



ORDINARY MINUTES (CONFIRMED)

DATE: Wednesday 17 April 2024

TIME: 9.30am

VENUE: Council Chambers
Nyabing Administration Office
24-26 Richmond Street
NYABING WA 6341

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Christie Smith

CHIEF EXECUTIVE OFFICER

MINUTES
17 April 2024

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1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting opened at 9.35 am.

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

ATTENDANCE

Elected Members

Cr K Johnston	Shire President
Cr D Gray	Deputy Shire President
Cr S Crosby	Member
Cr D Harris	Member
Cr G Hobley	Member
Cr S Reid	Member

Staff

C Smith	Chief Executive Officer
M Crosby	Manager Corporate
G Mathewson	Manager Infrastructure

APOLOGIES

APPROVED LEAVE OF ABSENCE

ABSENT

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 20 MARCH 2024

OCM2324/110 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr D GRAY/ Cr S CROSBY

That the minutes of the Ordinary Council Meeting of the Shire of Kent held at the Nyabing Council Chambers, on Wednesday 20 March 2024 be CONFIRMED.

CARRIED 6/0

**For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hobley, Cr S Reid, Cr D Harris**

**Against:
Nil**

6.1.2 SPECIAL MEETING HELD 28 MARCH 2024

OCM2324/111 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr D HARRIS/ Cr D GRAY

That the minutes of the Special Meeting held at the Nyabing Council Chambers, on Thursday 28 March 2024 be RECEIVED.

CARRIED 6/0

**For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hobley, Cr S Reid, Cr D Harris**

**Against:
Nil**

7. ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION

8. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

9. OFFICER REPORTS

9.1.1 MONTHLY FINANCIAL REPORTS TO 31 MARCH 2024

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Michaela Crosby – Manager Corporate
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	FIN.187
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 - Monthly Financial Reports to 31 March 2024
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.

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

OCM2324/112 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr S REID/ Cr S CROSBY

That Council receive the following Monthly Financial Reports as presented:

- **Monthly Financial Reports to 31 March 2024**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hopley, Cr S Reid, Cr D Harris

Against:
Nil

9.1.2 SCHEDULE OF ACCOUNTS PAID TO 31 MARCH 2024

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Michaela Crosby – Manager Corporate
REPORTING OFFICER:	Michaela Crosby – Manager Corporate
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

OCM2324/113 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr D GRAY/ Cr D HARRIS

That Council endorse the payments from the Municipal Fund and Trust Fund for the period ending 31 March 2024:

Municipal Fund (EFT)	\$248,888.29
Municipal Fund (CHQ)	\$ 0.00
Trust Fund	\$ 0.00
Direct Debits	\$140,249.45
<u>TOTAL</u>	<u>\$389,137.74</u>

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hopley, Cr S Reid, Cr D Harris

Against:
Nil

9.1.3 ENDORSEMENT STRATEGIC WASTE MANAGEMENT PLAN (SWMP) AND POST CLOSURE REHABILITATION PLANS (PCRPP)

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Christie Smith – Chief Executive Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.238
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – SWMP Attachment 2 – Nyabing PCRPP Attachment 3 – Pingrup PCRPP
DISCLOSURE OF INTEREST:	Nil

PURPOSE

The purpose of this report is to seek Council’s adoption of the following draft documents:

- Shire of Kent Strategic Waste Management Plan 2022 – 2032
- Post Closure Rehabilitation Plan – Nyabing Refuse Site March 2022
- Post Closure Rehabilitation Plan – Pingrup Refuse Site March 2022

BACKGROUND

Council engaged ASK Waste Management (ASK) to produce a Strategic Waste Management Plan (SWMP) for the period 2022 - 2032. ASK developed the Plan in line with regulatory requirements and Council’s needs and objectives.

In accordance with the *Environmental Protection (Rural Landfill) Regulations 2002*, a Post Closure Rehabilitation Plan (PCRPP) for both Nyabing and Pingrup refuse sites was to have been submitted to the Chief Executive Officer of Department of Water and Environmental Regulation (DWER) for approval within 18 months of the site being registered. The site was registered as a Category 89 landfill in 2004.

A Post Closure Rehabilitation Plan was developed for both sites in 2007 however there are no records of this Plan being submitted have been found by DWER or the Shire.

The 2022 PCRPP’s reviews and updates the previous 2007 plans to ensure compliance with the Regulations.

COMMENT

This SWMP sets the future direction for management of the Shires waste infrastructure and services to 2033 and provides a series of actions for implementation to:

- Keep pace with better practice
- Minimise waste to landfill
- Increase resource recovery
- Minimise impacts on health and the environment
- Strengthen the financial sustainability of the services provided.

