



Date: 17 May 2022

To: Shire President
All Councillors

Copy: Directors
Managers
Staff

ORDINARY COUNCIL MEETING NOTICE AND AGENDA

An Ordinary Council meeting of the Shire of Waroona will be held in the Council Chamber at 4.00 pm Tuesday 24 May 2022 to consider and resolve the matters set out in the attached Agenda.

A handwritten signature in blue ink, consisting of stylized initials that appear to be "MG".

**MARK GOODLET
CHIEF EXECUTIVE OFFICER**

PUBLIC QUESTION TIME

1. The order of business allows for a Public Question time at the beginning of the Meeting.
2. If you wish to ask a Question about an Agenda Item before it is considered then it is recommended to be made at the Public Question Time at Item 4 on the Agenda Notice Paper in accordance with Council's Procedures and Guidelines for Public Question Time.
3. The visual or vocal recording of Council meeting proceedings is expressly prohibited unless the prior approval of the Council has been given.

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AGENDA**1. DECLARATION OF OPENING/ANNOUNCEMENTS OF VISITORS****2. ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE**

Leave of Absence: Cr John Mason for the period 22 – 29 May inclusive.

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**4. PUBLIC QUESTION TIME****5. PETITIONS AND APPROVED DEPUTATIONS****6. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS****6.1 Ordinary Council Meeting – 26 April 2022****RECOMMENDATION**

That the Minutes of the Ordinary Council Meeting held 26 April 2022 be confirmed as being a true and correct record of proceedings.

7. ANNOUNCEMENTS BY THE PRESIDING MEMBER**8. ANNOUNCEMENTS BY MEMBERS****9. DISCLOSURES OF INTEREST**

(Disclosure of interest MUST ALSO be made by the member or officer immediately prior to a matter, for which an interest is being disclosed, is dealt with.)

10. RECEPTION OF MINUTES AND RECOMMENDATIONS OF COMMITTEES

11. REPORTS OF THE CHIEF EXECUTIVE OFFICER AND OFFICERS**11.1 DIRECTOR INFRASTRUCTURE AND DEVELOPMENT SERVICES**

11.1.1 Mobile Vendor Policy and Guidelines	
File Ref:	111/1
Previous Items:	Nil
Applicant:	Shire of Waroona
Author and Title:	Karen Oborn, Director Infrastructure & Development Services
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Appendix Number	11.1.1 A - Mobile Vendors Policy 11.1.1 B - Mobile Vendors Guidance

RECOMMENDATION

That Council adopts the:

1. **Mobile Vendor Policy, as per Appendix 11.1.1 A;**
2. **Mobile Vendor Guidelines, as per Appendix 11.1.1 B; and**
3. **Authorises the Chief Executive Officer to amend the Mobile Vendor Guidelines as required from time to time to give effect to the Mobile Vendor Policy.**

IN BRIEF

In February 2022, the Council endorsed the draft Mobile Vendor Policy and Guidelines for the purposes of community consultation. The consultation period closed on the 28th of April 2022. Council is now asked to adopt the Mobile Vendor Policy and Guidelines.

COUNCIL RESOLUTION

OCM22/02/005

Moved: Cr Mason

Seconded: Cr Odorisio

That Council endorses the following draft policy and guidelines for the purposes of community consultation:

- A. Draft Mobile Vendor Policy, as per Appendix 11.1.3A; and**
- B. Draft Mobile Vendor Guidelines, as per Appendix 11.1.3B.**

CARRIED 7/0

BACKGROUND

There is a need to balance the complexities and equity issues of enforcing the Shire of Waroona Local Law - Activities on Thoroughfares and Trading in Thoroughfares and Public Places, with the desire to support quality mobile food traders who enhance the vibrancy and economic activity of the Shire, without adversely affecting other existing 'bricks and mortar' businesses (2).

As a result, the Shire of Waroona staff sought Council's endorsement to undertake community consultation and input into developing a Mobile Vendor Policy and a Mobile Vendor Guideline for applicants.

