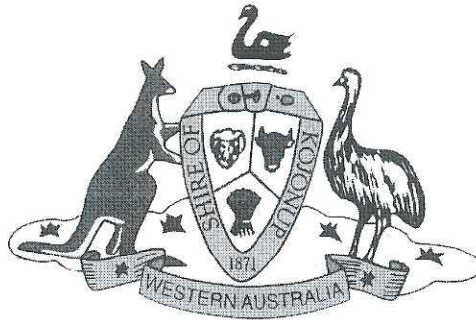


# SHIRE OF KOJONUP



## Council Agenda

*17<sup>th</sup> February 2015*

**TO: THE SHIRE PRESIDENT AND COUNCILLORS**

NOTICE is given that a meeting of the Council will be held in Council Chambers, Administration Building Albany Highway, Kojonup on Tuesday 17<sup>th</sup> February 2015 commencing at 3:00pm.

Qualified Persons Advice etc.

I certify that with respect to all advice, information or recommendation provided to the Council in or with this agenda:

- i. The advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation; and
- ii. Where any advice is directly given by a person who does not have the required qualifications or experience that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person.

Your attendance is respectfully requested.

A handwritten signature in blue ink, appearing to read 'Rick Mitchell-Collins', written over a dotted line.

**RICK MITCHELL-COLLINS**  
**CHIEF EXECUTIVE OFFICER**

*12* February 2015

**SHIRE OF KOJONUP****AGENDA FOR THE COUNCIL MEETING TO BE HELD ON 17<sup>th</sup> February 2015****TABLE OF CONTENTS**

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## A G E N D A

### **1 DECLARATION OF OPENING AND ANNOUNCEMENT OF GUESTS**

The Shire President shall declare the meeting open and alert the meeting of the procedures for emergencies including evacuation, designated exits and muster points and draw the meetings attention to the disclaimer below:

*Disclaimer*

*No person should rely on or act on the basis of any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting.*

*The Shire of Kojonup expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any advice or information provided by a member or officer, or the content of any discussion occurring, during the course of the meeting.*

*Where an application for an approval, a license or the like is discussed or determined during the meeting, the Shire warns that neither the applicant, nor any other person or body, should rely upon that discussion or determination until written notice of either an approval and the conditions which relate to it, or the refusal of the application has been issued by the Shire.*

### **2 ATTENDANCE & APOLOGIES**

Cr Ronnie Fleay	Shire President
Cr Robert Sexton	Deputy Shire President
Cr Ian Pedler	
Cr Jane Trethowan	
Cr John Benn	
Cr Frank Pritchard	
Cr Ned Radford	
Cr Jill Mathwin	

Mr Rick Mitchell-Collins	Chief Executive Officer
Mr Anthony Middleton	Manager of Corporate Services
Mr Mort Wignall	Manager of Regulatory & Community Services
Mr Craig McVee	Manager of Works & Services
Mrs Sue Northover	Manager of Aged Care Services
Mr Phil Shephard	Town Planner
Mrs Michelle Dennis	Development Services Coordinator
Miss Dominique Hodge	Personal Assistant to the CEO

### **APOLOGIES**

### **3 SUMMARY OF RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE**

Nil

4 **PUBLIC QUESTION TIME**

5 **PETITIONS, DEPUTATIONS & PRESENTATIONS**

6 **APPLICATIONS FOR LEAVE OF ABSENCE**

7 **CONFIRMATION OF MINUTES**

ORDINARY MEETING 9<sup>th</sup> December 2014

COUNCIL DECISION

/15 Moved Cr \_\_\_\_\_, seconded Cr \_\_\_\_\_ that the Minutes of the Ordinary Meeting of Council held on 9<sup>th</sup> December 2014 be confirmed as a true record.

CARRIED/LOST /

8 **ANNOUNCEMENTS** by the Presiding Member without discussion

Condolences to Cr Pedler and family on the sad loss of grandson Mark and also to the family of Frank Kelly who served as a Councillor for the Shire of Kojonup from 1970 to 1978.

**9      DECLARATIONS OF INTEREST**

**10 CORPORATE SERVICES REPORTS****10.1 FINANCIAL MANAGEMENT – MONTHLY STATEMENT OF FINANCIAL ACTIVITY**

AUTHOR: Anthony Middleton – Manager Corporate Services  
DATE: Friday, 6 February 2015  
FILE NO: FM.FNR.2  
ATTACHMENT: 10.1 Monthly Statement of Financial Activity

**DECLARATION OF INTEREST**

Nil

**SUMMARY**

The purpose of this report is to note the Monthly Financial Statements for the period ending 31 December 2014.

**BACKGROUND**

In addition to good governance, the presentation to the Council of monthly financial reports is a statutory requirement, with these to be presented at an ordinary meeting of the Council within two (2) months after the end of the period to which the statements relate.

**COMMENT**

The attached Statement of Financial Activity for the period 1 July 2014 to 31 December 2014 represents six (6) months, or 50% of the year. The following items are worthy of noting:

- Surplus position of \$1.265m;
- 57% of budgeted operating revenue has been received and 41% of budgeted operating expenditure (excludes depreciation) has been spent;
- 14.5% of total rates collectable are outstanding (this figure includes previous years arrears but excludes deferred rates); and
- Cash holdings of \$4.28m of which \$3.49m is held in cash backed reserve accounts.
- Page 7 & 8 of the statements details major variations from year to date (amended) budgets in accordance with Council Policy 2.1.6.

**CONSULTATION**

Nil.

**STATUTORY REQUIREMENTS**

Financial Management Regulation 34 sets out the basic information which must be included in the monthly reports to Council.

**POLICY IMPLICATIONS**

There are no policy implications for this report.

**FINANCIAL IMPLICATIONS**

This item reports on the current financial position of the Shire. The recommendation does not in itself have a financial implication.

**STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013-23 Focus Area 1 - Being Well Governed

Corporate Business Plan 2013-17

Strategy 1.1.2 Maintain a structured forward planning process in accordance with legislation and community aspirations

Strategy 1.1.4 Maintain robust systems and controls

**RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications for this report.

**ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications for this report.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That the monthly financial statements for the period 1 July 2014 to 31 December 2014, as attached, be noted.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

## 10.2 MONTHLY PAYMENTS LISTING

AUTHOR: Brodie Hueppauff – Finance Officer  
DATE: Monday, 9 February 2015  
FILE NO: FM.AUT.1  
**ATTACHMENT:** 10.2 Monthly Payment Listing 01/12/2014 – 31/12/2014

### **DECLARATION OF INTEREST**

Nil

### **SUMMARY**

To receive the list of payments covering the period 1<sup>st</sup> December 2014 – 31<sup>st</sup> December 2014.

### **BACKGROUND**

Not applicable.

### **COMMENT**

The attached list of payments is submitted for receipt by the Council.

In accordance with the previous briefing session any comments or queries regarding the list of payments is to be directed to the Manager of Corporate Services via email prior to the meeting.

### **CONSULTATION**

No consultation was required.

### **STATUTORY REQUIREMENTS**

Regulation 12(1)(a) of the *Local Government (Financial Management) Regulations 1996* provides that payment may only be made from the municipal fund or trust fund if the Local Government has delegated the function to the Chief Executive Officer.

The Chief Executive Officer has delegated authority to authorise payments. Relevant staff have also been issued with delegated authority to issue orders for the supply of goods and services subject to budget limitations.

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* provides that if the function of authorising payments is delegated to the Chief Executive Officer then a list of payments is to be presented to the Council at the next ordinary meeting and recorded in the minutes.

### **POLICY IMPLICATIONS**

Council's Policy 2.5 provides authorisations and restrictions relative to purchasing commitments.

### **FINANCIAL IMPLICATIONS**

All payments made in line with Council Policy.

### **STRATEGIC/CORPORATE IMPLICATIONS**

There are no strategic/corporate implications involved with presentation of the list of payments.

### **RISK MANAGEMENT IMPLICATIONS**

A control measure to ensure transparency of financial systems and controls regarding creditor payments.

### **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications for this report.



**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That in accordance with Regulation 13 (1) of the *Local Government (Financial Management) Regulations 1996*, the list of payments made under delegated authority from 1/12/2014 to 31/12/2014 comprising of Municipal Cheques 13284 to 13311, EFT's 13168 to 13360 and Direct Debits 16928.1 to 17043.1 totalling \$1,506,864.23 and as attached to this agenda, be received.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

### 10.3 MONTHLY PAYMENTS LISTING

AUTHOR: Brodie Hueppauff – Finance Officer  
DATE: Monday, 9 February 2015  
FILE NO: FM.AUT.1  
**ATTACHMENT:** 10.3 Monthly Payment Listing 01/01/2015 – 31/01/2015

#### **DECLARATION OF INTEREST**

Nil

#### **SUMMARY**

To receive the list of payments covering the period 1<sup>st</sup> January 2015 – 31<sup>st</sup> January 2015.

#### **BACKGROUND**

Not applicable.

#### **COMMENT**

The attached list of payments is submitted for receipt by the Council.

In accordance with the previous briefing session any comments or queries regarding the list of payments is to be directed to the Manager of Corporate Services via email prior to the meeting.

#### **CONSULTATION**

No consultation was required.

#### **STATUTORY REQUIREMENTS**

Regulation 12(1)(a) of the *Local Government (Financial Management) Regulations 1996* provides that payment may only be made from the municipal fund or trust fund if the Local Government has delegated the function to the Chief Executive Officer.

The Chief Executive Officer has delegated authority to authorise payments. Relevant staff have also been issued with delegated authority to issue orders for the supply of goods and services subject to budget limitations.

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* provides that if the function of authorising payments is delegated to the Chief Executive Officer then a list of payments is to be presented to the Council at the next ordinary meeting and recorded in the minutes.

#### **POLICY IMPLICATIONS**

Council's Policy 2.5 provides authorisations and restrictions relative to purchasing commitments.

#### **FINANCIAL IMPLICATIONS**

All payments made in line with Council Policy.

#### **STRATEGIC/CORPORATE IMPLICATIONS**

There are no strategic/corporate implications involved with presentation of the list of payments.

#### **RISK MANAGEMENT IMPLICATIONS**

A control measure to ensure transparency of financial systems and controls regarding creditor payments.

#### **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications for this report.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That in accordance with Regulation 13 (1) of the *Local Government (Financial Management) Regulations 1996*, the list of payments made under delegated authority from 1/01/2015 to 31/01/2015 comprising of Municipal Cheques 13312 to 13326, EFT's 13361 to 13470 and Direct Debits 17037.1 - 17139.1 totalling \$620,330.95 and as attached to this agenda, be received.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

**10.4 POLICY – RECORDS MANAGEMENT POLICY REVIEW**

**AUTHOR:** Dominique Hodge – Personal Assistant to the CEO  
**DATE:** Friday, 6 February 2015  
**FILE NO:** CM.POL.2  
**ATTACHMENT:** 10.4 Records Management Policy 2.3.2

**DECLARATION OF INTEREST**

Nil

**SUMMARY**

The purpose of this report is to consider a review of the Records Management Policy.

**BACKGROUND**

Council reviewed Policy 2.3.2 at the November 2014 Council Meeting. Officers have taken the opportunity to expand on this previous brief policy to achieve a clearer, more understandable policy. The reviewed Records Management Policy is attached. This item recommends adoption of this policy.

**COMMENT**

During the review of the Recordkeeping Plan 2010, the need for this policy to be reviewed became apparent, as the previous policy was very brief and not very clear.

**CONSULTATION**

Nil.

**STATUTORY REQUIREMENTS**

Policies have no legal status but are guidelines for staff to act on various matters without the need for continual referral to the Council. The Council may adopt, amend or waive policies under section 2.7(2)(b) of the *Local Government Act 1995*.

*State Records Act 2000*

**POLICY IMPLICATIONS**

This item reviews and updates Policy 2.3.2 – Records Management.

**FINANCIAL IMPLICATIONS**

Nil.

**STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013-23 Focus Area 1 - Being Well Governed

Corporate Business Plan 2013-17

Strategy 1.1.4 Maintain robust systems and controls

**RISK MANAGEMENT IMPLICATIONS**

If the Records Management Policy & Procedures are not followed the significant records that would fail to be captured is an extreme risk, so therefore control measures such as Policy & Procedures ensure that processes are followed and the risk is therefore reduced to low.

**ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications for this report.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That the reviewed Records Management Policy 2.3.2, as attached, be adopted.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

### 2.3.2 RECORDS MANAGEMENT

Adopted or Reviewed by Council:	18/11/2014	Council Minute Reference:	172/14
Reviewer:	Personal Assistant to the CEO		
Local Law:			
Procedure:	Contained within the Recordkeeping Plan		
Delegation:			

#### OBJECTIVE

The purpose of this policy is to define the principles of the Shire of Kojonup's record management function. This policy applies to all staff, elected members, contractors and volunteers.

- All records are to be managed according to whether they are significant or ephemeral records, vital or non-vital records, and in accordance with their security classification;
- All communications in the form of records which are handled, received or generated by the Shire of Kojonup, whether paper or electronic, and whether internal or external, are to be captured within the appropriate recordkeeping system (SynergySoft);
- Registers are to be maintained of all records, including but not limited to, registers of policies, databases, FOI applications, assets, tenders and quotations, forms, vital records, files and contracts;
- All contractual arrangements are to ensure the Shire of Kojonup's ownership of significant records;
- Any records / files in the possession of individual staff are to be registered to them and, dependent upon security classification, kept accessible;
- Only approved record formats are to be used in effecting the Shire of Kojonup's business; and
- Records are not to be removed from the Shire of Kojonup's sites unless in accordance with the approved retention and disposal schedule, or in the custody of an officer performing official business.