The SWMP will align with the Shire’s Integrated Planning and Reporting (IPR) framework as an issue-specific informing strategy.

The PCRPs dated 2022 for both Nyabing and Pingrup Refuse Sites been prepared to satisfy regulation 17 of the *Environmental Protection (Rural Landfill) Regulations 2002*. The plans contains a plan for the rehabilitation of the sites after landfilling on the sites has ceased and contains:

- Site overview
- Current site layout
- Future use of the site after it has ceased to be a landfill site
- A conceptual site layout design for future use of the site
- Capping and closure design which includes:
 - the estimated final contours of the site, cap design, vegetation, drainage systems
- Post closure management and monitoring requirements

The 2022 PCRPs reviews and updates the previous 2007 plan to ensure compliance with the Regulations.

STATUTORY IMPLICATIONS

Environmental Protection (Rural Landfill) Regulations 2002 regulation 17

POLICY IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

There will be nil financial implications from endorsing the Strategic Waste Management Plan. Recommendations within the report that require municipal expenditure can be considered within future budgets.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

3. Environment Strategic Priorities

3.1 Maintain a high standard of environmental health and waste services

Refuse and transfer sites are clean and safe to access

RISK IMPLICATIONS

Nil

VOTING REQUIREMENT

Simple Majority

OCM2324/114 - COUNCIL RESOLUTION (Officer Recommendation)
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MOVED Cr G HOBLEY/ Cr S CROSBY

That the Council adopt the following plans:

- **Shire of Kent Strategic Waste Management Plan 2022 – 2032**
- **Post Closure Rehabilitation Plan – Nyabing Refuse Site March 2022**
- **Post Closure Rehabilitation Plan – Pingrup Refuse Site March 2022**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hobley, Cr S Reid, Cr D Harris

Against:
Nil

9.1.4 DRAFT LOCAL HERITAGE SURVEY – COMMUNITY CONSULTATION

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Christie Smith – Chief Executive Officer
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.267
ASSESSMENT NO:	N/A
ATTACHMENTS:	Attachment 1 – Local Heritage Survey 2024 Attachment 2 – Local Heritage Survey List Attachment 3 – Heritage List Attachment 4 – Guidelines for Heritage Surveys Attachment 5 – Guidelines for Assessment Attachment 6 – Burra Charter
DISCLOSURE OF INTEREST:	Nil

PURPOSE

The purpose of this report is to seek Council's endorsement of the Draft Local Heritage Survey and commence community consultation.

BACKGROUND

The Department of Planning, Lands and Heritage (DPLH) announced a Local Heritage Grants Program in September 2022. The purpose of the grant was to identify local heritage places and develop and implement a heritage framework. In March 2023, Council was successful in receiving \$4,500 under this program.

Laura Gray of Heritage Intelligence (WA) was contracted to undertake works required to form a new Local Heritage Survey (LHS) which would replace Council's previously adopted Municipal Heritage Inventory.

In April 2023, Laura provided a presentation to Council on the overview of the LHS process and met with locals within the Shire to discuss and assess identified places and potential places of heritage interest.

COMMENT

The review has been undertaken in consideration of DPLH guidelines, 'Criteria for the assessment of local heritage places and areas as recommended in 'State Planning Policy 3.5 Historic Heritage Conservation.

The draft report comprises recommendations for the Local Heritage Survey and the places within that survey that form the Heritage List for conservation guidance through the provisions of the Shire's planning scheme and a local planning policy that will require adoption once LHS process is complete.

It is recommended community consultation be undertaken with public submissions be open for a minimum 14 day period with the final Local Heritage Survey and Heritage List to be prepared for adoption at the May Ordinary Meeting of Council.

STATUTORY IMPLICATIONS

Part 18 of the *Heritage Act 2018* requires each local government to identify places of cultural heritage significance in a Local Heritage Survey.

Local Government Act 1995
Planning and Development Act 2005

*State Planning Policy 3.5 Historic Heritage Conservation***POLICY IMPLICATIONS**

Shire of Kent Policy Manual

3.2.1 Community Consultation and Engagement Policy

Recommended consultation as Level C – Medium, will seek comment through social media, website, community email, and Keeping up with Kent newsletter. A public comment period of a minimum of 14 days for submissions will be advertised.

A Local Planning Policy relevant to the Heritage List will be prepared as part of this review process and will be presented to Council for consideration once the plans have been adopted.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023 - 2033

1. Community Strategic Priorities

1.3 Well maintained community spaces and infrastructure

Shire owned, community buildings and heritage spaces are well maintained, accessible and activated.