The consultation period closed on the 28th of April 2022. Council is now asked to adopt the Mobile Vendor Policy and Guidelines. Only one comment was submitted, that felt the Policy

was not detailed enough. The assumption has been made that the accompanying guidelines were not taken into consideration at the time. The policy document does refer to the guidelines.

Written feedback regarding the 30-day trial of a Mobile Food Vendor at Preston Beach, to date has been very favorable.

REPORT DETAIL

The purpose of developing a **Mobile Vendor Policy**, was to, support Council in assessing mobile food vendor permit applications. As the Council of the Shire of Waroona seeks to support mobile food vendors that enhance the ambience of an area and economic activity, while not adversely impacting on nearby businesses, public safety, pedestrian access, or the amenity of a public space. The policy does not apply to food vendors operating at a Shire approved event.

The purpose of developing a **Mobile Vendor Guideline**, is to,

- Provide guidance on the requirements for the operation of Mobile Food Traders within the Shire of Waroona to applicants;
- Encourage Mobile Food Traders to operate in locations which support the activation of public spaces;
- Ensure Mobile Food Traders operate in a way which complements existing food businesses in commercial areas;
- Ensure Mobile Food Traders do not unreasonably compromise the amenity of the surrounding residential area;
- Ensure Mobile Food Traders are of a temporary nature in line with the permitted trading times for each location; and
- Ensure Mobile Food Traders practice safe food handling in accordance with the Food Act 2008.

References

1. <https://www.facebook.com/mandurahfoodtruckfrenzy/>
2. <https://www.bayswater.wa.gov.au/development/business/business-approvals,-permits-and-guidelines/mobile-food-vehicles>
3. <https://perth.wa.gov.au/council/reports-and-important-documents/policies>
4. <https://www.mandurah.wa.gov.au/-/media/files/com/downloads/business/permits-and-approvals/food-business/mobile-food-van-requirements.pdf>

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Economy
Aspiration	To create a diverse economy base that supports opportunity and employment
Objective	2.2 Develop a locally supported resilient, stable and innovative business community that embraces creativity, resourcefulness and originality
Strategy	2.2.1 Support local businesses, Waroona Business Support Group and initiatives

OTHER STRATEGIC LINKS

Nil

STATUTORY ENVIRONMENT

- Shire of Waroona Local Planning Scheme No 7 (LPS7)

- Shire of Waroona Local Law - Activities on Thoroughfares and Trading in Thoroughfares and Public Places.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

- Support of new local businesses, Waroona Business Support Group and initiatives, without adversely affecting other existing ‘bricks and mortar’ businesses (2).

Social - (Quality of life to community and/or affected landowners)

- Support of innovative business community that embraces creativity, resourcefulness, and originality, promoting space activation around towns (1).

Environment – (Impact on environment’s sustainability)

- Need to ensure Mobile Food Traders practice safe food handling in accordance with the Food Act 2008.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

Theme	Environmental - Regulatory compliance, contamination, inadequate processes
Description	To enable quality mobile food traders to provide members of the public with a food service that enhances the vibrancy and economic activity of the Shire, without adversely affecting other existing ‘bricks and mortar’ businesses
Consequence	3 - Moderate
Likelihood	3 - Possible
Rating	Moderate (4-9)
Controls / Review	Council’s endorsement of the recommendation of this report may mitigate the likelihood of this risk coming into effect.
Review Frequency	Annually
Risk Owner	Director
Acceptance	Monitor - Risk acceptable with adequate control

CONSULTATION

- Mark Goodlet, Chief Executive Officer.
- The statutory public consultation has occurred.

RESOURCE IMPLICATIONS

Financial

Officers time is covered by salary package.

Workforce

Nil.

OPTIONS

Council has the option of:

1. Accepting the officer recommendation to endorse the proposed actions; or
2. Rejecting the officer recommendation to endorse the proposed actions.

CONCLUSION

There is a need to enable quality mobile food traders to provide members of the public with a food service that enhances the vibrancy and economic activity of the Shire, without adversely affecting other existing 'bricks and mortar' businesses.