#### POLICY

The purpose of this policy is to define the principles of the Shire of Kojonup's records management function and to document an orderly and efficient approach to the proper management of records.

Records are recognised as an important information resource in the Shire of Kojonup, and it is accepted that sound record management practices are vital and integral to the overall efficiency and effectiveness of the Shire of Kojonup. Due to legislative requirement, the Shire of Kojonup is obliged to maintain a records management system that completely, accurately and reliably creates and maintains evidential records, and to dispose of those records only through an approved scheme.

The policy and associated procedure applies to all external and internal records, which are handled, received or generated by the Shire of Kojonup, regardless of their physical format or media type.

The Council reviews the Recordkeeping Plan every five years which contains the procedure for recordkeeping in accordance with the *State Records Act 2000*. The next review is due in March 2015.

**Guidelines:****Roles and Responsibilities****Chief Executive Officer**

The CEO is to ensure there is a system for the maintenance and management of records that is compliant with records management legislation and State guidelines and procedures. This includes the provisions of Section 5.11(h) of the *Local Government Act 1995*.

**Managers**

Managers are to ensure their staff are familiar with, and adhere to the Records Management Policy and any associated procedures endorsed by the CEO.

**Staff**

Staff are to ensure they retain records relating to the business activities they perform. They are to identify significant and ephemeral records, ensure significant records are registered in the records management system (SynergySoft); and, protected and disposed of in accordance with the State Records Office's.

**General Disposal Schedule for Local Government Records**

All records within the recordkeeping system maintained by the Shire of Kojonup are to be disposed of in accordance with the State Records Office's General Disposal Schedule for Local Government Records.

**Custodianship**

The Shire's records are a government-owned asset. The records created during the course of business belong to the Shire of Kojonup by virtue of their possession, and not to the individuals who created such records during their time as a public officer or elected member at the Shire of Kojonup. Officers or elected members who acquire or create any records in the course of business shall not retain proprietary interest. Ownership of these records is vested in the Shire.

**Definitions****A Record**

A record as defined in the *State Records Act 2000* means any record of information however recorded and includes:

- Anything on which there is writing or Braille,
- A map, plan, diagram or graph,
- A drawing, pictorial or graphic work or photograph,
- Anything on which there are figures, marks, perforations, or symbols, having a meaning for persons qualified to interpret them,
- Anything from which images, sounds or writings can be reproduced with or without the aid of anything else, and
- Anything on which information has been stored or recorded, either mechanically, magnetically, or electronically.

Records in the public sector are referred to as:

Government Records (or Public Records)

Records created or received by a public officer or elected member in the course of his or her duties regardless of whether the communication is between staff in the same agency, between different agencies, or between public officers and members of the community (both private and business).

Records may be categorised as:

Ephemeral Records

Ephemeral records are duplicated records and/or those that have only short-term value to the Shire, with little or no on-going administrative, fiscal, legal, evidential or historical value. They may include insignificant drafts and rough notes, records of routine enquiries.

Significant Records

Significant records contain information which is of administrative, legal, fiscal, evidential or historical value and are not recorded elsewhere on the public record. They describe an issue, record who was involved, record why a decision was made, and may embody actual guidelines.

*Important Note: Distinguishing between significant and ephemeral records is a matter of judgment and the above definitions can only act as a guide. Reference to "records" in this guideline document should be read as relating to significant public records unless otherwise stated.*

Vital Records

Vital records are records which are essential to the continued business of the Shire. Vital records include those that protect the rights of individuals and the Shire, and are absolutely essential for the Shire's reconstruction in the event of a disaster.

The Shire of Kojonup considers that the following are vital records:

Computer system records, Council and Committee Minutes and Agendas, Title Deeds, Policy and Procedure Manuals, Registers, Contracts/Tenders, Licences, Historical documents, Delegation of Authority, Insurance Policies, Cemetery Records, Town Planning Scheme deeds/information, Financial documents such as Budgets & Annual Financial Statements and any documents detailing approvals of some kind.

Non-Records

Non-records are documents that are generally available in the public domain and do not form part of a business process in respect to the Shire's activities. They are generally used for reference and information purposes, such as reports or plans from another organisation, a published directory, or a training manual of a third party.

Records Disposal

Disposal / Archiving is conducted in accordance with General Disposal Schedule for Local Government Records. Records are stored onsite at the Shire of Kojonup Office and offsite at the Shire of Kojonup Works Depot, Springhaven Frail Aged Lodge and the Broomehill Repository.

Procedures

Procedures have been developed by the Shire of Kojonup to ensure correct treatment of incoming, outgoing, internal and confidential mail.



**10.5 162 BLACKWOOD ROAD, KOJONUP - LEASE**

**AUTHOR:** Heather Sheppard – Senior Project Officer  
**DATE:** Tuesday, 13 January 2015  
**FILE NO:** CP.LEA.1  
**ATTACHMENT:** 10.5 Map

**DECLARATION OF INTEREST**

Nil.

**SUMMARY**

Officers are seeking approval to lease for one year the farming land at 162 Blackwood Road, Kojonup under Certificate of Title Volume 1144 Folio 173.

**BACKGROUND**

The Shire have previously leased the land at 162 Blackwood Road, Kojonup to the Kojonup Football Club and Kojonup Cricket Club for farming purposes and more particularly for the purposes of a community cropping programme to provide funding for their ongoing operations which was outside the provisions of *s3.58 of the Local Government Act*.

After a review of all the leases, contracts and agreements, it was determined that in future this land should be advertised for tender *under s3.58 of the Local Government Act*.

Council approved advertising by way of public tender the land at 162 Blackwood Road which appeared in the Great Southern Herald on 11<sup>th</sup> December 2014 with tenders closing on 8<sup>th</sup> January 2015.

**COMMENT**

The lease of the land for farming purposes has the potential to raise significant funds for the community group(s) that is awarded the lease.

We have received one tender for the lease of 162 Blackwood Road from the Kojonup Football Club at an annual lease payment of \$4,000 plus GST.

**CONSULTATION**

Nil

**STATUTORY REQUIREMENTS**

*Section 3.58 – Local Government Act (1995)(as amended)* states that Council can only dispose of property (which encompasses leases) by the highest bidder at public auction or by public tender where in the opinion of the local government is the most acceptable tender, whether or not it is the highest tender.

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Council receive an annual payment for the lease of the land. The lease income for 2013/2014 was \$3,300 per annum. The current tender offers an increase of \$1,000 plus GST for 2014/2015.

**STRATEGIC/CORPORATE IMPLICATIONS**

Corporate Business Plan 2013-17 Strategy 1.5.2 Maintaining an active, healthy and social community.

**RISK MANAGEMENT IMPLICATIONS**

Nil

**ASSET MANAGEMENT IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council accept the tender offer from the Kojonup Football Club to lease Lot 162 Blackwood Road, Kojonup at \$4,000 plus GST per annum for the period 1st April 2015 to 31<sup>st</sup> March 2016.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/



## 10.6 LOT 9999 THORNBURY CLOSE, KOJONUP – LEASE

AUTHOR: Heather Sheppard – Senior Project Officer  
DATE: Tuesday, 13 January 2015  
FILE NO: CP.LEA.1  
**ATTACHMENT:** 10.6 Map

**DECLARATION OF INTEREST**

Nil

**SUMMARY**

Officers are seeking approval to lease for one year the industrial estate land at Thornbury Close Kojonup and part of Certificate of Title Volume 2670 Folio 367, Lot 9999 being remainder of Lot 9 after subdivision excluding the area of land in fenced off area in the south east corner.

**BACKGROUND**

The Shire have previously leased the land at Lot 9999 Thornbury Close, Kojonup to Gary Cavanagh for farming purposes and more particularly for the purposes of grazing sheep which was outside the provisions of *s3.58 of the Local Government Act*.

After a review of all the leases, contracts and agreements, it was determined that in future this land should be advertised for tender *under s3.58 of the Local Government Act*.

Council approved advertising by way of public tender the land at Lot 9999 Thornbury Close which appeared in the Great Southern Herald on 11<sup>th</sup> December 2014 with tenders closing on 8<sup>th</sup> January 2015.

**COMMENT**

We have received two tenders for the lease of Lot 9999 Thornbury Close as follows:

1. Kojonup Cricket Club of **PO Box 308, Kojonup** at an annual lease payment of \$1,200 plus GST.
2. Gary Cavanagh of **PO Box 308, Kojonup** at an annual lease payment of \$1,500 plus GST.

**CONSULTATION**

Nil

**STATUTORY REQUIREMENTS**

*Section 3.58 – Local Government Act (1995) (as amended)* states that Council can only dispose of property (which encompasses leases) by the highest bidder at public auction or by public tender where in the opinion of the local government is the most acceptable tender, whether or not it is the highest tender.

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Council has not previously received an annual payment for the lease of the land.

**STRATEGIC/CORPORATE IMPLICATIONS**

Nil

**RISK MANAGEMENT IMPLICATIONS**

Nil

**ASSET MANAGEMENT IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

- 1. That Council accept the tender offer from Kojonup Cricket Club to lease Lot 9999 Thornbury Close, Kojonup at \$1,200 plus GST per annum for the period 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016.**

**OR**

- 2. That Council accept the tender offer from Gary Cavanagh to lease Lot 9999 Thornbury Close, Kojonup at \$1,500 plus GST per annum for the period 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/





## 10.7 LOT 64 HONNER STREET, KOJONUP - LEASE

AUTHOR: Heather Sheppard – Senior Project Officer  
DATE: Tuesday, 13 January 2015  
FILE NO: CP.LEA.1  
**ATTACHMENT:** 10.7 Map

**DECLARATION OF INTEREST**

Nil.

**SUMMARY**

Officers are seeking approval to lease for one year the industrial estate land at Dorothea Park also known as Old Brickworks/Quin Quin Reserve, Lot 64 Honner Street, Kojonup under Certificate of Title Volume 1447 Folio 62.

**BACKGROUND**

The Shire have previously leased the land at Dorothea Park, Kojonup to Brent Hope for farming purposes and more particularly for the purposes of grazing sheep which was outside the provisions of *s3.58 of the Local Government Act*.

After a review of all the leases, contracts and agreements, it was determined that in future this land should be advertised for tender *under s3.58 of the Local Government Act*.

**COMMENT**

No tender offer received.

**CONSULTATION**

Nil

**STATUTORY REQUIREMENTS**

*Section 3.58 – Local Government Act (1995) (as amended)* states that Council can only dispose of property (which encompasses leases) by the highest bidder at public auction or by public tender where in the opinion of the local government is the most acceptable tender, whether or not it is the highest tender.

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Council has not previously received an annual payment for the lease of the land.

**STRATEGIC/CORPORATE IMPLICATIONS**

Nil

**RISK MANAGEMENT IMPLICATIONS**

Nil

**ASSET MANAGEMENT IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council negotiate with the existing user, Brent Hope, in the first instance to lease the land at Dorothea Park also known as Old Brickworks/Quin Quin Reserve, Lot 64 Honner Street for an annual lease of no less than \$1,000 per annum plus GST. If Mr Hope is not willing to enter into a formal lease agreement, then Council authorises Officers to negotiate with any others who may be interested, having regard to the provisions of s3.58 of the *Local Government Act 1995* where Council must give local public notice of the proposal.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/





**11     WORKS & SERVICES REPORTS**

Nil

**12 COMMUNITY & REGULATORY SERVICES REPORTS****12.1 NOMINATION OF SHIRE OF KOJONUP COUNCILLOR REPRESENTATIVES ONTO GREAT SOUTHERN JOINT DEVELOPMENT ASSESSMENT PANEL**

AUTHOR: Rick Mitchell-Collins – Chief Executive Officer  
DATE: Tuesday, 6 January 2015  
FILE NO: LP.PLN.13  
**ATTACHMENT: Nil**

**DECLARATION OF INTEREST**

Nil.

**SUMMARY**

The Shire of Kojonup representatives on the Great Southern Joint Development Assessment Panel (GSJDAP) have completed their 2-year term of appointment and the Minister for Planning has again called for nominations from Local Government Authorities.

The recommendation is to nominate 2 Councillors and 2 Alternate members as Shire of Kojonup representatives for appointment by the Minister onto the GSJDAP.

**BACKGROUND**

Council at its February 2013 meeting resolved as follows:

*19/13 That Council nominates Councillors Mathwin and Pedler as the Shire of Kojonup representatives on the Great Southern Joint Development Assessment Panel and Councillors Trethowan and Pritchard as alternate members and submit these to the Minister for Planning for approval.*

The GSJDAP became operational on 1 July 2011. The Shire is located in the Great Southern Joint Development Assessment Panel which consists of the following local governments: City of Albany, Shire of Broomehill-Tambellup, Shire of Cranbrook, Shire of Denmark, Shire of Gnowangerup, Shire of Jerramungup, Shire of Katanning, Shire of Kent, Shire of Kojonup, Shire of Plantagenet and Shire of Woodanilling.

**COMMENT**

The present representatives may renominate. The nominations are subject to approval by the Minister for Planning. The frequency of GSJDAP meetings is determined by the number of applications received for consideration.

The GSJDAP consists of 5 members with one presiding member, two specialist members and 2 Local Government members. The Local Government's membership depends on which local government area is affected and sitting fees are paid to representatives (unless excluded by Regulations).

If the Council fails to nominate 2 representatives, the Minister will have the power to appoint 2 members to the GSJDAP to represent the interests of the local community. These must be eligible to vote in elections for that local area and have relevant knowledge or experience that, in the opinion of the Minister, will enable them to represent the interests of their local community.

The period of appointment for GSJDAP members is 2 years. Unless already completed, following their appointment GSJDAP members are required to undertake training on the Development Assessment Panel legal framework and planning decision-making processes. DAP members cannot sit on a DAP and determine applications until they have completed the training.