4. Civic Leadership Strategic Priorities

4.1 Forward planning and implementation of plans to achieve community priorities

RISK IMPLICATIONS

Nil

VOTING REQUIREMENT

Simple Majority

OCM2324/115 - COUNCIL RESOLUTION (Officer Recommendation)**MOVED Cr D GRAY/ Cr G HOBLEY****That the Council:**

- 1. Endorses the Draft Local Heritage Survey, as presented; and**
- 2. Invites public comment, with submissions closing 9am Tuesday, 7 May 2024.**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hobley, Cr S Reid, Cr D Harris

Against:
Nil

9.1.5 ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2023 – UNDERTAKING TO JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION (JSCDL)

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Niel Mitchell
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.238
ASSESSMENT NO:	N/A
ATTACHMENTS:	<u>CONFIDENTIAL</u> – Letter from JSCDL
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To consider providing an undertaking to the Joint Standing Committee on Delegated Legislation (JSCDL) to amend the Animals Environment and Nuisance Local Law.

BACKGROUND

Advice has been received from the JSCDL regarding the Animals, Environment and Nuisance Local Law adopted by Council, published in the Government Gazette on 20 November 2023 and now in force.

Legislation requires that local laws are presented to Parliament for review, at which time they may be disallowed by the Parliament.

The *Interpretation Act 1984* s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow.

The JSCDL has delegated power from Parliament to review local laws etc, and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

COMMENT

The role of the JSCDL is to review all legislation, regulations, local laws etc on behalf of Parliament, made by government agencies and local government. As part of their role, they may seek to put in place an undertaking with the relevant authority to amend the delegated legislation, rather than disallowing it entirely. An undertaking is generally in two parts –

1. A commitment to amend the local law within a specified time, or the timeframe may not be specified; and
2. That the local law provisions that are to be amended will not be enforced until the amendment is made.

An undertaking may be requested where the purpose of the local law is able to continue reasonably intact, but is not sought if the matter is considered to be core to the local law and fatal to its operation.

Accordingly, the local law remains in place, including the provisions considered by the JSCDL to be requiring amendment. To amend these provisions requires an amendment local law to be made, following the procedures set out by the *Local Government Act 1995* s.3.12.

The JSCDL advises that the correspondence is confidential and privileged. Should the contents of the letter need to be discussed, the meeting should be closed to the public.

The JSCDL does not propose to present a Notice of Disallowance of the local law to as Council is requested to provide the undertakings proposed in the recommendation.

An amendment to the local law is required to be made within 6 months. If necessary, consequential amendments to other clauses may be made, but this is not expected.

If resolved, the undertaking needs to be publicly available. The simplest way for this to occur is to place the advice as a preface to the local law on the website, and on the local laws website page.

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 22 April 2024, should Council agree to give it.

The JSCDL require that the undertaking be confirmed with them by a letter signed by the President.

STATUTORY IMPLICATIONS

Interpretations Act 1984 –

- *s.42(2) – after publication in the Government Gazette, Parliament may disallow within 14 sitting days of receipt*

POLICY IMPLICATIONS

Amendment to current local law.

FINANCIAL IMPLICATIONS

Nil

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

Simple Majority

OCM2324/116 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr G HOBLEY/ Cr S REID

That the Council of the Shire of Kent resolves to undertake to the Joint Standing Committee on Delegated Legislation that –

- 1. Within 6 months correct the typographical errors in clauses 4.7(2), 9.2(1) and Schedule 1 of the Animals, Environment and Nuisance Local Law 2023.**
- 2. Not enforce the local law to the contrary before it is amended in accordance with undertaking 1.**
- 3. Ensure all consequential amendments arising from undertaking will be made.**
- 4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hoble, Cr S Reid, Cr D Harris

Against:
Nil

9.1.6 BUSH FIRE BRIGADES LOCAL LAW 2023 – UNDERTAKING TO JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION (JSCDL)

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Niel Mitchell
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.238
ASSESSMENT NO:	N/A
ATTACHMENTS:	CONFIDENTIAL – Letter from JSCDL
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To consider providing an undertaking to the Joint Standing Committee on Delegated Legislation (JSCDL) to amend the Bush Fire Brigades Local Law.

BACKGROUND

Advice has been received from the JSCDL regarding the Bush Fire Brigades Local Law adopted by Council, published in the Government Gazette on 20 November 2023 and now in force.

Legislation requires that local laws are presented to Parliament for review, at which time they may be disallowed by the Parliament.

The *Interpretation Act 1984* s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow.

