensure least harmful product that can be used is used.</p> <p>Ensure adequate PPE including repellents, long sleeves/trousers and hydration during application of product/surveillance and alike is readily available.</p> <p>No fogging to be conducted without a risk assessment first.</p> <p>Including isolating the fogged area from public and environmental impact from residual product.</p>
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**CONSULTATION**

Department of Health- Medical Entomology Unit;  
 Council briefing 16<sup>th</sup> September 2021 OCM;  
 Contiguous Local Authorities Group (CLAG);  
 Ongoing community consultation through local and community schools and public events.

**COMMENT**

The MMP enables continuity and formalises Council’s direction for the Shire to use its best endeavours to implement a mosquito management strategy. Residents, visitors and tourists will benefit from methodical and strategic mosquito control and education through control of nuisance and disease carrying mosquitoes making the Shire of Derby/West Kimberley a pleasant and safer place to reside.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

- DRAFT Shire of Derby West Kimberley Mosquito Management Plan 2021-2025**  

<p><b>RESOLUTION 171/21</b></p> <p><b>Moved: Cr Paul White</b>  <b>Seconded: Cr Rowena Mouda</b></p> <p><b>That With respect to the draft Shire of Derby West Kimberley Mosquito Management Plan, Council:</b></p> <ol style="list-style-type: none"> <li><b>Note the Report; and</b></li> </ol>
--

**2. Adopt the Shire of Derby West Kimberley Mosquito Management Plan for the period 2021-2025.**

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**

# Shire of Derby/West Kimberley DRAFT Mosquito Management Plan 2021-2025



**Table of Contents**

1.0 INTRODUCTION	4
2.0 SHIRE OF DERBY/WEST KIMBERLEY DESCRIPTION	4
3.0 IMPLEMENTATION OF THE MOSQUITO MANAGEMENT PLAN	6
4.0 STRATEGIC IMPLICATIONS	6
4.1 Goal	6
4.2 Aims	6
4.3 Objectives	6
5.0 STATUATORY MANAGEMENT	7
6.0 MOSQUITO LIFE CYCLE	7
7.0 MOSQUITO SPECIES OF INTEREST	8
7.1 Anopheles annulipes	8
7.2 Anopheles amictus	8
7.3 Aedes vigilax	8
7.4 Aedes notoscriptus	9
7.5 Culex quinquefasciatus	9
7.6 Culex annulirostris	9
7.7 Cules sitiens	10
7.8 Aedes tremulus	10
8.0 ROSS RIVER VIRUS & BARMAH FORREST VIRUS	10
8.1 Vectors of RRV & BFV	11
8.2 RRV & BFV in the Shire of Derby/West Kimberley	11
9.0 MURRAY VALLEY ENCEPHALITIS & KUNJIN VIRUS	12
10.0 ENVIRONMENTAL IMPACTS	13
11.0 MOSQUITO MANAGEMENT	16
11.1 Public awareness & education	16
11.2 Record keeping	17
11.3 Mosquito monitoring	17
11.3.1 Larval survey	17
11.3.2 Adult trapping	17
11.3.3 Land use	17
11.3.4 Sentinel chicken program	18
11.4 Physical Control	18
11.5 Chemical Control	18
11.5.1 Larvicides	18

11.5.2 Adulticides	19
11.6 Contiguous Local Authorities Group (CLAG)	19
12.0 PERSONAL TRAINING & AWARENESS	19
13.0 STANDARD OPERATIONAL PROCEDURES	20
14.0 REFERENCES	22
Appendix A	22
Appendix B	28
Appendix C	48
Appendix D	51
Appendix E	52

## 1.0 INTRODUCTION

The Shire of Derby/West Kimberley (the Shire) Mosquito Management Plan (MMP) is an Operational Program that gives guidance to the Shire on the control and management of seasonal mosquitoes. It has been prepared to guide the Shire's Environmental Health Officers in the education of the public and management of mosquito's and active breeding sites.

The MMP presents an integrated approach, which examines various control measures that can be used to minimise the number of adult mosquitoes present in populated areas and to reduce the risk of mosquito-borne disease. Such an approach incorporates a statutory framework, policies, guidelines, practices and consultative mechanisms.

Within the Shire of Derby/West Kimberley, mosquito management is necessary for two reasons –

- Some species of mosquitoes are transmitters or vectors of disease such as Ross River virus (RRV), Barmah Forest virus (BFV), Murray Valley Encephalitis (MVE) and Kunjin Virus (KUNV).
- Some mosquito species are aggressive biters, causing discomfort and pain to affected residents, and can impact significantly on lifestyle. Mosquito management within the Shire will be active during all months of the year however escalated during the wet season when mosquito numbers are at a peak.

In the 2020/2021 season the Kimberley experienced, along with many other areas of the State a large RRV & BFV outbreak with 318 notifications, of which 29 were in the Kimberley. Due to population size this number was significant, and these diseases have a direct health, social and financial impact on residents and visitors to the region. 49 seroconversions were detected, indicating that flavivirus activity was present in the Kimberley and Pilbara regions during 2019-20.

In response to localised amenity concerns the Shire also monitors problems experienced in residential and urban areas around the town sites and provide feedback to residents. Although the Shire only receives on average 6 direct complaints per season, there is a community expectation to reduce the impact of mosquitoes whilst recreating in public open spaces and/or their own properties.

In the past mosquito control has generally been sporadic and the approach has been reactive to complaints received by the public with little emphasis put on pre and post treatment surveys. For this reason a Standard Operating Procedure has also been produced as an appendix to this document to provide further detail and description of specific mosquito prevention and treatment actions.

## 2.0 SHIRE OF DERBY/WEST KIMBERLEY - DESCRIPTION

The Shire of Derby/West Kimberley covers a vast area of 118,560 square kilometres and is located more than 2,300 kilometres north of Perth. In the Shire there are three main towns – Derby, Fitzroy Crossing and Camballin.

The Shire of Derby/West Kimberley or the 'gateway to the Kimberley' consists of diverse and unique landscapes and environments. The Shire is home to approximately 750kms of the Fitzroy River which when in flood is one of the world's biggest rivers. Along the boundaries of the Shire are the Shire of Broome and the Shire of Halls Creek.



### Derby

The town of Derby has a population of approximately 3325 people according to the 2016 Census. Derby is located on the King Sound and is surrounded by vast expanses of flat inter-tidal salt marshes and native bush land. New housing estates at the southern end of the residential area has led to an increase in dwellings. These subdivisions are in close proximity of bushland and marsh land therefore increasing the likelihood of impact from mosquitos. Furthermore these housing developments provide for higher density living, meaning that more residents are situated in higher mosquito nuisance areas.

Derby experiences temperatures consistently high in the summer months along with a relatively high rainfall, mostly experienced from November to March. The mean annual rainfall for Derby is 655mm. It is during these months due to the favorable weather conditions and significant amount of pooling water in surrounding bush land that mosquito population's increase.

Derby has the highest tides in Australia, and the peak tides can reach 11.8 meters. Mosquitos breed naturally on the salt marsh vegetation. Due to the close proximity of Derby to the marshland outbreaks of mosquitos are also common throughout the year and are noticeably problematic after large tides.

As the development of the town site of Derby is already in existence there are times when mosquito management is not achieved or achievable due to environmental factors and mosquito nuisance will result.

### Fitzroy Crossing

Fitzroy Crossing is located on the banks of the Fitzroy River and has a population of approximately 1200. Fitzroy Crossing experiences temperatures consistently high in the summer months along with extreme humidity, and a relatively high rainfall mostly experienced from November to March. The mean annual rainfall for Fitzroy Crossing is 800mm. It is during these months due to the favorable weather conditions and pooling water in surrounding bush land that mosquito population's increase. The town of Fitzroy Crossing was subject to widespread flooding in 2011 cutting all road access to the town, and creating numerous additional mosquito breeding habitats.

### Camballin

Camballin has a population of approximately 100 and is located about 110km south of Derby. The town is located within the Fitzroy River Floodplain and primarily serves as a residential suburb servicing an adjoining Aboriginal Community.

### **3.0 IMPLEMENTATION OF THE MOSQUITO MANAGEMENT PLAN**

There is an ongoing need to review and refine this document and the Standard Operating Procedures (Appendix E) frequently. Additional and changing breeding sites will be identified from year to year depending on rainfall, tidal influence and human activity.

Furthermore alternative approaches and new innovations to mosquito management may become available or desirable for the region. It is also necessary to periodically review achievements and results from consecutive seasons to identify emerging trends or risks.

### **4.0 STRATEGIC IMPLICATIONS**

The Shire of Derby/West Kimberley current Strategic Community Plan for 2021-2031 has been 'developed to deliver clear direction as the Shire continues to provide leadership in a changing environment. This plan will support the development of improved services and outcomes for the people of the Shire.'

This MMP addresses the following strategy within the Strategic Community Plan –

*Strategy 1.2.4: Develop and implement a community education program on infectious diseases and mosquito control measures*

#### **4.2 Aims**

- To meet the requirements of Section IX of the Health Act (miscellaneous provisions) 1911 with respect to vector borne diseases.
- To meet the requirements of the residents to have a reasonable quality of outdoor life.

#### **4.3 Objectives**

- To monitor and control the level of larval and adult mosquito activity within the Shire of Derby/West Kimberley.
- To treat the areas affected or potentially affected by larval and adult mosquito activity.
- To ensure the ongoing research and application of emerging practises, technologies and treatment options.
- To carry out a community education program within the Shire of Derby/West Kimberley to educate residents of the risks of mosquito borne disease and measures that can be taken to reduce numbers around the home.
- To review the effectiveness of this plan and continue to make alterations to ensure best practise is followed and results are optimised.

**5.0 STATUTORY MANAGEMENT**

*Public Health Act 2016*  
*Health (miscellaneous provisions ) Act 1911*

Shire of Derby/West Kimberley:  
*Health Act 1911 – Shire of Derby/West Kimberley Health Amended Local Laws 2010*

**6.0 MOSQUITO LIFE CYCLE**

**Egg**

Eggs are laid by the adult mosquito and float on the surface of the water, soil or plants. *Anopheles* species lay their eggs as a single unit on the surface of a water body. *Aedes* deposit their eggs on a moist surface that will eventually be subject to water inundation. The *Aedes* are generally associated with temporary water bodies and can last long periods out of the water. *Culex* species deposit their eggs in clusters which float on the surface of a water body.

**Larva**

Larvae hatch from the egg and live in the many different kinds of water habitats. The larvae grow through four different stages before becoming a mature larva. This process can take between 4-10 days depending on the species of larva and environmental conditions the larva is living in. The *Culex* and *Aedes* species of larva have siphons that they breathe from and hang suspended from the surface of the water. The *Anopheles* species however do not have a siphon and therefore lie flat along the top surface of the water to breathe. The larvae feed on micro-organisms and other organic matter within the water.

**Pupa**

Followed by the larval stage is the pupal stage, and during this stage the pupa does not feed but is still mobile in the water. This is the final stage where the adult mosquito tissues are forming, and can last for as little as 2 days before emerging into an adult mosquito.

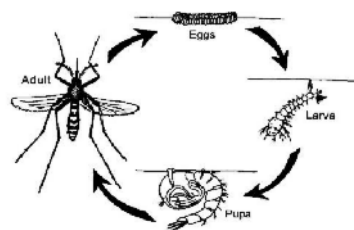
**Adult**

The newly emerged adult rests on the surface of the water for a short time to allow itself to dry before flying off to pursue the next phase of the life cycle. Male mosquitos usually stay close to the breeding site and feed on plant and flower juices. Female mosquitos travel further afield and firstly seek out a carbohydrate meal of plant juices to increase energy before mating with a male. The females will then seek blood after mating and then embark on a cycle of feeding, resting, developing and laying eggs and so on.

**Midge**

Dense swarms of small black midges, are one of the more obvious environmental problems associated with marshland. Midges, which belong to the insect family Chironomidae are not vectors of disease, so are not of public health significance.

**Figure 1: Life Cycle of the Mosquito**



**7.0 MOSQUITO SPECIES OF INTEREST**

Based on the 2009/2010 season the following species were trapped and identified.

**7.1 Anopheles annulipes**

Anopheles annulipes is a predominately fresh water breeding species. The species is known to bite man readily both during the day and after sunset.



**7.2 Anopheles amictus**

This species breeds in fresh water of varied qualities, levels of sunlight and amount of vegetation.



**7.3 Aedes vigilax**

*Aedes vigilax* is a salt water breeder that is usually found in on mudflats and behind mangroves. Hatching of eggs is usually in response to tidal movements in a salt marsh, although rainfall can initiate hatching and breeding adults are most abundant in summer months. They attack humans and will fly up to 50km for a blood meal which they readily bite all throughout the day and night. This species is a known vector of disease such as RRV & BFV. This species has the most significant impact in Derby due to the vast expanses of marsh surrounding the town site. This species is particularly prevalent in October after the first large tidal movement for a few months, and continues to be a pest species throughout the wet season and right through to May.



**7.4 Aedes notoscriptus**

This species tends to breed in clean water situations such as containers, tyres and roadside drains. This species is known to be a vicious biter readily attack humans by day in shaded areas but also feeds during the evening, night and early morning. This species is potentially a vector of RRV & BFV.



**7.5 Culex quinquefasciatus**

This species breeds in polluted fresh water drains, back yard containers and tyres. Adults are generally active only during the warmer months; they usually attack humans towards the middle of the night indoors and outdoors.



**7.6 Culex annulirostris**

This species is a fresh water breeder that also breeds in constructed water bodies, drains and swales. Adults readily feed on humans, and most feeding activity occurs from sunset for about 2 hours and again to a lesser degree at dawn; disperses 5-10 km.



**7.7 Culex sitiens**

Culex sitiens breed in brackish waters left by high tides and sometimes in fresh water. The adult mosquitos usually bite at night and will disperse distances up to 35km to reach a blood meal. Due to the environment in the Kimberley this species can become a major pest.



**7.8 Aedes tremulus**

This species breeds in palm tree junctions as well as artificial containers. It has been identified by the Department of Health that higher numbers of tremulus can be found in Derby. The mosquito will stay close to its breeding site, but is a vicious biter.



**8.0 Ross River Virus & Barmah Forest Virus**

Ross River Virus (RRV) and Barmah Forest Virus (BFV) are the two most common causes of mosquito-borne disease in Australia. The viruses are also referred to as arbovirus or arthropod-borne viruses. Arboviruses are spread through mosquitos which bite a host vertebrate animal.

Between 1992 and 2006 there have been 9163 reported cases of RRV and BFR in Western Australia. It is thought that due to the similarity between the viruses that BFR has most likely been under-diagnosed and under-reported.

Both are diagnosed through a confirmed blood test and there is currently no vaccine specific treatment. Evidently RRV and BFV can be debilitating and crippling and cause a considerable loss of income to individuals and the economy. Onset of symptoms is usually between 7 and 11 days, and common symptoms of both RRV & BFV include –



- |                  |                                     |
|------------------|-------------------------------------|
| Rash             | Joint pain                          |
| Fatigue          | Lethargy                            |
| Muscle pains     | Fever                               |
| Headache         | Neck stiffness                      |
| Flu-like illness | Depression                          |
| Enlarged glands  | Loss of libido                      |
| Sore throat      | Tingling or numbness of extremities |
| Eye irritation   |                                     |

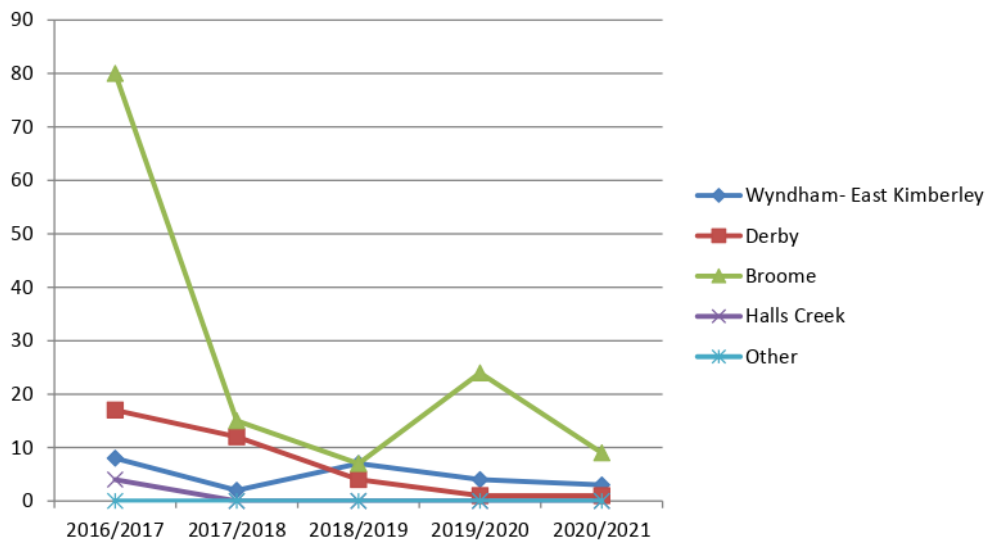
**8.1 Vectors of RRV & BFV**

There are approximately 30 species of mosquitos that have been proven to be competent vectors of RRV and BFV in Australia. This is done through isolation of the viruses in laboratory studies. The vector mosquito species that are of significance to the Shire of Derby/West Kimberley are as follows –

Species	RRV	BFV	MVE	KUNV
Aedes notoscriptus	√			
Aedes camptorhynchus		√		
Aedes vigilax	√	√		
Aedes normanensis	√	√		
Aedes alternans	√			
Culex annulirostris	√	√	√	√
Culex quinquefasciatus		√		
Anopheles bancroftii	√			

**8.2 RRV & BFV in the Shire of Derby/West Kimberley**

Figure 2: Number of cases of RRV in the Shire of Derby/West Kimberley from 2016 - 2021



As shown in the above table there are an average of 7 cases of RRV in the Shire of Derby/West Kimberley year since 2016. Given the small population in the Shire this is a significant number. There is most likely a larger number to report but due to the transient population of tourists we are unable to capture the true extent.

