

SHIRE OF KENT



ORDINARY MINUTES (UNCONFIRMED)

DATE: Wednesday 20 September 2023

TIME: 5:30pm

VENUE: Council Chambers,
Richmond Street, Nyabing WA 6341

**CHRISTIE SMITH
CHIEF EXECUTIVE OFFICER**

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The Shire of Kent advises that anyone who has any application lodged with the Shire of Kent shall obtain and should only rely on **WRITTEN CONFIRMATION** of the outcome of the application, and any conditions attaching to the decision made by the Shire of Kent in respect of the application.

Christie Smith

CHIEF EXECUTIVE OFFICER

MINUTES
20 September 2023

Table of Contents

1.	DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS	4
2.	RECORD OF ATTENDANCE/APOLOGIES AND APPROVED LEAVE OF ABSENCE	4
3.	DISCLOSURES OF INTEREST	4
4.	PUBLIC QUESTION TIME	4
5.	APPLICATIONS FOR LEAVE OF ABSENCE	4
6.	CONFIRMATION AND RECEIVING OF MINUTES/BUSINESS ARISING	5
6.1.1	ORDINARY MEETING OF COUNCIL HELD 16 AUGUST 2023	5
6.1.2	SPECIAL MEETING OF COUNCIL HELD 30 AUGUST 2023.....	5
6.1.3	SPECIAL MEETING OF COUNCIL HELD 1 SEPTEMBER 2023	5
6.1.4	LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING HELD 9 AUGUST 2023	6
6.1.5	GREAT SOUTHERN COUNTRY ZONE MEETING HELD 25 AUGUST 2023	6
1.	ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION.....	7
2.	PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS.....	7
3.	OFFICER REPORTS.....	7
9.1.1	KENT PISTOL CLUB - REQUEST THE REALIGNMENT OF RESERVES 16286 AND 42640 BOUNDARIES AND POWER TO LEASE	8
9.1.2	MONTHLY FINANCIAL REPORTS TO 31 AUGUST 2023	10
9.1.3	SCHEDULE OF ACCOUNTS PAID TO 31 AUGUST 2023.....	12
9.1.4	REQUEST TO WAIVE CAMPING FEES NYABING AND PINGRUP	14
9.1.5	DEVELOPMENT APPLICATION - ONE (1) NEW PERMANENT GRAIN STORAGE BULKHEAD & ASSOCIATED INFRASTRUCTURE AT COOPERATIVE BULK HANDLING LIMITED'S EXISTING GRAIN HANDLING & STORAGE FACILITY IN PINGRUP	16
9.1.6	PINGRUP SILO TRAIL PROJECT – PROJECT COST VARIATIONS.....	20
9.1.7	PROPOSED ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW – FINAL ADOPTION	22
9.1.8	PROPOSED BUSH FIRE BRIGADES LOCAL LAW – FINAL ADOPTION.....	25
9.1.9	CEMETERIES LOCAL LAW – FINAL ADOPTION.....	29
9.1.10	DOGS LOCAL LAW – FINAL ADOPTION	33
9.1.11	FENCING LOCAL LAW – FINAL ADOPTION	36
9.1.12	PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW – FINAL ADOPTION	40
9.1.13	STATUS OF COUNCIL DECISIONS – AUGUST 2023	44
9.1.14	BIN ROAD AND KURINGUP ROAD INTERSECTION UPGRADE.....	46
4.	ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	49
5.	NEW BUSINESS OF AN URGENT NATURE AGREED TO BY RESOLUTION OF COUNCIL	49
6.	MATTERS BEHIND CLOSED DOORS.....	49
7.	MEETING CLOSED.....	49

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The meeting was opened at 5:33pm by the Shire President.

2. RECORD OF ATTENDANCE/APOLOGIES AND APPROVED LEAVE OF ABSENCE

Members

Cr S Crosby	Shire President
Cr K Johnston	Deputy Shire President
Cr T Borgward	Member
Cr D Gray	Member
Cr G Hobley	Member
Cr R Jury	Member

Staff

C Smith	Chief Executive Officer
M Tulleken	Manager Infrastructure

Members of the Public

Suma Reid
Dustin Harris

Apologies

N Taekema	Governance Officer
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Members on Approved Leave of Absence Previously Granted

Nil

3. DISCLOSURES OF INTEREST

Nil

4. PUBLIC QUESTION TIME

Nil

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6. CONFIRMATION AND RECEIVING OF MINUTES/BUSINESS ARISING

6.1.1 ORDINARY MEETING OF COUNCIL HELD 16 AUGUST 2023

OCM2324/029 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr RA Jury

That the minutes of the Ordinary Council Meeting of the Shire of Kent held at the Nyabing Council Chambers, on Wednesday 16 August, 2023 be CONFIRMED.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward**

**Against:
Nil**

6.1.2 SPECIAL MEETING OF COUNCIL HELD 30 AUGUST 2023

OCM2324/030 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr DP Gray

That the minutes of the Special Meeting of the Shire of Kent held at the Nyabing Council Chambers, on Wednesday, 30 August 2023 be CONFIRMED.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward**

**Against:
Nil**

6.1.3 SPECIAL MEETING OF COUNCIL HELD 1 SEPTEMBER 2023

OCM2324/031 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr RA Jury / Cr TD Borgward

That the minutes of the Special Meeting of the Shire of Kent held at the Nyabing Council Chambers, on Friday, 1 September 2023 be CONFIRMED.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward**

**Against:
Nil**

6.1.4 LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING HELD 9 AUGUST 2023

OCM2324/032 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr DP Gray / Cr GW Hobley

That the minutes of the Local Emergency Management Committee held at the Shire of Katanning Council Chambers, on Wednesday, 9 August 2023 be RECEIVED.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward**

**Against:
Nil**

6.1.5 GREAT SOUTHERN COUNTRY ZONE MEETING HELD 25 AUGUST 2023

OCM2324/033 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr GW Hobley / Cr RA Jury

That the minutes of the Great Southern Country Zone of WALGA held at the City of Albany Civic Room, on Friday, 25 August 2023 be RECEIVED.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward**

**Against:
Nil**

1. **ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION**
2. **PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**
3. **OFFICER REPORTS**

9.1.1 KENT PISTOL CLUB - REQUEST THE REALIGNMENT OF RESERVES 16286 AND 42640 BOUNDARIES AND POWER TO LEASE

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	Department of Planning, Lands and Heritage
LOCATION:	Reserve 16286 Nyabing Rifle Range Reserve 42640 Parkland
AUTHOR:	Peter Clarke Acting Chief Executive Officer
REPORTING OFFICER:	Peter Clarke, Acting Chief Executive Officer
FILE NO:	GOV.285 / PRO.504
ASSESSMENT NO:	N/A
ATTACHMENTS:	Survey Map and Draft Survey Instructions
DISCLOSURE OF INTEREST:	Nil

PURPOSE

For Council to formally advise the Department of Planning, Lands and Heritage (DPLH) of its request to realign Reserves 16286 and 42640 boundaries pursuant to Section 51 of the *Land Administration Act (LAA)*.

BACKGROUND

Staff have been working with Council's Solicitors and DPLH for some time to initially action a request from the Kent Pistol Club for the formal lease of Reserve 16286, being the Nyabing Rifle Range as the original Management Order for the Reserve land did not provide Council with the power to Lease.

COMMENT

The initial request submitted by the Kent Pistol Club should have been straightforward however, a survey of the land indicated that the Pistol Club had built Clubrooms and other infrastructure over the boundary encroaching onto Reserve 42640. Whilst both Reserves are under Management Orders with the Shire of Kent, they did not provide Council with the Power to Lease the land.