11.1.2 Initiation of Local Planning Policy (LPP) 11 – Building envelopes	
File Ref:	N/A
Previous Items:	N/A
Applicant:	Shire of Waroona
Author and Title:	Craig Zanotti, Senior Planner
Declaration of Interest:	The author and authorising officer declare that they do not have any conflicts of interest in relation to this item.
Voting Requirements:	Simple Majority
Appendix Number	11.1.2 – Draft LPP 11 Building envelopes

RECOMMENDATION

That Council, pursuant to Clause 3, Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*:

1. Initiates Local Planning Policy (LPP) 11 Building envelopes, as presented in Appendix 11.1.2, for the purposes of public consultation; and
2. Advertises Local Planning Policy (LPP) 11 Building envelopes, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

IN BRIEF

- The purpose of this report is for Council to consider initiating draft Local Planning Policy (LPP) 11 – Building envelopes.
- The purpose of this policy is to assist developers and landowners to carefully select locations for building envelopes.
- Careful consideration in the location of building envelopes will assist with achieving sustainable development outcomes that are outlined in the Local Planning Strategy, Local Planning Scheme and Strategic Community Plan.

BACKGROUND

A number of rural residential areas within the Shire are required to contain development and/or land use within a building envelope. Building envelopes are approved parcels of land that:

- Generally measure 2,000sqm in area;
- Are setback from property boundaries; and
- Are located in cleared areas.

The intent of building envelopes are to contain a house, shed, granny flats and limit the clearing of vegetation or earthworks. They are usually approved by the Shire at the time of subdivision, structure planning or rezoning, with the aim to:

- Protect environmental attributes such as flora and fauna;
- Retain landscape values; and
- Achieve a high rural amenity in an area with appropriate setbacks to neighbours.

The Shire receives a significant volume of enquiries and applications to amend building envelopes, however no Local Planning Policy exists for this matter. The historical approach to dealing with these matters has been ad-hoc and a cause for inconsistent results and confusion.

REPORT DETAIL

Areas of Lake Clifton, Hamel and the Darling Scarp have significant amenity, landscape and environmental value. This has drawn a substantial amount of interest for residential settlement within a predominantly rural area. Developers in these areas have capitalised on increased demand in recent years, receiving subdivision approval from the Western Australian Planning Commission to create rural-residential lots ranging from 1Ha to 20Ha.

In an effort to preserve the rural character, retain landscape values and protect vegetation and fauna, building envelopes have been established. The intent under the Shire’s Planning Scheme No. 7 is to limit development such as works and/or land use to these allocated areas.

The Shire is finding that a large number of developers, landowners or prospective purchasers are seeking to propose or amend building envelopes to areas which:

- Contain significant mature vegetation or habitat areas for valued, threatened or endangered fauna;
- Are in a prominent location of a valued landscape; and/or
- Form part of a wetland protection buffer.

Coupled with bushfire planning regulations, the proposed locations can result in significant disturbance of areas. This is proving difficult to achieve the sustainable development objectives of the Shire’s planning framework and Strategic Community Plan.

The purpose of this Policy is to create a framework that provides a clear vision, approach and expectation for building envelope locations. The intent is create a straightforward policy for developers, landowners and prospective purchasers, to understand the expectations from the Shire, navigate the planning framework in a more efficient manner and increase transparency in governance.

Objectives of the Policy

Building envelopes should:

- Retain and enhance landscape values.
- Enable the responsible development of land.
- Promote sustainable development outcomes.
- Protect vegetation of environmental or community value.
- Preserve important habitat areas for valued and important fauna.
- Ensure appropriate locations for development and human habitation.
- Maintain the rural character of the area through appropriate setbacks and locate development away from prominent locations, that do not prejudice natural features or high amenity areas.

This Policy is designed to apply to all land that contains a building envelope or where the Shire deems it necessary for a building envelope to be established.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Environment
Aspiration	To have a connected and involved community that improves our quality of life through developing quality places and implementing quality town planning
Objective	3.1 Protect and enhance our natural assets, waterways, bushland and biodiversity

Strategy	1.3.1 Ensure our Town Planning Scheme and Local Planning Strategy facilitates quality and diverse planning outcomes
Action	Adoption of this proposed policy will assist in achieving the aspirations, objectives and Strategies of the Strategic Community Plan.