As RRV and BFV are notifiable diseases, once a diagnosis has been confirmed and notification will be sent through to the Shire with relevant patient contact details and date of onset of the virus. Part of the ongoing role of the Shire's Environmental Health Officers is to respond to the notifications received and undertake a survey with the patient. These surveys are used to ask the patient to recall areas where they have visited, times that they recall being bitten by mosquitos and the times of day this has occurred. This information is then sent to the Department of Health for their records.

### **9.0 Murray Valley Encephalitis & Kunjin Virus**

Murray Valley Encephalitis (MVE) and Kunjin Virus (KUNV) are both found in the Northwest of Australia and are both medically important. MVE can be potentially fatal and there have been major outbreaks in WA in 1981, 1993 and 2000. MVE and KUNV are thought to be always present in the Kimberley region and activity of the virus increases in the wet season.

The main vector of MVE and KUNV is the *Culex annulirostris*, and the water bird is considered to major vertebrate hosts.

Symptoms of MVE include –

- Headache
- Fever
- Nausea
- Vomiting
- Neck Stiffness
- Disorientation
- Dizziness

In severe cases the infection can progress to neurological disease which can lead to coma, paralysis and death. Mild cases usually lead to full recovery however severe cases can leave people with severe disability. There is presently no vaccine.

Symptoms of KUNV include –

- Fever
- Headache
- Muscle pain
- Swollen lymph nodes
- Fatigue
- Rash



The Sentinel Chicken Program is described in section 11.3.4 of this report and is a program that is carried out as an early indication of MVE and KUNV presence in a community. If there is a high level of MVE and KUNV detected in the program the WA Department of Health will put out a media release warning residents and tourists in the particular area of the increased risk of contracting either of the viruses and urging the use of personal protection from mosquitos.

#### **10.0 ENVIRONMENTAL IMPACTS**

As the most northern region of Western Australia the Kimberley has often unpredictable weather patterns. The spectacular and varied natural environment in the Kimberley provides for a wide range of temporary, seasonal and permanent mosquito breeding sites. Some of the environmental variances that can greatly impact the mosquito numbers are –

- Tidal variations
- Rainfall & flood events during the wet season
- Temperature
- Humidity

All of these weather factors play an important role in mosquito management and need to be considered during the implementation of the program.

The figures on the next pages show the vast natural environments surrounding Derby and Fitzroy Crossing and demonstrate the difficulties of creating an effective MMP.

Figure 3: Derby & Surrounds  
Salt marsh - tidal flood plain.



Figure 4: Fitzroy Crossing & Surrounds  
Fitzroy River & Floodplain surrounding the town site.



## 11.0 MOSQUITO MANAGEMENT

In order to be effective, this MMP uses an integrated approach, combining different methods of control and treatments to reduce and control the mosquito numbers and therefore reducing the nuisance and the risk of mosquito-borne disease.

### 11.1 Public Education & Awareness

The public are a vital stakeholder for this MMP and have a responsibility in any integrated program to manage mosquitoes. Due to the high transient residential population in the region it is important that educational programs are ongoing to ensure information is received by all residents. It is also essential to consider the large number of tourists that visit the region in the dry season months and convey public health messages to these people wherever possible.

The education program is centred around but not limited to the following –

- Information displays at local events such as NAIDOC, Madis Gras and the Saturday markets
- Letter box drops
- Display information posters on all local notice boards
- Interactive School talks at Derby District High School, Holy Rosary School, Kimberley School of the Air & Fitzroy Valley Remote Community School. School talks can also be carried out at remote Aboriginal Community Schools through the Shires Aboriginal Environmental Health Unit.
- Promotion of the program through local media such as local radio station 6DBY, ABC Kimberley, and the Babbling Boabs- Shire news column. See Appendix D for example of content.
- Disseminate warnings when environmental and mosquito monitoring indicate a risk of mosquito-borne disease is likely through local media.
- Advise the public of planned chemical and physical mosquito control activities. Ensure while out in the field conducting monitoring or treatment that the appropriate signage is put up.
- All telephone and written complaints will be recorded in the Sharepoint spreadsheet and recorded in the SDWK Synergy record registration system.
  
- Inform and educate the public about their responsibilities for personal protection measures and backyard mosquito control such as -
  - Avoiding exposure in areas of high mosquito activity, especially during dawn and dusk.
  - Ensure insect screens on houses are intact to prevent mosquitoes entering.
  - Wear long, loose fitting clothing when outdoors
  - Use personal repellents containing diethyl toluamide (DEET) or picaridin
  - Locating potential containers, emptying the water out and leaving the container inverted
  - Fitting mosquito proof cowls to septic tank system vent pipes. Ensure septic tanks lids are sealed to prevent mosquito access
  - Screen and seal rainwater tanks to prohibiting mosquito access;
  - Filling in depressions in the ground with soil or sand to eliminate a breeding site;
  - Ensure pools are well chlorinated and filtered and free from dead leaves
  - Remove water held in plant leaf axils regularly



**11.2 Record Keeping**

It is critical that good record keeping practices are carried out. The following records but not limited to should be kept on the Shire’s system and new to 2021 the Department of Health’s Atlas of Medical Entomology will also be used to capture data and create a baseline for all future reporting. <https://medical-entomology.gaiaresources.com.au/atlas/home/> Maintaining this standard of record keeping should ensure current staff and any future employee/s involved with delivering the MMP have access to background knowledge.

**11.3 Mosquito monitoring**

Determining mosquito numbers and the location of breeding sites can be managed and recorded in the Department of Health’s Atlas of Medical Entomology Atlas. Department of Health’s Atlas of Medical Entomology Abundance reports that can highlight hot spots and target areas will enable all users to see at a glance dominant species, average numbers and changes based on weather conditions.

**Adult - Abundance Report**

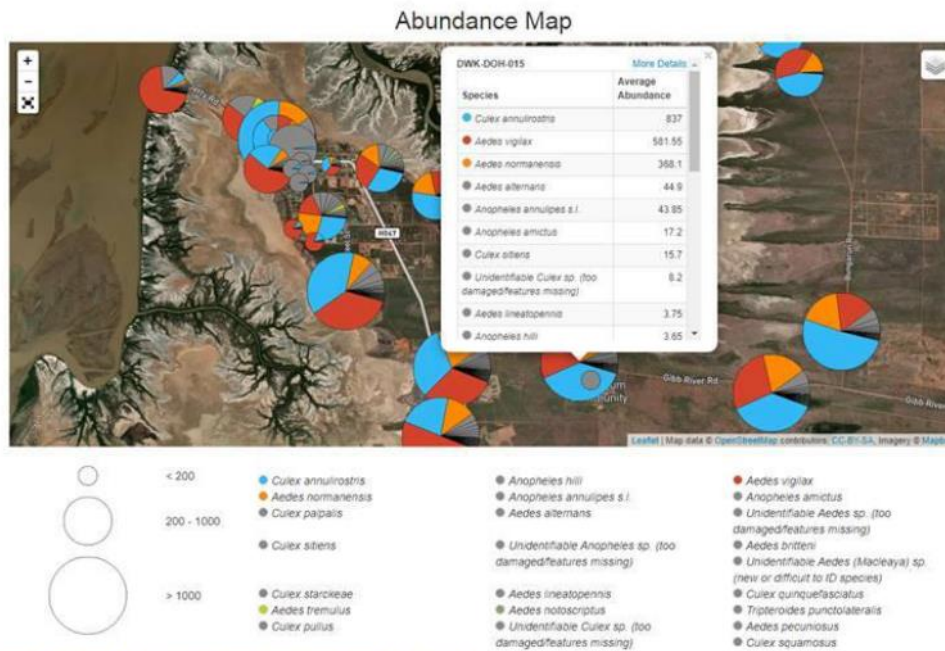


Figure 1 Atlas of Medical Entomology Abundance Map- Derby

- Annual complaint register
- RRV/BFV/MVE notifications and interview documentation
- Adult and complaint based trapping results
- Larval sampling surveys
- Chemical/bio-larvicide treatments
- Reports
- Product labelling/MSDS

- Media releases

### **11.3.1 Larval survey**

All identified breeding sites will be monitored regularly during the mosquito season or after large tides or floods to determine the larval activity. The survey involves taking a water sample with a larval dipper to establish the approximate number of larvae per m<sup>2</sup>, and the stage the larvae have reached in their life cycle. Water depth and temperature also have an effect on the frequency of the surveys. Both of these factors influence the numbers of larvae and potentially the number of mosquitoes and how quickly they breed. The findings of these surveys will determine if there is a need for the application of larvicide to prevent the emergence of adult mosquitos.

### **11.3.2 Adult trapping**

Adult mosquito traps are used to monitor the numbers and species of adult mosquitoes found in particular areas. The traps that are used by the Shire rely on dry ice (CO<sub>2</sub>), a light source to attract mosquitos and a small fan to keep the adult mosquitos contained. These traps can be placed in various areas around town sites and in particular in areas that are reporting higher than usual numbers of mosquitos. The mosquitos caught in the traps are counted and identified.

Once the mosquitos have been trapped and identified Environmental Health Officers can target the program to the relevant species of mosquitos and their breeding sites.

### **11.3.3 Land Use**

Ideally, residential developments should be located well away from mosquito breeding sites to minimise contact and impacts with mosquitoes and residents. This is however not usually practical or achievable in the Kimberley region due to the magnitude of the natural environment in comparison to the size of the town sites.

### **11.3.4 Sentinel Chicken Program**

There are currently 2 flocks of chickens in Derby and 1 flock in Fitzroy Crossing that are part of the WA Sentinel Chicken Surveillance Program. This program is run by the Department of Health and the University of Western Australia (UWA).



The program is used to provide an early warning of an increased level of flavivirus activity in WA, whereby fortnightly blood samples are taken from the chicken flocks and the blood is sent to UWA

for analysis for MVE, and Kunjin Virus. Should elevated numbers of positive results be confirmed the Department of Health issues a media release to urge people to take personal protective measures against mosquitos.

**11.4 Physical Control**

Physical control methods are measures taken to reduce the potential for mosquito breeding and harbourage through adapting the natural or built environment. Breeding sites can be reduced by decreasing the amount of vegetation within drains, marsh or other known breeding sites.

**11.5 Chemical control**

**11.5.1 Larvicides**

Larvicides kill mosquito larvae and prevent the emergence of the larvae into pupa and ultimately adult mosquitos. Larvicides can be used successfully to treat specific areas that are known breeding sites. As these known breeding sites can be specifically targeted this means that the effectiveness of the treatment is high, which can greatly reduce the number of adult mosquitos in the environment.

The following larvicides are currently used as part of the Shire’s mosquito management program –

S-methoprene ProLink XR Briquettes (See appendix 2) are an insect growth regulator. S-methoprene is absorbed by the larvae and prevents the larvae from emerging from the pupal stage. The Shire will apply this product in accordance with the required application rates throughout the mosquito season. This product is available in several different formulations, including the slow-release briquettes, which ensure ongoing reliance of the larvicide into inundated marsh land, providing ongoing control.

VectoBac G (See appendix 2) - contains spores and endotoxins of naturally occurring bacterium. The spores and endotoxins are concentrated by filter feeding other purpose. VectoBac G is toxic only to the larvae of certain diptera. It does not harm other aquatic, marine or terrestrial fauna.

Figure 5: application of S-methoprene ProLink Briquettes on the Derby salt marsh



**11.5.2 Adulticides**

Adulticiding refers to the killing of adult mosquitoes, and is the only form of chemical control once the mosquitoes reach adulthood. Adulticiding is not target specific and works like a large scale insect spray killing other insects, including predators and beneficial insects. Adulticiding can only be utilised when weather conditions are fine and there is no wind or rain. It should be noted that the environmental impact, particularly on natural wetland/marsh areas can be significant and is undesirable.

In particular adulticiding can be particularly useful during times of flood or during times where there is an outbreak of mosquito borne disease and decreasing the adult population quickly is vital.

Residual surface treatment chemicals are now available that have similar mode of action to traditional adulticides, however are applied to internal and external surface areas at or around known breeding sites/harbourage areas, and kill mosquitos that land on the surfaces.

The following adulticides are currently used as part of the Shire's mosquito management program (See appendix 2) –

Aqua-K-Orthine – this chemical is used in the thermal fogger and is a pyrethroid based insecticide concentrate used for space-spray for the control of adult mosquitoes and flies.

Biflex Aqua Max – is a bifenthrin insecticide that is used as a barrier treatment. The chemical is sprayed on surfaces such as trees and fences to kill mosquitos that land on the surface.

#### **11.6 Contiguous Local Authorities Group (CLAG)**

State Government funding of mosquito control activities is available to adjacent local governments to form a CLAG, with the grouping being based on considerations of geography and management of disease vector mosquitoes. As the Shire of Derby/West Kimberley is so geographically remote, it can be considered as one CLAG group.

The Shire has applied successfully for the funding in the 2020/2021 year for contribution by the State government for treatment chemicals and equipment to the value of \$5970.18 which effectively covers half of the forecasted chemicals and equipment for the season ahead.

More information on CLAG can be found here <https://ww2.health.wa.gov.au/~media/Corp/Documents/Health-for/Mosquitoes/CLAG/CLAG-Formation-factsheet.pdf>

#### **12.0 PERSONNEL TRAINING AND AWARENESS**

It is essential that personnel involved in the operational aspects of the MMP are suitably qualified, trained and/or supervised. Skills required to carry out the requirements of the MMP safely and effectively are -

1. Basic mosquito ecology
2. Principles of integrated mosquito management
3. Surveillance/monitoring techniques
4. Collection and recording of mosquito samples
5. Standard operating procedures for equipment
6. Safe storage, handling and application of chemicals/larvicides in accordance with product labelling and MSDS
7. Use of appropriate PPE in accordance with product labelling, MSDS and environmental conditions
8. Calibration techniques



9. Information technologies/geographical information systems

10. Budget management

11. First aid

The Department of Health offers an in depth mosquito management course approximately every two years which teaches most skills and competencies required. Specific skills and local knowledge can be attained under direct supervision and field work with EHO Specialist.

The Department of Health is also available to offer advice and assistance to regarding the MMP and its execution. There is no training on offer in the 2021/22 season, the next training course will be offered in September 2022 and subsequently every other year from thereon in.

### **13.0 STANDARD OPERATIONAL PROCEDURES**

A separate document outlining the finer details of the Mosquito Management Plan - Standard Operational Procedures (SOP) will be produced.

The document will outline the actions to be completed at the various times of the mosquito season and throughout the year. This is also a working document and will be reviewed and updated on a routine basis due to the constant changes in mosquito seasons and the associated environmental conditions. This document can be found in Appendix E.

**14.0 REFERENCES**

Biological Notes on Mosquitoes, *Mosquito Life Cycle*, Viewed on 22 June 2010, <http://www.mosquitoes.org/LifeCycle.html>

A Guide to Contiguous Local Authorities Group (CLAG) formation. DoH. 2020  
[A Guide to Contiguous LocalG-Formation-factsheet.pdf](#)

Department of Health, *Mosquito Management Manual*, Department of Health WA 2006

Department of Health, *An Atlas of the Mosquitos of Western Australia*, Department of Health WA 1991

Department of Medical Entomology, *Mosquitoes of Australia*, Viewed on 24 June 2010, <http://medent.usyd.edu.au/photos/mosquitoesofaustralia.htm>

Mosquito-Borne Disease Control Branch, Department of Health, *Review of the Contiguous Local Authorities Group (CLAG) funding scheme for health-driven mosquito management*, Viewed on 3 April 2013, <http://www.public.health.wa.gov.au/cproot/2096/2/Review%20of%20CLAG%20funding%20scheme%20for%20healthdriven%20mosquito%20management.pDf>

**Appendix A: DoH RRV and BFV cases confirmed within the SDWK July 2020 - June 2021.****ENHANCED SURVEILLANCE DATA****Serologically confirmed doctor-notified and laboratory reported cases of Ross River virus disease each month in WA****#Compiled by the Mosquito-Borne Disease Control Branch, WA Department of Health**

- # 1) Data current as at 13/09/2021 - table may vary from previous or future versions due to inclusion of additional enhanced surveillance data;
- 2) Source of data: Western Australian Notifiable Infectious Diseases Database (comprising Doctor's notifications to Public Health Units & Communicable Disease Control Directorate; Laboratory reports to Communicable Disease Control Directorate from participating pathology laboratories); Enhanced Surveillance Data (comprising case follow-ups from Environmental Health Officers; patient interviews; Doctor's comments on notification forms);
- 3) Month of onset and suburb/town of exposure determined from Enhanced Surveillance Data where available, and from Doctor's notifications or laboratory reports where not available;
- 4) Data varies from official Western Australian Notifiable Infectious Diseases Database records due to inclusion of Enhanced Surveillance Data;
- 5) Where it is not clearly defined if a case occurred in a particular suburb or a local Government (e.g. Mandurah suburb or the City of Mandurah the case has been entered as a "local government case - unknown suburb" - (e.g. City of Mandurah unknown);
- 6) Where a place of exposure occurs in a suburb that carries over 2 Local Governments and it is not clearly defined which local government it occurred in, the case has been entered in the Local Government where the largest portion of the suburb occurs (e.g. Canningvale is located in both Canning and Gosnells with the largest portion being in Gosnells); and
- 7) This information is the intellectual property of the Mosquito-Borne Disease Control Branch of the WA Department of Health and may not be used for any purpose without prior permission.