Therefore, to commence the realignment of the boundaries DPLH is requesting a formal advice from the Shire (by way of council resolution) requesting realignment of Reserve 16286 and 42640's (**Reserves**) boundaries pursuant to s.51 of the LAA. On receipt of this, DPLH can then commence the statutory referrals process for the proposal, being realignment of reserve boundaries, which will include the revocation and issue of new management orders for both Reserves; with the previously requested addition of power to lease provision specifically for Reserve 16286.

Council's Solicitors have also advised that because a new management order will be issued for the abutting Reserve 42640, it may be advisable to also request that the new management order also provides the Shire a power to lease the land for a maximum term of 21 years to avoid a future issue of requiring an amendment to that management order.

Once referral responses have been received by DPLH and assessed, the formal survey instructions for work to proceed on survey and a new deposited plan will be issued by the Department's Survey Co-ordination team.

STATUTORY IMPLICATIONS

Section 51 of the *Land Administration Act (LAA)*.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

There will be additional costs associated with the engagement of a Licenced Surveyor to prepare the necessary survey/drafting work.

STRATEGIC IMPLICATIONS

N/A

RISK IMPLICATIONS

N/A

VOTING REQUIREMENT

Absolute Majority

OCM2324/034 - COUNCIL RESOLUTION (Officer Recommendation)
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MOVED Cr KV Johnston / Cr RA Jury

That

- (a) Council formally requests the Department of Planning, Lands and Heritage to approve the realignment of Reserves 16286 and 42640 boundaries pursuant to Section 51 of the Land Administration Act and revocation of the previous Management Orders; and***
- (b) Following the above processes and in the issuing of new Management Orders for both Reserves, Council requests that the Shire of Kent be granted with the Power to Lease for a maximum term of 21 years.***

CARRIED 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobleby, Cr TD Borgward

Against:
Nil

9.1.2 MONTHLY FINANCIAL REPORTS TO 31 AUGUST 2023

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Christie Smith – Chief Executive Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	FIN.187
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 - Monthly Financial Reports to 31 August 2023
DISCLOSURE OF INTEREST:	Nil

PURPOSE

In accordance with the *Local Government (Financial Management) Regulations 1996*, to follow is the presentation of the Monthly Financial Reports to Council.

BACKGROUND

Monthly Financial Reports are to be presented to Council and are to be received by Council resolution.

COMMENT

The Monthly Financial Reports as presented indicate that Council continues to be in a sound financial position.

Please note the reports are the unaudited version, audit is now likely to be undertaken in November 2023 and audited financials will be presented to Council accordingly.

STATUTORY IMPLICATIONS

Local Government Act 1995 – Section 6.4

Local Government (Financial Management) Regulations 1996 – Clause 34 and 35

POLICY IMPLICATIONS

Policy 4.1 Accounting Policies

Objective: To provide the basis for Council’s accounting concepts and reporting guidelines.
To maintain accounting reporting procedures which comply with Statutory Requirements and to demonstrate Council’s financial position.

FINANCIAL IMPLICATIONS

Ongoing management of Council funds

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

Civic Leadership Strategic Priorities – Proactive and well governed Shire

RISK IMPLICATIONS

N/A

VOTING REQUIREMENT

Simple Majority

OCM2324/035 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr TD Borgward / Cr DP Gray

That Council receive the following Monthly Financial Reports as presented:

- **Monthly Financial Reports to 31 August 2023**

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD
Borgward**

**Against:
Nil**

9.1.3 SCHEDULE OF ACCOUNTS PAID TO 31 AUGUST 2023

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Christie Smith – Chief Executive Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	FIN.183
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 - Schedule of accounts paid Attachment 2 – List of credit card payments
DISCLOSURE OF INTEREST:	Nil

PURPOSE

Council endorsement of payment to Creditors under CEO Delegated Authority 2.1.2.

BACKGROUND

Details payments made to creditors since last Council Meeting.

COMMENT

The Schedule of Accounts Reports as presented, indicate that Council continues to be in a sound financial position.

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* states that only the following information is to be reported to Council and form part of the public minutes:

- a) the payee's name;
- b) the amount of the payment;
- c) the date of the payment; and
- d) sufficient information that identifies the payment.

STATUTORY IMPLICATIONS

Local Government Act 1995 – Section 6.4;

Local Government (Financial Management) Regulations 1996 – Part 2 – Regulation 11, 12 and 13.

POLICY IMPLICATIONS

Policy 4.1 Accounting Policies

Objective: To provide the basis for Council's accounting concepts and reporting guidelines.

To maintain accounting reporting procedures which comply with Statutory Requirements and to demonstrate Council's financial position.

FINANCIAL IMPLICATIONS

Ongoing management of Council funds

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

Civic Leadership Strategic Priorities – Proactive and well governed Shire

RISK IMPLICATIONS

N/A

VOTING REQUIREMENT

Simple Majority

OCM2324/036 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr GW Hobley

That Council endorse the payments from the Municipal Fund and Trust Fund for the period ending 31 August 2023:

Municipal Fund (EFT)	\$471,553.31
Municipal Fund (CHQ)	\$ 0.00
Trust Fund	\$ 0.00
Direct Debits	\$261,998.65
<u>TOTAL</u>	<u>\$733,551.96</u>

CARRIED 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.4 REQUEST TO WAIVE CAMPING FEES NYABING AND PINGRUP

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Christie Smith – Chief Executive Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Nil
DISCLOSURE OF INTEREST:	Nil

PURPOSE

Council to consider waiving fees for camping at both the Nyabing and Pingrup Caravan Parks on 13 – 15 October 2023 (inclusive) for those attending centenary celebrations and Nyabing Caravan Park on 22-24 October 2023 (inclusive) for those attending the Kent Districts Football Club 50 year premiership reunion.

BACKGROUND

The Shire of Kent 100 year Centenary is being held on Friday 13 October 2023 and the Pingrup Centenary on Saturday 14 and Sunday 15 October 2023. It is expected that over 500 people will attend events in Nyabing and Pingrup over these dates.

On Saturday 21 October 2023, the past members of the Kent Districts Football Club are hosting a premiership reunion in Nyabing.

COMMENT

Accommodation is currently scarce in both and surrounding towns, providing free camping for these events will encourage those returning to the district to stay and enjoy festivities.

STATUTORY IMPLICATIONS

Local Government Act 1995 – Section 6.16 Imposition of Fees and Charges;

POLICY IMPLICATIONS

Council policy 3.8 *Requests for Donations and Financial Assistance* allows for the CEO to waive fees and charges at their discretion however there are limitations under delegated authority. These limitations are up to an amount of \$500.

FINANCIAL IMPLICATIONS

Council have not budgeted to receive this income, waiving the fees associated with camping will be supporting Council and community events.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033
Community Priorities – 1.2 Inclusive community activities, events, services and initiatives.