The GSJDAP is responsible to consider the following types of planning applications:

1. *Mandatory DAP applications*  
A development (which is not an excluded application) where the estimated cost of development is \$7m or more.
2. *Optional DAP applications*  
A development (which is not an excluded application) where the estimated cost of development is more than \$3m but less than \$7m and which has not been delegated to the DAP by Council. An applicant may also elect to refer an application of this type to the DAP for a determination.

Excluded applications are still to be determined by the Shire which includes:

- The construction of a single dwelling.
- The construction of less than 10 dwellings or multiple dwellings, including aged and/or dependent persons dwellings.
- The construction of carports, patios, outbuildings or incidental development.

### **CONSULTATION**

Cr Pedler, Cr Pritchard & Cr Mathwin have all expressed an interest.

### **STATUTORY REQUIREMENTS**

*Planning and Development Act 2005*

*Planning and Development (Development Assessment Panels) Regulations 2011*

*Local Government Act 1995* (Cr Pedler and Cr Mathwins' terms expire October 2015 however if they are not re-elected to Council their term on the GSJDAP will continue unless Council determines otherwise.

### **POLICY IMPLICATIONS**

Nil.

### **FINANCIAL IMPLICATIONS**

Nil.

### **STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013 - 2023

Focus Area 1.8 Building Prosperity – enabling service: Town Planning and Development

### **RISK MANAGEMENT IMPLICATIONS**

Broadens elected members planning knowledge and skill set which can be applied when determining applications to be considered by the Shire.

### **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications for this report.

### **VOTING REQUIREMENTS**

Simple Majority

### **OFFICER RECOMMENDATION**

**That Council nominates Councillors \_\_\_\_\_ and \_\_\_\_\_ as the Shire of Kojonup representatives on the Great Southern Joint Development Assessment Panel and Councillors \_\_\_\_\_ and \_\_\_\_\_ as alternate members and submit these to the Minister for Planning for approval.**

---

COUNCIL DECISION

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

12.2 FINAL APPROVAL FOR TOWN PLANNING SCHEME No. 3 - AMENDMENT No. 12 TO INCLUDE ADDITIONAL POWERS TO VARY/MODIFY APPROVALS, DEAL WITH EXISTING UNAUTHORISED DEVELOPMENTS, LIMIT PLANNING APPROVAL ETC.

AUTHOR: Phil Shephard – Town Planner  
DATE: Tuesday, 6 February 2015  
FILE NO: LP.PLN.21  
ATTACHMENT: [12.2.1 Schedule of Submissions](#)  
[12.2.2 Copy of Submissions](#)

**DECLARATION OF INTEREST**

Nil.

**SUMMARY**

To consider any submissions received from the advertising of the draft scheme amendment and determine whether to seek final approval, or not, to the amendment.

At the close of the advertising period one submission had been received, subsequently one late submission was received after the closure of the advertising period.

The recommendation is to seek final approval to the amendment.

**BACKGROUND**

Scheme Amendment No. 12 was initiated by Council at its 19 August 2014 meeting (Item 12.4 Resolution 128/14).

The amendment will update the existing Town Planning Scheme No. 3 to reflect the controls available in more contemporary town planning schemes. The new provisions deal with amending or revoking a planning approval, unauthorised existing developments, term of planning approval, scope of planning approval, approval subject to later approval of details. Some other minor complimentary changes are also included.

**COMMENT**

In accordance with the requirements of the *Planning and Development Act 2005*, the amendment was firstly referred to the Environmental Protection Authority for their assessment. They advised that the amendment was acceptable and no formal assessment was required.

The amendment was then advertised for a period exceeding 42-days to allow for submissions to be received.

The Council has the option to consider, or not, the late submission. Staff recommend the late submission be considered as it was received prior to this agenda report being finalised.

Given the lack of any objection to the proposed scheme amendment, it is recommended by staff that the Council proceed to seek final approval to the amendment.

The Council may choose to seek final approval, or not, to the amendment. The decision of the Council on the scheme amendment at this stage is effectively a recommendation to the WA Planning Commission, who will assess the amendment and process, and subsequently provide a recommendation to the Minister for Planning on whether to approve or refuse final approval to the amendment.

**CONSULTATION**

Following environmental clearance from the EPA, the amendment was advertised in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967* for submissions for a period exceeding 42-days (18 November 2014 – 6 January 2015). This included advertising the

proposal in the Great Southern Herald and The Kojonup News newspapers and displaying a notice of the proposal on the Shire's Public Notice Board and website.

### **STATUTORY REQUIREMENTS**

The *Planning and Development Act 2005 & Town Planning Regulations 1967* sets out the procedures to undertake an amendment to a Local Planning Scheme including referral to EPA, public notice period, referral to WAPC and Minister's decision-making powers.

The Shire of Kojonup Town Planning Scheme No. 3 is an operative Local Planning Scheme under the Act.

### **POLICY IMPLICATIONS**

This item does not affect any Council Policies.

### **FINANCIAL IMPLICATIONS**

The administration and advertising costs associated with the amendment are covered within the 2014/2015 budget.

### **STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013 -2023 – Focus Area 1.8 Building Prosperity

Corporate Business Plan 2013-2017 - Strategy 1.8.1 Building local economic capacity to generate wealth and provide a variety of local employment opportunities.

### **RISK MANAGEMENT IMPLICATIONS**

The item covers several risk areas to Council including strategy and planning, community, environment and heritage, legal and political and services and functions. The organisational risk and proposed treatment or mitigation is summarised in the following table:

<b>Risk Description</b>	<b>Risk Likelihood</b>	<b>Risk Consequence</b>	<b>Risk Classification</b>	<b>Risk Treatment</b>
Lack of flexibility in considering and implementing planning decisions as a result of out of date planning controls	Likely	Minor	High	Senior management attention needed.  Update town planning scheme to include relevant and up to date planning controls from Model Scheme Text.

### **ASSET MANAGEMENT IMPLICATIONS**

This item does not affect the Asset Management Plan.

### **VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION****That Council:**

- 1) **Consider the late submission and endorse the recommendations in the attached Schedule of Submissions for Town Planning Scheme No. 3 – Amendment No. 12.**
- 2) **Pursuant to the *Planning and Development Act 2005* and *Town Planning Regulations 1967* seek final approval without modification of Town Planning Scheme No. 3 – Amendment No. 12 from the Minister for Planning.**
- 3) **Authorise the Chief Executive Officer and Shire President to endorse the Town Planning Scheme No. 3 – Amendment No. 12 scheme amendment documents for final approval and apply the Shire’s Common Seal accordingly.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/



**SHIRE OF KOJONUP TOWN PLANNING SCHEME No. 3 - AMENDMENT No. 12****SCHEDULE OF SUBMISSIONS**

<b>No.</b>	<b>Name/Address of Submitter</b>	<b>Summary of Submission</b>	<b>Planning Comment</b>	<b>Submission Recommendation</b>
1	Environmental Protection Authority Locked Bag 33 Cloister's Square PERTH WA 6850 (Government agency)	Scheme amendment not required to be formally assessed and not necessary to provide any advice or recommendations.	Nil.	The submission be noted.
2	Dr Sarah Rankin PO Box 151 KOJONUP WA 6395 (Managing Director Moonies Hill Energy Pty Ltd)	Welcomes the amendment as it will enable Council to address possible developments undertaken on farming land without the correct approvals in place, which is a sensible solution to these issues.  Comments that in terms of large-scale developments, this will enable the Council to work closely with residents/developers to attract new economic opportunities to the Shire ensuring a prosperous future.  Congratulates the Shire in identifying this gap in the present Town Planning Scheme.	Supports the amendment proposal.	The submission be noted.



04 SEP 2014

## Environmental Protection Authority

ICR17503

SHIRE OF KOJONUP				
FILE: LP.PLN.21				
CEO	EC or HC	NFA	MCS	MRCB
RGR	SFO	WM	CDPO	PB
NBSM	SHM	PLAN	✓	

Chief Executive Officer  
Shire of Kojonup  
PO Box 163  
KOJONUP WA 6395

Your Ref: LP.PLN.21  
Our Ref: 14-907996  
Enquiries: Angela Coletti  
Phone: 6145 0806

Attn: Mr Phil Shephard

Dear Sir/Madam

**DECISION UNDER SECTION 48A(1)(a)  
Environmental Protection Act 1986**

**SCHEME AMENDMENT TITLE:** Shire of Kojonup Town Planning Scheme 3  
Amendment 12 - to include additional scheme  
powers regarding planning approvals  
**RESPONSIBLE AUTHORITY:** Shire of Kojonup  
**DECISION:** Scheme Amendment Not Assessed (no  
appeals)

Thank you for referring the above scheme amendment to the Environmental Protection Authority (EPA).

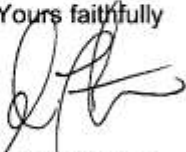
After consideration of the information provided by you, the EPA considers that the proposed scheme amendment should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) and that it is not necessary to provide any advice or recommendations.

Please note the following:

- For the purposes of Part IV of the EP Act, the scheme amendment is defined as an assessed scheme amendment. In relation to the implementation of the scheme amendment, please note the requirements of Part IV Division 4 of the EP Act.
- There is no appeal right in respect of the EPA's decision to not assess the scheme amendment.

- This letter will be made available to the public on request.

Yours faithfully



Darren Foster  
Director  
Strategic Policy and Planning Division

1 September 2014

21 JAN 2015

ICR18836

SHIRE OF KOJONUP				
FILE:	LP-PLN-21			
CFO	EC or HC	NFA	MCS	AMCO
BGR	SFO	WM	CDPO	ITI
INDM	SPM	PLAN	<input checked="" type="checkbox"/>	

Form No. 4  
[Regs. 16(1) and 20(2).]

**Planning and Development Act 2005**

TO: The Chief Executive Officer of the Shire of Kojonup

**SUBMISSION ON TOWN PLANNING SCHEME No. 3**

**AMENDMENT No. 12**

Name DR SARAH RANKIN Phone 0417 864 493  
Address PO Box 151 KOJONUP WA 6395

**SUBJECT OF SUBMISSION**

(State how your interests are affected, whether as a private citizen, on behalf of a company or other organisation, or as an owner or occupier of property.)

Comment on proposed amendment No 12 of Town Planning Scheme No 3 in position as Managing Director of Moorrees Hill Energy Pty Ltd (MHE)

**ADDRESS OF PROPERTY AFFECTED BY SCHEME (if applicable)**

(Include lot number and nearest street intersection).

NOT APPLICABLE

**SUBMISSION**

(Give in full your comments and any arguments supporting your comments - continue on additional sheets if necessary).

I welcome this amendment to the Town Planning Scheme by the council and staff as the nature of the Shire of Kojonup with farming land, may see "developments" undertaken without council approval. The option to retrospectively approve or amend developmental approvals offers a sensible solution to such issues.  
In terms of large scale developments, the ability to work closely with the shire staff to ensure the best outcome for residents, developers and the shire in general is vital in attracting new economic opportunities to the shire, ensuring its prosperous future.  
Well done on identifying this gap in the town planning scheme.

Date 20/1/2015 Signature [Signature]

**12.3 FINAL ADOPTION OF DRAFT TOWN PLANNING SCHEME POLICIES**

AUTHOR: Phil Shephard – Town Planner  
DATE: Tuesday, 3 February 2015  
FILE NO: CM.POL.2  
ATTACHMENT: **12.3 Town Planning Scheme Policy Manual**

**DECLARATION OF INTEREST**

Nil.

**SUMMARY**

To finalise the recently advertised draft Town Planning Scheme Policies.

**BACKGROUND**

The draft Town Planning Scheme Policies were adopted by Council at its 9 December 2014 meeting (Item 12.2 Resolution 196/14). Staff have now completed the advertising of the draft Policies as required under Town Planning Scheme No. 3 and at the conclusion of the advertising period no submissions had been received.

**COMMENT**

As there were no submissions received for consideration, Council can proceed to adopt the Town Planning Scheme Policies for final approval.

Staff undertook the following changes to the draft Policies as required by Council decisions prior to the advertising commencing:

**TOWN PLANNING SCHEME POLICY No. 3 - ADVERTISING SIGNS**

Staff made the following changes to the draft Policy:

- 1) Added the following note to the Table showing the permissibility of certain sign types:

*\* = Where a proposed advertising sign involves a billboard or hoarding type sign, Council will only support these signs within the Airport Reserve. Council does not support general advertising signs of this nature within the Shire and prefers that advertising signs are erected on the approved premises and directly relate to the property on which the business is operating and the goods/services are available.*

- 2) Modified the standard requirements for billboard or hoarding sign to state:

*A billboard or hoarding sign shall:*

- a) have a maximum area of 10m<sup>2</sup>;*
- b) be located within the Airport Reserve (North-facing billboard or hoarding signs may only be used for the promotion of Kojonup or Kojonup enterprises as approved by Council);*
- c) not be closer than 1m or more than 10m from the boundary along Albany Highway;*
- d) not be erected to expose an unsightly back view of the sign;*
- e) not be closer than 100m to another such sign; and*
- f) not be less than 1.2m or greater than 7m above ground level.*

**TOWN PLANNING SCHEME POLICY No. 7 - LOTS SUBJECT TO STORMWATER FLOODING AND/OR INUNDATION**

Staff changed 'Balgarpur River' to 'Kojonup Brook' in the Introduction part of the Policy.

In considering whether to finally adopt, or not, the draft Town Planning Scheme Policies, the Council has a number of options available and these and their implications are discussed below:

- 1) Defer final adoption of the draft Policies and seek additional advice/make additional changes – the implications of this decision would be to delay the review until that information was provided or changes made; or

- 2) Not finally adopt the draft Policies – the implications of this decision would mean that Council has an outdated set of Town Planning Policies that do not reflect the current situation or practice in Kojonup; or
- 3) Finally adopt the draft Policies – the implications of this decision would be that Council has updated its present Policies.