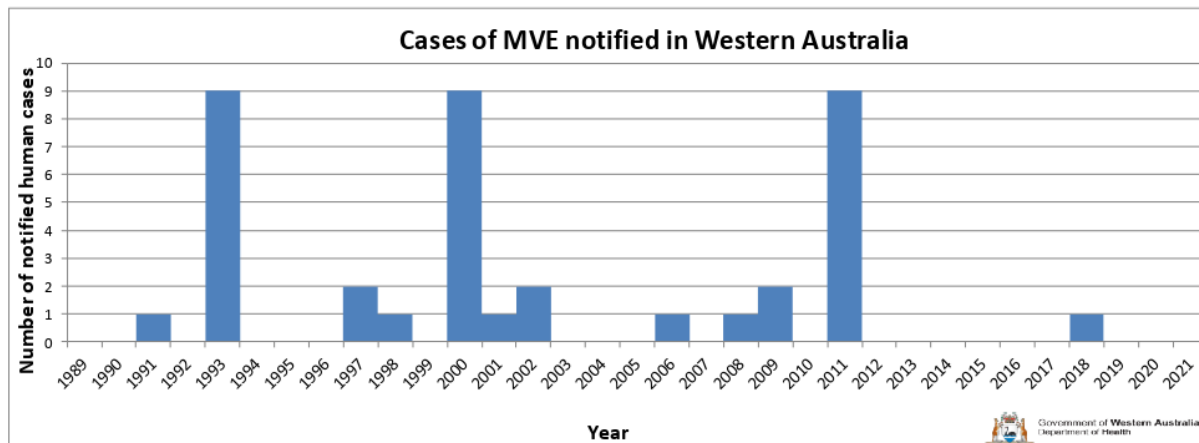
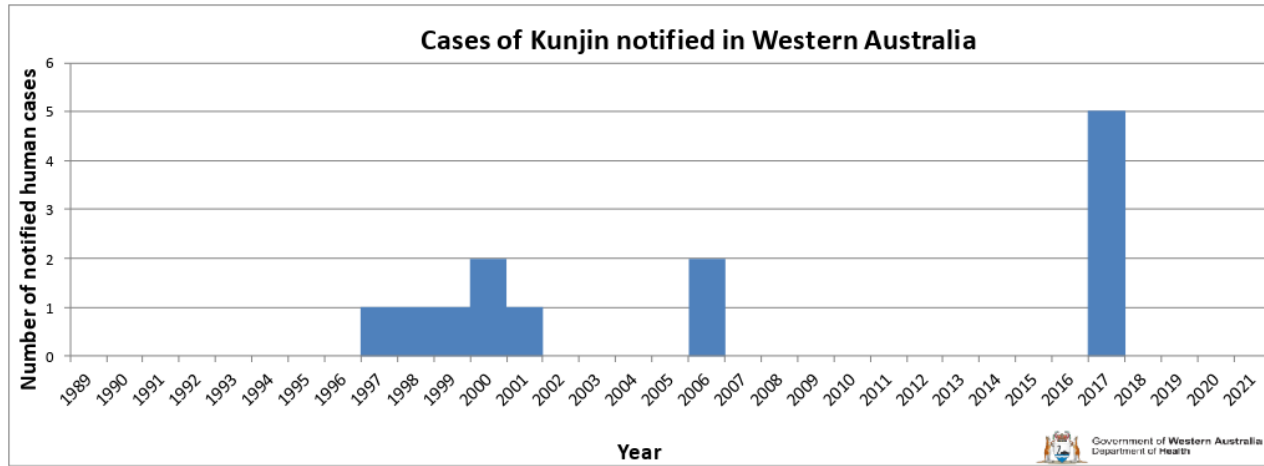
Organism	Ross River virus	Note - no recorded cases during 2021/22 yet											
FinYr	2020/2021												
Location	Month												
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Kimberley regional total			2				2		2	1	5	1	13
Broome (S) LG total			2				1		1		4	1	9
Derby-West Kimberley (S) LG total										1			1
DERBY										1			1
Wyndham-East Kimberley (S) LG total							1		1		1		3
Total			2				2		2	1	5	1	13

	2019/2020												
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Kimberley regional total		1					1	4	15	7	1		29
Broome (S) LG total		1						2	14	6	1		24
Derby-West Kimberley (S) LG total								1					1
FITZROY CROSSING								1					1
Wyndham-East Kimberley (S) LG total							1	1	1	1			4
Total		1					1	4	15	7	1		29

	2018/2019												
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Kimberley regional total	3	4			3	1	1	1	1	1	2	1	18
Broome (S) LG total	2	2			1		1			1			7
Derby-West Kimberley (S) LG total					1	1		1			1		4
DERBY					1	1		1					3
FITZROY CROSSING											1		1
Wyndham-East Kimberley (S) LG total	1	2			1				1		1	1	7
Total	3	4			3	1	1	1	1	1	2	1	18

**ENHANCED SURVEILLANCE DATA****Serologically confirmed doctor-notified and laboratory reported cases of Barmah Forest virus disease each month in WA****#Compiled by the Mosquito-Borne Disease Control Branch, WA Department of Health**

- # 1) Data current as at 13/09/2021 - table may vary from previous or future versions due to inclusion of additional enhanced surveillance data;
- 2) Source of data: Western Australian Notifiable Infectious Diseases Database (comprising Doctor's notifications to Public Health Units & Communicable Disease Control Directorate; Laboratory reports to Communicable Disease Control Directorate from participating pathology laboratories); Enhanced Surveillance Data (comprising case follow-ups from Environmental Health Officers; patient interviews; Doctor's comments on notification forms);
- 3) Month of onset and suburb/town of exposure determined from Enhanced Surveillance Data where available, and from Doctor's notifications or laboratory reports where not available;
- 4) Data varies from official Western Australian Notifiable Infectious Diseases Database records due to inclusion of Enhanced Surveillance Data;
- 5) Where it is not clearly defined if a case occurred in a particular suburb or a local Government (e.g. Mandurah suburb or the City of Mandurah the case has been entered as a "local government case - unknown suburb" - (e.g. City of Mandurah unknown);
- 6) Where a place of exposure occurs in a suburb that carries over 2 Local Governments and it is not clearly defined which local government it occurred in, the case has been entered in the Local Government where the largest portion of the suburb occurs (e.g. Canningvale is located in both Canning and Gosnells with the largest portion being in Gosnells); and
- 7) This information is the intellectual property of the Mosquito-Borne Disease Control Branch of the WA Department of Health and may not be used for any purpose without prior permission.





Appendix B -Material Safety Data Sheets



MATERIAL SAFETY DATA SHEET  
Page 1 of 4

**SECTION 1 IDENTIFICATION OF THE MATERIAL AND SUPPLIER**

**Product Name: ProLink XR Briquets Mosquito Growth Regulator**

Other Names: (S)-Methoprene  
 Use: Mosquito Growth Regulator.  
 Company: Pacific BioLogics.  
 Address: 35 Beach Street, Kippa Ring, QLD, 4020  
 Telephone Number: 07 3283 5077 Fax Number: 07 3283 5088  
 Emergency Telephone Number: 07 3283 5077 (8.30 am to 5.30pm EST Mon to Fri).

**SECTION 2 HAZARDS IDENTIFICATION**

Classified as hazardous according to criteria of NOHSC.  
 Not classified as a Dangerous Good according to the ADG Code

Risk phrases: R20 Harmful by inhalation.  
 R22 Harmful if swallowed.  
 Safety Phrases: S2 Keep out of reach of children.  
 S13 Keep away from food, drink and animal feeding stuffs.  
 S24 Avoid contact with skin.  
 S23 Do not breathe vapour or spray.

**SECTION 3 COMPOSITION/INFORMATION ON INGREDIENTS**

Ingredients:	CAS NUMBER	PROPORTION (% w/w)
CHEMICAL		
(S)-Methoprene	65733-16-6	1.8 % w/w
Poly(oxy-1,2-ethanediyl), alpha-(4-nonylphenyl)-omega-hydroxy-, branched	127087-87-0	< 0.5%
Other ingredients determined to be non hazardous		balance

**SECTION 4 FIRST AID MEASURES**

**FIRST AID**  
**Ingestion:** If poisoning occurs, contact a doctor or Poisons Information Centre Phone Australia 131126. Give 1-2 glasses of water to drink.  
**Eye contact:** Flush gently with water for at least 15 minutes. If irritation occurs and persists, obtain medical attention.  
**Skin contact:** Wash skin with soap and water. Remove contaminated clothing and footwear.  
**Inhalation:** Remove to fresh air.  
**Advice to Doctor:** Treatment should be symptomatic and supportive care.

**SECTION 5 FIRE FIGHTING MEASURES**

This product is non-flammable.  
**Extinguishing media:** Use water spray, foam, CO<sub>2</sub> or dry chemical. Contain all runoff.  
**Hazards from combustion products:** When exposed to high temperatures, toxic fumes may be emitted.

ProLink XR Briquets Mosquito Growth Regulator May 2006





**MATERIAL SAFETY DATA SHEET**  
Page 2 of 4

**SECTION 5 | FIRE FIGHTING MEASURES (Continued)**

**Precautions for fire-fighters and special protective equipment:** Isolate fire area. Evacuate downwind. Wear full protective clothing and self-contained breathing apparatus. Do not breathe or contact smoke, gases or vapours generated.

**SECTION 6 | ACCIDENTAL RELEASE MEASURES**

**Emergency procedures:** Isolate and post spill area. Wear prescribed protective clothing and equipment. Large spills should be dyked or covered to prevent dispersal. Sweep, vacuum or shovel spilled material (briquets) into an approved container and if unable to use as directed on the label, dispose of as listed in section 13.

**Material and methods for containment and cleanup procedures:** To clean spill area, tools and equipment, wash with a solution of soap, water and acetic acid/vinegar. Follow this with a neutralisation step of washing the area with a bleach or caustic soda ash solution. Finally, wash with a strong soap and water solution. Absorb, as above, any excess liquid and add both solutions to the drums of waste already collected. Keep out unprotected persons and animals.

**SECTION 7 | HANDLING AND STORAGE**

**Precautions for safe Handling:** Ensure containers are kept intact until using product. When using product wear cotton overalls buttoned to the neck and wrist (or equivalent clothing) and elbow length PVC gloves. If dust is present wear face shield or goggles and disposable dust mask. After use and before eating, drinking or smoking, wash hands, arms and face thoroughly with soap and water. After each day's use, wash gloves and contaminated clothing.

**Conditions for safe Storage:** Store in the closed, original container in a well ventilated area, out of direct sunlight. Store in a room or place away from children, animals, food and feed stuffs.

**SECTION 8 | EXPOSURE CONTROLS / PERSONAL PROTECTION**

**National Exposure Standards:**  
No exposure standard has been established by NOHSC Australia. However a general standard of 10 mg/m<sup>3</sup> (TWA) is applicable for dusts. This dust concentration is unlikely to be encountered when using this product.

**Biological Limit Values:**  
No biological limits have been established for this product.

**Engineering controls:**  
Use in ventilated area only. Use local exhaust at all process locations where dust may be emitted. Ventilate all transport vehicles prior to unloading.

**Personal Protective equipment (PPE):**  
Work Clothing: Wear long-sleeved uniform of coveralls and chemical resistant (PVC) gloves.

Eye Protection: If dust is present, wear chemical protective goggles or face shield.

Respiratory Protection: For dust exposure, wear a disposable dust mask.

Gloves: Wear chemical protective gloves made of PVC when handling this product. Inspect regularly for leaks. Thoroughly wash the outside of gloves with soap and water prior to removal.

Personal Hygiene: Clean water should be available for washing in case of eye or skin contamination. Wash skin before eating, drinking or smoking. Shower at the end of the workday.



**MATERIAL SAFETY DATA SHEET**  
Page 3 of 4

**SECTION 9 | PHYSICAL AND CHEMICAL PROPERTIES**

**Appearance:** Grey to black solid briquets with slight hydrocarbon odour.  
**Boiling point:** Solid - not applicable  
**Freezing point:** Solid - not applicable  
**Bulk Density:** 1.85 g/mL  
**Solubility in Water:** 1 ppm.  
**pH:** Not applicable.  
**Flammability:** Not flammable.  
**Corrosive hazard:** Non corrosive.  
**Flashpoint (°C) :** Not applicable - solid.  
**Poisons Schedule:** Not a scheduled poison.

**SECTION 10 | STABILITY AND REACTIVITY**

**Chemical Stability:** Product is considered stable in ambient conditions for a period of at least 2 years after manufacture.  
**Conditions to avoid:** No particular conditions to avoid.  
**Incompatible materials:** No particular materials to avoid.  
**Hazardous decomposition products:** When the product is heated to high temperatures, the active constituent will decompose and emit toxic fumes.  
**Hazardous reactions:** No particular reactions to avoid.

**SECTION 11 | TOXICOLOGICAL INFORMATION**

**Potential Health Effects:**  
**Swallowed:** This product is harmful if swallowed.  
**Eye Contact:** Not irritating to eyes (Based on data on S-Methoprene).  
**Skin Contact:** This product has low toxicity by the dermal route. Acute Dermal LD<sub>50</sub> (rabbit) > 2000 mg/kg.  
**Inhaled:** The product may be harmful by inhalation. Do not breathe vapours.  
**Chronic:** No data available on this formulation. In studies with laboratory animals, S-Methoprene Technical did not cause teratogenicity, reproductive toxicity or carcinogenicity.

**SECTION 12 | ECOLOGICAL INFORMATION**

**Environmental Properties:** No data is available on this product. Toxicity data is on the active constituent, (S)-Methoprene, has a half-life in soil of approximately 10 days which varies with soil type. The hydrolysis half-life > 4 weeks. Photolysis half-life is < 10 hours. Water solubility is < 2 mg/L.  
**Environmental Toxicology:** With fish LC<sub>50</sub> values of > 370 mg/L to 760 mg/L, (S)-methoprene is considered moderately toxic to fish. [Note: Acute fish toxicity would not be expected during control programmes as the concentration of methoprene in water at any one time is unlikely to exceed 0.002 mg/L.] (S)-methoprene has low toxicity to birds and is practically non-toxic to adult bees.



**MATERIAL SAFETY DATA SHEET**  
Page 4 of 4

**SECTION 13 | DISPOSAL CONSIDERATIONS**

**Disposal:** Dispose of waste in accordance with the requirements of Local or State Waste Management Authorities or according to Australian Standard 2507 - Storage & Handling of Pesticides. Wear protective clothing such as full body cover barrier suit, eg. a rubber rain suit. Keep out unprotected persons and animals.

**Disposal of empty containers:** Break, crush, puncture and bury empty containers in a local authority landfill. If not available bury the containers below 500 mm in a disposal pit specifically marked and set up for this purpose clear of waterways, vegetation and roots. Empty containers and product should not be burnt.

**SECTION 14 | TRANSPORT INFORMATION**

**Storage & Transport:** This product is not classified as a Dangerous Good. Store in the closed, original container in a well ventilated area, out of direct sunlight. Store in a room or place away from children, animals, food, feed stuffs, seeds and fertilisers.

**SECTION 15 | REGULATORY INFORMATION**

Classified as a hazardous substance according to criteria of NOHSC Australia. (Xn). Under the Standard for Uniform Scheduling of Drugs and Poisons (SUSDP), this product is a not a scheduled poison. This product is registered under the Agricultural and Veterinary Chemicals Code Act 1994. Product Registration No. 58061. Product is not classified as a Dangerous Good according to the ADG Code (6<sup>th</sup> Ed).

**SECTION 16 | OTHER INFORMATION**

Issue Date: 10 May 2006 (First issue)  
 Key to abbreviations and acronyms used in this MSDS:  
 ADG Code Australian Dangerous Goods Code (for the transport of dangerous goods by Road and Rail).  
 Carcinogen An agent which is responsible for the formation of a cancer.  
 Genotoxic Capable of causing damage to genetic material, such as DNA.  
 NOHSC National Occupational Health and Safety Commission.  
 PPE Personal protective equipment.  
 Teratogen An agent capable of causing abnormalities in a developing foetus.  
 TWA The Time Weighted Average airborne concentration over an eight-hour working day, for a five day working week over an entire working life.

References  
 1. "Search Hazardous Substances". Dept. of Employment and Workplace Relations. Office of the Australian Safety and Compensation Council website. (2006).  
 2. "Approved Criteria for Classifying Hazardous Substances" 3rd Ed. NOHSC Australia. [NOHSC:1008 (2004)]. October 2004.