RISK IMPLICATIONS

Nil

VOTING REQUIREMENT

Simple Majority

OCM2324/037 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr GW Hobley

That Council waive fees associated for camping at both the Nyabing and Pingrup Caravan Parks on 13 – 15 October 2023 (inclusive) for those attending centenary celebrations and Nyabing Caravan Park on 22-24 October 2023 (inclusive) for those attending the Kent Districts Football Club 50 year premiership reunion.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD
Borgward**

**Against:
Nil**

9.1.5 DEVELOPMENT APPLICATION - ONE (1) NEW PERMANENT GRAIN STORAGE BULKHEAD & ASSOCIATED INFRASTRUCTURE AT COOPERATIVE BULK HANDLING LIMITED'S EXISTING GRAIN HANDLING & STORAGE FACILITY IN PINGRUP

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	Cooperative Bulk Handling Limited
LOCATION:	Lot 11 (No.67) Jolley Road, Pingrup
AUTHOR:	Mr Joe Douglas – Town Planner
REPORTING OFFICER:	Ms Christie Smith – Chief Executive Officer
FILE NO:	GOV.106
ASSESSMENT NO:	
ATTACHMENTS:	Attachment 1 – Development Application Documentation & Plans
DISCLOSURE OF INTEREST:	Nil

PURPOSE

This report recommends that Council grant conditional approval to a development application submitted by Cooperative Bulk Handling Limited requesting permanent approval for an existing grain storage bulkhead and various associated improvements constructed at its grain handling and storage facility in Pingrup pursuant to a temporary approval granted by the Shire's Chief Executive Officer under delegated authority in July 2022.

BACKGROUND

Cooperative Bulk Handling Limited (CBH) has submitted a development application seeking Council's approval for the following permanent additions and upgrades to its existing grain handling and storage facility in Pingrup that were constructed pursuant to a temporary approval granted by the Shire's Chief Executive Officer under delegated authority in July 2022 in accordance with the exemptions afforded by clause 61(1) and (2) of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as they apply specifically to temporary works and uses:

- i) A new grain storage bulkhead comprising a total storage capacity of 55,020 tonnes and associated grain stacker on a new hardstand area located centrally adjacent to the southern boundary Lot 11;
- ii) New heavy vehicle accessways surrounding the grain storage bulkhead referred to in point i) above that tie into the existing heavy vehicle accessways previously constructed on the land, including safety signage; and
- iii) Stormwater drainage infrastructure constructed in accordance with a stormwater management strategy and drainage design prepared by a suitably qualified engineering consultant.

A full copy of the application submitted, including supporting documentation and plans, is provided in Attachment 1.

Council should note under the terms of the temporary approval granted by the Shire's Chief Executive Officer in July 2022 CBH were required to cease the temporary use of the new grain storage bulkhead and associated improvements at the end of the twelve (12) month approval term, remove all the improvements constructed, and reinstate the relevant portion of the land to its pre-development condition.

CBH has advised the continued use of the grain storage bulkhead and associated improvements are integral to its ongoing operations and long-term strategic plan. As such, it is seeking Council's development approval to allow the works and use to be retained on a permanent basis.

COMMENT

Assessment of the application in the context of the Shire's current local planning framework, including Local Planning Strategy, Local Planning Scheme No.3 (LPS3) and the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, has confirmed the development is compliant with the following relevant requirements:

- The general aims and objectives of the Shire's Local Planning Strategy and LPS3;
- Land use permissibility;
- Land capability and suitability;
- Land use compatibility including minimum separation distances to sensitive land uses;
- Lot boundary setbacks;
- Amenity of the locality including potential environmental, visual and social impacts;
- Protection of the natural environment, water resources and cultural heritage significance;
- Vehicle access, parking and traffic safety more generally;
- Key essential services including stormwater drainage; and
- Flood and bushfire risk management.

It should be noted the development has been constructed in accordance with all information and plans previously submitted to the Shire and has not given rise to any known issues or complaints. In light of this fact, the development's compliance with all relevant town planning requirements, and the significant benefits the development will have for local growers and the agricultural industry more generally, it is recommended Council approve the application subject to a range of standard conditions and advice notes.

STATUTORY IMPLICATIONS

Planning and Development Act 2005 (as amended)

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Kent Local Planning Scheme No.3

POLICY IMPLICATIONS

- State Planning Policy 2 – *Environment and Natural Resources Policy*
- State Planning Policy 2.5 – *Rural Planning*
- State Planning Policy 2.9 – *Water Resources*
- State Planning Policy 3.7 – *Planning in Bushfire Prone Areas*
- State Planning Policy 4.1 – *State Industrial Buffer*

FINANCIAL IMPLICATIONS

All administrative costs associated with processing the application are provided for in Council's annual budget and have been offset in full by the development application fee paid by the proponent.

All costs associated with the proposed development have been met by the proponent.

It is significant to note should the proponent be aggrieved by Council's final decision in this matter it has the right seek a formal review of that decision by the State Administrative Tribunal. Should this occur for whatever reason, which is considered unlikely in this particular instance, the Shire would need to respond. The cost to respond to an appeal cannot be determined at this preliminary stage but could be expected, based on the recent experience of other local government authorities in Western Australia, to range anywhere from \$5,000 to \$60,000 excluding GST depending upon how far the matter proceeds through the review process.

STRATEGIC IMPLICATIONS

The proposed development is considered to be generally consistent with the Shire's Local Planning Strategy as well as the following elements of the Shire's *Community Strategic Plan 2023-2033* and *Corporate Business Plan 2021 to 2025*:

2. ECONOMY

- 2.1 Coordinated delivery of economic services and projects
- 2.3 Safe and efficient transport network enables economic growth

3. ENVIRONMENT

- 3.1 Maintain a high standard of environmental health and waste services
- 3.2 Conservation of our natural environment and resources

RISK IMPLICATIONS

The main risks associated with the proposed development are flooding and dust. Given Council's ability to impose a range of conditions on any development approval granted, and other statutory and regulatory controls applicable, it is concluded all risks are relatively minor, manageable and therefore acceptable.

VOTING REQUIREMENT

Simple Majority

OCM2324/038 - COUNCIL RESOLUTION (Officer Recommendation)
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MOVED Cr KV Johnston / Cr GW Hobley

That Council resolve to approve the development application submitted by Cooperative Bulk Handling Limited for one (1) existing grain storage bulkhead comprising a total storage capacity of 55,020 tonnes and various associated improvements constructed on Lot 11 (No.67) Jolley Road, Pingrup pursuant to a temporary approval granted by the Shire's Chief Executive Officer under delegated authority in July 2022 subject to the following conditions and advice notes:

Conditions

- 1. The development hereby approved shall be undertaken strictly in accordance with the documentation and plans submitted in support of the application subject to any modifications required as a consequence of any condition/s of this approval or otherwise approved by the local government.**
- 2. Any additional development which is not in accordance with the application the subject of this approval or any condition of approval will require the further approval of the local government.**
- 3. The development hereby approved shall not encroach upon any part of any immediately adjoining property unless otherwise approved by the local government.**

4. All stormwater drainage infrastructure shall be maintained by the proponent at its own cost to the specifications and satisfaction of the local government for the life of the development.
5. The proponent shall regularly monitor and manage all dust generated by the development. Should dust become an issue and the local government provides written notification to that effect, the proponent shall, at its own cost, arrange for the preparation and submission of a Dust Management Plan within sixty (60) days of receipt of notification for consideration and endorsement by the local government's Chief Executive Officer in consultation with the local government's Environmental Health Officer and/or the Department of Water and Environmental Regulation and implemented thereafter for the life of the development.