OTHER STRATEGIC LINKS

- State Planning Policy 2.0 Environment and natural resources policy (WAPC);
- State Planning Policy 2.1 The Peel Harvey coastal plain catchment (WAPC);
- State Planning Policy 2.5 Rural planning (WAPC);
- State Planning Policy 2.9 Planning for water (WAPC);
- State Planning Policy 3.7 Planning in bushfire prone areas (WAPC)
- Guidance Statement No. 33 Environmental guidance for planning and development (EPA);
- Guidance for planning and development: Protection of naturally vegetated areas in urban and peri-urban areas (EPA); and
- Guideline for the Determination of Wetland Buffer Requirements (WAPC).

STATUTORY ENVIRONMENT

- Planning and Development Act 2005;
- Planning and Development (Local Planning Schemes) Regulations 2015; and
- Shire of Waroona Local Planning Scheme No. 7.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

Innovation and resilience of the built form are encouraged, assessed and implemented.

Social - (Quality of life to community and/or affected landowners)

Regular opportunities for the broad community to have input into the Shire’s plans and programs are provided for transparency, accountability and two-way interaction.

Environment – (Impact on environment’s sustainability)

The protection and valuing of the environment, amenity and the rural space in enhanced through community engagement.

Policy Implications

The initiation of this policy will allow advertising to the public and stakeholders to gauge the level of support for a new Local Planning Policy.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

<i>Theme</i>	Reputation - Public perception, poor customer service, sub standard work, corruption
<i>Description</i>	There is a reputational risk associated which may arise from the adoption of LPP11, given an applicant has the option to apply to the State Administrative Tribunal for a review of any decision made using this policy.
<i>Consequence</i>	2 - Minor
<i>Likelihood</i>	2 - Unlikely

<i>Rating</i>	Moderate (4-9)
<i>Controls / Review</i>	Although this risk will remain with the adoption of the officer's recommendation, the reputation risk would be greater if no policy was adopted.
<i>Review Frequency</i>	Annually
<i>Risk Owner</i>	Director
<i>Acceptance</i>	Accept - Risk acceptable with adequate controls

CONSULTATION

External Agencies

The proposed policy is intended to be advertised to the Department of Water and Environmental Regulation, Department of Biodiversity, Conservation and Attractions and Department of Planning, Lands and Heritage.

Community and Stakeholders

Should Council resolve to initiate advertisement, the policy will be publicly advertised by a notice in the local newspaper, for a period of no less than 21 days. The advertisement will provide details on:

- The subject and nature of the proposed policy;
- The objectives of the proposed policy;
- Where the proposed policy may be inspected; and
- To whom, in what form and during what period submissions in relation to the proposed policy may be made.

A copy of the policy will be provided at the Shire's Administration Building and on the Shire's webpage inviting submissions. Any submissions received during the public consultation period will be considered and reported back to Council in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

RESOURCE IMPLICATIONS

Financial

There is a financial cost of advertising the draft policy in the local newspaper, with an approximate cost of \$300.

Workforce

Officer time associated with the preparation, review and possible adoption of the policy, which is within the Shire's existing operating expenditure.

OPTIONS

Council has the option of:

1. Adopting the officer's recommendation;
2. Amending the officer's recommendation; or
3. Not adopting the officer's recommendation.

CONCLUSION

LPP11 is designed to provide clarity to assist developers and landowners who may propose a new building envelope or seek to amend an existing one. The correct design and location will preserve the rural character and amenity, retain landscape values and protect vegetation and associated fauna. The policy establishes a framework that provides a clear vision, approach and expectation for building envelope locations. This should assist developers,

landowners and prospective purchasers to understand the expectations from the Shire, navigate the planning framework in a more efficient and consistent manner and increase transparency in governance.