The JSCDL has delegated power from Parliament to review local laws etc, and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

COMMENT

The role of the Committee is to review all legislation, regulations, local laws etc on behalf of Parliament, made by government agencies and local government. As part of their role, they may seek to put in place an undertaking with the relevant authority to amend the delegated legislation, rather than disallowing it entirely. An undertaking is generally in two parts –

1. A commitment to amend the local law within a specified time, or the timeframe may not be specified; and
2. That the local law provisions that are to be amended will not be enforced until the amendment is made.

An undertaking may be requested where the purpose of the local law is able to continue reasonably intact, but is not sought if the matter is considered to be core to the local law and fatal to its operation.

Accordingly, the local law remains in place, including the provisions considered by the JSCDL to be requiring amendment. To amend these provisions requires an amendment local law to be made, following the procedures set out by the *Local Government Act 1995* s.3.12.

The JSCDL advises that the correspondence is confidential and privileged. Should the contents of the letter need to be discussed, the meeting should be closed to the public.

The JSCDL does not propose to present a Notice of Disallowance of the local laws to as Council is requested to provide the undertakings proposed in the recommendation.

An amendment to, or remake of, the local law is requested to be made within 6 months.

The WA Local Government Model Bush Fire Brigades Local Law model is very prescriptive, unrealistic for small brigades, and if adopted as is, would be very likely to result in the local law being ignored as largely irrelevant. This would in turn may possibly create a liability on the part of brigades if they were non-compliant with the overly restrictive requirements of the local law.

The Bush Fire Brigades Local Law adopted by Council is essentially identical to that adopted by City of Greater Geraldton and the Shire of Carnarvon, both which had the requests by the JSCDL for undertakings withdrawn. Other local governments have also adopted a near identical local law (refer Shire of Carnarvon minutes of January 2022).

The JSCDL position was solidified in a report by them in November 2023, after the current local law was published in the Gazette, which further endorsed their stance regarding the WALGA model, despite the *Bush Fires Act 1954* –

- section 41(1) stating "... a local government may, in accordance with its local laws ...". WALGA, DFES and JSCDL are interpreting this clause as meaning that the local government may establish brigades, and if it does, shall stipulate duties in a local law. It should be noted that their interpretation of this section is contradicted by a prominent legal firm.
- section 42 permitting local government to establish a joint brigade by agreement, not local law
- section 43 requires duties etc of BFB captain and lieutenant to be stipulated in a local law. There is no requirement for functions of fire control officers to be included, or those of secretary, treasurer etc
- section 62 clearly stating "... may make local laws ..." relating to fire control officers, organisation and management of a brigade etc.

Further, the *Interpretations Act 1984* s.55 states that "*May*" imports a discretion, "*shall*" is imperative and clarifies this further in the text of the section.

Despite the inconsistency of their interpretation and requirements with multiple legislation, the JSCDL requires these matters advised being included in a local law, as noted in their report. Accordingly, the simple local law previously adopted by various local governments and accepted by the JSCDL is no longer acceptable to them. This has resulted in the request for an undertaking.

There appear to be several options –

- refuse to make an undertaking, most likely resulting in a disallowance of the current local law, which in turn results in non-compliance with the *Bush Fires Act 1954* s.43,
- make the undertaking as requested, resulting in the current local law being effectively wiped out or replaced with the amendments required, or
- revoke the current local law and adopt a new local law.

In an email, the JSCDL provided informal advice that "*it is up to the Shire as to how it wishes to fulfil the undertakings to the Committee. The reference to 'amend' in the letter was not intended to restrict this to an amendment local law. The Shire may wish to do it in the way you describe. As long as the Shire's local law contains what the Committee is requesting.*"

It is considered that the simplest, quickest and cheapest option is revocation of the existing local law and adoption of a new local law. From a list of several local governments, it is suggested that one of these be adopted by reference, and the few amendments needed be made in the local law that adopts by reference. The text is then amended and becomes a consolidated local law for the purposes of the *Local Government Act 1995* s.5.96A(1)(b).

Please note –

- there is no certainty the JSCDL will accept this as an undertaking, although it appears likely,

- there is no certainty that the JSCDL will accept adoption by reference, although this is a firmly established practice with many other local laws made under the *Local Government Act 1995* and previously, under the former *Health Act 1911*,
- there is no certainty that the JSCDL will accept any changes other than the name of the local government.

The most appropriate of the Bush Fire Brigade Local Laws in recent times is that adopted by the Shire of Pingelly. While still including a great amount of detail that are not considered required by legislation, it does insert some important discretions, and excludes some completely extraneous matters.

Please note – that the wording of the Recommendation is not the same as the wording suggested by the JSCDL.

If resolved, the undertaking needs to be publicly available. The simplest way for this to occur is to place the advice as an addendum to the local law on the website, and on the local laws website page.

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 22 April 2024, should Council agree to give it.

The JSCDL require that the undertaking be confirmed with them by a letter signed by the President.