Advice Notes

1. This approval is not an authority to ignore any constraint to development on the land which may exist through contract or on title, such as an easement or restrictive covenant. It is the responsibility of the proponent and not the local government to investigate any such constraints. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the local government's attention.
2. This is a development approval of the Shire of Kent under its Local Planning Scheme No.3. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the proponent to obtain any other necessary approvals, consents, permits and licenses required under any other law, and to commence and carry out development in accordance with all relevant laws.
3. The proponent is reminded of their obligation to ensure compliance with the specific standards and requirements of the Shire of Kent Annual Fire Break Notice as it applies to all land within the local government's municipal district.
4. The proponent is reminded of their obligation to ensure compliance with the *Environmental Protection (Noise) Regulations 1997*.
5. The proponent is responsible for ensuring the correct siting of all structures on all land the subject of this approval including fill. An identification survey demonstrating correct siting and setbacks of structures and fill may be requested of the proponent by the local government to ensure compliance with this determination notice and all applicable provisions.
6. Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the *Planning and Development Act 2005* and the Shire of Kent Local Planning Scheme No.3 and may result in legal action being initiated by the local government.
7. If the proponent is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be submitted directly to the State Administrative Tribunal within 28 days of receipt of notification of the local government's determination.

CARRIED 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD
Borgward

Against:
Nil

9.1.6 PINGRUP SILO TRAIL PROJECT – PROJECT COST VARIATIONS

<p>PROPOSED MEETING: PROPONENT: LOCATION: AUTHOR: REPORTING OFFICER: FILE NO: ASSESSMENT NO: ATTACHMENTS: DISCLOSURE OF INTEREST:</p>	<p>20 September 2023</p> <p>Pingrup Silo Trail Michaela Crosby – Project/Grants Officer Christie Smith – Chief Executive Officer GOV.285</p> <p>Email and Quotes – Woodlands N/A</p>
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PURPOSE

Council to consider cost variations for the Pingrup Silo Trail Project.

BACKGROUND

The Pingrup Silo Trail Project is a nominated development under the Local Roads and Community Infrastructure Program (Phase 3). In the 2022-2023 budget, Council committed \$61,892 to the project, and LRCIP (Phase 3), \$58,108. The development included trail surface and drainage upgrades to the walk trail, and installation of a viewing platform at the silo art. Expenditure for the Pingrup Silo Trail Project is currently at \$167,754.40 (over the 2022/2023 and 2023/2024 financial years). The budget shortfall of \$47,754.40, has been absorbed by under budgeted LRCIP projects.

COMMENT

Prior to construction, community concerns over proposed drainage at the trail header, resulted in the installation of two 900mm culvert pipes.

Installation of these pipes has now jeopardised public safety, and handrails/balustrades will need to be installed. Building Code Australia (BCA) Regulations specify that any outdoor surface that is one metre or more above a change in levels, will require a safety barrier to be installed. In addition to this, other legislation that covers public safety requires a guardrail to stop people inadvertently stepping off the trail causing injuries. Additionally, concrete headwalls will need installing, to ensure the stability of the trail over the culvert.

Alternatively, to improve pedestrian functionality and safety over the drain, replacement of the 900mm pipes for a pre-fabricated bridge has been investigated.

STATUTORY IMPLICATIONS

Building Code Australia Regulations
 Public Health Act (2016)

Local Government Act (1995)

Expenditure from municipal fund not included in annual budget

6.8. (1) A local government is not to incur expenditure from its municipal fund which is not included in its annual budget except where the expenditure —

- (a) is incurred in a financial year before the adoption of the annual budget by the local government;
- (b) is authorized in advance by resolution*; or

* Absolute majority required.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

This is an unbudgeted expense and therefore requires approval by Absolute Majority. This total unbudgeted expense would be approximately \$21,370.

Woodlands Pedestrian Walk Bridge - \$13,885.00

Freight - \$1485.00

Installation - \$5,000

Incidentals (ie. Concrete) - \$1,000

STRATEGIC IMPLICATIONS

Shire of Kent Strategic Community Plan 2023-2033

Strategic Priority – 2. Economy

2.3 Visitors have a positive experience across our Shire (*Tourism infrastructure in particular trails and signage improve the visitor experience*).

RISK IMPLICATIONS

Exposure to liability from non-compliance with public safety legislation and regulations.

VOTING REQUIREMENT

Absolute Majority

OCM2324/039 - COUNCIL RESOLUTION (Officer Recommendation)
--

MOVED Cr TD Borgward / Cr DP Gray

That Council approve unbudgeted expenditure from the Municipal Fund up to \$21,370 exclusive of GST for the purchase, delivery and installation of the Woodlands Pedestrian Walk Bridge (5.28m x 1.35m) at the Pingrup Silo Trail.

CARRIED by absolute majority 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD
Borgward**

**Against:
Nil**

9.1.7 PROPOSED ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW – FINAL ADOPTION

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith –Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Proposed Animals, Environment and Nuisance Local Law
DISCLOSURE OF INTEREST:	N/A

PURPOSE

To consider the final adoption of the Animals, Environment and Nuisance Local Law in accordance with the *Local Government Act 1995* s.3.12.

BACKGROUND

The Local Government Act requires the following statements be made in the agenda and minutes of the meeting –

- Purpose – to provide for the regulation, control and management of animals and the prevention of environmental damage and nuisances
- Effect – to establish the requirements with which any person keeping animals, or undertaking activities that have the potential to impact the environment or create nuisance must comply.

The proposed local law repeals two old local laws.

COMMENT

There are a number of matters that Council should be aware of –

- (1) Terms used –
 - (a) “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified.
There are important legislative and administrative differences between appointment as an authorised person and delegation of power.
 - (b) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
 - (c) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to decision a person who has been given the power to make a decision rather than the Council.
- (2) Application of the local law –
 - (a) the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various clauses and Parts.
 - (b) Local Planning Scheme No.3 has a mixed use zoning, which could be used for residential as well as commercial or similar use, which has complicated how some of the provisions are applied. LPS No.3 also has land zoned “rural” inside townsites as well as outside areas, which also created a degree of complication.

- (3) Notice to correct and undertaking remedial works – clauses 9.2, 9.3 and 9.4 are powers of the Council where damage, nuisance or other non-compliance has occurred. Similar to an infringement notice or a prosecution, these also rely on knowing the identity of the offender. These clauses allow, where the offender is known, to –
- (a) Issue a notice to repair, pay for repairs or carry out works needed for compliance with the local law. Generally, if there is damage, it is suggested that paying for reinstatement or repairs is most appropriate as the local government would then control the standard of works.
 - (b) If the recipient of the notice does not comply with the notice, they can be infringed or prosecuted.
 - (c) The local government may carry out the works and recover the cost as a debt, applying interest to the outstanding amount if necessary, or taking legal action. This is consistent with the provisions of the Local Government Act s.3.25 and 3.26 in relation to notices issued concerning Schedule 3.1 matters.

Public notice was given by four methods as required by the Local Government Administration Regulations r.3A, for public comment on the proposed local law –

- on the Shire's website on 8 June 2023 (mandatory)
- Shire notice boards and social media on 8 June 2023
- in Great Southern Herald on 8 June 2023 and Pingrup Post on 8 June 2023

At the close of the submission period, comment had been received from –

1. Dept of Local Government, Sport and Cultural Industries –
 - Clause 2.4(4)(d)(ii) of the draft has been deleted as the Department advised that the clause *provides that an exemption granted under this clause can include a condition requiring all cats to be confined to premises. It is suggested that this paragraph be deleted, as it may be flagged as an issue by the Committee.*
 - No other changes were suggested.

No amendments are considered to be significant.

2. No other submissions were received.

Additional review of the text revealed that the definition of “Building Code” in clause 1.5 is not used in the local law and should be deleted. It is not considered to be a significant amendment.

Should significant amendments be made at time of final adoption, the statutory public comment period must be recommenced.