The recommendation from staff is for Council to adopt as final the new Town Planning Scheme Policy Manual as attached. A copy of the adopted Policies will be available for public inspection with the Town Planning Scheme and an annual review will occur.

### **CONSULTATION**

The revised draft Policies and existing Policies to be rescinded were advertised in the Great Southern Herald and The Kojonup News newspapers as required by c.7.6 ‘Power to make Policies’ of Town Planning Scheme No. 3 for a minimum period of 21-days. A copy of the notice was displayed on the Shire’s Public Notice Board and website.

No written submissions were received following conclusion of the advertising period. Several copies of the draft Policies were provided to members of the public on request and one landowner met with staff regarding the draft Policies seeking some additional advice on the implications of a Policy to be rescinded.

### **STATUTORY REQUIREMENTS**

*Planning and Development Act 2005* – Town Planning Scheme No. 3 is an operative local planning scheme under the Act.

### **POLICY IMPLICATIONS**

This item proposes the introduction of new Town Planning Scheme Policies.

Clause 7.6 sets out the following process for adoption of a new Town Planning Scheme Policy as follows:

#### **7.6 Power to Make Policies**

- 7.6.1 *In order to achieve the objectives of the Scheme, the Council may make Town Planning Scheme Policies relating to parts or all of the Scheme Area and relating to one or more of the aspects of the control of development.*
- 7.6.2 *A Town Planning Scheme Policy shall become operative only after the following procedures have been completed:*
  - a) *The Council having prepared and having resolved to adopt a Draft Town Planning Scheme Policy, shall advertise a summary of the Draft Policy once a week for two consecutive weeks in a newspaper circulating in the area giving details of where the Draft Policy may be inspected and where, in what form, and during what period (being not less than 21 days) representations may be made to the Council.*
  - b) *The Council shall review its Draft Town Planning Scheme Policy in the light of any representations made and shall then decide to finally adopt the Draft Policy with or without amendment, or not proceed with the Draft Policy.*
  - c) *Following final adoption of a Town Planning Scheme Policy, details thereof shall be advertised publicly and a copy kept with the Scheme Documents for inspection during normal office hours.*
- 7.6.3 *A Town Planning Scheme Policy may only be altered or rescinded by:*
  - a) *Preparation and final adoption of a new Policy pursuant to this clause, specifically worded to supersede an existing policy.*
  - b) *Publication of a formal notice of rescission by the Council twice in a newspaper circulating in the area.*
- 7.6.4 *A Town Planning Scheme Policy shall not bind the Council in respect of any application for planning consent but the Council shall take into account the*

*provisions of the Policy and objectives which the Policy was designed to achieve before making its decision.*

#### **FINANCIAL IMPLICATIONS**

The administration and advertising costs associated with the Policies are covered within the 2014/2015 budget.

#### **STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013 -2023 – Focus Area 1.8 Building Prosperity

Corporate Business Plan 2013-2017 - Strategy 1.8.1 Building local economic capacity to generate wealth and provide a variety of local employment opportunities.

#### **RISK MANAGEMENT IMPLICATIONS**

The item covers several risk areas to Council including strategy and planning, community, environment and heritage, legal and political and services and functions. The organisational risk and proposed treatment or mitigation is summarised in the following table:

<b>Risk Description</b>	<b>Risk Likelihood</b>	<b>Risk Consequence</b>	<b>Risk Classification</b>	<b>Risk Treatment</b>
Policies not updated by Council affects staff abilities to make decisions and leads to inefficiencies and time delays.	Likely	Minor	High	Senior management attention needed. Update planning policies.
Out of date policies will not articulate Council's position on various planning and development issues affecting the Shire.	Likely	Minor	High	Senior management attention needed. Review planning policies.
Poor decision making as a result of unnecessary or inconsistent planning requirements.	Likely	Minor	High	Senior management attention needed. Update planning policies.

#### **ASSET MANAGEMENT IMPLICATIONS**

The item does not affect the Asset Management Plan.

#### **VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council pursuant to c.7.6.2 of Town Planning Scheme No. 3 adopt as final Town Planning Scheme Policies, the Town Planning Scheme Policy Manual including the following policies:**

- 1) Caretaker's Dwellings in the Kojonup Industrial Area**
- 2) Tourist Accommodation in Rural Zoned Areas**
- 3) Advertising Signs**
- 4) Road Construction Standards**
- 5) Outbuildings in the Residential, Residential Development and Special Rural Zones**
- 6) Subdivision/Amalgamation Applications**
- 7) Lots Subject To Stormwater Flooding and/or Inundation**
- 8) Kojonup Industrial Buffer Area**
- 9) Ancillary Accommodation Units**

**and advertise their final adoption in the Great Southern Herald and The Kojonup News newspapers accordingly.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/



## 12.4 PROPOSED NEW DELEGATION &amp; MODIFICATION OF EXISTING DELEGATION

AUTHOR: Michelle Dennis – Development Services Coordinator  
 DATE: Friday, 6 February 2015  
 FILE NO: PE.AUT.2  
 ATTACHMENT: [12.4.1 Local Law Contents Page](#)  
[12.4.2 Instrument of Delegation Roads 011](#)  
[12.4.3 Instrument of Delegation Admin 005](#)

**DECLARATION OF INTEREST**

Nil

**SUMMARY**

To consider an additional delegation to the Chief Executive Officer to expedite applications made under the *Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* and to modify an existing delegation.

**BACKGROUND**

A recent stallholder application has identified the need for consideration of an additional Council delegation to expedite the application of the abovementioned local laws.

**COMMENT**

The *Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* (excerpt of contents page attached), contains provisions for any number of activities that may be conducted within the Shire's road reserves and public places with a permit. While some of these activities may also be captured by our existing Planning and Building Controls some, like a request to hold a fundraising stall, are stand alone, infrequent events and would be considered under this local law.

Including a new delegation under this local law assists in the timely response to customers and streamlines the application process. The proposed delegation is outlined in attachment 12.4.2.

These local laws contain provisions relating to an "authorized person". In reviewing the existing delegation Admin 005 for the appointment of authorized persons, it has been identified that the building surveying delegation is incorrect, due to new legislation having been introduced. It is also considered that an additional delegation that is explicit in the appointment of authorized persons for all of the existing local laws would also be beneficial. The proposed changes to existing delegation are outlined in attachment 12.4.3.

**CONSULTATION**

Manager of Regulatory & Community Services

**STATUTORY REQUIREMENTS**

Section 3.18(1) of the *Local Government Act 1995*, states:

*A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.*

Section 5.42 of the *Local Government Act 1995* allows for the delegation of some powers and duties from the Council to the CEO. Section 5.42 states:

(1) *A local government may delegate\* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*

*\*Absolute majority required.*

(2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

**POLICY IMPLICATIONS**

The local laws are an additional consideration for the following policies:

- 1.5 Signs – Advertising at the Airport
- 2.1.9 Asset Management
- 4.1 Vehicular Crossover (Driveways)
- 4.2 Street Trees

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC/CORPORATE IMPLICATIONS**

Consideration of a new delegation assists to respond to correspondence in a timely manner ie Corporate Business Plan Strategy 1.1.1 *To expand the way we communicate with the community and ensure appropriate response times* and Community Strategic Plan Commitment *Being Well Governed*.

**RISK MANAGEMENT IMPLICATIONS**

Within the local laws there is no prescribed timeframe for an application to be lodged before an activity. Without the delegation, there is a risk that the community is unable to take advantage of potential opportunities.

**ASSET MANAGEMENT IMPLICATIONS**

Consideration of permits under the local laws will consider effect on any Shire asset, as applicable.

**VOTING REQUIREMENTS**

Absolute Majority

**OFFICER RECOMMENDATION**

**That, in accordance with section 5.42 of the *Local Government Act 1995*, Council adopt:**

- 1) The attached changes to existing Shire delegation number ADMIN 005**
- 2) New delegation ROADS 011**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

2344

GOVERNMENT GAZETTE, WA

[16 May 2000

## LOCAL GOVERNMENT ACT 1995

## SHIRE OF KOJONUP

**ACTIVITIES ON THOROUGHFARES AND TRADING IN  
THOROUGHFARES AND PUBLIC PLACES LOCAL LAW**

Under the powers conferred by the Local Government Act 1995, and all other powers, the Council of the Shire of Kojonup resolved to make the following Local Law on the 28th day of February 2000.

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Definitions
- 1.3 Application
- 1.4 Repeal

**PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES***Division 1—General*

- 2.1 General prohibitions
- 2.2 Activities allowed with a permit—general
- 2.3 No possession and consumption of liquor on thoroughfare

*Division 2 Vehicle crossing*

## Subdivision 1 Temporary crossings

- 2.4 Permit required

## Subdivision 2—Redundant vehicle crossings

- 2.5 Removal of redundant crossing.

*Division 3—Verge treatments*

## Subdivision 1—Preliminary

- 2.6 Interpretation
- 2.7 Application

## Subdivision 2—Permissible verge treatments

- 2.8 Permissible verge treatments
- 2.9 Only permissible verge treatments to be installed
- 2.10 Obligations of owner or occupier
- 2.11 Notice to owner or occupier

## Subdivision 3—Existing verge treatments

- 2.12 Transitional provision

## Subdivision 4—Public works

- 2.13 Power to carry out public works on verge

*Division 4—Property numbers*

## Subdivision 1—Preliminary

- 2.14 Interpretation

## Subdivision 2—Assignment and marking of numbers

- 2.15 Assignment of numbers

*Division 5—Fencing*

- 2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act

16 May 2000]

GOVERNMENT GAZETTE, WA

2345

*Division 6—Signs erected by the local government*

- 2.17 Signs
- 2.18 Transitional

*Division 7—Driving on a closed thoroughfare*

- 2.19 No driving on closed thoroughfare

**PART 3—ADVERTISING SIGNS ON THOROUGHFARES***Division 1—Preliminary*

- 3.1 Interpretation

*Division 2—Permit*

- 3.2 Advertising signs and portable direction signs
- 3.3 Matters to be considered in determining application for permit

*Division 3—Conditions on permit*

- 3.4 Conditions on portable sign
- 3.5 Conditions on election sign

**PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS***Division 1—Animals and vehicles*

- 4.1 Leaving animal or vehicle in public place or on local government property
- 4.2 Prohibitions relating to animals

*Division 2—Shopping trolleys*

- 4.3 Interpretation
- 4.4 Shopping trolley to be marked
- 4.5 Person not to leave trolley in public place
- 4.6 Retailer to remove abandoned trolley
- 4.7 Retailer taken to own trolley

**PART 5—ROADSIDE CONSERVATION***Division 1—Preliminary*

- 5.1 Interpretation
- 5.2 Application

*Division 2—Flora roads*

- 5.3 Declaration of flora road
- 5.4 Construction works on flora roads
- 5.5 Signposting of flora roads
- 5.6 Driving only on carriageway of flora roads

*Division 3—Special environmental areas*

- 5.7 Designation of special environmental areas
- 5.8 Marking of special environmental areas

*Division 4—Planting in thoroughfares*

- 5.9 Permit to plant
- 5.10 Relevant considerations in determining application

*Division 5—Clearance of vegetation*

- 5.11 Permit to clear
- 5.12 Application for permit

*Division 6—Fire management*

- 5.13 Permit to burn thoroughfare
- 5.14 Application for permit
- 5.15 When application for permit can be approved
- 5.16 Prohibitions on burning

*Division 7—Firebreaks*

- 5.17 Permit for firebreaks on thoroughfares
- 5.18 application for permit cannot be approved

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*Division 8—Commercial wildflower harvesting on thoroughfares*

- 5.19 General prohibition on commercial wildflower harvesting
- 5.20 Permit for revegetation projects

**PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES***Division 1—Stallholders and traders*

## Subdivision 1—Preliminary

- 6.1 Interpretation

## Subdivision 2—Permits

- 6.2 Stallholder's permit
- 6.3 Trader's permit
- 6.4 No permit required to sell newspaper
- 6.5 Relevant considerations in determining application for permit
- 6.6 Conditions of permit
- 6.7 Exemptions from requirement to pay fee or to obtain a permit

## Subdivision 3—Conduct of stallholders and traders

- 6.8 Conduct of stallholders and traders

*Division 2—Street entertainers*

## Subdivision 1—Preliminary

- 6.9 Interpretation

## Subdivision 2—Permits

- 6.10 Permit required to perform
- 6.11 Variation of permitted area and permitted time
- 6.12 Duration of permit
- 6.13 Cancellation of permit
- 6.14 Obligations of permit holder

*Division 3—Outdoor eating facilities on public places*

- 6.15 Interpretation
- 6.16 Permit required to conduct Facility
- 6.17 Matters to be considered in determining application
- 6.18 Obligations of permit holder
- 6.19 Removal of Facility unlawfully conducted
- 6.20 Use of Facility by public
- 6.21 Temporary removal of Facility may be requested

**PART 7—PERMITS***Division 1—Applying for a permit*

- 7.1 Application for permit
- 7.2 Decision on application for permit

*Division 2—Conditions*

- 7.3 Conditions which may be imposed on a permit
- 7.4 Imposing conditions under a policy
- 7.5 Compliance with and variation of conditions

*Division 3—General*

- 7.6 Duration of permit
- 7.7 Renewal of permit
- 7.8 Transfer of permit
- 7.9 Production of permit
- 7.10 Cancellation of permit

**PART 8—OBJECTIONS AND APPEALS**

- 8.1 Application of Part 9 Division I of Act

**PART 9—MISCELLANEOUS NOTICES**

- 9.1 Notice to redirect or repair sprinkler
- 9.2 Hazardous plants
- 9.3 Notice to repair damage to thoroughfare
- 9.4 Notice to remove thing unlawfully placed on thoroughfare

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**PART 10 ENFORCEMENT**

*Division 1—Notices given under this local law*

- 10.1 Offence to fail to comply with notice
- 10.2 Local government may undertake requirements of notice

*Division 2—Offences and penalties*

Subdivision 1—General

- 10.3 Offences

Subdivision 2—Infringement notices and modified penalties

- 10.4 Prescribed offences
- 10.5 Forms

**SCHEDULE 1**

**PRESCRIBED OFFENCES**

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**INSTRUMENT OF DELEGATION****ROADS 011      ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW**

<b>Delegate:</b>	Chief Executive Officer	<b>Sub Delegate:</b>	Nil
<b>Adopted by Council:</b>		<b>Last Reviewed:</b>	

**DELEGATOR**

Council

**POWER/ DUTY**

The Chief Executive Officer is, on receipt of an application, delegated authority to issue any of the permits referred to in the *Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law*.