11.1.3 Application for Development Approval and Extractive Industry Licence – Lots 1001 and 1002 Preston Beach Road North, Preston Beach	
File Ref:	TP1576 and EI32
Previous Items:	Nil
Applicant:	Doyles Lime Service Pty Ltd
Author and Title:	Craig Zanotti, Senior Planner
Responsible Officer:	Karen Oborn, Director Infrastructure & Development Services
Declaration of Interest:	Nil
Voting Requirements:	Majority
Appendix Number	11.1.3 A – 2013 Site Plan 11.1.3 B – Public submissions 11.1.3 C – DPAW submission

RECOMMENDATION

That Council:

- 1. Refuses Development Application TP1576 and the application for Extractive Industry Licence EI32 for limestone and sand excavation on Lots 1001 and 1002 Preston Beach Road North, Preston Beach, for the following reasons:**
 - a. Not consistent with the aims of the Peel Region Scheme, specifically:**
 - (a) promote the sustainable development of land taking into account relevant environmental, social and economic factors;**
The application has not demonstrated that it will promote environmental and social factors. It is anticipated that the proposal will have a detrimental impact on fauna and flora communities. It will place road users at an unacceptable risk and the community has expressed considerable objection to the proposal.
 - b. Not consistent with the aims of Local Planning Scheme No. 7. specifically**
 - (ii) *promote sustainable development that integrates consideration of economic, social and environmental goals for the district;***
The proposal is not consistent with the expectations of the community for the use of the land, it will impact environmental objectives and cultural values.
 - (v) *seek to avoid future land use conflicts for extraction of mineral and basic raw material resources;***
The development is in close proximity to the Yalgorup National Park which is a significant tourist attraction and recreational destination. The proposal is likely to impact the peaceful enjoyment of the National Park and create land use conflict through noise and dust emissions.
 - (vi) *ensure that appropriately located mining, mineral processing and forestry activities are able to provide significant contributions to the District economy in a manner consistent with protection of the District's environment and landscape; &***
 - (ix) *protect and enhance the environmental values and natural resources of the District and to promote ecologically sustainable land use and development; &***

- (xvii) ***preserve and enhance the amenities of the District and to manage land uses so as to minimise conflicts between otherwise incompatible uses; &***
- (xx) ***conserve, protect and enhance the biodiversity (genetic, species and ecosystem diversity, environmental values and natural heritage) of the municipality and its environs by ensuring that land use and development is undertaken sustainably; &***
- (xxi) ***recognise and, where possible, take account of the adverse cumulative impacts on biodiversity, and environmental and heritage values;***
 Tuart Woodland is proposed to be cleared. This Threatened Ecological Community is 'Critically Endangered' under the Federal *Environment Protection and Biodiversity Conservation Act 1999*.

The Tuart Woodland over peppermint sub-canopy provide the primary sustenance for the Western Ringtail Possum, which is listed as 'Critically Endangered' in both Western Australian and National jurisdictions. The Woodland may also likely host or be suitable for providing critical breeding and nesting sites for the Threatened Carnaby's Cockatoo and the Forest Red Tailed Clack Cockatoo.

The proposal may have unacceptable impacts on other fauna of Conservation Significance that are likely to reside in the subject site. The site may provide habitat for Echidna, Chuditch, Quenda and Western Brush Wallaby. A fauna investigation has not been provided to identify habitat areas.

The works are likely to affect the water quantity and quality of the National Park's water bodies as the subject site is located within its catchment. The limestone proposed to be excavated acts as a filter for ground and surface water replenishment. A hydrological study has not been provided to allow a comprehensive assessment.

Fringing vegetation of the site forms an extension of and protects habitat within the National Park. Clearing of this will likely result in an edging effect, along with potentially impacting the water quality. This may result in the degradation of vegetation within the National Park and impact the natural landscape.

- (xi) ***protect and enhance the landscape values of the District;***
 The area forms part of a unique coastal and lakes setting with large tracts of remnant vegetation, rolling coastal dunes, undulating countryside, undisturbed wetlands of international significance and wildlife.

The National Park and the surrounds are part of a highly valued natural landscape. This is reflected in the Shire's Strategic Community Plan 2030. The objectives for the area include to protect and enhance the Shire's existing natural assets, waterways, bushland and biodiversity.

The clearing of vegetation, disturbance of and modification to the geomorphology, introduction of industrial operations and heavy vehicle traffic is not compatible with its setting, including the relationship of the development to the adjoining Yalgorup National Park.