Once formally adopted by Council, the –

- the local law is to be published in the Government Gazette,
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the Government Gazette.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,
- if a provision is not considered to be critical, the JSCDL may require an undertaking from Council to make an amendment,
- the local law takes effect on the day stipulated in the local law, generally 14 days after publication in the Government Gazette.

The JSCDL reviews the local law, its effects and may recommend to Parliament that it be amended and request an undertaking, or that it be disallowed. The JSCDL will not review the local law until after it has been formally adopted, Gazetted etc.

STATUTORY IMPLICATIONS

Local Government Act 1995 –

- s 3.12 – Procedure for making local laws
- s.3.13 – Significant changes require recommencement of proposal
- s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazetted
- s.3.15 – local public notice of the final adoption/making of a local law to be given

Cat Act 2011 –

- s.79 – local laws

POLICY IMPLICATIONS

Future adoption of Council policy for control and approval of matters provided in the proposed local law.

FINANCIAL IMPLICATIONS

Advertising of adoption of the local law, and publication in the Government Gazette.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

4. Civic Leadership > 4.2 Proactive and well governed shire

RISK IMPLICATIONS

The perceived level of risk is considered low-moderate.

VOTING REQUIREMENT

Absolute Majority

OCM2324/040 - COUNCIL RESOLUTION (Officer Recommendation)
--

MOVED Cr KV Johnston / Cr DP Gray

That Council –

- 1. resolves to make the Animals, Environment and Nuisance Local Law as per the attached draft;**
- 2. authorise the President and CEO to sign and affix the Common Seal to the Local Law;**
- 3. authorise the CEO to –**
 - **publish the Local Law in the Government Gazette and provide copies of the local law to the Minister for Local Government; and**
 - **forward a copy of the Gazetted Local Law, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.**

CARRIED by absolute majority 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobleby, Cr TD Borgward

Against:
Nil

9.1.8 PROPOSED BUSH FIRE BRIGADES LOCAL LAW – FINAL ADOPTION

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith - Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Proposed Bush Fire Brigades Local Law
DISCLOSURE OF INTEREST:	N/A

PURPOSE

To consider the final adoption of the Bush Fire Brigades Local Law in accordance with the *Local Government Act 1995* s.3.12 and the *Bush Fires Act 1954* s.62.

BACKGROUND

The Local Government Act requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to make provisions for establishment and roles of officers of Bush Fire Brigades in accordance with the *Bush Fires Act 1954*.

Effect – to align the requirements for Bush Fire Brigades with legislation and local practice.

The proposed local law repeals 1 old local law.

COMMENT

There are a number of matters that Council should be aware of –

(4) Terms used –

(d) “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified.

There are important legislative and administrative differences between appointment as an authorised person and delegation of power.

(e) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the CEO, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to CEO, nor to mean administratively.

(f) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.

As noted in the Agenda item to the Council meeting of 16 May 2023 –

1. the proposed local law does not conform to the WA Local Government Association model

–

- the Bush Fire Act being 70 years old;
- the WALGA model local law being over 20 years old,
 - o not updated for changes in legislation, particularly the Workplace Health and Safety Act
 - o unrealistic and unachievable for small local governments and small brigades

- no longer considered fit for purpose by many local governments including large local governments such as Rockingham, Wanneroo, Greater Geraldton and Carnarvon
- the model local law, if adopted, is very highly likely to be simply ignored as irrelevant
- 2. the minutes of the Shire of Carnarvon of January 2022, which referenced a substantial legal opinion inconsistent with JSCDL, DFES and WALGA position
- 3. Accordingly, it is considered that –
 - DFES may object to any local law that is not substantially the same as WALGA model, regardless of the model's inadequacies;
 - the JSCDL may support the position of DFES, despite any legal opinions that have been or may be obtained;
 - therefore, the JSCDL would likely either require and undertaking to be made to amend the local law, or more likely disallow it.
- 4. The proposed local law –
 - recognises that brigades are not independent, but are ultimately responsible to the local government;
 - includes provision for appointment of brigade officers directly by Council if considered necessary or appropriate, similar to appointment of fire control officers (which are required to be by Council, and are not an elected position).

Public notice was given by four methods as required by the Local Government Administration Regulations r.3A, for public comment on the proposed local law –

- on the Shire's website on 8 June 2023 (mandatory)
- Shire notice boards and social media on 8 June 2023
- in Great Southern Herald on 8 June 2023 and Pingrup Post on 8 June 2023

At the close of the submission period, comment had been received from –

3. Dept of Local Government, Sport and Cultural Industries –
 - No suggested amendments were received.
4. Dept of Fire and Emergency Services
 - No submissions were received at time of preparation of the agenda item.
5. No other submissions were received.

Should significant amendments be made at time of final adoption, the statutory public comment period must be recommenced.

Once formally adopted by Council, the –

- the local law is to be published in the Government Gazette,
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the Government Gazette.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,
- if a provision is not considered to be critical, the JSCDL may require an undertaking from Council to make an amendment,
- the local law takes effect on the day stipulated in the local law, generally 14 days after publication in the Government Gazette.

The JSCDL reviews the local law, its effects and may recommend to Parliament that it be amended and request an undertaking, or that it be disallowed. The JSCDL will not review the local law until after it has been formally adopted, Gazetted etc.

STATUTORY IMPLICATIONS

Local Government Act 1995 –

- s 3.12 – Procedure for making local laws
- s.3.13 – Significant changes require recommencement of proposal
- s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazetted
- s.3.15 – local public notice of the final adoption/making of a local law to be given

Bush Fires Act 2011 –

- s.42 – local governments may establish joint brigades by agreement
(*comment – local law not required*)
- s.43 local government shall make a local law for the appointment or election of captain, lieutenant etc, and prescribe duties
(*comment – support positions such as secretary, treasurer etc are not prescribed*)
- s.62 – local laws may be made for organisation etc of bush fire brigades

POLICY IMPLICATIONS

None

FINANCIAL IMPLICATIONS

Advertising of adoption of the local law, and publication in the Government Gazette.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

4. Civic Leadership > 4.2 Proactive and well governed shire

RISK IMPLICATIONS

The perceived level of risk is considered low-moderate.

VOTING REQUIREMENT

Absolute Majority

OCM2324/041 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr GW Hobley / Cr RA Jury

That Council –

- 1. resolves to make the Bush Fire Brigades Local Law as per the attached draft;**
- 2. authorise the President and CEO to sign and affix the Common Seal to the Local Law;**
- 3. authorise the CEO to –**
 - publish the Local Law in the Government Gazette and provide copies of the local law to the Minister for Local Government and Minister for Emergency Services; and**
 - forward a copy of the Gazetted Local Law, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.**

CARRIED by absolute majority 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.9 CEMETERIES LOCAL LAW – FINAL ADOPTION

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Proposed Cemeteries Local Law N/A
DISCLOSURE OF INTEREST:	

PURPOSE

To consider the final adoption of the Cemeteries Local Law in accordance with the *Local Government Act 1995* s.3.12.

BACKGROUND

The Local Government Act requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to provide for the management of cemeteries within the district and create offences for non-compliance.

Effect – to provide for the management and control of cemeteries.

The proposed local law repeals one old local law.

COMMENT

There are a number of matters that Council should be aware of –

(5) Terms used –

(g) “Board” means “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified. There are important legislative and administrative differences between appointment as an authorised person and delegation of power.

(h) “by resolution” – limits the decision to the Board (Council) at a meeting, and cannot be delegated to the CEO, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to CEO, nor to mean administratively.