This MSDS summarises our best knowledge of the health and safety hazard information of the product and how to safely handle and use the product in the workplace. Each user should read this MSDS and consider the information in the context of how the product will be handled and used in the workplace including in conjunction with other products.

If clarification or further information is needed to ensure that an appropriate risk assessment can be made, the user should contact this company.  
*End of MSDS*



MATERIAL SAFETY DATA SHEET



**VECTOBAC® G BIOLOGICAL INSECTICIDE**

SECTION 1: CHEMICAL PRODUCT AND COMPANY INFORMATION

<b>Product Name:</b>	<b>VectoBac G Biological Insecticide</b>
<b>Product Use:</b>	Biological Insecticide for control of mosquitoes
<b>Company:</b>	Sumitomo Chemical Australia Pty Ltd A.B.N. 21 081 096 255
<b>Address:</b>	242 Beecroft Road, Epping NSW 2121
<b>Telephone Number:</b>	(02) 8752 9000 (Mon-Fri 8am-5pm EST)
<b>Emergency Telephone Number:</b>	1800 024 973 (24 hours) (EMERGENCIES ONLY)

SECTION 2: HAZARDS IDENTIFICATION

<b>Approved Criteria Classification:</b>	Non-hazardous according to the criteria of the National Occupational Health and Safety Commission (NOHSC).
<b>SUSDP Classification:</b>	Not Scheduled
<b>ADG Classification:</b>	Not a Dangerous Good
<b>Active Constituent</b>	NOHSC exposure standards have not been assigned for the active ingredient in the formulation.

EMERGENCY OVERVIEW

<b>Colour:</b>	Tan
<b>Physical description:</b>	granule
<b>Odour:</b>	Mild fermentation (malt) odour
<b>Major health hazards:</b>	Product is non-toxic by ingestion, skin contact or inhalation. Direct contact with eyes or skin may cause mild irritation.

POTENTIAL HEALTH EFFECTS

**Acute Toxicity:** Product is non-toxic by ingestion, skin contact or inhalation. Direct contact with eyes and skin may cause mild irritation.

**Signs and Symptoms of Systemic Effects:** Direct contact with eyes may cause mild irritation. Inhalation of dust may result in respiratory tract irritation

<b>Eye:</b>	Non Irritant
<b>Skin:</b>	Non irritant
<b>Ingestion:</b>	Not a likely route of exposure
<b>Inhalation:</b>	Not a likely route of exposure

SECTION 3: COMPOSITION/INFORMATION ON INGREDIENTS

Chemical Entity	CAS number	Proportion
<i>Bacillus thuringiensis</i> subsp <i>israelensis</i>	68038-71-1	<5%
Other ingredients determined not to be hazardous		to 100%



**MATERIAL SAFETY DATA SHEET**  
Page 2 of 4

**SECTION 5 | FIRE FIGHTING MEASURES (Continued)**

**Precautions for fire-fighters and special protective equipment:** Isolate fire area. Evacuate downwind. Wear full protective clothing and self-contained breathing apparatus. Do not breathe or contact smoke, gases or vapours generated.

**SECTION 6 | ACCIDENTAL RELEASE MEASURES**

**Emergency procedures:** Isolate and post spill area. Wear prescribed protective clothing and equipment. Large spills should be dyked or covered to prevent dispersal. Sweep, vacuum or shovel spilled material (briquets) into an approved container and if unable to use as directed on the label, dispose of as listed in section 13.

**Material and methods for containment and cleanup procedures:** To clean spill area, tools and equipment, wash with a solution of soap, water and acetic acid/vinegar. Follow this with a neutralisation step of washing the area with a bleach or caustic soda ash solution. Finally, wash with a strong soap and water solution. Absorb, as above, any excess liquid and add both solutions to the drums of waste already collected. Keep out unprotected persons and animals.

**SECTION 7 | HANDLING AND STORAGE**

**Precautions for safe Handling:** Ensure containers are kept intact until using product. When using product wear cotton overalls buttoned to the neck and wrist (or equivalent clothing) and elbow length PVC gloves. If dust is present wear face shield or goggles and disposable dust mask. After use and before eating, drinking or smoking, wash hands, arms and face thoroughly with soap and water. After each day's use, wash gloves and contaminated clothing.

**Conditions for safe Storage:** Store in the closed, original container in a well ventilated area, out of direct sunlight. Store in a room or place away from children, animals, food and feed stuffs.

**SECTION 8 | EXPOSURE CONTROLS / PERSONAL PROTECTION**

**National Exposure Standards:**  
No exposure standard has been established by NOHSC Australia. However a general standard of 10 mg/m<sup>3</sup> (TWA) is applicable for dusts. This dust concentration is unlikely to be encountered when using this product.

**Biological Limit Values:**  
No biological limits have been established for this product.

**Engineering controls:**  
Use in ventilated area only. Use local exhaust at all process locations where dust may be emitted. Ventilate all transport vehicles prior to unloading.

**Personal Protective equipment (PPE):**  
Work Clothing: Wear long-sleeved uniform of coveralls and chemical resistant (PVC) gloves.  
Eye Protection: If dust is present, wear chemical protective goggles or face shield.  
Respiratory Protection: For dust exposure, wear a disposable dust mask.  
Gloves: Wear chemical protective gloves made of PVC when handling this product. Inspect regularly for leaks. Thoroughly wash the outside of gloves with soap and water prior to removal.  
Personal Hygiene: Clean water should be available for washing in case of eye or skin contamination. Wash skin before eating, drinking or smoking. Shower at the end of the workday.



**MATERIAL SAFETY DATA SHEET**  
Page 3 of 4

**SECTION 9 | PHYSICAL AND CHEMICAL PROPERTIES**

**Appearance:** Grey to black solid briquets with slight hydrocarbon odour.  
**Boiling point:** Solid - not applicable  
**Freezing point:** Solid - not applicable  
**Bulk Density:** 1.85 g/mL  
**Solubility in Water:** 1 ppm.  
**pH:** Not applicable.  
**Flammability:** Not flammable.  
**Corrosive hazard:** Non corrosive.  
**Flashpoint (°C) :** Not applicable - solid  
**Poisons Schedule:** Not a scheduled poison.

**SECTION 10 | STABILITY AND REACTIVITY**

**Chemical Stability:** Product is considered stable in ambient conditions for a period of at least 2 years after manufacture.  
**Conditions to avoid:** No particular conditions to avoid.  
**Incompatible materials:** No particular materials to avoid.  
**Hazardous decomposition products:** When the product is heated to high temperatures, the active constituent will decompose and emit toxic fumes.  
**Hazardous reactions:** No particular reactions to avoid.

**SECTION 11 | TOXICOLOGICAL INFORMATION**

**Potential Health Effects:**  
**Swallowed:** This product is harmful if swallowed.  
**Eye Contact:** Not irritating to eyes (Based on data on S-Methoprene).  
**Skin Contact:** This product has low toxicity by the dermal route. Acute Dermal LD<sub>50</sub> (rabbit) > 2000 mg/kg.  
**Inhaled:** The product may be harmful by inhalation. Do not breathe vapours.  
**Chronic:** No data available on this formulation. In studies with laboratory animals, S-Methoprene Technical did not cause teratogenicity, reproductive toxicity or carcinogenicity.

**SECTION 12 | ECOLOGICAL INFORMATION**

**Environmental Properties:** No data is available on this product. Toxicity data is on the active constituent, (S)-Methoprene, has a half-life in soil of approximately 10 days which varies with soil type. The hydrolysis half-life > 4 weeks. Photolysis half-life is < 10 hours. Water solubility is < 2 mg/L.  
**Environmental Toxicology:** With fish LC<sub>50</sub> values of > 370 mg/L to 760 mg/L, (S)-methoprene is considered moderately toxic to fish. [Note: Acute fish toxicity would not be expected during control programmes as the concentration of methoprene in water at any one time is unlikely to exceed 0.002 mg/L.] (S)-methoprene has low toxicity to birds and is practically non-toxic to adult bees.



**MATERIAL SAFETY DATA SHEET**  
Page 4 of 4

**SECTION 13 | DISPOSAL CONSIDERATIONS**

**Disposal:** Dispose of waste in accordance with the requirements of Local or State Waste Management Authorities or according to Australian Standard 2507 - Storage & Handling of Pesticides. Wear protective clothing such as full body cover barrier suit, eg. a rubber rain suit. Keep out unprotected persons and animals.

**Disposal of empty containers:** Break, crush, puncture and bury empty containers in a local authority landfill. If not available bury the containers below 500 mm in a disposal pit specifically marked and set up for this purpose clear of waterways, vegetation and roots. Empty containers and product should not be burnt.

**SECTION 14 | TRANSPORT INFORMATION**

**Storage & Transport:** This product is not classified as a Dangerous Good. Store in the closed, original container in a well ventilated area, out of direct sunlight. Store in a room or place away from children, animals, food, feed stuffs, seeds and fertilisers.

**SECTION 15 | REGULATORY INFORMATION**

Classified as a hazardous substance according to criteria of NOHSC Australia (Xn). Under the Standard for Uniform Scheduling of Drugs and Poisons (SUSDP), this product is a not a scheduled poison. This product is registered under the Agricultural and Veterinary Chemicals Code Act 1994. Product Registration No. 58061. Product is not classified as a Dangerous Good according to the ADG Code (6<sup>th</sup> Ed).

**SECTION 16 | OTHER INFORMATION**

Issue Date: 10 May 2006 (First issue)  
Key to abbreviations and acronyms used in this MSDS:  
ADG Code Australian Dangerous Goods Code (for the transport of dangerous goods by Road and Rail).  
Carcinogen An agent which is responsible for the formation of a cancer.  
Genotoxic Capable of causing damage to genetic material, such as DNA.  
NOHSC National Occupational Health and Safety Commission.  
PPE Personal protective equipment.  
Teratogen An agent capable of causing abnormalities in a developing foetus.  
TWA The Time Weighted Average airborne concentration over an eight-hour working day, for a five day working week over an entire working life.

- References
1. "Search Hazardous Substances". Dept. of Employment and Workplace Relations. Office of the Australian Safety and Compensation Council website. (2006).
  2. "Approved Criteria for Classifying Hazardous Substances" 3rd Ed. NOHSC Australia. [NOHSC:1008 (2004)]. October 2004.

This MSDS summarises our best knowledge of the health and safety hazard information of the product and how to safely handle and use the product in the workplace. Each user should read this MSDS and consider the information in the context of how the product will be handled and used in the workplace including in conjunction with other products.

If clarification or further information is needed to ensure that an appropriate risk assessment can be made, the user should contact this company.  
*End of MSDS*



**MATERIAL SAFETY DATA SHEET**

Page 1 of Total 5  
 Date of Issue: May 2012  
 MSDS No. FMC/AQUAMAX/1

**SECTION 1 IDENTIFICATION OF THE MATERIAL AND SUPPLIER**

**Product Name: BIFLEX<sup>®</sup> AQUAMAX INSECTICIDE**

**Other Names:** Bifenthrin.  
**Use:** Termiticide and insecticide for use in buildings and other structures.  
**Company:** FMC Australasia Pty Ltd.  
**Address:** Unit 26, 8 Metroplex Ave, Murarrie, Qld 4172  
**Telephone Number:** 07 3908 9222 **Fax Number:** 07 3908 9221  
**Emergency Telephone Number:** 1800 033 111 (All hours - Australia wide).

**SECTION 2 HAZARDS IDENTIFICATION**

Classified as hazardous according to criteria of Safe Work Australia.  
 Not classified as a Dangerous Good according to the ADG Code.

**Risk phrases:** R22 Harmful if swallowed  
**Safety Phrases:** S2 Keep out of reach of children.  
 S13 Keep away from food, drink and animal feeding stuffs.  
 S24/25 Avoid contact with skin and eyes.  
 S23 Do not breathe vapour or spray.  
 S36/37 Wear suitable protective clothing and gloves.  
 S39 Wear eye/face protection.

**SECTION 3 COMPOSITION/INFORMATION ON INGREDIENTS**

Ingredients:	CAS NUMBER	PROPORTION
<i>CHEMICAL</i>		
Bifenthrin	82657-04-3	100 g/L
Propane-1,2-diol	57-55-6	1 - 10%
Other ingredients determined not to be hazardous	mixture	Balance

**SECTION 4 FIRST AID MEASURES**

**FIRST AID**

**Swallowed:** If poisoning occurs, contact a doctor or Poisons Information Centre. Phone Australia 13 11 26. If any discomfort persists seek medical advice.  
**Eye:** If in eyes, hold eyes open and flush gently with water. If irritation occurs and persists, obtain medical attention.  
**Skin:** If on skin remove contaminated clothing and wash with soap and water. If irritation occurs and persists see a doctor.  
**Inhaled:** Remove patient to fresh air. If breathing discomfort occurs, obtain medical attention.

**Advice to Doctors:** Bifenthrin the active ingredient in this product is a pyrethroid insecticide. It has been reported that a topical application of Vitamin E cream has therapeutic value in reducing skin irritation, associated with skin contact with pyrethroid insecticides. Treatment is otherwise symptomatic and supportive.



Product Name: <b>BIFLEX AQUAMAX INSECTICIDE</b>	Page 2 of Total 5 Issued: May 2012 FMC/AQUAMAX/1
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**SECTION 5 FIRE FIGHTING MEASURES**

**Specific Hazard:** Product is a not flammable.  
**Extinguishing media:** Foam, CO<sub>2</sub> or dry chemical. Soft stream water fog if no alternatives. Contain all runoff.  
**Hazards from combustion products:** Non-combustible, however after evaporation of water, the residual material will emit toxic fumes of carbon monoxide, carbon dioxide, hydrogen chloride, chlorine, fluorine and hydrogen fluoride etc.  
**Precautions for fire-fighters and special protective equipment:** Isolate fire area. Evacuate downwind. Wear full protective clothing and self-contained breathing apparatus. Do not breathe or contact smoke, gases or vapours generated.

**SECTION 6 ACCIDENTAL RELEASE MEASURES**

**Emergency procedures:** Isolate and post spill area. Keep out unprotected persons and animals. Wear prescribed protective clothing and equipment.  
**Spills:** In the case of spillage, contain and absorb spilled material with absorbent material such as sand, clay or cat litter and dispose of waste according to the Australian Standard 2507 - Storage and Handling of Pesticides. Keep material out of streams and sewers. Vacuum, shovel or pump waste into an approved drum. Label for contents. Dispose of drummed wastes, including decontamination solution, in accordance with the requirements of Local or State Waste Management Authorities. Do NOT allow spilled product to enter sewers, drains, creeks or any other waterways.  
**Material and methods for containment and cleanup procedures:** To clean spill area, tools and equipment, wash with a solution of soap, water and acetic acid/vinegar. Follow this with a neutralisation step of washing the area with a bleach or caustic soda ash solution. Finally, wash with a strong soap and water solution. Absorb, as above, any excess liquid and add both solutions to the drums of waste already collected.

**SECTION 7 HANDLING AND STORAGE**

**Precautions for Safe Handling:** Ensure containers are kept closed until using product. Avoid skin and eye contact and breathing vapour. When opening the container and preparing spray, wear cotton overalls buttoned to the neck and wrist and a washable hat and elbow length PVC or nitrile gloves. When using the prepared spray wear cotton overalls buttoned to the neck and wrist and a washable hat and elbow length PVC or nitrile gloves. After each day's use, wash gloves and contaminated clothing.  
**Conditions for Safe Storage:** DO NOT store near (or allow to contact) fertilizers, fungicides or pesticides. Store in the closed original container, in a cool well ventilated area, out of direct sunlight.

**SECTION 8 EXPOSURE CONTROLS / PERSONAL PROTECTION**

**National Exposure Standards:**  
 No exposure standard for bifenthrin has been established by Safe Work Australia. However, the following exposure standard has been established:

Atmospheric Contaminant	Exposure Standard (TWA) <sup>a</sup>	Proportion in AquaMax
Propane-1,2-diol total: (vapour & particulates)	150 ppm (474 mg/m <sup>3</sup> )	< 10%
TWA = Time-weight Average		

It is highly unlikely that atmospheric concentrations of Propane-1,2-diol will reach the above concentrations when used as directed.  
**Biological Limit Values:**  
 No biological limit allocated.

<b>Product Name:</b> <b>BIFLEX AQUAMAX INSECTICIDE</b>	Page 3 of Total 5 Issued: May 2012 FMC/AQUAMAX/1
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**SECTION 8 | EXPOSURE CONTROLS / PERSONAL PROTECTION (Continued)**

**Engineering controls:**  
Use in ventilated areas only. Use local exhaust at all process locations where spray may be emitted. Ventilate all transport vehicles prior to unloading. Keep containers closed when not in use.

**Personal Protective equipment (PPE):**  
**Work Clothing:** Wear cotton overalls buttoned to the neck and wrist and a washable hat, elbow-length PVC or nitrile gloves and face shield or goggles.

**Eye Protection:** When using product, wear chemical protective goggles or face shield.

**Respiratory Protection:** If inhalation risk exists, wear a properly fitted half-face or full-face air-purifying respirator which is approved for pesticides (Australian Standards).

**Gloves:** Wear chemical protective gloves made of materials such as nitrile, Viton® brand or PVC when handling this product. Inspect regularly for leaks. Wash the outside of gloves with soap and water prior to removal.