STATUTORY IMPLICATIONS

Interpretations Act 1984 –

- *s.42(2) – after publication in the Government Gazette, Parliament may disallow within 14 sitting days of receipt*

POLICY IMPLICATIONS

Amendment to current local law.

FINANCIAL IMPLICATIONS

Nil

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

Simple Majority

OCM2324/117 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr S CROSBY/ Cr D GRAY

That the Council of the Shire of Kent resolves to undertake to the Joint Standing Committee on Delegated Legislation that –

- 1. Within 6 months the Bush Fire Brigades Local Law 2023 will be repealed, and a new local law adopted, meeting the requirements of the Joint Standing Committee on Delegated Legislation.**
- 2. Not enforce the local law to the contrary before it is amended in accordance with undertaking 1.**
- 3. Ensure all consequential amendments arising from undertaking will be made.**
- 4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.**

CARRIED 6/0

**For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hobley, Cr S Reid, Cr D
Harris**

**Against:
Nil**

9.1.7 CEMETERIES LOCAL LAW 2023 – UNDERTAKING TO JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION (JSCDL)

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Niel Mitchell
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.238
ASSESSMENT NO:	N/A
ATTACHMENTS:	CONFIDENTIAL – Letter from JSCDL
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To consider providing an undertaking to the Joint Standing Committee on Delegated Legislation (JSCDL) to amend the Cemeteries Local Law.

BACKGROUND

Advice has been received from the JSCDL regarding the Cemeteries Local Law adopted by Council, published in the Government Gazette on 20 November 2023 and now in force.

Legislation requires that local laws are presented to Parliament for review, at which time they may be disallowed by the Parliament.

The *Interpretation Act 1984* s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow.

The JSCDL has delegated power from Parliament to review local laws etc, and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

COMMENT

The role of the JSCDL is to review all legislation, regulations, local laws etc on behalf of Parliament, made by government agencies and local government. As part of their role, they may seek to put in place an undertaking with the relevant authority to amend the delegated legislation, rather than disallowing it entirely. An undertaking is generally in two parts –

1. A commitment to amend the local law within a specified time, or the timeframe may not be specified; and
2. That the local law provisions that are to be amended will not be enforced until the amendment is made.

An undertaking may be requested where the purpose of the local law is able to continue reasonably intact, but is not sought if the matter is considered to be core to the local law and fatal to its operation.

Accordingly, the local law remains in place, including the provisions considered by the JSCDL to be requiring amendment. To amend these provisions requires an amendment local law to be made, following the procedures set out by the *Local Government Act 1995* s.3.12.

The JSCDL advises that the correspondence is confidential and privileged. Should the contents of the letter need to be discussed, the meeting should be closed to the public.

The JSCDL does not propose to present a Notice of Disallowance of the local laws to as Council is requested to provide the undertakings proposed in the recommendation.

An amendment to the local law is required to be made when next reviewed. However, since other local laws also require amendment, it is proposed that it be done at the same time. If necessary, consequential amendments to other clauses may be made, but this is not expected.

If resolved, the undertaking needs to be publicly available. The simplest way for this to occur is to place the advice as an addendum to the local law on the website, and on the local laws website page.

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 22 April 2024, should Council agree to give it.

The JSCDL require that the undertaking be confirmed with them by a letter signed by the President.

STATUTORY IMPLICATIONS

Interpretations Act 1984 –

- *s.42(2) – after publication in the Government Gazette, Parliament may disallow within 14 sitting days of receipt*

POLICY IMPLICATIONS

Amendment to current local law.

FINANCIAL IMPLICATIONS

Nil

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

Simple Majority

OCM2324/118 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr G HOBLEY/ Cr S CROSBY

That the Council of the Shire of Kent resolves to undertake to the Joint Standing Committee on Delegated Legislation that –

- 1. When the local law is next reviewed correct the typographical errors in clauses 1.5, 3.1(2) and 7.1(1) of the Cemeteries Local Law 2023.**
- 2. Ensure all consequential amendments arising from undertaking will be made.**
- 3. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hopley, Cr S Reid, Cr D Harris

Against:
Nil

9.1.8 FENCING LOCAL LAW 2023 – UNDERTAKING TO JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION (JSCDL)

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Niel Mitchell
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.238
ASSESSMENT NO:	N/A
ATTACHMENTS:	CONFIDENTIAL – Letter from JSCDL
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To consider providing an undertaking to the Joint Standing Committee on Delegated Legislation (JSCDL) to amend the Fencing Local Law.

BACKGROUND

Advice has been received from the JSCDL regarding the Fencing Local Law adopted by Council, published in the Government Gazette on 20 November 2023 and now in force.