(i) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.

(j) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to decision a person who has been given the power to make a decision rather than the Council.

(6) Use of policy to specify standards and activities. In accordance with the Local Government Act s.2.7, policies are to be set by Council, not the CEO, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.

- (7) Application of the local law the local law applies throughout the district, but then limits that application to the two cemetery reserves.
- (8) Notice to correct and undertaking remedial works – clauses 9.11, 9.12 and 9.13 are powers of the Council where damage or other non-compliance has occurred. Similar to an infringement notice or a prosecution, these also rely on knowing the identity of the offender. These clauses allow, where the offender is known, to –
 - (d) Issue a notice to repair, pay for repairs or carry out works needed for compliance with the local law. Generally, if there is damage, it is suggested that paying for reinstatement or repairs is most appropriate as the local government would then control the standard of works.
 - (e) If the recipient of the notice does not comply with the notice, they can be infringed or prosecuted.
 - (f) The local government may carry out the works and recover the cost as a debt, applying interest to the outstanding amount if necessary, or taking legal action. This is consistent with the provisions of the Local Government Act s.3.25 and 3.26 in relation to notices issued concerning Schedule 3.1 matters.

Public notice was given by four methods as required by the Local Government Administration Regulations r.3A, for public comment on the proposed local law.

Local public notice was given –

- on the Shire's website on 8 June 2023 (mandatory)
- Shire notice boards and social media on 8 June 2023
- in Great Southern Herald on 8 June 2023 and Pingrup Post on 8 June 2023

At the close of the submission period, comment had been received from –

6. Dept of Local Government, Sport and Cultural Industries –
 - No suggestions were received.
7. No other submissions were received.

Should significant amendments be made at time of final adoption, the statutory public comment period must be recommenced.

Once formally adopted by Council, the –

- the local law is to be published in the Government Gazette,
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the Government Gazette.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,
- if a provision is not considered to be critical, the JSCDL may require an undertaking from Council to make an amendment,
- the local law takes effect on the day stipulated in the local law, generally 14 days after publication in the Government Gazette.

The JSCDL reviews the local law, its effects and may recommend to Parliament that it be amended and request an undertaking, or that it be disallowed. The JSCDL will not review the local law until after it has been formally adopted, Gazetted etc.

STATUTORY IMPLICATIONS

Local Government Act 1995 –

s 3.12 – Procedure for making local laws

s.3.13 – Significant changes require recommencement of proposal

s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal

s.3.15 – local public notice of the final adoption/making of a local law to be given

Cemeteries Act 1986 –

s.55 (1) – a Board may make local laws ... as are necessary or convenient for the purposes of this Act ...

(r) generally for the doing of all such acts and things as are necessary or may necessary or convenient for the effective administration of a cemetery.,

POLICY IMPLICATIONS

Future adoption of Council policy for control and approval of matters provided in the proposed local law.

FINANCIAL IMPLICATIONS

Advertising of adoption of the local law, and publication in the Government Gazette.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2017-2027

Civic Leadership Objective - Continually enhance the Shire's organisational capacity to

service the needs of our community.

Outcome 4.1 An efficient and effective organisation

1.1.1 Continually improve operational efficiencies and provide effective services.

RISK IMPLICATIONS

The perceived level of risk is considered low-moderate.

VOTING REQUIREMENT

Absolute Majority

OCM2324/042 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr DP Gray / Cr GW Hobley

That Council –

- 1. resolves to make the Cemeteries Local Law as per the attached draft;**
- 2. authorise the President and CEO to sign and affix the Common Seal to the Local Law;**
- 3. authorise the CEO to –**
 - publish the Local Law in the Government Gazette and provide copies of the local law to the Minister for Local Government; and**
 - forward a copy of the Gazetted Local Law, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.**

CARRIED by absolute majority 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.10 DOGS LOCAL LAW – FINAL ADOPTION

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Proposed Dogs Local Law
DISCLOSURE OF INTEREST:	N/A

PURPOSE

To consider the final adoption of the Dogs Local Law in accordance with the *Local Government Act 1995* s.3.12.

BACKGROUND

The Local Government Act requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to make provisions about the impounding, the number that may be kept on premises, the manner of keeping dogs and create offences for non-compliance.

Effect – to repeal existing Dogs Local Law 1998 and provide for the controls of dogs within the district and impose penalties for non-compliance.

The proposed local law repeals one old local law.

COMMENT

There are a number of matters that Council should be aware of –

(9) Terms used –

(k) “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified.

There are important legislative and administrative differences between appointment as an authorised person and delegation of power.

(l) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.

(m) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to decision a person who has been given the power to make a decision rather than the Council.

(10) Use of policy to specify standards and activities. In accordance with the Local Government Act s.2.7, policies are to be set by Council, not the CEO, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.

(11) Application of the local law the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various clauses and Parts.

Public notice was given by four methods as required by the Local Government Administration Regulations r.3A, for public comment on the proposed local law.

Local public notice was given –

- on the Shire's website on 8 June 2023 (mandatory)
- Shire notice boards and social media on 8 June 2023
- in Great Southern Herald on 8 June 2023 and Pingrup Post on 8 June 2023

At the close of the submission period, comment had been received from –

8. Dept of Local Government, Sport and Cultural Industries –
 - Minor matters relating to punctuation etc.

No amendments are considered to be significant.

9. No other submissions were received.

Should significant amendments be made at time of final adoption, the statutory public comment period must be recommenced.

Once formally adopted by Council, the –

- the local law is to be published in the Government Gazette,
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the Government Gazette.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,
- if a provision is not considered to be critical, the JSCDL may require an undertaking from Council to make an amendment,
- the local law takes effect on the day stipulated in the local law, generally 14 days after publication in the Government Gazette.

The JSCDL reviews the local law, its effects and may recommend to Parliament that it be amended and request an undertaking, or that it be disallowed. The JSCDL will not review the local law until after it has been formally adopted, Gazetted etc.

STATUTORY IMPLICATIONS

Local Government Act 1995 –

- a. s 3.12 – Procedure for making local laws
- b. s.3.13 – Significant changes require recommencement of proposal
- c. s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal
- d. s.3.15 – local public notice of the final adoption/making of a local law to be given

Dog Act 1976 –

49. Local laws

A local government may make local laws —

- (a) for its district and any other area that is to be regarded, for the purposes of this Act, as being within that district;

POLICY IMPLICATIONS

Future adoption of Council policy for control and approval of matters provided in the proposed local law.

FINANCIAL IMPLICATIONS

Advertising of adoption of the local law, and publication in the Government Gazette.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

Civic Leadership Strategic Priorities – Proactive and well governed Shire

RISK IMPLICATIONS

The perceived level of risk is considered low-moderate.

VOTING REQUIREMENT

Absolute Majority

OCM2324/043 - COUNCIL RESOLUTION (Officer Recommendation)
--

MOVED Cr TD Borgward / Cr RA Jury

That Council –

- 1. resolves to make the Dogs Local Law as per the attached draft;**
- 2. authorise the President and CEO to sign and affix the Common Seal to the Local Law;**
- 3. authorise the CEO to –**
 - publish the Local Law in the Government Gazette and provide copies of the local law to the Minister for Local Government; and**
 - forward a copy of the Gazetted Local Law, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.**

CARRIED by absolute majority 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.11 FENCING LOCAL LAW – FINAL ADOPTION

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Proposed Fencing Local Law
DISCLOSURE OF INTEREST:	N/A

PURPOSE

To consider the final adoption of the Fencing Local Law in accordance with the *Local Government Act 1995* s.3.12.