**Personal Hygiene:** Clean water should be available for washing in case of eye or skin contamination. Wash skin before eating, drinking or smoking. Shower at the end of the workday.

**SECTION 9 | PHYSICAL AND CHEMICAL PROPERTIES**

<b>Appearance:</b>	White, opaque liquid.
<b>Odour:</b>	Very mild, soap like odour.
<b>Boiling point:</b>	Not available.
<b>Freezing point:</b>	Not available.
<b>Specific Gravity:</b>	1.02 g/mL.
<b>pH:</b>	Not available.
<b>Solubility in Water:</b>	Product suspends in water.
<b>Flammability:</b>	Not flammable.
<b>Corrosive hazard:</b>	Non corrosive; compatible with stainless steel containers & polyethylene used in spray tanks and parts.
<b>Flashpoint (°C):</b>	Not applicable, not flammable.
<b>Flammability Limits (%):</b>	Not flammable.
<b>Poisons Schedule:</b>	Product is a schedule 6 poison.

**SECTION 10 | STABILITY AND REACTIVITY**

**Chemical Stability:** Product is considered stable in ambient conditions for a period of at least 2 years after manufacture.

**Conditions to avoid:** No particular conditions to avoid.

**Incompatible materials:** No particular materials to avoid.

**Hazardous decomposition products:** When the product is heated to high temperatures and the water is evaporated, the active constituent will decompose and emit toxic and noxious fumes.

**Hazardous reactions:** No particular reactions to avoid.

**SECTION 11 | TOXICOLOGICAL INFORMATION**

**Potential Health Effects:**  
Studies with laboratory animals have shown this product to be harmful if swallowed. Ingestion of large doses of bifenthrin by laboratory animals produced signs of toxicity which included clonic convulsions, tremors and bloody nasal discharge.

**Acute**

<b>Swallowed:</b>	This product is harmful if swallowed; the acute oral LD <sub>50</sub> (rat) = 505 mg/kg (calculated).
<b>Eye:</b>	Irritating to the eyes.
<b>Skin:</b>	This product has a low dermal toxicity. The acute dermal LD <sub>50</sub> (rabbit) > 2000 mg/kg. May cause skin irritation. Skin sensitising may occur in sensitive individuals.
<b>Inhaled:</b>	This product is harmful if inhaled. Acute inhalation LC <sub>50</sub> > 8.7 mg/L/4 hour (calculated).



<b>Product Name:</b> <b>BIFLEX AQUAMAX INSECTICIDE</b>	Page 4 of Total 5 Issued: May 2012 FMC/AQUAMAX/1
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**SECTION 11 TOXICOLOGICAL INFORMATION (Continued)**

**Chronic:** No data available on this formulation. In studies with laboratory animals, Bifenthrin Technical did not cause teratogenicity or reproductive toxicity. Tremors were associated with repeated exposure of dogs, rats, rabbits and mice to Bifenthrin. The overall results from a battery of genotoxicity studies indicate that Bifenthrin is not considered to be genotoxic. Ames test results were negative.

**SECTION 12 ECOLOGICAL INFORMATION**

**Environmental Toxicology:** The active ingredient, Bifenthrin, is highly toxic to fish and aquatic arthropods with LC<sub>50</sub> values ranging from 0.0038 µg/L to 17.8 µg/L. In general, the aquatic arthropods are the most sensitive species. Care should be taken to avoid contamination of the aquatic environment. Bifenthrin had no effect on molluscs at its limit of water solubility. Bifenthrin is only slightly toxic to both waterfowl and upland game birds with LC<sub>50</sub> values range from 1800 mg/kg to > 2,150 mg/kg. Do not contaminate sewers, drains, dams, creeks or any other waterways with product or the used container.

**Environmental Properties:** The active ingredient, Bifenthrin, degrades at a moderate rate in agricultural soils (t<sub>1/2</sub> = 50 to 205 days), and more rapidly on the surface of bare soils (t<sub>1/2</sub> = 7 to 62 days). Bifenthrin is tightly bound in most soils and has extremely low water solubility.

**SECTION 13 DISPOSAL CONSIDERATIONS**

**Disposal:** Label all recovered material for contents. Dispose of drummed wastes, including decontamination solution, in accordance with the requirements of Local or State Waste Management Authorities.

Do not bury waste or surplus product. Dispose of undiluted waste by either dilution and use, according to the Directions for Use, or returning to the point of purchase in the original container for controlled disposal. Dispose of diluted surplus product by using according to the Directions for Use. Do not re-use empty container.

*Dangerous to Fish:* Do NOT allow spilled product or wash solution to enter sewers, drains, dams, creeks or any other waterways.

**Disposal of empty, non-returnable containers:** Triple or preferably pressure rinse containers before disposal. Add rinsings to spray tank. Do not dispose of undiluted chemicals on-site. If recycling, replace cap and return containers to recycler or designated collection point. If not recycling, break, crush or puncture and bury empty containers in a local authority landfill. If not available bury the containers below 500 mm in a disposal pit specifically marked and set up for this purpose clear of waterways, vegetation and roots, in compliance with relevant Local, State or Territory government regulations. Empty containers and product should not be burnt.

**SECTION 14 TRANSPORT INFORMATION**

**Road & Rail Transport:** This product is exempt from classification as a Dangerous Good in packs less than 3,000 kg or litres under the Australian Code for the Transport of Dangerous Goods by Road and Rail. For bulk shipments this product is a class 9, UN 3082.

**Marine and Air Transport:** Biflex AquaMax Insecticide is classified as a Marine Pollutant according to International Maritime Dangerous Goods (IMDG) Code and the International Air transport Association (IATA). If transporting by sea or air the following Dangerous Goods Classification applies:- UN 3082, Class 9 (Miscellaneous Dangerous Goods), Packing Group III, Proper Shipping Name ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (Contains 10% Bifenthrin). Hazchem code •3Z. Hazard Identification Number (HIN) 90.

<b>Product Name:</b> <b>BIFLEX AQUAMAX INSECTICIDE</b>	Page 5 of Total 5 Issued: May 2012 FMC/AQUAMAX/1
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**SECTION 15 REGULATORY INFORMATION**

Classified as a hazardous substance according to criteria of Safe Work Australia. (Xn).  
 Under the Standard for Uniform Scheduling of Medicines and Poisons (SUSMP), this product is a schedule 6 poison.  
 This product has registration pending under the Agricultural and Veterinary Chemicals Code Act 1994. Product No. 60678.  
 Product is not classified as a Dangerous Good according to the ADG Code (7<sup>th</sup> Ed).  
 Product is classified as a Dangerous Good according to the International Maritime Dangerous Goods (IMDG) Code and the International Air Transport Association (IATA).

**SECTION 16 OTHER INFORMATION**

Issue Date: 1 May 2012 (5 year update).

Key to abbreviations and acronyms used in this MSDS:

- ADG Code: Australian Dangerous Goods Code (for the transport of Dangerous Goods by Road and Rail).
- Carcinogen: An agent which is responsible for the formation of a cancer.
- Genotoxic: Capable of causing damage to genetic material, such as DNA.
- HSIS: Hazardous Substances information System.
- Lacrimation: The production, secretion, and shedding of tears.
- Lavage: A general term referring to cleaning or rinsing.
- Mutagen: An agent capable of producing a mutation.
- NOHSC: National Occupational Health and Safety Commission.
- Pneumonitis: A general term that refers to inflammation of lung tissue.
- PPE: Personal protective equipment.
- Teratogen: An agent capable of causing abnormalities in a developing foetus.
- TWA: The Time Weighted Average airborne concentration over an eight-hour working day, for a five day working week over an entire working life.
- Safe Work Australia: Formally known as Australian Safety & Compensation Council (ASCC) which was formally known as the National Occupational Health & Safety Commission (NOHSC).

References

1. "Search Hazardous Substances". HSIS - Safe Work Australia website. (2012).
2. "Approved Criteria for Classifying Hazardous Substances" 3rd Ed. NOHSC Australia. [NOHSC:1008 (2004)]. October 2004.

This MSDS summarises our best knowledge of the health and safety hazard information of the product and how to safely handle and use the product in the workplace. Each user should read this MSDS and consider the information in the context of how the product will be handled and used in the workplace including in conjunction with other products.

If clarification or further information is needed to ensure that an appropriate risk assessment can be made, the user should contact this company.

End of MSDS

New Zealand text June 2012

Aqua K-Othrine

Page 1 of 7

FRONT OF PACK LABEL

**ECOTOXIC  
HARMFUL  
READ LABEL BEFORE USE  
KEEP OUT OF REACH OF CHILDREN**


<b>Aqua K-Othrine®</b>
<b>INSECTICIDE SPACE-SPRAY CONCENTRATE</b>
ACTIVE INGREDIENT: 20 g/L DELTAMETHRIN SOLVENT: 250 g/L HYDROCARBON LIQUID

A pyrethroid based insecticide concentrate for use as a space-spray for the control of adult mosquitoes and flies.

**Net contents**  
\*

Shake well before use.

IMPORTANT: Read the attached booklet before use.

APPROVED PURSUANT TO THE HSNO ACT 1996, No. HSR100623  
See [www.epa.govt.nz](http://www.epa.govt.nz) for approval controls



NZFSA Approved Type A (All animal product except dairy).



(Label code)

\* 500 mL, 1 L and 10 L

FRONT PAGE OF BOOKLET

**ECOTOXIC  
HARMFUL  
READ LABEL BEFORE USE  
KEEP OUT OF REACH OF CHILDREN**

**Aqua K-Othrine® Insecticide Space Spray Concentrate**

**HSNO CLASSIFICATIONS:** 6.1D (All), 6.1D (O), 6.1E (I), 6.3B , 6.9B (All), 6.9B (I), 6.9B (O), 9.1A (All), 9.1A (M), 9.2C , 9.3B , 9.4A.

**WARNING:**

Harmful if swallowed. May be harmful if swallowed and enters airways. Causes mild skin irritation. May be harmful if inhaled. Facial skin contact may cause temporary facial numbness. May cause organ damage from repeated oral exposure. Very toxic to aquatic life. Harmful to the soil environment. Toxic to terrestrial vertebrates. Very toxic to terrestrial invertebrates.

**APPROVED HANDLER:**

This product must be under the control of an approved handler when:  
a) applied in a wide dispersive manner; or  
b) used by a commercial contractor.

**STORAGE AND DISPOSAL:**

Store locked up in the closed, original container in a cool, well-ventilated area. Do not store for prolonged periods in direct sunlight. Triple or preferably pressure rinse containers before disposal. Add rinsings to spray tank. Do not dispose of undiluted chemicals on site. If recycling, replace cap and return clean containers to recycler or designated collection point. If not recycling, break, crush or puncture and deliver empty packaging to an approved waste management facility. **DO NOT** burn empty containers or product. Do not re-use container for any other purpose.

**FIRST AID:**

For advice contact the National Poisons Centre 0800 POISON (0800 764766) or a doctor immediately. Get medical advice if you feel unwell. Refer to booklet for additional information.

For 24 hour specialist advice in an emergency only phone 0800 734 607.

**IMPORTANT: READ THE BOOKLET BEFORE USE**

**APPROVED PURSUANT TO THE HSNO ACT 1996, No. HSR100623**  
See [www.epa.govt.nz](http://www.epa.govt.nz) for approval controls

NZFSA Approved Type A (All animal product except dairy).

K-Othrine® is a Registered Trademark of Bayer.

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BOOKLET

**HSNO CLASSIFICATIONS:** 6.1D, 6.1E, 6.3B, 6.9B, 9.1A, 9.2C, 9.3B, 9.4A.

**WARNING:**

Harmful if swallowed.  
 May be harmful if swallowed and enters airways.  
 Causes mild skin irritation.  
 May be harmful if inhaled.  
 Facial skin contact may cause temporary facial numbness.  
 May cause organ damage from repeated oral exposure.  
 Very toxic to aquatic life.  
 Harmful to the soil environment.  
 Toxic to terrestrial vertebrates.  
 Very toxic to terrestrial invertebrates.

**APPROVED HANDLER:**

This product must be under the control of an approved handler when:  
 a) applied in a wide dispersive manner; or  
 b) used by a commercial contractor.

**SAFETY DIRECTIONS:**

If product in eyes wash it out immediately with water.  
 Do not eat, drink or smoke when using this product.  
 Do not inhale spray mist.  
 Ensure adequate ventilation during use.  
 When opening the container, mixing and loading, preparing spray and using spray wear chemical resistant gloves and face shield of goggles. When using in enclosed areas, wear elbow length chemical resistant gloves and full face-piece respirator.  
 Avoid re-entry for 4 hours after use in confined spaces. If re-entering wear all protective clothing including respirator.  
 After each day's use, wash gloves, face shield of goggles, contaminated clothing and respirator and if rubber wash with detergent and warm water.

**Re-entry Period**

DO NOT allow re-entry into treated areas for 4 hours after use in enclosed spaces, unless wearing chemical resistant gloves, goggles and respirator. Clothing must be laundered after each days use. It is recommended that appropriate signage is utilised or adequate communication takes place with on-site staff and/or bystanders to ensure that these periods are adhered to.

**STORAGE AND DISPOSAL:**

Store locked up in the closed, original container in a cool, well-ventilated area. Do not store for prolonged periods in direct sunlight. Triple or preferably pressure rinse containers before disposal. Add rinsings to spray tank. Do not dispose of undiluted chemicals on site. If recycling, replace cap and return clean containers to recycler or designated collection point. If not recycling, break, crush or puncture and deliver empty packaging to an approved waste management facility. DO NOT burn empty containers or product. Do not re-use container for any other purpose.

When stored appropriately this product should show no significant degradation for 2 years from the date of manufacture. Contact your supplier for further information about the use of product which is older than this.

**ENVIRONMENTAL PROTECTION:**

Dangerous to fish and aquatic invertebrates. DO NOT use over or immediately adjacent to any water body or water course. DO NOT contaminate streams, rivers or waterways with the chemical or used container.

**EMERGENCY RESPONSE:**

For specialist advice in an emergency call 0800 734 607 (24 hours). Collect spillage.

**FIRST AID:**

For advice contact the National Poisons Centre 0800 POISON (0800 764766) or a doctor immediately. Get medical advice if you feel unwell. If medical advice is needed, have product container or label at hand. IF SWALLOWED: Immediately call a POISON CENTER or doctor. Rinse mouth. Do not induce vomiting. IF INHALED: Call a POISON CENTER or doctor if you feel unwell. If skin irritation occurs: Get medical attention.

It is an offence to use this product on animals.

**DIRECTIONS FOR USE**

**SPRAY DRIFT RESTRAINTS (FOR OUTDOOR USE)**

Users of this product **MUST** make an accurate written record of the details of each spray application within 24 hours following application and **KEEP** this record for a minimum of 2 years. The spray application details that must be recorded are: 1. date and start and finish times of application; 2. location address and areas sprayed; 3. full name of this product; 4. amount used per hectare and number of hectares applied to; 5. situation and pest; 6. wind speed and direction during application; 7. air temperature; 8. nozzle brand, model and type and spray system pressure measured during application; 9. name and address of person applying this product.

SITUATION	PEST	RATE	CRITICAL COMMENTS
Outdoor and indoor situations where flies and/or mosquitoes are a problem (including but not limited to abattoirs, refuse tips, picnic areas, sports grounds, recreation areas, factories, industrial buildings, domestic residences and areas associated with animal production).	Adult flies and mosquitoes	Outdoors 50 mL/ha  Indoors 2.5 mL/ 1000 m <sup>3</sup>	Dilute with a suitable volume of water (further details provided in the table below) and apply using equipment capable of generating a mist or thermal or cold fog. Avoid application outdoors if wind speed is in excess of 10 km/h as spray will be dispersed too quickly.

**NOT TO BE USED FOR ANY PURPOSE, OR IN ANY MANNER, CONTRARY TO THIS LABEL UNLESS AUTHORISED UNDER APPROPRIATE LEGISLATION.**

**NO WITHHOLDING PERIOD IS REQUIRED WHEN USED AS DIRECTED BUT THIS PRODUCT SHOULD NOT BE APPLIED OVER WATER INTENDED FOR HUMAN CONSUMPTION**

**GENERAL INSTRUCTIONS**

Aqua K-Othrine is a water-based space spray concentrate (oil in water emulsion) specifically designed for dilution in water **ONLY**, which can be applied by ultra low volume (ULV; vehicle mounted application techniques), thermal fogging or misting machines. Aqua K-Othrine Insecticide Space-Spray Concentrate may only be applied via ground-based methods.

Aqua K-Othrine incorporates anti-evaporant Film Forming Aqueous Suspension Technology (FFAST); which allows dilution with water yet spray droplet size is maintained as if diluted in oil.

**Mixing:** Dilute Aqua K-Othrine with the suitable volume of water according to the equipment manufacturer's recommendations for the output rates required. As standard practice, application equipment should be calibrated to determine output rates and actual volumes required in order to reach the target application rates of product referred to in the directions for use above.



As a guide only, some dilution and application rates are provided in the table below.