Legislation requires that local laws are presented to Parliament for review, at which time they may be disallowed by the Parliament.

The *Interpretation Act 1984* s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow.

The JSCDL has delegated power from Parliament to review local laws etc, and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

COMMENT

The role of the Committee is to review all legislation, regulations, local laws etc on behalf of Parliament, made by government agencies and local government. As part of their role, they may seek to put in place an undertaking with the relevant authority to amend the delegated legislation, rather than disallowing it entirely. An undertaking is generally in two parts –

1. A commitment to amend the local law within a specified time, or the timeframe may not be specified; and
2. That the local law provisions that are to be amended will not be enforced until the amendment is made.

An undertaking may be requested where the purpose of the local law is able to continue reasonably intact, but is not sought if the matter is considered to be core to the local law and fatal to its operation.

Accordingly, the local law remains in place, including the provisions considered by the JSCDL to be requiring amendment. To amend these provisions requires an amendment local law to be made, following the procedures set out by the *Local Government Act 1995* s.3.12.

The JSCDL advises that the correspondence is confidential and privileged. Should the contents of the letter need to be discussed, the meeting should be closed to the public.

The JSCDL does not propose to present a Notice of Disallowance of the local laws to as Council is requested to provide the undertakings proposed in the recommendation.

An amendment to the local law is required to be made within 6 months. If necessary, consequential amendments to other clauses may be made, but this is not expected.

If resolved, the undertaking needs to be publicly available. The simplest way for this to occur is to place the advice as an addendum to the local law on the website, and on the local laws website page.

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 22 April 2024, should Council agree to give it.

The JSCDL require that the undertaking be confirmed with them by a letter signed by the President.

STATUTORY IMPLICATIONS

Interpretations Act 1984 –

- *s.42(2) – after publication in the Government Gazette, Parliament may disallow within 14 sitting days of receipt*

POLICY IMPLICATIONS

Amendment to current local law.

FINANCIAL IMPLICATIONS

Nil

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

Simple Majority

OCM2324/119 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr D GRAY/ Cr D HARRIS

That the Council of the Shire of Kent resolves to undertake to the Joint Standing Committee on Delegated Legislation that –

- 1. Within 6 months correct the typographical errors in clauses 2.2(3), 3.7 and 6.1(2)(c) of the Fencing Local Law 2023.**
- 2. Not enforce the local law to the contrary before it is amended in accordance with undertaking 1.**
- 3. Ensure all consequential amendments arising from undertaking will be made.**
- 4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hopley, Cr S Reid, Cr D Harris

Against:
Nil

9.1.9 PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW 2023 – UNDERTAKING TO JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION (JSCDL)

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Niel Mitchell
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GOV.238
ASSESSMENT NO:	N/A
ATTACHMENTS:	<u>CONFIDENTIAL</u> – Letter from JSCDL
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To consider providing an undertaking to the Joint Standing Committee on Delegated Legislation (JSCDL) to amend the Public Places and Local Government Property Local Law.

BACKGROUND

Advice has been received from the JSCDL regarding the Public Places & Local Government Property Local Law adopted by Council, published in the Government Gazette on 20 November 2023 and now in force.

Legislation requires that local laws are presented to Parliament for review, at which time they may be disallowed by the Parliament.

The *Interpretation Act 1984* s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow.

The JSCDL has delegated power from Parliament to review local laws etc, and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

COMMENT

The role of the JSCDL is to review all legislation, regulations, local laws etc on behalf of Parliament, made by government agencies and local government. As part of their role, they may seek to put in place an undertaking with the relevant authority to amend the delegated legislation, rather than disallowing it entirely. An undertaking is generally in two parts –

1. A commitment to amend the local law within a specified time, or the timeframe may not be specified; and
2. That the local law provisions that are to be amended will not be enforced until the amendment is made.

An undertaking may be requested where the purpose of the local law is able to continue reasonably intact, but is not sought if the matter is considered to be core to the local law and fatal to its operation.

Accordingly, the local law remains in place, including the provisions considered by the JSCDL to be requiring amendment. To amend these provisions requires an amendment local law to be made, following the procedures set out by the *Local Government Act 1995* s.3.12.

The JSCDL advises that the correspondence is confidential and privileged. Should the contents of the letter need to be discussed, the meeting should be closed to the public.

The JSCDL does not propose to present a Notice of Disallowance of the local laws to as Council is requested to provide the undertakings proposed in the recommendation.

An amendment to the local law is required to be made within 6 months. If necessary, consequential amendments to other clauses may be made, but this is not expected.

If resolved, the undertaking needs to be publicly available. The simplest way for this to occur is to place the advice as an addendum to the local law on the website, and on the local laws website page.