BACKGROUND

The Local Government Act requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to prescribe a sufficient fence and the standard for construction of fences and create offences for non-compliance.

Effect – to establish the minimum requirements for fencing, provide for permitted and prohibited fencing, and create offences for non-compliance.

The proposed local law repeals one old local law.

COMMENT

There are a number of matters that Council should be aware of –

(12) Terms used –

(n) “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified.

There are important legislative and administrative differences between appointment as an authorised person and delegation of power.

(o) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.

(p) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to decision a person who has been given the power to make a decision rather than the Council.

(13) Use of policy to specify standards and activities. In accordance with the Local Government Act s.2.7, policies are to be set by Council, not the CEO, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.

(14) Application of the local law –

(c) the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various clauses and Parts.

- (d) Local Planning Scheme No.3 has a mixed use zoning, which could be used for residential as well as commercial or similar use, which has complicated how some of the provisions are applied. LPS No.3 also has land zoned "rural" inside townsites as well as outside areas, which also created a degree of complication.
- (15) Notice to correct and undertaking remedial works – clause 8.1(3) to (6) are powers of the Council where damage, nuisance or other non-compliance has occurred. Similar to an infringement notice or a prosecution, these also rely on knowing the identity of the offender. These clauses allow, where the offender is known, to –
- (g) Issue a notice to repair, pay for repairs or carry out works needed for compliance with the local law. Generally, if there is damage, it is suggested that paying for reinstatement or repairs is most appropriate as the local government would then control the standard of works.
 - (h) If the recipient of the notice does not comply with the notice, they can be infringed or prosecuted.
 - (i) The local government may carry out the works and recover the cost as a debt, applying interest to the outstanding amount if necessary, or taking legal action. This is consistent with the provisions of the Local Government Act s.3.25 and 3.26 in relation to notices issued concerning Schedule 3.1 matters.

Public notice was given by four methods as required by the Local Government Administration Regulations r.3A, for public comment on the proposed local law.

Local public notice was given –

- on the Shire's website on 8 June 2023 (mandatory)
- Shire notice boards and social media on 8 June 2023
- in Great Southern Herald on 8 June 2023 and Pingrup Post on 8 June 2023

At the close of the submission period, comment had been received from –

10. Dept of Local Government, Sport and Cultural Industries –
- Minor changes suggested
 - Noted that although referring to local laws, the Dividing Fences Act does not have a head of power for local laws and reference to that Act should be removed
 - Noted also that use of Australian Standards will necessitate information in its website advising where a copy of the Standard can be viewed (either the Shire offices or some other location).

No amendments are considered to be significant.

11. No other submissions were received.

Should significant amendments be made at time of final adoption, the statutory public comment period must be recommenced.

Once formally adopted by Council, the –

- the local law is to be published in the Government Gazette,
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the Government Gazette.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,

- if a provision is not considered to be critical, the JSCDL may require an undertaking from Council to make an amendment,
- the local law takes effect on the day stipulated in the local law, generally 14 days after publication in the Government Gazette.

The JSCDL reviews the local law, its effects and may recommend to Parliament that it be amended and request an undertaking, or that it be disallowed. The JSCDL will not review the local law until after it has been formally adopted, Gazetted etc.

STATUTORY IMPLICATIONS

Local Government Act 1995 –

- e. s 3.12 – Procedure for making local laws
- f. s.3.13 – Significant changes require recommencement of proposal
- g. s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal
- h. s.3.15 – local public notice of the final adoption/making of a local law to be given

POLICY IMPLICATIONS

Future adoption of Council policy for control and approval of matters provided in the proposed local law.

FINANCIAL IMPLICATIONS

Advertising of adoption of the local law, and publication in the Government Gazette.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

Civic Leadership Strategic Priorities – Proactive and well governed Shire

RISK IMPLICATIONS

The perceived level of risk is considered low-moderate.

VOTING REQUIREMENT

Absolute Majority

OCM2324/044 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr RA Jury

That Council –

- 1. resolves to make the Fencing Local Law as per the attached draft;**
- 2. authorise the President and CEO to sign and affix the Common Seal to the Local Law;**
- 3. authorise the CEO to –**
 - publish the Local Law in the Government Gazette and provide copies of the local law to the Minister for Local Government; and**
 - forward a copy of the Gazetted Local Law, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.**

CARRIED by absolute majority 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.12 PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW – FINAL ADOPTION

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Proposed Public Places and Local Government Property Local Law
DISCLOSURE OF INTEREST:	N/A

PURPOSE

To consider the final adoption of the Public Places and Local Government Property Local Law in accordance with the *Local Government Act 1995* s.3.12.

BACKGROUND

The Local Government Act requires the following statements be made in the agenda and minutes of the meeting –

- Purpose – to make provisions for the management of public places, thoroughfares and all local government property
- Effect – to repeal existing local laws, establish necessary controls for public places, thoroughfares and local government property, provide for permitted and prohibited use and activities, and create offences for non-compliance

The proposed local law repeals five old local laws.

COMMENT

There are a number of matters that Council should be aware of –

- (16) Terms used –
 - (q) “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified. There are important legislative and administrative differences between appointment as an authorised person and delegation of power.
 - (r) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
 - (s) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to decision a person who has been given the power to make a decision rather than the Council.
- (17) Use of policy to specify standards and activities. In accordance with the Local Government Act s.2.7, policies are to be set by Council, not the CEO, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.
- (18) Application of the local law –
 - (e) the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various clauses and Parts.

- (f) Local Planning Scheme No.3 has a mixed use zoning, which could be used for residential as well as commercial or similar use, which has complicated how some of the provisions are applied. LPS No.3 also has land zoned “rural” inside townsites as well as outside areas, which also created a degree of complication.
- (19) Notice to correct and undertaking remedial works – clauses 11.3 and 11.5 are powers of the Council where damage, nuisance or other non-compliance has occurred. Similar to an infringement notice or a prosecution, these also rely on knowing the identity of the offender. These clauses allow, where the offender is known, to –
- (j) Issue a notice to repair, pay for repairs or carry out works needed for compliance with the local law. Generally, if there is damage, it is suggested that paying for reinstatement or repairs is most appropriate as the local government would then control the standard of works.
 - (k) If the recipient of the notice does not comply with the notice, they can be infringed or prosecuted.
 - (l) The local government may carry out the works and recover the cost as a debt, applying interest to the outstanding amount if necessary, or taking legal action. This is consistent with the provisions of the Local Government Act s.3.25 and 3.26 in relation to notices issued concerning Schedule 3.1 matters.

Public notice was given by four methods as required by the Local Government Administration Regulations r.3A, for public comment on the proposed local law.

Local public notice was given –

- on the Shire’s website on 8 June 2023 (mandatory)
- Shire notice boards and social media on 8 June 2023
- in Great Southern Herald on 8 June 2023 and Pingrup Post on 8 June 2023

At the close of the submission period, comment had been received from –

12. Dept of Local Government, Sport and Cultural Industries –
- DLGSC noted that clause 2.2 did not specifically state that the power in relation to determinations could not be delegated, although the clause does state that Council is to make the decisions. Accordingly, (8) has been inserted
 - Clause 3.1 is amended to remove a duplication
 - Some minor changes were suggested

No amendments are considered to be significant.

13. No other submissions were received.

Should significant amendments be made at time of final adoption, the statutory public comment period must be recommenced.