APPLICATION METHOD	SITUATION	DILUTION RATE	APPLICATION RATE OF DILUTION
ULV (Cold fogging)	Indoors	1 – 2 mL + 50 mL water	50 mL/1000 m <sup>3</sup>
	Outdoors	50 mL + 450 mL water	500 mL/ha
Thermal Fogging	Indoors	1- 2 mL/500 mL water	100 – 200 mL/house or 500 mL/1000 m <sup>3</sup>
	Outdoors	50 mL + 4950 mL water	5 L / Ha

Prepare only the amount required for immediate usage. Do not store diluted material.

The maximum application rate permitted is 0.05 L product/ha (1 g deltamethrin/ha) with a maximum of five applications per year and a minimum application interval of two days.

**Equipment:**

Apply by means of appropriate specialist equipment capable of producing and distributing droplets of a volume mean diameter (VMD) value below 50 microns. This equipment may be thermal fogging equipment, cold aerosol generating ULV equipment and hand-held or knapsack sprayers which are designed for space spraying.

Note that generally speaking motorised knapsack/backpack sprayers or mist blowers produce a mist with a droplet size spectrum of 0 to 200 µm with Volume Median Diameters greater than 50 µm. These larger droplets are less efficient for flying insect control.

**Application Timing**

Fly and mosquito control campaigns should begin early in the breeding season. Spray rounds should initially be every other day for 7 to 10 days to kill newly emerging adults and then a maintenance phase of weekly sprays may be used.

Application should be timed correctly to achieve optimum results; for fly control; application should take place in the morning when flies are at ground level and have not had a chance to disperse. Application should be targeted to resting and breeding areas.

For mosquito control the optimum application time is generally in the evening when most species are active however the peak activity time should be identified to optimise effect against the particular target species.

For optimum results when applying indoors close windows and doors before application and do not open for at least 30 minutes after treatment.

**PRECAUTIONS**

DO NOT apply in areas where food is prepared or eaten or where spray may come into direct contact with food.

Before use, remove or cover all exposed foodstuffs. Cover all dishes and utensils and other food preparation equipment.

After use, thoroughly ventilate treated area. Clean up thoroughly before processing/serving resumes. Fish bowls/aquaria should be removed or covered during indoor treatment.

**Re-entry Period**

DO NOT allow re-entry into treated areas for 4 hours after use in enclosed spaces, unless wearing chemical resistant gloves, goggles and respirator. Clothing must be laundered after each days use.

It is recommended that appropriate signage is utilised or adequate communication takes place with on-site staff and/or bystanders to ensure that these periods are adhered to.

**Insecticide Resistance Warning**

GROUP	<b>3A</b>	INSECTICIDE
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For insecticide resistance management, Aqua K-Othrine is a Group 3A insecticide. Some naturally occurring insect biotypes resistant to Aqua K-Othrine and other Group 3A insecticides may exist through normal genetic variability in any insect population. The resistant individuals can eventually dominate the insect population if Aqua K-Othrine or other Group 3A insecticides are used repeatedly. The effectiveness of Aqua K-Othrine on resistant individuals could be significantly reduced. Since occurrence of resistant individuals is difficult to detect prior to use, Bayer Environmental Science accepts no liability for any losses that may result from the failure of Aqua K-Othrine to control resistant insects.

New Zealand text June 2012

Aqua K-Othrine

Page 6 of 7

Aqua K-Othrine may be subject to specific resistance management strategies. For further information contact your local supplier or Bayer Environmental Science representative.

**PROTECTION OF WILDLIFE, FISH, CRUSTACEANS AND ENVIRONMENT**

Dangerous to fish and aquatic invertebrates. DO NOT use over or immediately adjacent to any water body or water course. DO NOT contaminate streams, rivers or waterways with the chemical or used container.

**PROTECTION OF LIVESTOCK**

Dangerous to bees. Will kill bees foraging in the area during application or in hives which are oversprayed or reached by spray drift.

**SAFETY DATA SHEET**

Additional information is listed in the Safety Data Sheet.

**CONDITIONS OF SUPPLY:**

**READ THESE CONDITIONS OF SUPPLY BEFORE BUYING AND USING. IF THESE CONDITIONS ARE UNACCEPTABLE RETURN AT ONCE UNOPENED.**

To the extent permitted by law Bayer does not accept any liability or responsibility whatsoever for any loss, damage or injury whether direct, indirect or consequential howsoever arising in connection with these goods, including without limitation their storage, application, handling or use. Bayer does not make any warranties (express or implied) with respect to fitness for purpose, merchantable quality or any other matter. To the extent only that Bayer is prevented by law from contracting out of the Consumer Guarantees Act then these conditions apply subject to that Act. The Act shall not apply where these goods are acquired for business purposes.

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BOOKLET BASE LABEL

**Aqua K-Othrine® Insecticide Space Spray Concentrate**

<p><b>HSNO CLASSIFICATIONS:</b> 6.1D, 6.1E, 6.1E, 6.3B, 6.9B, 9.1A, 9.2C, 9.3B, 9.4A.</p> <p><b>WARNING:</b>                  Harmful if swallowed. May be harmful if swallowed and enters airways. Causes mild skin irritation. May be harmful if inhaled. Facial skin contact may cause temporary facial numbness. May cause organ damage from repeated oral exposure. Very toxic to aquatic life. Harmful to the soil environment. Toxic to terrestrial vertebrates. Very toxic to terrestrial invertebrates.</p> <p><b>APPROVED HANDLER:</b>                  This product must be under the control of an approved handler when:                  c) applied in a wide dispersive manner; or                  d) used by a commercial contractor.</p> <p><b>STORAGE AND DISPOSAL:</b>                  Store locked up in the closed, original container in a cool, well-ventilated area. Do not store for prolonged periods in direct sunlight. Triple or preferably pressure rinse containers before disposal. Add rinsings to spray tank. Do not dispose of undiluted chemicals on site. If recycling, replace cap and return clean containers to recycler or designated collection point. If not recycling, break, crush or puncture and deliver empty packaging to an approved waste management facility. <b>DO NOT</b> burn empty containers or product. Do not re-use container for any other purpose.</p>
--

**FIRST AID:**  
 For advice contact the National Poisons Centre 0800 POISON (0800 764766) or a doctor immediately. Get medical advice if you feel unwell. Refer to booklet for additional information.

For 24 hour specialist advice in an emergency only phone 0800 734 607.

**IMPORTANT: READ THE BOOKLET BEFORE USE**

**APPROVED PURSUANT TO THE HSNO ACT 1996, No. HSR100623**  
 See [www.epa.govt.nz](http://www.epa.govt.nz) for approval controls

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Appendix C – Community Education Flyers

# m o z z i e s B I T I N G ?



**You could be breeding mozzies in your yard!!**

Mosquitoes lay their eggs in water. After about 5 days they mature into adults. Any container that holds water around your house has the potential to breed thousands of mosquitoes!



Unsealed or damaged septic tanks or open leach drains



Tyres



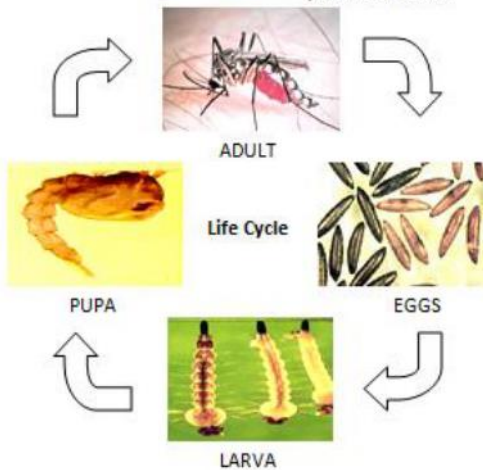
Tarpaulins holding pockets of water



Stagnant ponds or unused fish ponds



Pot plant dishes



Dishes or dog bowls



Unmaintained spas or pools



Old or unsealed rainwater tanks



**For further information, call the Shire's Environmental Health staff on 9191 0999.**



# MOSQUITO WARNING



**Shire of Derby/West Kimberley  
ALERT FOR JANUARY 2012**

Kimberley communities should take precautions to protect against mosquito bites as mosquitoes have been found to be carrying the Murray Valley Encephalitis Virus. This virus can kill small children.

***DON'T LET YOU OR YOUR KIDS GET BITTEN***  
Here are some things you can do to protect them

**Use Insect repellent every 4 hours**



**Avoid camping out in places with lots of mosquitoes**

**When outside, wear long, loose clothing.**



**Make sure you have fly screens on your windows**

***Remember: MOSQUITOES ARE AT THEIR WORST AT SUNRISE AND SUNSET***

For more information contact Shire of Derby/West Kimberley Environmental Health Unit 9191 0999

## Protect yourself and your family!



Mozzies are worst at dawn and dusk. Especially during "The Wet Season"– this is the time when you most need to protect yourself – or just stay indoors!



Use repellents containing DEET and mosquito coils to keep the mozzies away. Check the labels to see if they are safe to use on small children.

*Caution: Always follow the instructions on the label.*



Long loose sleeves and pants will protect you from mozzie bites. Always make sure to wear this sort of clothing at dawn and dusk or when you are out camping.



### The Shire's Mosquito Control Program



Identifying mosquito breeding areas in Derby.



Different mozzies breed in different habitats. Through trapping and identifying the different types of mozzies under the microscope, we can determine where they may have come from.



Once we have found breeding sites we can treat the mozzie larvae with Vectobac or Prolink briquettes, these chemicals kill the larvae before they turn into adult mozzies. This is the most effective way to control mozzies in Derby.



Mosquito Larvae



Vectobac



Fogging adult mozzies.

Prolink Brickettes – these can be seen in drains and in marsh areas. Please don't touch!



For further information, call the Shire's Environmental Health Staff on 91910999.

**Appendix D – Example of a Mosquito warning community radio notice.**

*'Over the dry season mosquito eggs lay dormant on the surrounding marsh. Due to the recent rain, high tides and warm weather, these eggs hatch into mosquito larvae which then grow into adult mosquitoes. This has caused a sudden rise in mosquito activity around Derby and the offending mosquito is the Aedes vigilax. This mosquito will fly up to 50km to feed. The fogging of this breed is largely ineffective due to the sheer size of the marsh and their ability to travel.*

*Not only are mosquitoes a nuisance with an irritating bite, they are capable of spreading diseases such as Ross River Virus, Barmah Forest Virus and Murray Valley Encephalitis.*

*The community's assistance is sought to reduce the spread of mosquito borne diseases by eliminating mosquito breeding sites at their home and work place and protecting themselves and their families from mosquito bites.*

*Avoid being bitten! You can prevent you and your family being bitten by mosquitoes by:*

- *Use personal repellents containing diethyl toluamide (DEET) or picaridin.*
- *Avoiding exposure in areas of high mosquito activity, especially during dawn and dusk.*
- *Ensure insect screens on houses are intact to prevent mosquitoes entering.*
- *Wear long, loose fitting clothing when outdoors.*

*Local residents are asked to eradicate potential mosquito breeding sites in their backyards by:*

- *Locating potential containers, emptying the water out and leaving the container inverted.*
- *Fitting mosquito proof cowls to septic tank system vent pipes. Ensure septic tanks lids are sealed to prevent mosquito access.*
- *Screen and seal rainwater tanks to prohibiting mosquito access;*
- *Filling in depressions in the ground with soil or sand to eliminate a breeding site;*
- *Ensure pools are well chlorinated and filtered and free from dead leaves.*
- *Remove water held in plant leaf axils regularly.*

*It is important people showing symptoms of illness are seen by a doctor as soon as possible.*

*Further information can be obtained by contacting Council's Environmental Health Services by phoning 9191 0999.'*

**Appendix E – Standard Operating Procedures**

**Shire of Derby/West Kimberley  
Mosquito Management Plan**

**STANDARD OPERATING PROCEDURES**



## Table of Contents

1.0 Introduction	54
2.0 Equipment List	54
3.0 Chemical Stock List	54
4.0 Preseason	54
4.1 Actions (August)	54
4.2 Complaints	55
4.3 RRV, BFV, MVE & KUNV notifications	55
5.0 Season Commencement	55
5.1 Adult Trapping	55
5.2 Larval Inspection & Larvacide Application	55
5.3 Adulticide Application	56
6.0 Post Seasonal	56

## 1.0 INTRODUCTION

This document details the standard operating procedures (SOP's) and timings for delivery of pre-season, seasonal and post seasonal actions to be carried out. Due to the nature of mosquito breeding this document should be used in conjunction with local knowledge of Environmental Health Officers and should be considered a working document that is flexible to be changed and reviewed annually.

## 1.0 EQUIPMENT LIST

**Reviewed by:** Evie Molson      **Date:** 05/08/2021

- 1X thermal trailer fogger
- 2 x back pack mister blower
- 5 x Larvae dippers
- 2 x Hand application mister
- Sandwich board sign (Mosquito Control in Progress)
- 6 x Adult mosquito traps & batteries
- 2 x Co2 gas bottles
- 1 x Portable Dry-Ice Maker\* pending delivery
- For ProLink Briquettes -
  - Fence Droppers
  - Yellow star picket caps
  - Styrofoam
  - Cable ties
  - Glue (non-toxic)
  - Laminated notices (do not touch)
- OHS equipment –hats, sunscreen, mosquito repellent, gloves.

## 3.0 CHEMICAL STOCK LIST

- 7 x bags of granular Vectobac **to be ordered 2021**
- 1x 18L bucket of ProLink Briquettes **to be ordered 2021**
- 1x 1L Aqua-K-Orthine *in stock*
- 1 x 5L Biflex Aqua max *in stock*

## 4.0 PRESEASON

### 4.1 Actions (July-August)

- Assess the mosquito control budget for the current year.
- Apply for any relevant funding
- Contact Garrads in Darwin in regards to all chemical needs for the season and place order if required. Contact details -

David Murphy

Unit 2, 17 Benison Road,  
Winnellie, N.T. 0821  
PH: (08) 8947 2856  
Mobile: 0417 803 654  
[murphyd@garrads.com.au](mailto:murphyd@garrads.com.au)

- Check all equipment is functioning and ready for the season. If any machinery requires repair or servicing this should be done during August and arranged accordingly. Ensure machinery has fuel if required. Shire mechanic has serviced and repaired foggers/misters x 3.

Ensure Shire website is up to date.

#### 4.2 Seasonal Documentation

Create a file for the current mosquito season (i.e. Register – Chemical, Complains & Trapping Data 2021-2022) in X: drive – SUBJECT – DEV – PUBLIC HEALTH – PEST CONROL - APPS. The file should keep all documentation and records for that season, included as a minimum:

- ✓ **Complaints Folder**- register all complaints received (written, email, phone call, internal referral) in a complaint register for that year. All complaints should be investigated and appropriate feedback and/or education given and then documented.
- ✓ **Trapping Record** – trapping record sheets which document trapping sites and counts used for Entomology Atlas entry shall be scanned and stored here.
- ✓ **Chemical Application**- chemical register to be kept of Larvacide and Adulticide treatments including the date, site and quantity of chemical used.

#### 4.3 RRV, BFV, MVE & Kunjin Virus notifications

All mosquito borne disease notifications will be followed up by the Environmental Health Officer via phone. If it is not possible to contact the patient the survey forms can be posted. On completion of the Survey they are to be faxed to the Department of Health on 9383 1819 for their records.

#### 5.0 SEASON COMMENCEMENT

##### 5.1 Briquettes (after first heavy rainfall)

Briquettes are to be distributed at sites which are known to hold water throughout the wet season and are known problem sites for mosquito's. Briquettes should be placed in these water bodies after the first heavy rainfall. Briquettes have been place at the following locations in the past:

- Derby West End (behind Mary Island Fishing Club)
- Derby Highway (in front of industrial area)
- Wetland behind Numbla Ngunga

- Golf Course

An assessment is to be made after the first heavy rainfall to determine which sites should be treated with Briquettes for that season.

### 5.2 Adult Trapping

Adult trapping should be done at least twice per week during the peak season to gather annual data. Trapping should take place when mosquito numbers are abundant to give an indication of species diversity and numbers.

In the past adult traps using CO<sub>2</sub> have been set in the following areas –

- Rowan Street Marsh
- West Kimberley Lodge
- Holy Rosary School
- Industrial Area
- Waste water ponds – Derby Wetlands
- Caravan Park
- TOLL Bushland- Knowsley East
- Bushland- Edgar St

### 5.3 Larval Inspection & Larvicide Application

- Commence inspections of all drains and other known breeding sites, and larvicide as necessary after major rainfall. This should occur at a minimum once per week. In the past it has been done on a Friday. Increase frequency of inspections if the mosquito situation is bad and/or complaints are being received.
- During inspections and treatment install the Mosquito sign so that the public are aware that mosquito management is taking place. It is important to build a positive relationship with the community in regards to mosquito control.
- Collect larvicide products and relevant PPE from the Development Services shed. Consult MSDS and product labelling prior to use of chemical (See Appendix 2).
- Regular sites that were inspected and treated in the 2019/2020 season are specified below.

For maps of locations see Attachment 1 – Derby Town mosquito larvae detection sites.