The bulk, scale and nature of industrial operations associated with the proposal will be detrimental to the area.

(xxii) *improve the means of access into and around the District and to ensure the safe and convenient movement of people including pedestrians, cyclists and motorists;*

The proposal will result in heavy vehicle types and volumes on a road that is not designed and constructed to accommodate the anticipated traffic. Preston Beach Road North is unsealed and channels a significant number of tourists to the Yalgorup National Park. The intersection of Preston Beach Road North and Preston Beach Road is not designed to accommodate the proposed traffic. The proposed upgrades contained within the application are inadequate.

c. *Tuart Woodland has significant cultural and heritage values for Indigenous peoples. Clearing and disturbance of these landscapes is inconsistent with the local planning framework.*

The Tuart Woodlands and Forests have considerable cultural heritage value for the Noongar people who are the traditional owners of southwest Western Australia.

d. *Not consistent with the Objectives and Policies of the ‘Rural 3A – Coastal’ zone.*

This proposal is not consistent with the provisions to protect the coastal environment or the ecology of the Yalgorup National Park. It is envisaged that complimentary land uses and development should be located here such as tourism, private recreation or nature based activities.

Advice from the Department of Biodiversity, Conservation and Attractions, formerly the Department of Parks and Wildlife, has expressed concerns that the proposal will detrimentally impact the National Park. Concerns are also held for road safety.

e. *The proposal is inconsistent with Western Australian Planning Commissions State Planning Policy (SPP) 2.0 Environment and natural resources policy.*

Ground disturbance activities, changes to the topography, the clearing of remnant vegetation and possible water quantity and quality impacts are at odds with the SPP. This Policy aims to protect, conserve and enhance the natural environment. The industrial land use and its anticipated activities and emissions are contrary to the highly valued natural landscape of the area. Preston Beach is renowned for containing a diverse and high quality of geological, geomorphological and ecological attributes, as well as aesthetic, cultural or historical value to the community. This proposal is not consistent with the Objectives and Policy Measures of SPP 2.0.

f. *The amount and type of traffic likely to be generated by the development, particularly in regard to the use of Preston Beach Road North and the intersection with Preston Beach Road, will create an unsafe road environment and impact traffic flow.*

The proposal will:

- i. Reduce traffic flow along both roads;
- ii. Result in the degradation of the unsealed road at an unacceptable increased rate;
- iii. Introduce slower moving heavy vehicles to a predominantly tourist road network. This will greatly increase the likelihood of traffic conflict; and
- iv. Create a dangerous situation for the intersection with Preston Beach Road North and Preston Beach Road.

A Transport Impact Assessment has not been provided in accordance with the Western Australian Planning Commission’s Transport Impact Assessment

Guidelines. The proposal has not demonstrated that the proposed road upgrades are adequate.

g. Technical advice from the Department of Biodiversity, Conservation and Attractions (formerly Department of Parks and Wildlife) recommends the proposal be refused. It conveys the following:

- i. The application has not demonstrated that the proposal will not impact Lake Pollard or the wider Yalgorup National Park. It is unknown whether the proposal will alter the hydrology and water quality of Lake Pollard.
- ii. Any impact to the hydrology and water quality of Lake Pollard will directly impact the vegetation, invertebrates, avifauna and the ecological character of an internationally significant wetland.
- iii. It is likely to have a significant impact on the safety of visitors and recreational users to the National Park, especially those accessing Martins Tank Campsite.

2. Advises the applicant and Department of Water and Environment Regulation (DWER) that the application with the DWER (DWER Ref No. DWERA-000129), requires a fresh development application to be lodged as it varies substantially from the development application lodged in 2013 (TP1576) and cannot be dealt with as an amendment.

Should the DWER-000129 proposal have similar characteristics to this application, it is unlikely that the Council will support the application.

IN BRIEF

In July 2013, the Shire of Waroona (the Shire) received a development application and extractive industry licence application for Lots 1001 and 1002 Preston Beach Road North, Preston Beach. This proposed an excavation pit on Lot 1001 and Lot 1002 and access through Lot 1002. A determination has not yet been made by the Council.