**HEAD OF POWER**

*Local Government Act 1995* section 5.42(1)

**CONDITIONS**

In exercising this delegation, the CEO, in addition to the existing considerations contained within the local law, shall have regard to the potential risks of the application with respect to existing Shire assets.

**RELATED POLICY / FILE REFERENCE AND DOCUMENTATION REQUIREMENTS**

Approvals and refusals to be saved in the Record Management System.

Use of delegation to be recorded on Shire of Kojonup Delegation Register and must be presented to Council regularly.

**INSTRUMENT OF DELEGATION****ADMIN 005 APPOINTMENT OF AUTHORISED PERSONS**

<b>Delegate:</b>	Chief Executive Officer	<b>Sub Delegate:</b>	Nil
<b>Adopted by Council:</b>	21/08/2007	<b>Last Reviewed:</b>	18/11/2014

**DELEGATOR**

Council

**POWER/ DUTY**

The Chief Executive Officer is Delegated Authority, in respect of the relevant legislation outlined under the head of power of this Delegation, to:

1. Exercise the powers and the discharge duties of the Council; and
2. Appoint where considered necessary by the CEO, -
  - a) any officer of the Shire as an "Authorised Officer"; and
  - b) appoint any person to the position of "Authorised Person"

to undertake the functions and responsibilities authorised therein.

**HEAD OF POWER**

*Local Government Act 1995* (as amended) section 5.42(1) and otherwise as stated in the legislation column of the table below:

LEGISLATION	FUNCTIONS AND DUTIES
<i>Local Government (Miscellaneous Provisions) Act 1960 s.449</i>	To perform the general functions and exercise the powers of a Ranger.
<del><i>Local Government (Miscellaneous Provisions) Act 1960 Part XV</i></del>	<del>To undertake any of the functions of a "building surveyor" conferred on that office under the 1960 Act but not including those functions specifically Delegated to the CEO.</del>
<del><i>Local Government Act 1995 and Building Act 2011</i></del>	<del>To undertake any of the functions of an "Authorised Person" conferred on that office under Section 96 of the Building Act 2011 for the assessment of swimming pool enclosures.</del>
<i>Local Government Act 1995 s.3.24, 3.31 and 3.33</i>	To enter land to perform any function that the Shire has under the <i>Local Government Act 1995</i> if entry is required for the performance of the function or in any other case in which entry is authorised by this Act other than by a local law. (Refer to Subdivision 3 of Part 3 of the LGA and especially section 3.31 and 3.33).
<del><i>Local Government Act 1995 s3.18(1)</i></del>	<del>To undertake the functions of an "Authorised Person" conferred on that office under a local law.</del>

**CONDITIONS**

In exercising this Delegation, the CEO shall have regard to the qualifications and experience of the person to be appointed must consider them a fit and proper person.

Each person authorised under this Delegation must be given a certificate outlining the power or responsibilities they have been Delegated.

**RELATED POLICY / FILE REFERENCE AND DOCUMENTATION REQUIREMENTS**

Copies of appointment certificates to be kept in personnel file.

Use of Delegation to be recorded on Shire of Kojonup Delegation Register and must be presented to Council regularly.



## 12.5 PROPOSED PLANNING & DEVELOPMENT (LOCAL PLANNING SCHEMES) REGULATIONS 2014

AUTHOR: Phil Shephard – Town Planner  
DATE: Wednesday, 11 February 2015  
FILE NO: LP.PLN.13  
ATTACHMENT: 12.5 Department of Planning Discussion Paper

### DECLARATION OF INTEREST

Nil.

### SUMMARY

To consider providing a submission to the WA Planning Commission on the proposed *Planning & Development (Local Planning Schemes) Regulations 2014*.

The recommendation is to provide a submission.

### BACKGROUND

The Minister for Planning assisted by the WA Planning Commission and Department of Planning have prepared draft new planning regulations that will replace the *Town Planning Regulations 1967* which includes the Model Scheme Text. The Model Scheme Text is used by local governments to prepare local planning schemes and includes general provisions for incorporation into a proposed scheme.

The new regulations will affect the preparation of the Shire's new Local Planning Scheme.

### COMMENT

The Minister has invited submissions on the draft new planning regulations as required by s.256 'Content of local planning schemes, regulations as to' of the *Planning and Development Act 2005*. Any submissions must be considered before the Minister can finalise the regulations.

The submissions were due on 30 January 2015. Due to the lack of a Council Meeting in January 2015, staff sought and received approval for an extension to the submission period to enable the matter to be considered by the Council.

The Shire has largely completed a draft Local Planning Scheme No. 1 and associated Local Planning Strategy in accordance with the existing Model Scheme Text requirements. The draft new regulations will require these drafts to be modified to satisfy the new requirements.

The attached Department of Planning Discussion Paper outlines the background and proposals for the draft regulations. The new regulations are proposed to be gazetted and operate from 1 July 2015. The full regulations contain some 150 pages and can be viewed or downloaded via the WA Planning Commission's PlanningWA website at <http://www.planning.wa.gov.au> > plans and policies > publications > proposed Planning and Development (Local Planning Schemes) Regulations 2014.

The new draft regulations and impacts on the Shire's present land use planning activities are discussed below:

#### Part 1 Preliminary

This set of regulations contains advice on the citation; commencement date; definitions; use of authorised officers; document standards, crown land schemes and Ministerial orders.

The regulations do not materially alter the existing process.

*The regulations in Part 1 are noted.*

## Part 2 Requirements for Local Planning Scheme

The new regulations include:

- Model provisions that are to be included within a local planning scheme under s.257A. These model provisions are to be included within a local planning scheme and largely reflect an updated version of the existing Model Scheme Text.

They include preliminary matters, scheme reserves, zones and uses, general development requirements, special control areas, definitions, and standardised scheme mapping colours/labels.

Any provisions proposed by a local government to supplement the model provisions or vary a model provision must be approved by the Minister for Planning.

The draft Local Planning Scheme No. 1 Text under preparation will require minor changes. The regulations include standardised colours and labels for Scheme Maps and these will require substantial change to the existing mapping to be completed.

- Deemed provisions that are to be included within a local planning scheme under s.257B. These deemed provisions automatically replace existing local planning scheme provisions in the Shire's existing Town Planning Scheme No. 3 and draft Local Planning Scheme No. 1.

They include definitions, planning policies, heritage protection, structure/local development plans, planning approval, applications, application procedures, bush fire risk management, development contribution plans, enforcement/administration and standard forms.

Given that deemed provisions will exist in all operative planning schemes in the State, the corresponding provisions in the existing Town Planning Scheme No. 3 will have no effect and can be deleted from the Scheme Text and they will not need to be included in the draft Local Planning Scheme No. 1. Scheme Text. As a result minor changes to the existing draft Local Planning Scheme No. 1. Scheme Text are required to delete those relevant provisions.

Any provisions proposed by a local government to supplement the deemed provisions must be approved by the Minister for Planning. No variations to a deemed provision is permitted.

*In summary, whilst the wording of some of the proposed deemed provisions could still be improved and many of the changes are considered long overdue, they are supported. The introduction of additional uses for local reserves and reintroduction of incidental land uses is an improvement. The inclusion of discretion regarding advertising of planning proposals is also a welcome addition.*

*Many are expected to also require some changes to the manner in which the Shire undertakes its land use planning activities as they provide a much more formal and possibly onerous approach than exists. It is not expected that the provisions will reduce the overall size of a planning schemes or lead to any general reduction in application processing times.*

*Given the length of time it has taken to complete the review of the Town Planning Regulations 1967, it is hoped the WA Planning Commission can be expected to sufficiently resource itself to continually monitor and complete updates to model and deemed provisions when determined necessary by local government to achieve better and more effective local planning outcomes.*

*Many of the proposed provisions appear as a direct result of advice from local government over many years. Local governments are the operators and custodians of local planning schemes and are constantly undertaking amendments to schemes to improve local planning laws and reflect the communities land use expectations for the area. This ability should be respected when applying to the WA Planning Commission and Minister to vary or add provisions to a local planning scheme required by the local government to reflect a particular circumstance or approach.*

**Part 3 Local Planning Strategies**

The new regulations include the process for preparation and endorsement of a local planning strategy. The regulations do not alter the existing process and no changes are expected to the preparation of the Shire's Local Planning Strategy.

*In summary, the new regulations in Part 3 are supported in part. Ideally they would include a time limit on the WA Planning Commission in responding to strategies referred to them for certification and endorsement. Given the public consultation period for a strategy is 21-days then perhaps this should be applied to the response time from the WA Planning Commission and should no response be received in that time, the local government can proceed to advertise or commence using the strategy.*

**Part 4 Preparation and adoption of Local Planning Scheme**

The new regulations include the process for preparation and endorsement of a local planning scheme. The regulations do not alter the existing process and no changes are expected to the preparation of the Local Planning Scheme.

*In summary, the new regulations in Part 4 are supported. Ideally they would include a time limit on the WA Planning Commission in responding to schemes referred to them for approval. Given the consideration time for a local government to submissions is 60-days then perhaps this should also be applied to the response time from the WA Planning Commission.*

**Part 5 Amending the Local Planning Scheme**

The new regulations will introduce classes of scheme amendments as follows:

- Basic amendment – includes any amendment to correct errors; to include a model provision; to ensure consistency with any other Act; or to be consistent with a region planning scheme if minor in scale.
- Complex amendment – includes any amendment that is not deemed to be a basic or standard amendment.
- Standard amendment – includes any amendment that relates to a reserve/zone consistent with the Scheme objectives for the land; consistent with endorsed local planning strategy; consistent with structure/local development plan; consistent with region planning scheme; is minor and not subject to another scheme amendment; or does not result in any significant environmental, social, economic or governance impacts on land.

There are separate defined process for each type of amendment including different minimum public consultation periods (Basic – 0-days, Complex – 42-days and Standard – 21-days).

*In summary, the new regulations in Part 5 are supported in part. As above, ideally they would include a time limit on the WA Planning Commission in responding to scheme amendments referred to them for approval. Given the consideration time for a local government to submissions is 60-days then perhaps this should also be applied to the response time from the WA Planning Commission.*

*The regulations should ideally include a similar provision as c.6.2.8 'Operation of Structure Plan' in the WA Planning Commission's Local Planning Manual to ensure that an approved structure plan and/or local development plan does not require a standard amendment to also be completed.*

*The ability to consider submissions received after the closing date should properly remain at the discretion of the Council and the inclusion of a new proposed consideration period of 42-days after the submission period has closed is not considered necessary. In practice, submissions received prior or in conjunction with the reporting of the final amendment have long been accepted by the Shire of Kojonup, at their discretion, and no change is considered necessary. The additional period will potentially delay the time taken for the Shire to finalise an amendment.*

*Given the expectation that many of the existing planning schemes around the State are over 5-years old, and will require immediate review, Council expects that the WA Planning Commission will be sufficiently resourced to meet the expected increased workload (especially in regional offices) and ensure that delays are not created that would potentially freeze the ability for Council to initiate subsequent amendments if required.*

### **Part 6 Review and Consolidation of Local Planning Schemes**

The new regulations will require local planning schemes to be reviewed every 5-years after its approval by the Minister for Planning. The regulations will require the Shire to complete a review of the existing Town Planning Scheme No. 3 as it is older than 5-years.

*In summary, the new regulations in Part 6 are supported. The Shire has largely completed a review of the existing Town Planning Scheme No. 3 and a new Local Planning Scheme No. 1 is under preparation which will satisfy the regulations. The Shire will then be required to review its scheme around 2020/2021*

### **Part 7 Development Contribution Plans**

The new regulations will require standards to be introduced for development contribution plans. The Shire does not have any contribution plans in place.

*The new regulations in Part 7 are noted.*

### **Part 8 Miscellaneous**

The new regulations will require standards to be introduced for recouping of environmental review expenses; compensation and transition of existing provisions. These regulations will not affect the existing arrangements.

*In summary, the new regulations in Part 8 are supported in part. The regulations should ideally retain the wording of c.25B of the existing Town Planning Regulations 1967 to enable a local government to recoup environmental report review costs before or after completing a scheme and/or amendment.*

### **Part 9 Repeal and Transitional Provisions**

The new regulations will repeal the existing *Town Planning Regulations 1967*; allow for the continuance of existing schemes; consider steps taken to prepare a new scheme under the existing regulations as corresponding to the same step in the new regulations; and allow for bushfire risk management regulations to be prepared in the future.

The proposed regulations will recognise the Shire's previous decisions and progress in preparing the draft Local Planning Scheme No. 1 and should not affect the progress of the new local planning scheme.

*The new regulations in Part 9 are noted.*

### **Schedule 1 Model Provisions for Local Planning Schemes**

These are largely based on revised existing Model Scheme Text clauses. Some of the definitions including for a holiday house and residential building and liquor store – large/small etc. need to be combined or modified as they appear overly complex.