1. Tyres at Rifle club
2. Gibb Road
3. Derby Marsh Drains (Rowan St)
4. Derby Marsh Drains (near Caravan Park)
5. Derby Jetty (underneath boat )
6. Derby Jetty (Jetty Rd Drainage)
7. Derby Jetty (enclosed fenced area)
8. Derby West End (Villiers St)
9. Derby West End (behind Mary Island Fishing Club)
10. Derby Highway (in front of industrial area)
11. Derby Highway (in front of Derby auto electrics)
12. Derby Highway (cnr Wodehouse St)

13. Behind Numbla Ngunga
14. Golf Course

- For regularly monitored sites and any other sites that are identified as containing water –
  1. Dip for larvae
  2. Take water temperature where possible
  3. Photograph average dip take to estimate mosquito counts on return to office
  4. Treat the effected water source with Vectobac G at the appropriate rate.
  5. Provide feedback to the Engineering/Technical department on any drain maintenance that is required.

Ensure collection of pupae and await no-emergence/emergence. This will determine the length of residual effect of the treatment. Adjustment to treatment can then be made based on this information.

#### **5.4 Adulticide Application**

Fogging can be carried out at the discretion of the Manager Development Services in periods of extreme mosquito activity. Weather conditions must be fine without wind or rain for the fogging to be successful.

Fogging should only be carried out under the following circumstances –

- Adult trapping has taken place and species of mosquito found are recommended for adult control by the Department of Health.
- Larvicidal treatments have been carried out and numbers are still high.
- Suitable notice (1 week prior) has been given to residents that fogging is going to occur.
- After flood events.

If fogging is to occur around the Derby or Fitzroy Crossing the following notice will be posted on notice boards and on local radio stations 1 week before the commencement of the fogging –

*“Due to increased mosquito activity, the Shire of Derby/West Kimberley Environmental Health staff will be commencing mosquito fogging on ~DATE~ between 5:30 – 7:30pm. Please avoid direct contact with the ‘fog’. Motorists are also advised to drive with caution while the ‘fog’ settles.*

*Mosquitoes are capable of spreading diseases such as Ross River Virus, Barmah Forest Virus and Murray Valley Encephalitis. The community’s assistance is sought to reduce the spread of mosquito borne diseases by eliminating mosquito breeding sites at their home and work place. The Shire urges people to protect themselves and their families from mosquitoes by avoiding outdoor exposure during dusk and during the night, wearing protective clothing and using mosquito repellent containing DEET.*

*For further information please contact this Shire’s Environmental Health Services on 9191 0999.”*

Spraying can be carried out on a needs basis throughout the season at problem areas of popular public sites. Spraying should be conducted in the early morning when the weather is cool and the

appropriate PPE needs to be worn (refer to MSDS). In the 2019/2020 season the following sites were sprayed-

- Old Botanical Gardens near Shire admin building
- Derby Pool
- Derby District Highschool
- Holy Rosary School

#### **5.5 Education & Awareness**

Public education and awareness should be ongoing from the period of October-April. Refer to section 11.1 'Public Education & Awareness' of the Management Plan for details of the education program. Education should be both pro-active and reactive in response to outbreaks and complaints.

#### **6.0 POST SEASONAL**

- Continue to monitor potential breeding sites and set adult traps where required.
- Prepare any required reports for Council and the Department of Health.
- Ensure all records are registered in the Shire's electronic registration system and on the hard copy file.
- Review the MMP and SOP documents and make amended versions as necessary.

**Attachment 1 - Derby Town mosquito larvae detection sites**

**Site A** – Area on left hand side of wharf road. Area is cut off to drain water when raining by dirt road.



**Site B** – Multiple runnels for water drainage. Check for larvae on each edge of runnels as bush can cover on occasion.





**Site C** – Golf course has 3 or 4 ponds that have vegetation well maintained but larvae at sites detected. Check for tadpoles and overgrown areas.





**Site D** – Gun range and speedway have tyres that need to be checked and 2 water ponds that hold water from construction. Check back of site (marsh side) for tyres that have been dumped also.



**Site E** – Gibb River Road turnoff has bushland that holds approx 5cm water in thick scrub. Mosquitos detected start of 2017.



**Site F** – Water build up on left side of highway between industrial areas. Brickettes usually deployed start of wet season and area regularly checked.





**Site G** – Drain wasn't draining correctly last year due to silt build up. Check during wet season to see if flowing and check inside drain also.



**Site H** – Pond behind the nursing home. Will need 4WD to access as road can be boggy. Brickettes usually used at start of wet season and maintained regularly throughout season.



**Site I** – Cleared area behind Karmulingunga community. Drive on road between community hall and community houses. When land was cleared it created a water holding area with sand and rubble hill at back of clearing. Check for larvae through year.



**Site J** – Approx. 4 runnels and or access roads along road to marsh to be checked for vegetation build up and drainage.







**14.6 REQUEST FOR COMMENT FOR THE REVESTMENT OF LOT 180 (FREEHOLD) TO AMALGAMATE INTO ADJOINING RESERVE 38789 (LOT 181) EMANUAL WAY, FITZROY CROSSING ALONG WITH CHANGE OF PURPOSE TO RESERVE 38789 TO INCLUDE "ACCOMMODATION"**

**File Number:** A3000033; A3000025; 7060; O31594  
**Author:** Robert Paull, Manager Development Services  
**Responsible Officer:** Wayne Neate, Director Technical and Development Services  
**Applicant:** Department of Planning, Lands and Heritage  
**Owner:** State of Western Australia  
**Proposal:** To reinvest Freehold Lot 180 and amalgamate into adjoining Reserve 38789 over Lot 181 Emanuel Way, Fitzroy Crossing  
**Location:** Lot 180 and adjoining Lot 181 Emanuel Way, Fitzroy Crossing  
**Authority/Discretion:** Administrative

#### **SUMMARY**

The Department of Planning Lands and Heritage (DPLH) is seeking Council's position on a request from the Department of Biodiversity, Conservation and Attractions (DBCA) to amalgamate freehold Lot 180 with Lot 181 (Reserve 38789) Emanuel Way, Fitzroy Crossing and to change of purpose to Reserve 38789 to include "Accommodation".

Council is recommended to oppose the request but instead support the purpose change to "*Workers Accommodation associated with the Depot Site, Office Premises purpose*" (or similar wording). There is no Shire objection to the amalgamation of Lots 180 and 181.

#### **DISCLOSURE OF ANY INTEREST**

Nil by Author and Responsible Officer.

#### **BACKGROUND**

Both Lots 180 and 181 are occupied by several large sheds and is largely used for storage purposes. Lot 181 (Reserve 38789) Emanuel Way, Fitzroy Crossing is vested in the DBCA for the purpose of 'Depot Site, Office Premises'. Lot 180 has no such title or reserve restrictions.

From previous discussions with DBCA staff it is understood that DBCA intend to construct a 'marine shed' over Lot 181 as depicted in (**Attachment 1**). DBCA has previously advised the Shire that for the propose 'marine shed', it will not seek planning approval from the Shire and instead rely upon public work exemptions under section 6 of the *Planning and Development Act 2005* (Note comment in the Statutory Environment Section of this Report.)

DPLH is seeking Council's position on a request from the Department of Biodiversity, Conservation and Attractions (DBCA) to amalgamate freehold Lot 180 with (Reserve 38789) Lot 181 Emanuel Way, Fitzroy Crossing and to change of purpose to Reserve 38789 to include "Accommodation" (**Attachment 2**).



Subject land – Source Plan WA

**STATUTORY ENVIRONMENT**

***Public Works Act 1902***

***Planning and Development Act 2005 (PD Act)***

Section 6 of the PD Act states:

*"nothing in this Act interferes with the right of the Crown, or the Governor, or the Government of the state, or a local government –*

- (a) to undertake, construct or provide any public work; and*
- (b) to take land for the purposes of that public work."*

The Western Australian Planning Commission advised in 'Planning Bulletin 94' as follows (in part):

*"In general terms, this section gives the bodies referred to in section 6, "section 6 bodies", the power to undertake a public work or take land for the purposes of a public work without obtaining development approval from the responsible authority under the relevant planning scheme. The term "public work" is defined under section 4 of the PD Act as including any public work as defined in the Public Works Act 1902."*

*“Public works under a local planning scheme Section 6 has the effect of exempting section 6 bodies from the requirement to obtain development approval for a public work under a local planning scheme. Despite this exemption, section 6 bodies are still required to comply with the requirements of section 6(2) and (3), namely:*

- *to have regard to the purpose and intent of the local planning scheme;*
- *to have regard to the principles of proper and orderly planning and the amenity of the area; and*
- *to consult with the local government when a proposal is being formulated for any public work, or the taking of land for a public work If a section 6 body undertakes a public work without consulting with the relevant local government under section 6(3), then it has breached the requirements of the PD Act.”*

***Shire of Derby/West Kimberly Interim Development Order No. 9 (IDO No.9)***

Development in the town of Fitzroy Crossing is under IDO No. 9. In relation to developments by a public authority such as the DBCA, Part 5 of IDO No 9:

***5. DEVELOPMENT BY PUBLIC AUTHORITY***

- (a) Any public authority intending to carry out development (other than permitted development) within the area covered by this Order is required to consult the Local Government in writing and to supply such information as may be necessary to explain the proposal.*
- (b) The development shall not be commenced until the Local Government advises either that the development is in conformity with the proposed Local Planning Scheme or can be co-ordinated with it; but before so advising the Local Government may require modification to the development.*
- (c) In the event of the modification not being accepted to the public authority, the development shall not be commenced but the matter shall be referred to the Minister for determination by the Governor as provided by section 111(2), Division 3, Part 6 of the Planning and Development Act 2005.*

As noted above in Clause 5(a), DBCA must consult in writing with the local government. Whilst there is no defined zoning or specific provisions referred in IDO No. 9, it does make reference to an adopted planning policy relevant to the locality. In this regard, the Shire would rely upon the *Fitzroy Futures Town Plan* as guidance in any planning proposal along with any relevant State Planning Policy (SPP).

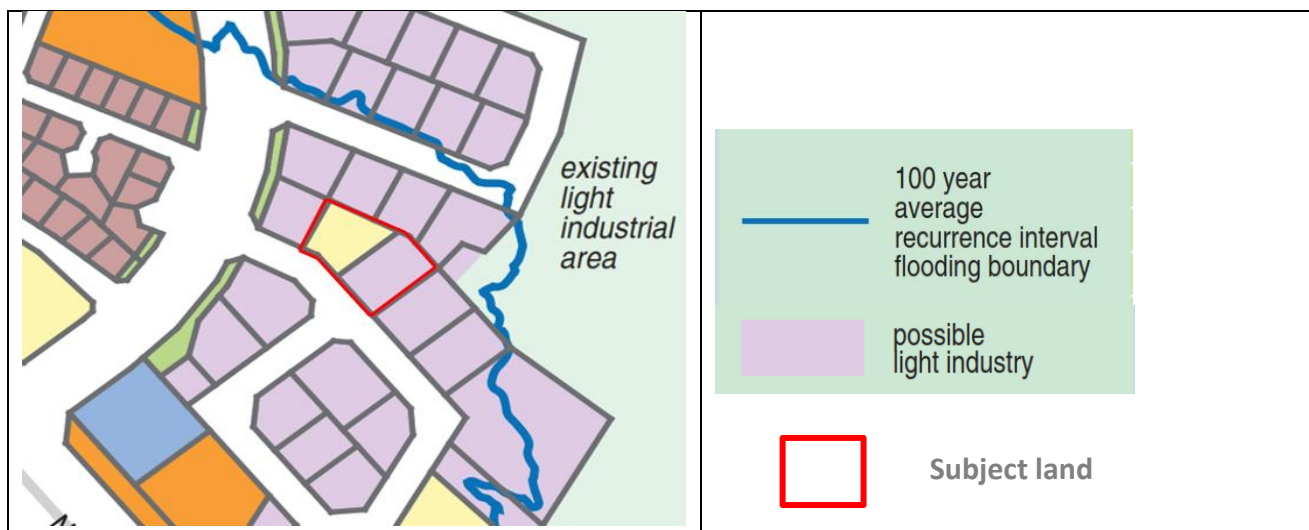
***Fitzroy Futures Town Plan (March 2009)***

The Fitzroy Futures Town Plan was prepared by the Department for Planning and Infrastructure on behalf of the Western Australian Planning Commission (WAPC) in conjunction with the Shire.

The *Fitzroy Futures Town Plan* was published for public comment in December 2004. Following the amendment of the document in accordance with the comment received, a *Final Fitzroy Futures Town Plan* was produced in November 2005 and endorsed by the Shire of Derby–West Kimberley. An updated document was endorsed by the WAPC in March 2009.

The Subject land is located within the area that is identified in the *Fitzroy Futures Town Plan* as ‘light industry’ and the range of commercial activities to be operated from the property are to be appropriate and compatible land uses within light industrial areas.





**POLICY IMPLICATIONS**

*Fitzroy Futures Town Plan*

**FINANCIAL IMPLICATIONS**

There are no known financial implications in relation to the proposal.

**STRATEGIC IMPLICATIONS**

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.1 Collaboration and Partnerships	1.1.1 Maximise local opportunities
	1.2 Capable, inclusive and effective organisation	1.2.4 Attract and effectively use resources to meet community needs
	1.3 Effective Communication	1.3.3 Listen to and respond to the needs of our communities

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Property:</b> Agencies are unable to maintain services due to limitations on staff accommodation.	Possible	Moderate	Medium	To reasonably support Government Agencies in the provision of Services to Fitzroy Crossing and the Shire.

**CONSULTATION**

The Shire is responding to the statutory consultation required by the DPLH under the *Land Administration Act 1997*.

**COMMENT**

The Shire sought further advice from DPLH who advised as follows:

*"The additional purpose: 'Accommodation' is an addition to the purpose types currently listed for Lot 180: 'Office', 'Depot'. The region stated "a ranger house on the property (Lot 181) will be retained. In addition, it will provide option of building additional two 3x1 units to accommodate incoming staff; short stay/overflow accommodation for rangers and other visiting staff".*

In the recent past (2016 and 2021), Council acknowledged the limitations associated with accommodation in Fitzroy Crossing. Accordingly, it has agreed to approve limited on-site residential accommodation for staff directly employed by businesses undertaken on the property in Fitzroy Crossing's Light Industrial location as follows:

- Lots 90 & 91 Emanuel Way comprising eight (8), two (2) bedroom dwellings (2016); and
- Lot 326 (No. 49) and Lot 325 (No. 53) Bell Road comprising eight (8), two (2) bedroom dwellings (2021).

Both approvals had conditions requiring that only persons associated with the business on site are permitted to be occupied in the accommodation units.

In relation to the request modifying the purpose to Reserve 38789 to refer to "Accommodation", it is recommended that some limited 'accommodation' be supported however, (like the private freehold developers) it should only relate to the operations on the land. This is particularly important on the basis that DBCA has indicated that it won't seek planning approval from the Shire but instead will rely upon the 'exemptions' under the PD Act.

To ensure consistency of approach, Council is recommended to oppose changing the purpose to allow "Accommodation" but instead request DPLH to modify the purpose to Reserve 38789 to refer to: *"Workers Accommodation associated with the Depot Site, Office Premises purpose"* (or similar wording). There is no Shire objection to the amalgamation of Lots 180 and 181.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

1. **Attachment 1 - DBCA proposed shed**  
2. **Attachment 2 - DPLH Letter and attachments**  

**RESOLUTION 172/21****Moved: Cr Paul White****Seconded: Cr Peter McCumstie**

That with respect to request for comment on a request for comment for the revestment of Freehold Lot 180 to amalgamate into adjoining Reserve 38789 over Lot 181 Emanuel Way, Fitzroy Crossing, Council:

1. Note the Shire report; and
2. Advise the Department of Planning, Lands and Heritage (DPLH) that Council:
  - a) Does not to oppose the amalgamation of freehold Lot 180 with (Reserve 38789) Lot 181 Emanuel Way, Fitzroy Crossing;
  - b) Opposes modifying the purpose to Reserve 38789 to refer to "Accommodation";
  - c) Would alternatively support the modification of the purpose to Reserve 38789 to refer to: *"Workers Accommodation associated with the Depot Site, Office Premises purpose"* (or similar wording); and
  - d) Request DPLH to remind the Department of Biodiversity, Conservation and Attractions (DBCA) that Part 5 of the Shire of Derby/West Kimberley Interim Development Order No. 9 as approved by the Minister for Planning obliges DBCA as a public authority intending to carry out development to consult the Local Government in writing and to supply such information as may be necessary to explain the proposal and that:

*"(b) The development shall not be commenced until the Local Government advises either that the development is in conformity with the proposed Local Planning Scheme or can be co-ordinated with it; but before so advising the Local Government may require modification to the development.*

*(c) In the event of the modification not being accepted to the public authority, the development shall not be commenced but the matter shall be referred to the Minister for determination by the Governor as provided by section 111(2), Division 3, Part 6 of the Planning and Development Act 2005."*

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**



Dear Sir/Madam,

**Request for comment for the revestment of Freehold Lot 180 on Deposited Plan 185538 to amalgamate into adjoining Reserve 38789 over Lot 181 on Deposited Plan 185538 – Shire of Derby/West Kimberley**

The Department of Planning, Lands and Heritage is considering a proposal from the Department of Biodiversity, Conservation and Attraction for the revestment of Freehold Lot 180 on Deposited Plan 185538 to amalgamate into adjoining Reserve 38789 over Lot 181 on Deposited Plan 185538 pursuant to section 51 of the Land Administration Act 1997 . The proposal will involve the revestment of Freehold Lot 180 on Deposited Plan 185538 to be amalgamated into adjoining Reserve 38789 over Lot 181 on Deposited Plan 185538, change of purpose to Reserve 38789 to include "Accommodation" within the Shire of Derby/West Kimberley pursuant to section 51 and 46 of the Land Administration Act 1997.