It is not clear why a determination has not been made on this application, however it is suspected that it was placed on hold pending a determination from the Department of Water and Environmental Regulation (DWER).

On 8 March 2022, the Shire received a referral from the DWER regarding a proposed excavation pit on Lot 1002 Preston Beach Road North, Preston Beach. The proposal contained within the DWER referral is substantially different to the proposal contained within the 2013 application.

The 2013 development application is now presented to Council for determination to satisfy regulatory requirements.

BACKGROUND

2013 development application

In July 2013, the Shire received a development application and extractive industry licence application for Lots 1001 and 1002 Preston Beach Road North, Preston Beach (Attachment 1 – 2013 Site Plan). The proposal seeks approval for two pits, one on each lot for the extraction of limestone and sand. A summary of the application is as follows:

- Quarry area:
 - 7.5 hectares for limestone on Lot 1001
 - 2.5 hectares for sand on Lot 1002
- Approximate yields per annum:
 - Limestone: 50,000 tonnes

- Sand: 10,000
- Total estimated resource:
 - Limestone: 1 million tonnes
 - Sand: 150,000 tonnes
- Estimated life of project: 20 years
- Dewatering requirements: None
- Clearing of native vegetation and modifications to the Preston Beach Road North.
- Setbacks for Lot 1001:
 - North: 20m
 - East (Lake Pollard): Approximately 60m
 - South: 75m
 - West: Nil
- Setbacks not provided for Lot 1002

The limestone pit is located on the western side of Lake Pollard and proposes to excavate a limestone ridge to a depth of 16m. Activities associated with the limestone extraction include:

- Clearing of remnant vegetation that includes, but is not limited to, Tuart woodland over Peppermint woodland and grass trees;
- Stockpiling of cleared vegetation, soil and overburden;
- Limestone interburden incorporated into stockpiling;
- Bulldozer used to rip and push the limestone down the excavation face; and
- Stockpiling of excavated material;
- Limestone to be screened and crushed with a mobile crusher; and
- Material loaded onto trucks and exported from site.

The days and hours of operation sought for approval are Monday to Friday, 6:30am to 5pm. Transporting of material on Saturday is also sought.

REPORT DETAIL

Vehicle movements

The applicant has indicated that trucks to transport material may include semi-trailers, rigid eight-wheeler trucks or a five axle dog trailer. Based on the use of a 19m long semi-trailer combination with a 30 tonne payload, it is anticipated that 10 loads per day would be exported from the site, resulting in 20 vehicle movements at a rate of two per hour.

The road assessment/transport report provided in July 2014 concludes that the current road and intersection design will not support the level of activity associated with the proposed development. This includes the Preston Beach Road North and the intersection with Preston Beach Road.

The July 2014 application report discusses carting between December and April to limit impacts to road users, whereas the July 2014 road assessment/transport report discusses closing the Preston Beach Road North to the public between October and November and carting then. There is conflicting information provided between the application report and the road assessment/transport report.

The applicant has proposed to upgrade Preston Beach Road North to a formed and sheeted standard (remaining unsealed) and allowing for two grades to maintain the road over the course of the 20 year approval sought. Details on this upgrade are limited.

Based on the information available this upgrade will:

- Lead to dust problems with reduced visibility. This will ultimately reduce traffic flow and create a safety hazard to other road users; and
- Degrade at an unacceptable and increased rate.

The introduction of slower moving, heavy vehicles to a predominantly tourist road network will greatly increase the likelihood of traffic conflict as a significant number of road users are unfamiliar with these roads.

Concerns are also held for the Preston Beach Road North and Preston Beach Road intersection. There are no deceleration or acceleration lanes, turning pockets, the design of the intersection is not an adequate standard, sight lines are inadequate and the posted speed limit is 70km/h. Turning trucks and trucks entering the Preston Beach Road are likely to present a significant hazard to other road users.

A Transport Impact Assessment (TIA) has not been provided in accordance with the Western Australian Planning Commission's (WAPC) *Transport Impact Assessment Guidelines*. This technical report is essential in understanding whether the proposed development will achieve a safe and efficient road network. It should also demonstrate required road upgrades to ensure the principles of safe and efficient road network are achieved.