### **Schedule 2 Deemed Provisions for Local Planning Schemes**

These are also largely based on revised existing Model Scheme Text clauses. The regulations will automatically make the existing Municipal Heritage Inventory the defined Heritage List under the Scheme. The original intention for Municipal Heritage Inventories was to record locally important heritage places to the community and not for them to be subject to statutory planning controls. The regulations should be modified to distinguish between places that are subject to statutory planning controls and those places that do not require the same level of statutory protection.

The regulations should ensure that the exempt development approval for a single house, ancillary dwelling, outbuilding, verandah and/or pool etc. requires the proposal to be in accordance with any applicable local planning scheme and/or adopted local planning policy.

*In summary, the Schedules are supported subject to the consideration of the suggested modifications above to simplify some land use terms; remove the statutory inclusion of all places on the Municipal Heritage Inventory; and including reference to planning schemes and policies in exempt planning approval for dwellings and related developments.*

In conclusion, the Council has the option to either provide, or not, a submission on the draft planning regulations. Staff recommend that a submission be submitted for consideration based on the summary comments in italics above.

The proposals do affect some parts of the Shire's land use planning activities including the draft Local Planning Strategy and Local Planning Scheme No. 1 into the future and it is considered important that Council provides comment. The comments will be assessed by the WA Planning Commission who will then provide a recommendation to the Minister for Planning on whether to approve or modify the regulations.

#### **CONSULTATION**

Nil.

#### **STATUTORY REQUIREMENTS**

The *Planning and Development Act 2005 & Town Planning Regulations 1967* sets out the procedures to prepare and/or amend Local Planning Strategies and Schemes. The new *Planning and Development (Local Planning Schemes) Regulations 2014* will replace the *Town Planning Regulations 1967*.

The Shire of Kojonup Town Planning Scheme No. 3 is an operative Local Planning Scheme under the Act.

#### **POLICY IMPLICATIONS**

This item does not affect any Council Policies.

#### **FINANCIAL IMPLICATIONS**

The administration costs associated with the required changes to the draft Local Planning Strategy and Local Planning Scheme No. 1 are covered within the 2014/2015 budget.

#### **STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013-2023 – Focus Area 1.8 Building Prosperity

Corporate Business Plan 2013-2017 – Strategy 1.8.1.7 – Produce new Town Planning Scheme

#### **RISK MANAGEMENT IMPLICATIONS**

The item covers several risk areas to Council including strategy and planning, community, environment and heritage, legal and political and services and functions. The organisational risk and proposed treatment or mitigation is summarised in the following table:

<b>Risk Description</b>	<b>Risk Likelihood</b>	<b>Risk Consequence</b>	<b>Risk Classification</b>	<b>Risk Treatment</b>
No submission provided from the Shire	Unlikely	Minor	Low	Manage by routine procedures, unlikely to need specific application of resources.

<b>Risk Description</b>	<b>Risk Likelihood</b>	<b>Risk Consequence</b>	<b>Risk Classification</b>	<b>Risk Treatment</b>
				Provide submission and complete modifications to draft Local Planning Scheme No. 1 to address the new regulations.

**ASSET MANAGEMENT IMPLICATIONS**

This item does not affect the Asset Management Plan.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council acknowledge the extension granted by the WA Planning Commission and provide the following comments on the proposed new *Planning and Development (Local Planning Schemes) Regulations 2014* as a submission to the Minister for Planning:**

**Part 1 Preliminary**

*The regulations in Part 1 are noted.*

**Part 2 Requirements for Local Planning Scheme**

*In summary, whilst the wording of some of the proposed deemed provisions could still be improved and many of the changes are considered long overdue, they are supported. The introduction of additional uses for local reserves and reintroduction of incidental land uses is an improvement. The inclusion of discretion regarding advertising of planning proposals is also a welcome addition.*

*It is not expected that the provisions will reduce the overall size of planning scheme documents as both the scheme and regulations will ordinarily be made available for inspection by the public. Neither are they expected to lead to a reduction in application processing times from current turnaround times.*

*Given the length of time it has taken to complete the review of the Town Planning Regulations 1967, it is hoped the WA Planning Commission can be expected to sufficiently resource itself to continually monitor and complete updates to model and deemed provisions when determined necessary by local government to achieve better and more effective local planning outcomes.*

*Many of the proposed provisions appear as a direct result of advice from local government over many years. Local governments are the operators and custodians of local planning schemes and are constantly undertaking amendments to schemes to improve local planning laws and reflect the communities land use expectations for the area. This ability should be respected when applying to the WA Planning Commission and Minister to vary or add provisions to a local planning scheme required by the local government to reflect a particular circumstance or approach.*

**Part 3 Local Planning Strategies**

*The new regulations in Part 3 are supported in part. Ideally they would include a time limit on the WA Planning Commission in responding to strategies referred to them for certification and endorsement. Given the public consultation period for a strategy is 21-days then perhaps this should be applied to the response time from the WA Planning Commission and should no response be received in that time, the local government can proceed to advertise or commence using the strategy.*

**Part 4 Preparation and adoption of Local Planning Scheme**

*The new regulations in Part 4 are supported. Ideally they would include a time limit on the WA Planning Commission in responding to schemes referred to them for approval. Given the consideration time for a local government to submissions is 60-days then perhaps this should also be applied to the response time from the WA Planning Commission.*

**Part 5 Amending the Local Planning Scheme**

*The new regulations in Part 5 are supported in part. As above, ideally they would include a time limit on the WA Planning Commission in responding to scheme amendments referred to them for approval. Given the consideration time for a local government to submissions is 60-days then perhaps this should also be applied to the response time from the WA Planning Commission.*

*The regulations should ideally include a similar provision as c.6.2.8 ‘Operation of Structure Plan’ in the WA Planning Commission’s Local Planning Manual to ensure that an approved structure plan and/or local development plan does not require a standard amendment to also be completed.*

*The ability to consider submissions received after the closing date should properly remain at the discretion of the Council and the inclusion of a new proposed consideration period of 42-days after the submission period has closed is not considered necessary. In practice, submissions received prior or in conjunction with the reporting of the final amendment have long been accepted by the Shire of Kojonup, at their discretion, and no change is considered necessary. The additional period will potentially delay the time taken for the Shire to finalise an amendment.*

*Given the expectation that many of the existing planning schemes around the State are over 5-years old, and will require immediate review, Council expects that the WA Planning Commission will be sufficiently resourced to meet the expected increased workload (especially in regional offices) and ensure that delays are not created that would potentially freeze the ability for Council to initiate subsequent amendments if required.*

**Part 6 Review and Consolidation of Local Planning Schemes**

*The new regulations in Part 6 are supported. The Shire has largely completed a review of the existing Town Planning Scheme No. 3 and a new Local Planning Scheme No. 1 and Local Planning Strategy are under preparation which will satisfy the regulations.*

**Part 7 Development Contribution Plans**

*The new regulations in Part 7 are noted.*

**Part 8 Miscellaneous**

*The new regulations in Part 8 are supported in part. The regulations should ideally retain the wording of c.25B of the existing Town Planning Regulations 1967 to enable a local government to recoup environmental report review costs before or after completing a scheme and/or amendment.*

**Part 9 Repeal and Transitional Provisions**

*The new regulations in Part 9 are supported on the basis that they will recognise the Shire's previous decisions and progress in preparing the draft Local Planning Scheme No. 1 and Local Planning Strategy and will not affect their previous progress through the process.*

**Schedule 1 Model Provisions for Local Planning Schemes and Schedule 2 Deemed Provisions for Local Planning Schemes**

*The Schedules are supported subject to the consideration of the suggested modifications above to simplify some land use terms; remove the statutory inclusion of all places on the Municipal Heritage Inventory; and including reference to planning schemes and policies in exempt planning approval for dwellings and related developments.*

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/



### **13 EXECUTIVE & GOVERNANCE REPORTS**

#### **13.1 MANAGEMENT ORDER FOR TOURIST RAILWAY RESERVE 51700**

**AUTHOR:** Rick Mitchell-Collins – Chief Executive Officer  
**DATE:** Friday, 6 February 2015  
**FILE NO:** RC.MUS.4  
**ATTACHMENT:** [13.1.1 Department of Lands Correspondence](#)  
[13.1.2 Map of Railway Line](#)  
[13.1.3 Extracts from \*Land Administration Act 1997\*](#)

#### **DECLARATION OF INTEREST**

Cr Radford has previously declared an interest as President of the Kojonup Tourist Railway Inc.

#### **SUMMARY**

To receive and note the new Management Order for the Tourist Railway Reserve 51700 which extends from the Albany Highway at Benn Parade through to the Farrar Reserve and to understand the requirements of Council as the Management Body.

#### **BACKGROUND**

The Management Order remains in force for a period of 21 years as from 21 October 2014 and lists conditions pertaining to the use of Reserve 51700 as a Tourist Railway to be managed on the State Governments behalf by the Tourist Operator which is specifically stated as the Shire of Kojonup.

It should be noted that the new Management Order does not make reference to the previous “Kojonup – Farrar Railway Order 2002” and therefore is a stand-alone Order for the next 21 years.

#### **COMMENT**

The Management Order requires the Shire at all times to be responsible for:

1. Use of the Reserve for the Designated Purpose and any activities or services to be carried out for the Designated Purpose;
2. Its care, control and management of the Reserve;
3. Use of the Infrastructure;
4. Any works to be done on the Reserve or to the Infrastructure;
5. Being accredited under the *Rail Safety Act 2010* as an Owner and Operator;
6. Is not to permit any other person to operate a tourist railway service within the Reserve;
7. Obtain and comply with all Authorisations required for any conduct, activity or use undertaken by the Management Body on the Reserve before that conduct, activity or use is undertaken;
8. Comply with the requirements of the *Rail Safety Act 2010* and any other Written Law applicable to its operation of a tourist railway service or management of the land comprising the Reserve including, the *Bush Fires Act 1954*, the *Wildlife Conservation Act 1950* and the *Environmental Protection Act 1986*.

If the Shire wishes to transfer Tourist Railway Operations responsibility to the Kojonup Tourist Railway Association Inc. (KTR) by way of a Licence Agreement in accordance with Section 18 of the *Land Administration Act 1997* the Ministers prior approval is required together with a detailed Management Plan as stated under Point 5 of the Management Order.

Under Point 6.3 Insurance the level of public risk for any one claim is \$20 million and the Minister is to be provided with a certificate of currency for the insurance policy annually.

#### **CONSULTATION**

Council Briefing Sessions  
Annual Railway Safety Compliance Audits

**STATUTORY REQUIREMENTS**

*Land Administration Act 1997*

*Rail Safety Act 2010*

*Bush Fires Act 1954*

*Wildlife Conservation Act 1950*

*Environmental Protection Act 1986*

*Local Government Act 1995*

*Heritage of Western Australia Act 1990* - (Heritage Place Number 01398)

*Government Railways Act 1904*

**POLICY IMPLICATIONS**

There are no policy implications for this report other than trying to identify and establish achievable and realistic goals and policies that meet mandatory ongoing governance and compliance.

**FINANCIAL IMPLICATIONS**

There may be an increase in Insurance Premiums due to minimum \$20 Million cover and also essential that KTR remains solvent to ensure the Tourist Railway is maintained in accordance with Rail Safety accreditation and Management Order requirements.

If the expectation of Council is to transfer responsibility onto KTR then the Management Plan submitted to the Minister should demonstrate compliance with Risk Management implications listed below as a starting point including the development of a long term financial plan incorporating asset maintenance and replacement.

Councillors must consciously ask the question “Is the present approach of relying on the goodwill and dedication of KTR who have committed many hours and members own money into the railway sustainable and in the best interests of all stakeholders?” A similar scenario existed when developing the Kodja Place Strategic Plan.

**STRATEGIC/CORPORATE IMPLICATIONS**

The Community Strategic Plan 2013 -2023 does not specifically mention KTR other than as an enabling service under Focus Area 1.5: *Staying Active and Entertained*  
Strategy 1.8.1.4 – Support local tourism initiatives and the Kojonup Tourism Association

**RISK MANAGEMENT IMPLICATIONS**

Minimizing risk exposure to both Council and KTR in relation to financial costs, plant & equipment, heritage values, compliance, future planning and public risk.

Operational aspects of the KTR remain compliant with Rail Safety Audit requirements however Council is ultimately responsible to comply with the Orders and Rail Safety Act for example:

- 1) Lay solid foundations for management and oversight,
- 2) Structure Management Committee to add value,
- 3) Act ethically and responsibly,
- 4) Safeguard integrity in reporting,
- 5) Make timely and balanced disclosure,
- 6) Respect the rights of stakeholders,
- 7) Recognise and manage risk.

**ASSET MANAGEMENT IMPLICATIONS**

Is the ability to sustain and ultimately enhance the existing tourist operation may be too onerous on Council and the community?

As indicated under financial implications should KTR membership restrict longevity and sustainability, will Council as the Management Body be prepared to accept responsibility for the rail line to the Farrar Reserve or indeed maintain and operate the existing activities/operations given that ownership of rolling stock is vested in KTR or private ownership?

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council:**

- 1. Receive the Management Order for Tourist Railway Reserve 51700 dated 21 October 2014; and**
- 2. Instruct the Chief Executive Officer to prepare a Management Plan in conjunction with the Kojonup Tourist Railway Inc. (KTR) that addresses the Shire’s financial, strategic, risk and asset management implications to enable KTR’s continued contribution to the community.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/



Government of Western Australia  
Department of Lands

Regional and Metropolitan Services

12 JAN 2015

ICR18971

7 January 2015

Chief Executive Officer  
Shire of Kojonup  
PO Box 163  
Kojonup WA 6395

Dear Rick

#### MANAGEMENT ORDER FOR TOURIST RAILWAY RESERVE 51700

With reference to your previous correspondence the Management Order for Reserve 51700 has now issued.