Once formally adopted by Council, the –

- the local law is to be published in the Government Gazette,
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the Government Gazette.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,

- if a provision is not considered to be critical, the JSCDL may require an undertaking from Council to make an amendment,
- the local law takes effect on the day stipulated in the local law, generally 14 days after publication in the Government Gazette.

The JSCDL reviews the local law, its effects and may recommend to Parliament that it be amended and request an undertaking, or that it be disallowed. The JSCDL will not review the local law until after it has been formally adopted, Gazetted etc.

STATUTORY IMPLICATIONS

Local Government Act 1995 –

- a. s 3.12 – Procedure for making local laws
- b. s.3.13 – Significant changes require recommencement of proposal
- c. s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal
- d. s.3.15 – local public notice of the final adoption/making of a local law to be given

POLICY IMPLICATIONS

Future adoption of Council policy for control and approval of matters provided in the proposed local law.

FINANCIAL IMPLICATIONS

Advertising of adoption of the local law, and publication in the Government Gazette.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

Civic Leadership Strategic Priorities – Proactive and well governed Shire

RISK IMPLICATIONS

The perceived level of risk is considered low-moderate.

VOTING REQUIREMENT

Absolute Majority

OCM2324/045 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr DP Gray

That Council –

- 1. resolves to make the Public Places and Local Government Property Local Law as per the attached draft;**
- 2. authorise the President and CEO to sign and affix the Common Seal to the Local Law;**
- 3. authorise the CEO to –**
 - publish the Local Law in the Government Gazette and provide copies of the local law to the Minister for Local Government; and**
 - forward a copy of the Gazetted Local Law, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.**

CARRIED by absolute majority 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.13 STATUS OF COUNCIL DECISIONS – AUGUST 2023

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Nathanael Taekema – Governance Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 - Action Sheet Attachment 2 - Outstanding Matters List
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To inform the Council of the actions taken in relation to Council decisions.

BACKGROUND

By providing this report to Council as an agenda item on a monthly basis will keep Council informed on the progress of decisions made.

COMMENT

The status of Council decisions/resolutions is included as an attachment and updated monthly.

It is requested that action items be reviewed at each Council meeting.

STATUTORY IMPLICATIONS

Local Government Act 1995 – Section 5.41

The CEO's functions are to:-

- c) cause Council decisions to be implemented

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

- 4. Civic Leadership > 4.2 Proactive and well governed shire

RISK IMPLICATIONS

N/A

VOTING REQUIREMENT

Simple Majority

OCM2324/046 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr TD Borgward / Cr RA Jury

That the following be received by the Council:

- 1. The Action Sheet for the Council Meeting 16 August 2023;**
- 2. The Outstanding Matters list dated 20 September 2023.**

CARRIED 6/0

For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD Borgward

Against:
Nil

9.1.14 BIN ROAD AND KURINGUP ROAD INTERSECTION UPGRADE

PROPOSED MEETING DATE:	20 September 2023
PROPONENT:	N/A
LOCATION:	Bin Road and Kuringup Roads
AUTHOR:	Mark Tulleken – Manager Infrastructure
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.285
ASSESSMENT NO:	N/A
ATTACHMENTS:	Nil
DISCLOSURE OF INTEREST:	Nil

PURPOSE

Council to consider the need for the upgrade of the intersection of Bin Road and Kuringup Road Nyabing.

BACKGROUND

As part of the approved Development Application for Lot 100 on Deposited Plan 420337, portion of Crown Reserve 37752 and portion of Railway Reserve (Landgate Land ID no 3669132) Bin Road Nyabing dated 31 January 2023 it was stated in Condition 7 that:-

“The proponent shall monitor the use of the Kuringup/Bin Road intersection in consultation with the local government over a period of 12 months to determine and confirm the need for any upgrade works to this intersection. If works is deemed necessary by the local government, those works shall be undertaken in accordance with detailed engineering design drawings to be prepared by the proponent at its own cost for consideration and determination by the local government in consultation with Main Roads WA with all approved works required to be undertaken thereafter by the proponent at its own cost an completed within two years of the dated of this approval unless otherwise agreed.”

COMMENT

The Manager Infrastructure has carried out a Dilapidation Report on the said Intersection. The findings are below.

Road Dilapidation Report

Road Name:- Bin Road/ Kuringup Road Nyabing Intersection

Visual assessment as at 6/9/2023.

Width of roadway Kuringup Road:- 7m

Width of roadway Bin Road:- 7m

Defects

- 1) *Edge breaks* 10m
- 2) *Base Failure* 1m2
- 3) *Potholes* minor
- 4) *Dollar holes* minor
- 5) *Cracking* minor
- 6) *Rutting* N/A
- 7) *Seal Age* *Unknown but old and in need of a reseal.*

Recommendations;-

The intersection is old and but in a stable condition and as such there is no reason to rip it up and reconstruct it.

It is suggested that when the Bin Road Intersection with the Nyabing-Pingrup Road is upgraded that this intersection is resurfaced (including edge break repairs and small base failure) to tie in with the reconstruction works to the intersections. This works to include Regulatory Signage and line. This to be done at CBH's expense.

STATUTORY IMPLICATIONS

Local Government Act 1995:

6.8 Expenditure from municipal fund not included in annual budget

(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure –

- (a) Is incurred in a financial year before the adoption of the annual budget by the local government; or
- (b) Is authorised in advance by resolution*; or
- (c) Is authorised in advance by the mayor or president in an emergency.

**Absolute majority required.*

POLICY IMPLICATIONS

Policy 4.1 Accounting Policies

Objective: To provide the basis for Council's accounting concepts and reporting guidelines.
To maintain accounting reporting procedures which comply with Statutory Requirements and to demonstrate Council's financial position.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023-2033

2. ECONOMY

2.1 Coordinated delivery of economic services and projects

2.3 Safe and efficient transport network enables economic growth

RISK IMPLICATIONS

Positive risk implications due to better interaction between heavy vehicles and light motor vehicles Introduction of Hold Lines and Regulatory Stop signs will improve safety.

VOTING REQUIREMENT

Absolute Majority

OCM2324/047 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr KV Johnston / Cr RA Jury

That Council approve the Manager Infrastructure to approach CBH to put forward Councils position on the Intersection of Bin Road and Kuringup Road and Bin Road from the Bin/Kukerin Road intersection to the Bin/Katanning – Pingrup Road intersection, which would be upgrades in line with the Dilapidation Report above.

CARRIED 6/0

**For:
Cr SR Crosby, Cr KV Johnston, Cr DP Gray, Cr RA Jury, Cr GW Hobley, Cr TD
Borgward**

**Against:
Nil**

Amendment:

Council slightly amended the resolution for clarification, including Bin Road from the Bin / Kukerin Road intersection to the Bin / Katanning – Pingrup Road intersection.

- 4. **ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 5. **NEW BUSINESS OF AN URGENT NATURE AGREED TO BY RESOLUTION OF COUNCIL**
- 6. **MATTERS BEHIND CLOSED DOORS**

That the meeting be closed to the public in accordance with section 5.23 *Local Government Act 1995*, 5.5.23(2))

- Matters affecting employee(s)
- Personal affairs of any person(s), including financial and/or commercial Contracts
- Commercial Confidentiality
- Legal advice/matters
- Public safety/security matters where public knowledge may be prejudicial.

7. **MEETING CLOSED**

There being no further business the Shire President Cr Scott Crosby, closed the meeting at 6:17PM.

I certify these minutes were confirmed at the Ordinary Meeting of Council held 25 October 2023.

.....
Cr Scott Crosby – Shire President

.....
Date