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 22 April 2024, should Council agree to give it.

The JSCDL require that the undertaking be confirmed with them by a letter signed by the President.

STATUTORY IMPLICATIONS

Interpretations Act 1984 –

- *s.42(2) – after publication in the Government Gazette, Parliament may disallow within 14 sitting days of receipt*

POLICY IMPLICATIONS

Amendment to current local law.

FINANCIAL IMPLICATIONS

Nil

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

Simple Majority

OCM2324/120 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr S Reid/ Cr D HARRIS

That the Council of the Shire of Kent resolves to undertake to the Joint Standing Committee on Delegated Legislation that –

- 1. Within 6 months delete clause 4.8 of the Public Places and Local Government Property Local Law 2024.**
- 2. Not enforce the local law to the contrary before it is amended in accordance with undertaking 1.**
- 3. Ensure all consequential amendments arising from undertaking will be made.**
- 4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.**

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hoble, Cr S Reid, Cr D Harris

Against:
Nil

9.1.10 LOCAL ROADS AND COMMUNITY INFRASTRUCTURE PROGRAM – PHASE 4

PROPOSED MEETING DATE:	17 April 2024
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	Michaela Crosby – Manager Corporate and Gary Mathewson- Manager Infrastructure
REPORTING OFFICER:	Christie Smith – Chief Executive Officer
FILE NO:	GRA.188
ASSESSMENT NO:	N/A
ATTACHMENTS:	Nil
DISCLOSURE OF INTEREST:	Nil

PURPOSE

Council to consider eligible projects for submission under the Local Roads and Community Infrastructure Program (LRCIP) Phase 4.

BACKGROUND

Council received \$501,544 under Phase 1, \$349,064 under Phase 2, and \$1,003,108 under Phase 3 of the funding program.

Phase 4 of the LRCI Program continues to be a temporary, targeted measure supporting local infrastructure, jobs, firms and procurement. The funding allocated comprises of two sections;

- Part A (\$501,544) – For use on road and/or community infrastructure projects and
- Part B (\$289,307) – For use on rural, regional or outer – urban road projects.

As with the earlier Phases of the LRCI Program, the Council can select a broad range of projects to fund so that communities can continue to be provided with the infrastructure they require. It is expected that Council will use local businesses and workforces to deliver projects wherever possible to ensure direct benefits to local communities.

Co-contributions are not required under the LRCI Program, but are allowed to be used for projects. A project can be funded by a combination of LRCI Program funds, Council funds, and other government program funds (including state government programs), as long as the combined funding for the project does not exceed the estimated cost of a project.

As part of the guidelines, the Department of Infrastructure, Transport, Regional Development and Communications require receipt of a draft work schedule no later than 31 December 2024 and nominated projects are due to for completion by 30 June 2025.

Under Phase 1, 2 and 3, the following projects have been approved and are nearing completion:

PROJECT	COST	PHASE	STATUS
Kukerin Road - sealing	\$501,544	Phase 1	Completed
Memorial & Burston Parks Shade Structure	\$131,300	Phase 2	Completed
Carrie Street, Pingrup Multi Path	\$48,324	Phase 2	Completed
Admin Office Solar Battery Back Up	\$15,598	Phase 2	Completed
Nyabing & Pingrup Pavilions PV Solar	\$66,161	Phase 2	Completed
Jury Street/Parrot’s Bridge Solar Lighting	\$17,626	Phase 2	Completed
Jury Street Drainage Works	\$6,814	Phase 2	Completed
Replacement Playground Equipment	\$12,334	Phase 2	Completed
Smart Room Meeting Device	\$12,543	Phase 2	Completed
Pingrup Sports Pavilion Jumping Pillow	\$27,283	Phase 2	Completed
Memorial and Burston Park Fencing Adult Equip	\$11,081	Phase 2	Completed
Pingrup Pavilion Upgrade	\$180,030	Phase 3	Completed

Pingrup Caravan Park Upgrade	\$245,722	Phase 3	Completed
Nyabing Memorial Park Improvements	\$59,637	Phase 3	Completed
Pingrup Silo Trail Improved Accessibility	\$58,108	Phase 3	Completed
Nyabing South/Wallacup Intersection	\$34,535	Phase 3	In Progress
Footpath Upgrade in Nyabing	\$58,725	Phase 3	Completed
Footpath Upgrade in Pingrup	\$47,740	Phase 3	Completed

Changes to the original Works Schedule in Phase 3 include;

- Richmond Street Carpark Project (\$65,000) - request to be removed as nominated project.
- Nyabing Rear Access Back Lane Project (\$150,000) - removed as a nominated project (drainage survey is required for the entire town).
- Council Chambers Carpark Project (\$33,000) - accepted as a new project.
- Nyabing Standpipe Tank Project (\$60,000) - nominated as a new project.
- Repairs/Replacement of Fence at Holding Pond Project (\$20,000) - nominated as a new project variation.
- Replacement of Fence at St John Sub Centre/RSL/Fire Shed Project (\$20,000) - nominated as a new project.
- Footpath Upgrade on George Street Project (\$76,248) - nominated as a new project.