The reserve is the purpose of Tourist Railway to be managed by the Tourist Operator, in this instance the Shire of Kojonup. Please note the conditions within the management order. These conditions relate to the use of Reserve 51700 as a Tourist Railway.

I have included copies for the Crown Land Titles for your information.

Please find attached Duplicate Management Order for your save keeping.

Should you have any queries please contact me on the above telephone number or e-mail address.

Yours sincerely

Kevin Harrison  
A/Assistant Manager  
South West Great Southern

Attachment

IDA5282684

"10<sup>th</sup> Floor Bunbury Tower", 61 Victoria Street, Bunbury, Western Australia 6230  
Telephone: (08) 9791 0836 Facsimile (08) 9791 0835  
Website [www.lands.wa.gov.au](http://www.lands.wa.gov.au)  
ABN is 68 565 723 484.

SHIRE OF KOJONUP				
FILE	RC.MUS 4			
CEO	<input checked="" type="checkbox"/> EC or r/C	NFA	MCS	MICS
RGB	SPO	WM	CDPO	FE
NASA	SHM	PLAN		

Your Ref:-

Our Ref: 51262-2006 Job No: 072855

Email: kevin.harrison@lands.wa.gov.au

Telephone: (08) 9791 0860

Enquiries: Kevin Harrison

# DUPLICATE

FORM B1 WESTERN AUSTRALIA TRANSFER OF LAND ACT 1893 AS AMENDED ADDITIONAL PAGE TO MANAGEMENT ORDER (XE)
--

RESERVE DESCRIPTION (NOTE 1)	EXTENT	VOLUME	FOLIO
51700	Whole	0000 <b>3165</b>	000 <b>192</b> <b>193</b> <b>194</b> <b>195</b> <b>196</b> <b>198</b> <b>199</b>

**CONDITIONS (NOTE 3)**  
Annexure A

The Management Body agrees to comply with the following conditions in its care control and management of the Reserve.

**1. Use of the Reserve**

- (a) The Management Body may use the Reserve for the Designated Purpose.
- (b) Pursuant to section 46(3a) of the LAA, the Management Body has power to grant licences over any part of the Reserve for the Designated Purpose, subject to the conditions in this Management Order.

**2. Term**

Subject to any earlier revocation Management Order pursuant to condition 8 the Management Order remains in force for a period of [21] years commencing on the Commencement Date.

**3. Compliance with Written Laws**

- (a) The Management Body must comply with all Written Laws relevant to, and the requirements, notices or orders of any Governmental Agency having jurisdiction or authority in respect of:
  - (i) use of the Reserve for the Designated Purpose and any activities or services to be carried out for the Designated Purpose;
  - (ii) its care control and management of the Reserve;
  - (iii) use of the Infrastructure;
  - (iv) any works to be done on the Reserve or to the Infrastructure.
- (b) Without limiting paragraph (a), the Management Body is to at all times during the currency of the Management Order:
  - (i) be accredited under the Rail Safety Act as an Owner and an Operator;
  - (ii) is not to permit any other person to operate a tourist railway service within the Reserve;
  - (iii) obtain and comply with all Authorisations required for any conduct, activity or use undertaken by the Management Body on the Reserve before that conduct, activity or use is undertaken;
  - (iv) comply with the requirements of the Rail Safety Act and any other Written Law applicable to its operation of a tourist railway service or management of the land comprising the Reserve including, the Bush Fires Act 1954, the Wildlife Conservation Act 1950 and the Environmental Protection Act 1986.
- (c) The Management Body will allow Authorised Persons onto the Reserve to carry out their powers, functions or obligations under a Written Law relevant to the land within the Reserve, the Designated Purpose or conduct, activity or use undertaken by the Management Body on the Reserve or the care control and management of the Reserve.

**4. Care of Reserve, Repair and Maintenance of Infrastructure**

- (a) The Management Body shall perform all acts necessary to properly carry out its responsibility as a management body that has care, control and management of the Reserve and nothing in this Management Order is intended to limit its obligations in this regard.
- (b) The Management Body during the currency of the Management Order must not, without



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the written consent of the Minister:

- (i) remove from the Reserve, or alter, any Infrastructure; or
- (ii) carry out any excavation or earth works in the Reserve.

(c) The provisions of paragraph (a) will not apply to anything necessarily done for the purposes of repair, maintenance or otherwise incidental to the routine care control and management of operating a tourist railway service unless it would have a direct effect on the preservation of the railway.

(d) The Management Body, prior to commencing any excavation or works shall obtain all necessary Approvals and comply with all requirements of relevant Governmental Agency included in an Approval.

(e) The Management Body must at all times at its cost repair, maintain and replace as required to keep in good order and safe condition:

- (i) all Infrastructure necessary or associated with use of the Reserve for the Designated Purpose;
- (ii) all existing railway and drains constructed within the Reserve;
- (iii) all level crossings within the Reserve;
- (iv) all road traffic control warning devices, signs and signals installed to control and warn road users at level crossings.

(f) The Management Body shall not, without the consent of the PTA, close, change or obstruct any level crossings or create or permit the creation of any new level crossings on or over the Reserve.

## 5. Management Plan

(a) The Management Body shall prepare and submit to the Minister for his or her approval a plan for the development, management and use of the Reserve for the Designated Purpose.

(b) The Management Body shall ensure that the Management Plan includes provisions on:

- (i) how it intends to maintain and replace as required, Infrastructure in order to keep it in good order and safe condition;
- (ii) the type of services it will be offering from the Reserve including the number of passengers it will be able to carry, the minimum passenger carrying services it will conduct each year during the term of the Management Order.
- (iii) emergency procedures;
- (iv) the type of rolling stock that will be used by the Management Body within the Reserve and any safety measures required in respect to the operation of that rolling stock.

(c) The Management Body is to make such changes to the Management Plan as the Minister may require and resubmit the varied Management Plan for approval.

(d) The Management Body must comply with the terms of a Management Plan approved by the Minister under section 49(4).

## 6. Risk Indemnity and Insurance

### 6.1 Risk and Acknowledgement

The Management Body acknowledges that:

(a) neither the Minister, the State nor any of its employees or agents has made any representation or given any warranty as to the state or condition of the Infrastructure on the Reserve or the suitability of the Infrastructure for operating a tourist railway service;

(b) it has satisfied itself and relied on its own enquiries about the state of the Infrastructure on the Reserve at the Commencement Date and the suitability of it for operating a tourist railway service; and

(c) it occupies, uses and keeps the Reserve and the Infrastructure and undertakes operation of the tourist railway service on the Reserve at its risk.

### 6.2 Indemnity

The Management Body indemnifies and must keep indemnified the State and the Minister from and against all actions, suits, proceedings, claims and demands whatsoever (whether arising, founded on, or based in, tort, contract, statute or otherwise or any combination of these) which may at any time be brought, maintained or made by:

- (a) the Management Body, its employees, contractors, sub-contractors or agents; or

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- (b) any other person,
- against the State or the Minister or any employee contractor or agent of the State, in respect of:
- (c) any loss whatsoever (including loss of use);
- (d) injury or damage of, or to, any kind of property or thing; and
- (e) the death of, or injury or illness sustained by, any person,
- caused by, arising out of or in connection with:
- (f) the negligent acts or omissions of the Management Body in its care control and management of the Reserve;
- (g) any right granted by the Management Body to any person under the terms of this Management Order;
- (h) use of the Reserve or the Infrastructure for the operation of a tourist railway service;
- (i) any Contamination, Pollution or Environmental Harm caused or contributed to by the Management Body or any person to whom it has granted right under the terms of this Management Order and any remediation required to be undertaken as a result of that Contamination, Pollution or Environmental Harm;
- (j) any default or non compliance by the Management Body of the conditions of this Management Order or the terms of the Management Plan,
- and which indemnity continues after termination of this Management Order in respect of any act, matter or thing occurring before the termination of this Management Order.

## 6.3 Insurance

- (a) The Management Body must obtain a public risk policy from a reputable insurer for an amount of not less than \$20,000,000 for any one claim (with such increases from time to time as the Minister may reasonably require) and which policy includes coverage in respect of:
- (i) injury to, illness or death of, any person;
- (ii) loss, damage, or destruction to any property including the Infrastructure;
- (iii) liability arising out of any Contamination or Pollution.
- (b) The Management Body shall take out and maintain at its cost any insurance it requires for replacement of its improvements, fixtures and fittings relating to the operation of the tourist railway service.
- (c) The Management Body must provide evidence that it has in place an insurance policy that meets the requirements of paragraph (a) and provide the Minister with a certificate of currency for the insurance policy annually.
- (d) The Management Body must not alter or vary the terms of the public risk policy without first notifying the Minister.
- (e) The Management Body must not, and must not permit any person to, do anything which adversely affects the continuation, validity, extent of cover, or ability to make a claim, under the public risk policy.

## 7. Notices

- (a) Notices to be given by either the Management Body or the Minister:
- (i) are to be done in writing;
- (ii) are to be signed by a person for the sender who is authorised to give the notice; and
- (iii) are to be sent by prepaid post or facsimile to the address or facsimile number set out in paragraph (b) or as notified in writing by the relevant party to the other from time to time.

- (b) The address and facsimile number for:
- (i) the Minister is as follows:  
 Department of Lands  
 State Land Services  
 Gordon Stephenson House  
 Level 2, 140 William Street

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PERTH WA 6000  
 Attention: Manager [ ]  
 Facsimile Number: [ ]

(ii) the Management Body is as follows:  
 {Insert address}  
 Attention: Manager [ ]  
 Facsimile Number: [ ],  
 or such other address or facsimile number as the Minister or the Management Body advises the other of in writing from time to time.

(c) Any notice that is given is deemed to have been received:  
 (i) if delivered personally at the address of the recipient, when delivered;  
 (ii) if sent by prepaid post, within 3 business days of it being posted; or  
 (iii) if sent by facsimile, is deemed to have been received by the recipient on the date a correct transmission report is printed by facsimile machine from which it was sent.

## 8. Revocation of Management Order

(a) This Management Order may be revoked:  
 (i) by the Minister acting under the section 50 (1) (a) of the LAA with the consent of the Management Body;  
 (ii) subject to paragraph (d), by the Minister acting pursuant to section 50(1) (b) of the LAA where the Management Body is in breach of a condition of the Management Order or the Management Plan;  
 (iii) by the Minister pursuant to section 50(2) of the LAA if the Minister considers that it is in the public interest to revoke the Management Order.

(b) For the purposes of paragraph (a), the Management Body hereby consents to the Management Order being revoked pursuant to section 50(1) (a) of the LAA and paragraph (a) (i) if the PTA requires the Reserve for the purposes of the Public Transport Authority Act provided that, the Minister will give the Management Body [12] months notice of the proposed revocation unless the Management Body agrees to a lesser period.

(c) If the Management Body:  
 (i) enters into any formal arrangement with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;  
 (ii) being a body corporate, an order is made, or a resolution passed, for its winding up (except for the purposes of reconstruction or amalgamation);  
 (iii) being a body corporate, is placed under official management under the Corporations Act 2000 (Commonwealth); or  
 (iv) if it is an incorporated association, is wound up under the provisions of the Associations Incorporation Act,  
 then this is taken to be a breach of this Management Order for which the Minister may revoke this Management Order as provided in paragraph (a) (ii) pursuant to section 50(1) (b) of the LAA.

(d) Other than a breach provided by paragraph (c) for which no notice of default is required to be given before taking action under paragraph (a) (ii), if the Management Body is in breach of a term of the Management Order or the Management Plan and the breach is not rectified by the Management Body within 30 days of receiving a notice from the Minister specifying the default, then the Minister may revoke the Management Order as provided in paragraph (a) (ii) pursuant to section 50(1) (b) of the LAA.

## 9. Definition and Interpretations

### 9.1 Definitions

In this document, unless the context otherwise requires:

Authorised Person means any officer, employee, agent, contractor or consultant of the State or person otherwise authorised by the State.

Authorisation includes a consent, authorisation, permit, licence, approval agreement, certificate, authority or exemption from, by or with a Governmental Agency or required under any Written Law and all conditions attached to an authorisation.

Commencement Date means the date this Management Order is registered at Landgate.

Contamination is the state of being contaminated as that term is defined in the CSA.

CSA means the Contaminated Sites Act 2003.

Designated Purpose means the purpose of the Reserve under section 41 of the LAA being at the Commencement Date, "Tourist Railway" and includes purposes ancillary or beneficial



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to that purpose.

Environmental Harm has the same meaning given to that term in the EPA.

EPA means the Environmental Protection Act 1986.

Governmental Agency means any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or statutory body corporate.

Landgate means the department responsible for the registration of dealings relating to land in the register kept pursuant to the Transfer of Lands Act 1893 and being, at the Commencement Date, the Western Australian Land Information Authority a body corporate under the Land Information Authority Act 2006 and known as Landgate.

LAA means the Land Administration Act 1997.

Minister means the Minister for Lands, a body corporate continued under Section 7 of the LAA.

Infrastructure as applicable, has the meaning given to "rail infrastructure", in the Road Safety Act and also includes fences, and passenger facilities.

Operator means a person who is responsible, whether by reason of ownership, control or management, for the operation of rolling stock on the railway constructed within the Reserve.

Owner means in relation to a railway, the person who is responsible, whether by reason of ownership, control or management, for:

- (a) the construction and maintenance or the constructional maintenance of rail infrastructure; or
- (b) the operation of train control signalling or communication systems.

Pollution means any thing that is pollution as that term is defined in the EPA and that is not authorised under any Written Law.