I have attached the completed smart plan and aerial map for your information and reference.

To enable further consideration to be given to this proposal, it would be greatly appreciated if you can please provide comments within of this email.

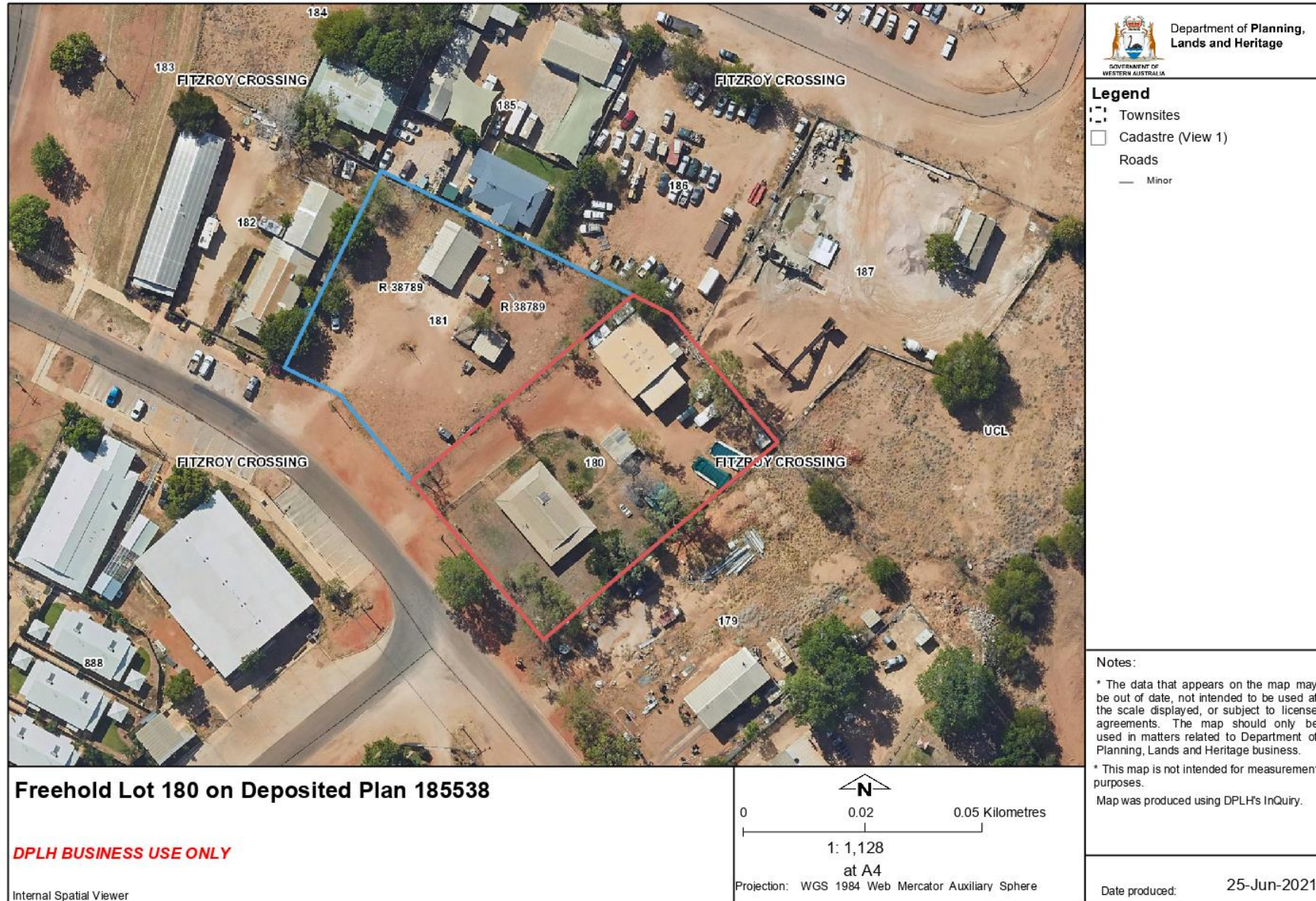
Please contact Sabrina Ahmed, Assistant State Land Officer, Land Use Management. Tel: 08 6552 4486 or [sabrina.ahmed@dplh.wa.gov.au](mailto:sabrina.ahmed@dplh.wa.gov.au) quoting the above reference and job number should you have any queries.

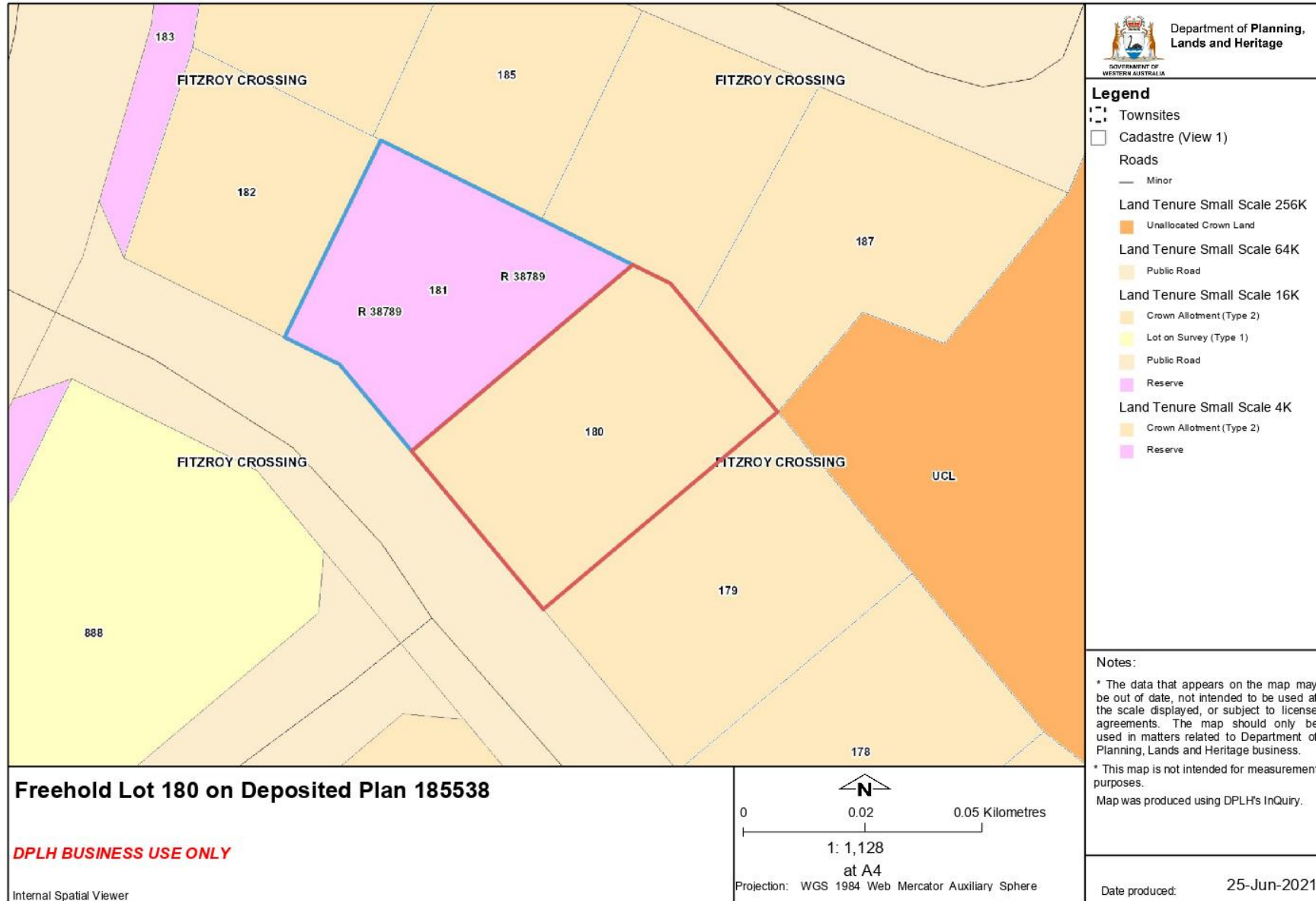
Regards

**Sabrina Ahmed** | Assistant State Land Officer | Land Use Management  
140 William Street, Perth WA 6000  
6552 4486  
[www.dplh.wa.gov.au](http://www.dplh.wa.gov.au)











**15 COMMUNITY AND RECREATION SERVICES****15.1 KIMBERLEY ART PRIZE - COUNCILLOR REPRESENTATION AND HANGING SYSTEM FEE INTRODUCTION****File Number:** RC/015/17**Author:** Sarah Smith, Executive Services Coordinator**Responsible Officer:** Christie Mildenhall, Acting Director of Community Services**Authority/Discretion:** Administrative**SUMMARY**

To allow planning to commence on the 2022 Kimberley Art Prize Council is being requested to select a Council representative for the Kimberley Art Prize organising committee. It is further requested that Council support the introduction of a hanging fee of \$25.00.

**DISCLOSURE OF ANY INTEREST**

Nil by Author or Authoriser.

**BACKGROUND**

The Kimberley Art and Photographic Prize celebrated its 50th Anniversary on the 3 July 2021 at the Derby Airport Terminal. It was a wonderful celebration which attracted the biggest crowds to date and given the effect of COVID 19 during 2020 and 21 was well represented artistically.

The Shire has sponsored and facilitated the Prize since 1970. Recent Management of the Prize and the resulting exhibition has been facilitated by a committee of key artistic stakeholders across the Shire as well as a council representative, with administration provided by Shire Staff.

During the debrief of the 50<sup>th</sup> celebration, it was identified that the lack of hanging systems or framing on the art works created considerable time and cost impost on the curator, with approximately 50 works requiring systems to be installed to enable hanging of the works. It is recommended to implement a new fee for works that require a hanging systems or framing. The proposed fee covers the consumables and the anticipated time spent by the curator on completing this task.

**STATUTORY ENVIRONMENT**

Division 5 of the *Local Government Act 1995* deals with financing local government activities. Sections 6.16 to 6.19 relate to setting fees and charges;

- Section 6.16 allows the Shire 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, however may be amended from time to time during the financial year. Absolute majority is required for this to occur.
- Section 6.19 advises that if fees and charges are to be imposed after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of the intention to do so and the date from which the proposed fees or charges will be imposed.

**POLICY IMPLICATIONS**

Fees and charges are collected in accordance with Shire policies AF4- Sundry Debtors Collection Policy.

**FINANCIAL IMPLICATIONS**

The Kimberley Art Prize is funded through a combination of the Shire’s operational budget, donations and sponsorship, entry fees and commissions.

**STRATEGIC IMPLICATIONS**

<b>GOAL</b>	<b>OUR PRIORITIES</b>	<b>WE WILL</b>
2. Community	2.3 Vibrant and culturally rich communities	2.3.1 Support the growth and development of arts and cultural programs, services, places and spaces
2. Community	2.3 Vibrant and culturally rich communities	2.3.2 Facilitate and/ or contribute to community events, cultural activities and festivals
2. Community	2.3 Vibrant and culturally rich communities	2.3.3 Record, recognise, preserve and celebrate the district’s culture, history and heritage
3. Economy	3.2 Strong economy	3.2.2 Endeavour to increase visitor numbers, length of stay, spend and return

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<b>Business Interruption:</b> The lack of hanging systems adds an increased impost to the curation of the event	Likely	Moderate	Medium	Endorse the implementation of a fee to discourage works being entered without the appropriate hanging systems.
<b>Organisation's Operations:</b> The Kimberley Art Prize is not representative of the Community and Councils Strategic Vision and goals.	Possible	Minor	Medium	Appoint a Council to the Kimberley Art Prize Committee to ensure that the Councils Strategic Vision and Goals are represented.

**CONSULTATION**

The Kimberley Art Prize Committee seeks feedback through the following mechanisms

- Community members;
- Participants in the awards; and
- Curator and judges.

Feedback was received verbally during the exhibition, written correspondence, feedback forms, and through an event de-brief.

**COMMENT**

The Shire and the Kimberley Art Prize Committee are keen to start planning the 2022 event, and are looking to formalise this year's contributors. Traditionally the organising committee is made up of:

- Shire Councillor;
- Representative, Mowanjum Arts and Cultural Centre;
- Mark Norval, Norval Gallery;
- Ciaran Frost, Winun Ngari;
- Kate Breckon, Derby District High School;
- Representative, Mangkaja Arts Resource Agency;
- Contracted Curator; and
- Shire Staff as required.

Council is requested to nominate a representative for the 2022 organising committee. The representative is required to attend regular planning meetings in the lead up to the exhibition (usually monthly until June and then meetings move to weekly in the lead up to the Opening Night), as well as a debrief following the conclusion of the exhibition.

It has been identified that a fee to cover the cost and time taken to assist with the implementation of a hanging system on individual art works is required in an effort to reduce works being submitted without appropriate hanging system. Around 50 pieces were submitted either without a hanging system on the piece or a system that was not suitable and if used was likely to break and damage the artwork. Whilst the Curator is paid, the role is honorary and it is important to keep the work load to a reasonable level.

It is recommended a fee be introduced and applied where a piece needs a hanging system installed. The suggested fee of \$25 will allow for recovery of the cost of consumables and the time of the curator to install the system.

**VOTING REQUIREMENT**

Absolute majority

**ATTACHMENTS**

Nil

**RESOLUTION 173/21****Moved: Cr Paul White****Seconded: Cr Andrew Twaddle****That Council:**

- 1. Nominates Cr Linda Evans as the Council representative to the 2022 Kimberley Art and Photographic Prize Committee;**
- 2. Endorses the introduction of a \$25 Hanging System fee to be applied where entries are submitted without a hanging system attached to the art piece; and**
- 3. Authorises the CEO to advertise the fee as per section 1.7 of the Local Government Act 1995**

**In Favour:** Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

**Against:** Nil

**CARRIED 8/0**

**16 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

**17 NEW BUSINESS OF AN URGENT NATURE**

**18 MATTERS FOR WHICH THE MEETING MAY BE CLOSED (CONFIDENTIAL MATTERS)****CHRISTIE MILDENHALL LEFT THE MEETING AT 6:30PM.****RESOLUTION 174/21****Moved: Cr Andrew Twaddle****Seconded: Cr Paul White**

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 5.23(2) of the Local Government Act 1995:

**In Favour:** Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

**Against:** Nil

**CARRIED 8/0****SUSPENSION OF STANDING ORDERS****RESOLUTION 175/21**

A motion was moved that Council suspend standing orders.

**RESUMPTION OF STANDING ORDERS****RESOLUTION 176/21**

A motion was moved that Council resume standing orders.

**18.1 Kimberley Mineral Sands - Lease Modifications**

This matter is considered to be confidential under Section 5.23(2) - c and d of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting and legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

**RESOLUTION 177/21****That Council:**

- 1. Acknowledges the constructive efforts all of the parties involved in the negotiations of the proposed modifications to the existing sub-lease;**
- 2. Notes the legal advice in regard to the requirements to meet S. 3.58 and S. 3.59 of the Local Government Act;**
- 3. Directs the CEO to as soon as is possible, cause to be prepared and advertised a business plan and other requirements in accordance with sections 3.58 and 3.59 of the Local Government Act 1995, reflecting modifications to the existing sub-lease as outlined in the Background Section of this report;**

4. Directs that the CEO, following the close of advertising, causes a further report to Council to be prepared addressing any public submissions received on the proposed transaction, including a recommendation as to whether Council should resolve to proceed with the transaction, and action steps for fully documenting the same; and
5. Authorises the calling of a Special Council Meeting if required, to address (4).

#### **18.2 Kimberley Mineral Sands - Letter of Support**

This matter is considered to be confidential under Section 5.23(2) - e(ii) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government.

#### **RESOLUTION 178/21**

**That Council:**

1. Notes the potential benefits to the district if agreement can be reached for Kimberley Mineral Sands to utilise the Derby Port;
2. Notes that Council has considered a report on an agreed position in regard to the lease arrangements (as per the earlier item in this Council Agenda); and
3. Conditional on agreement being reached as outlined in (2), authorises the President and CEO to prepare a suitable letter of support for Northern Australia Infrastructure Facility loan funding in favour of the Kimberley Mineral Sands/Thunderbird Project (generally consistent with the intentions of the draft outlined in the Background of this report) but to only forward the letter after mutual agreement is reached on the lease conditions of the Derby Port lease with Kimberley Mineral Sands.

#### **RESOLUTION 179/21**

**Moved: Cr Andrew Twaddle**

**Seconded: Cr Rowena Mouda**

That Council moves out of Closed Council into Open Council.

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

**CARRIED 8/0**



**19 CLOSURE**

**19.1 Date of Next Meeting**


The next ordinary meeting of Council will be held Thursday, 24 February 2022 in the Council Chambers, Clarendon Street, Derby.

**19.2 Closure of Meeting**

The Presiding Member closed the meeting at 6:55pm.

**These minutes were confirmed at a meeting on**

24 February 2022 .....

Signed:  .....

**Presiding Person at the meeting at which these minutes were confirmed.**

24 February 2022  
**Date:** .....