COMMENT

The Dumbleyung Road serves a primary thoroughfare linking towns in the Great Southern. Despite its significance, the road infrastructure is in need of repair to meet the current and future commuter and transport demands of the region.

Upgrading areas of the Dumbleyung Road has previously been unsuccessfully proposed for funding under the Commodity Route Funding Program which proves improvements align with the community’s needs and priorities, promoting safety and connectivity in addressing existing challenges for this important transport corridor.

It is proposed to upgrade areas of the Dumbleyung Road from SLK 5.49 to SLK 8.65 (Warnaminup to Phillips Road), using the total (both Part A and B) LRCIP Phase 4 budget of \$790,861. A cost estimation breakdown is listed below;

Materials	
23,700 sq. metres of lime stabilising \$4.50/t	\$ 106,650.00
23,700 sq. metres of cement stabilising \$4.50/t	\$ 106,650.00
Mobilisation / Demobilisation	\$ 5,000.00
Surveying	\$ 15,000.00
Gravel 5,550 cubic metres @ \$9.50/cu	\$ 52,725.00
22,120 sq. metres two coat 14/7mm seal @ \$11.50/m	\$ 254,380.00
14mm aggregate 300t \$60/t	\$ 18,000.00
7mm aggregate 300t \$60/t	\$ 18,000.00
	\$ 576,405.00
Machinery	
Grader 15 days x 8hours @ \$176/hr	\$ 21,120.00
Loader 10 days x 8hours @ \$165/hr	\$ 13,200.00
Excavator 5 days x 8hours @ \$176hr	\$ 7,040.00
2 x truck and trailer 10 days x 8hours @ \$192/hr	\$ 30,720.00
2 x water trucks 10 days x 8hours @ \$165/hr	\$ 26,400.00
Semi water trucks 10 days x 8hours @ \$192/hr	\$ 15,360.00
Low loader 2 days x 8hours @ \$192/hr	\$ 3,072.00
2 x rollers 10 days x 8hours @ \$110/hr	\$ 17,600.00
Crew cab	\$ 6,600.00
6 x wages 10 days x 10 hours @ \$66/hr	\$ 39,600.00
6 wages 5 days x 10 hours @ \$132/hr	\$ 39,600.00
Project Management	\$ 30,000.00
	\$ 250,312.00
Total Project Estimation	\$ 826,717.00

STATUTORY IMPLICATIONS

Local Government Act 1995

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

All of Phase 4 funding allocation will be expended on the proposed project. Council will investigate and assess the possibility of securing additional funding from alternative government grants or the budget allocated for the year 2024-2025.

STRATEGIC IMPLICATIONS

Community Strategic Plan 2023-2033

2. Economy

2.3 Safe and efficient transport network enables economic growth

Less impact on our roads due to weather events and increased vehicle tonnage

Agricultural freight movement is safe

RISK IMPLICATIONS

N/A

VOTING REQUIREMENT

Simple Majority

OCM2324/121 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr D GRAY/ Cr G HOBLEY

That Council nominates the following projects in a works schedule for Local Roads and Community Infrastructure Program (LRCIP) Phase 4 and submits to the Department of Infrastructure, Transport, Regional Development and Communications:

- Dumbleyung Road Upgrade Part A \$501,544
- Dumbleyung Road Upgrade Part B \$289,307
- Total \$790,851*

CARRIED 6/0

For:
Cr K Johnston, Cr D Gray, Cr S Crosby, Cr G Hobley, Cr S Reid, Cr D Harris

Against:
Nil

10. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

11. NEW BUSINESS OF AN URGENT NATURE AGREED TO BY RESOLUTION OF COUNCIL

12. MATTERS BEHIND CLOSED DOORS

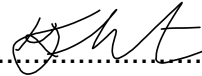
That the meeting be closed to the public in accordance with section 5.23 *Local Government Act 1995, 5.5.23(2)*

- 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.

13. MEETING CLOSED

There being no further business the Shire President Cr Kate Johnston, closed the meeting at 9.51am.

I certify these minutes were confirmed at the Ordinary Meeting of Council held 15 May 2024.



.....
Cr Kate Johnston – Shire President

15th May 2024

.....
Date