PTA means the Public Transport Authority a body corporate under the Public Transport Authority Act 1994.

Management Order means the LAA form 1023 for the Reserve together with this document.

Management Plan means a management plan under section 49 of the LAA and includes any variation approved to that management plan by the Minister.

Railway has the meaning given to be that term in the Rail Safety Act.

Rail Safety Act means the Rail Safety Act 1998.

Reserve means the Reserve detailed in this Management Order.

Written Law includes any Act of Parliament whether State or Federal.

## 9.2 Interpretations

In this document, unless the context otherwise requires:

(a) headings or sub headings are inserted in for guidance only and do not govern the meaning or construction of any provision;

(b) words expressed in the singular include the plural and vice versa;

(c) a reference to "person" as the context requires means a natural person, a company, body corporate, or incorporated association;

(d) a reference to the Reserve includes any part of the Reserve;

(e) a reference to a business day means a day which is not a weekend day or public holiday in Western Australia;

(f) a reference to the word "including" is deemed to be followed the words "but not limited to";

(g) all acts and things the Minister is required or empowered to do under the Management Order may be done by a delegate of the Minister appointed under section 9 of the LAA; and

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(h) a reference to a Written Law includes any amendments, re-enactments or consolidations of the Written Law and reference to a Written Law includes every regulation, proclamation, ordinance, by-law, code or standard issued pursuant to that Written Law.



**Land Administration Act 1997****18. Crown land transactions that need Minister's approval**

- (1) A person must not without authorisation under subsection (7) assign, sell, transfer or otherwise deal with interests in Crown land or create or grant an interest in Crown land.
- (2) A person must not without authorisation under subsection (7)—
  - (a) grant a lease or licence under this Act, or a licence under the *Local Government Act 1995*, in respect of Crown land in a managed reserve; or
  - (b) being the holder of such a lease or licence, grant a sublease or sublicense in respect of the whole or any part of that Crown land.
- (3) A person must not without authorisation under subsection (7) mortgage a lease of Crown land.
- (4) A lessee of Crown land must not without authorisation under subsection (7) sell, transfer or otherwise dispose of the lease in whole or in part.
- (5) The Minister may, before giving approval under this section, in writing require —
  - (a) an applicant for that approval to furnish the Minister with such information concerning the transaction for which that approval is sought as the Minister specifies in that requirement; and
  - (b) information furnished in compliance with a requirement under paragraph (a) to be verified by statutory declaration.
- (6) An act done in contravention of subsection (1), (2), (3) or (4) is void.
- (7) A person or lessee may make a transaction under subsection (1), (2), (3) or (4) —
  - (a) with the prior approval in writing of the Minister; or
  - (b) if the transaction is made in circumstances, and in accordance with any condition, prescribed for the purposes of this paragraph.
- (8) This section does not apply to a transaction relating to an interest in Crown land if —
  - (a) that land is set aside under, dedicated or vested for the purposes of an Act other than this Act, and the transaction is authorised under that Act; or
  - (b) that interest may be created, granted, transferred or otherwise dealt with under an Act other than —
    - (i) this Act; or
    - (ii) a prescribed Act;or
  - (c) an agreement, ratified or approved by another Act, has the effect that consent to the transaction was not required under section 143 of the repealed Act; or
  - (d) the transaction is a lease, sublease or licence and the approval of the Minister is not required under section 46(3b).



[Section 18 amended by No. 59 of 2000 s. 8(1)-(5) <sup>5</sup>.]

**46. Care, control and management of reserves**

- (1) The Minister may by order place with any one person or jointly with any 2 or more persons the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for purposes ancillary or beneficial to that purpose and may in that order subject that care, control and management to such conditions as the Minister specifies.
- (2) The Minister may, with the consent of the management body of a reserve and of the holders of any interests within the reserve, by order vary any condition to which the care, control and management of the reserve is subject.
- (3) The Minister may —
  - (a) by order confer on a management body power, subject to section 18, to grant a lease or sublease or licence over the whole or any part of the Crown land within the reserve in question for the purposes referred to in subsection (1); and
  - (b) approve a mortgage of any such lease.
- (3a) The Minister may by order —
  - (a) without the consent of the management body of a reserve, vary —
    - (i) an order made under subsection (3)(a); or
    - (ii) an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* <sup>7</sup> that subsists as an order made under subsection (3)(a),

in relation to whether or not prior approval in writing of the Minister is required to a grant of a lease, sublease, or licence; or
  - (b) with the consent of the management body of a reserve, vary any other condition to which —
    - (i) an order made under subsection (3)(a); or
    - (ii) an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* <sup>7</sup> that subsists as an order made under subsection (3)(a),

is subject.
- (3b) The Minister's approval under section 18 is not required for the exercise of a power conferred under subsection (3)(a) unless —
  - (a) the person on whom the power is conferred is —
    - (i) a body corporate that is constituted for a public purpose under an enactment and is an agency of the Crown in right of the State; or
    - (ii) a person referred to in subsection (10)(b),

and the order provides that the Minister's approval under section 18 is required; or
  - (b) the person on whom the power is conferred is a person other than a person referred to in paragraph (a).

- (4) If an unmanaged reserve is the subject of —
- (a) a lease granted under section 47; or
  - (b) a licence, or a lease or profit à prendre, granted under section 48,
- or of any other interest in the unmanaged reserve, the Minister may under subsection (1) place the care, control and management of that reserve with a management body subject to that licence, lease or profit à prendre or other interest, the term of which continues unbroken by that placing.
- (5) An order made under subsection (1), (2), (3) or (3a) does not create any interest in Crown land in the relevant reserve in favour of the management body of that reserve.
- (6) If Crown land reserved under section 41 for the purpose of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sublessee may, unless the terms of the management order or the lease or sublease otherwise provide, restrict public access to the area leased.
- (7) A person with whom the care, control and management of a reserve is placed by order under subsection (1) has, by virtue of this subsection, the capacity, functions and powers to hold and deal with the reserve in a manner consistent with the order, any order conferring power on that person under subsection (3)(a) and this Act to the extent that the person does not already have that capacity or those functions and powers.
- (8) Subsection (7) does not authorise a management body to perform a function or exercise a power if another enactment expressly prevents the person from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.
- (9) Any instrument in relation to the care, control and management of a reserve entered into or given by a person holding an office referred to in subsection (10)(b)(i) or (iii) is taken to have been entered into or given by the person for the time being holding that office.
- (10) In subsection (1), a reference to a person is a reference to —
- (a) a person having perpetual succession;
  - (b) a person not having perpetual succession who is —
    - (i) a Minister to whom the Act specified in the relevant order is for the time being committed by the Governor; or
    - (ii) the Marine Parks and Reserves Authority established under section 26A of the *Conservation and Land Management Act 1984*; or
    - (iii) a person holding a prescribed office.
- (11) If an order made under section 33 of the repealed Act subsists under clause 16(1) of Schedule 2 as if it were a management order under section 46(1), the Minister may by order vary that order to place the care, control and management of the reserve the subject of the order with a person referred to in subsection (10).
- (12) An order made under section 46(1) before the coming into operation of section 12 of the *Land Administration Amendment Act 2000*<sup>1</sup> may be varied by the Minister by

order to place the care, control and management of the reserve the subject of the order with a person referred to in subsection (10).

*[Section 46 amended by No. 59 of 2000 s. 12(1)-(3) <sup>8</sup>.]*

**49. Management plan for managed reserve**

- (1) A management body may submit to the Minister for his or her approval a plan for the development, management and use of the Crown land in its managed reserve for the purpose of that managed reserve.
- (2) The Minister may request a management body or proposed management body to submit to the Minister in an approved form, within such period as is specified in that request, for his or her approval a plan for the development, management and use of the Crown land in the managed reserve of the management body for the purpose of that managed reserve.
- (3) A management body must, before submitting a plan to the Minister under subsection (1) or in response to a request under subsection (2) —
  - (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the Crown land in its managed reserve for the purpose of that managed reserve; and
  - (b) incorporate in the plan a statement that it has considered those issues in drawing up the plan.
- (4) If a management body submits a plan to the Minister under subsection (1) or in response to a request under subsection (2) and the Minister approves that plan and notifies the management body of that fact, the management body may develop, manage and use the Crown land concerned —
  - (a) in accordance with the plan; or
  - (b) if the Minister approves a variation of the plan, in accordance with the plan as varied.

**14 COMMITTEES OF COUNCIL**

**14.1 AUDIT COMMITTEE**

**OFFICER RECOMMENDATION**

**That the attached unconfirmed minutes of the Audit Committee held Tuesday 3<sup>rd</sup> February 2015 be received by Council.**

**COUNCIL DECISION**

/15 Moved Cr , seconded Cr

CARRIED/LOST /



## 14.2 REVIEW OF MUNICIPAL HERITAGE INVENTORY – COMMUNITY NOMINATIONS FOR PROJECT STEERING COMMITTEE

AUTHOR: Phil Shephard – Town Planner  
DATE: Wednesday, 4 February 2015  
FILE NO: LP.PRG.1  
**ATTACHMENT:** Nil

### DECLARATION OF INTEREST

Nil.

### SUMMARY

To consider the nominations received to sit on the Municipal Inventory Project Steering Committee.

The recommendation is to accept the nominations and appoint the nominees as community members on Steering Committee.

### BACKGROUND

The Shire at its 9 December 2014 meeting (Item 16.1 Resolution 201/14) in selecting a consultant to undertake the review of the Shire's existing Municipal Heritage Inventory resolved in part to:

- 1) *Form a Municipal Inventory Project Steering Committee to assist the consultant during the review of the Municipal Heritage Inventory and preparation of new Heritage List. The heritage consultant will ensure the Steering Committee is involved in the preparation and consideration of the recommendations and final report for this project.*

*The Steering Committee consists of the following persons:*

- *2 Elected Members*
- *3 Community Members*
- *Chief Executive Officer*
- *Development Services Coordinator*
- *Community Services Officer/Town Planner*

- 3) *Seek nominations from the community and interested groups for positions on the Steering Committee.*

### COMMENT

The request for nominations from the public was placed in The Kojonup News newspaper and on the Council's Public Notice Board and website. A total of 5 nominations have been received as follows:

Hugh Carder - community member with heritage experience in preparing Heritage Inventories etc.  
Kath Mathwin - member of Kojonup Historical Society.  
Arnold Bilney - member of Kojonup Historical Society.  
Arthur Collins - member of Kojonup Historical Society.  
Geoff McKenney - member of Kojonup Historical Society.

Whilst the decision of Council in December 2014 sought only 3 community members, staff would support this being expanded to include all those that nominated for a position.

### CONSULTATION

Advertisements seeking nominations from the public were placed in The Kojonup News newspaper and on the Council's Public Notice Board and website.

### STATUTORY REQUIREMENTS

The Municipal Inventory Project Steering Committee is a volunteer advisory committee to Council.

**POLICY IMPLICATIONS**

This item does not affect any Council Policies.

**FINANCIAL IMPLICATIONS**

The administration and advertising costs associated with the Steering Committee are covered within the 2014/2015 budget.

**STRATEGIC/CORPORATE IMPLICATIONS**

Community Strategic Plan 2013 -2023 – Focus Area 1.8 Building Prosperity

**RISK MANAGEMENT IMPLICATIONS**

The item covers several risk areas to Council including strategy and planning, community and environment and heritage functions. The organisational risk and proposed treatment or mitigation is summarised in the following table:

<b>Risk Description</b>	<b>Risk Likelihood</b>	<b>Risk Consequence</b>	<b>Risk Classification</b>	<b>Risk Treatment</b>
Fail to maintain effective working relationship with community in reviewing MHI	Likely	Minor	High	Senior management attention needed.  Form Project Steering Committee and include members of the Kojonup community.

**ASSET MANAGEMENT IMPLICATIONS**

This item does not affect the Asset Management Plan.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council accept the nominations from Hugh Carder, Kath Mathwin, Arnold Bilney, Arthur Collins and Geoff McKenney as community members on the Review of Municipal Heritage Inventory Project Steering Committee.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

**15 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**16 NEW BUSINESS**

(of an urgent nature, introduced by a decision of the meeting).

**16.1 CONSTRUCTION OF NEW DAY CARE CENTRE AT LOT 330 (RESERVE 24245) ELVERD STREET, KOJONUP**

The proposed construction of the new Day Care Centre is required to be advertised for comment and referred to adjoining/nearby properties in accordance with Town Planning Scheme No. 3 requirements. The closing date for submissions is Friday 13 February 2015.

Given that the closing time to receive submissions is after the agenda closes for the February 2015 meeting, staff will review any comments received and table a report item at the Council Meeting for Council's consideration.

**OFFICER RECOMMENDATION**

**That Item 16.1 Construction of new Day Care Centre at Lot 330 (Reserve 24245) Elverd Street, Kojonup be discussed.**

**COUNCIL DECISION**

/15 Moved Cr

, seconded Cr

CARRIED/LOST

/

**17     CONFIDENTIAL REPORTS**

Nil

**18**     **NEXT MEETING**

Tuesday, 17<sup>th</sup> March 2015 commencing at 3:00pm.

**19**     **CLOSURE**

There being no further business to discuss, the President thanked the members for their attendance and declared the meeting closed at ..... pm.

**20**     **ATTACHMENTS (SEPARATE)**

- Item 10.1     Monthly Statement of Financial Activity
- Item 10.2     Monthly Payment Listing 01/12/2014 – 31/12/2014
- Item 10.3     Monthly Payment Listing 01/01/2015 – 31/01/2015
- Item 12.3     Town Planning Scheme Policy Manual
- Item 12.5     Department of Planning Discussion Paper
- Item 14.1     Unconfirmed Audit Committee Minutes – Tuesday 3<sup>rd</sup> February 2015