It is considered that the proposal will result in traffic flow issues and presents an unacceptable risk to the public.

Amenity and view

The landscape consists of undulating coastal dunes and hills, remnant vegetation including trees, shrubs and groundcovers, Lake Pollard and farmland. The proposed area of operations consists of remnant vegetation and an undulating landscape. The subject site is located 75m to the north of the Yalgorup National Park Lake Pollard Walk Trail. The Walk Trail is in an elevated position and has views to the proposed extraction area.

The proposal seeks to excavate to a depth of 16m with the pit measuring on average 250m by 400m. Operations will include the stockpiling of materials, a bulldozer scraping and ripping the limestone, semi trailers, a front end loader, a screener and crusher. The operations are intrinsically industrial in nature.

A visual landscape evaluation and impact assessment report has not been provided in accordance with the WAPC's *Visual Landscape Planning in Western Australia a manual for evaluation, assessment, siting and design*. This technical report is essential in understanding the potential visual impact on the landscape and whether adequate mitigation measures can be employed.

The proposal seeks to introduce an industrial land use within a natural landscape of high amenity. This is considered at odds with the desired landscape for the area and will negatively impact the amenity.

Environment

Lake Pollard

The Department of Biodiversity, Conservation and Attractions, formerly Department of Parks and Wildlife, has advised that the proposed extraction area is located approximately 60-70m from the wetland boundary of Lake Pollard as delineated in the *Geomorphic Wetland Swan Coastal Plain* dataset.

Lake Pollard is located within the internationally significant Peel-Yalgorup System Ramsar Site and the nationally recognized Yalgorup Lakes System. It is a 'Conservation Category Wetland', the highest value placed on wetlands, and is within an environmentally sensitive

area under the *Environment Protection (Clearing of Native Vegetation) Regulations 2004*. The vegetation within and surrounding Lake Pollard is identified as regionally significant by the Environment Protection Authority.

The limestone ridge along the western shore of Lake Pollard, inclusive of the subject site, stores rainwater which slowly seeps into the lake and reduces salinity along the western shoreline. The freshwater seepage has been linked to high productivity, including invertebrates, vegetation and shorebirds.

Inadequate information has been provided in terms of ecological and hydrological information and the application has largely dismissed the potential impacts. In particular, the potential impacts to Lake Pollard have not been investigated. Of greatest concern is the potential to alter the hydrology and water quality of Lake Pollard.

Flora & Fauna

The flora and vegetation survey provided in June 2014 indicates the presence of Threatened Ecological Communities (TECs), specifically Tuart Woodland. The vegetation structure also includes Tuart Woodland over Peppermint Woodland. The limestone pit seeks to clear approximately 1.9 hectares of this woodland along with 5.6 hectares of Grass trees, Melaleuca and Acacia.

The Tuart Woodlands and Forests with peppermint sub-canopy provide the primary sustenance for the Western Ringtail Possum, which is listed as 'Critically Endangered' in both Western Australian and National jurisdictions. Tree hollows in the Tuart trees also provide vital daytime refuge for nocturnal species such as the Brushtail Possum, the Southern Brush-tailed Phascogale and bat species. Other mammal species that still rely on the ecological community and that may inhabit the site include Chuditch, Quenda and Quokka. Tuart trees also provide critical breeding and nesting sites for the threatened Carnaby's Cockatoo and the Forest Red-tailed Black Cockatoo.

The large expanse of grass trees and remnant coastal vegetation provides a unique and visually appealing setting for the National Park hinterland. The limestone pit is located wholly within vegetated areas.

The flora and vegetation survey from July 2014 has classified the vegetation as 'Degraded' to 'Completely Degraded'. The two surveys conducted were conducted in November and December. Only the November survey was undertaken during the Environmental Protection Authority's recommended survey period. The primary survey should occur during Spring (September to November) and the supplementary survey after Autumn rains.

The supplementary flora survey period is considered inadequate for a project of this nature. This classification of vegetation quality is also considered an inaccurate representation of the floristic communities. Officers deem the vegetation to be in 'Good' to 'Very Good' condition. A fauna survey has not been provided to the Shire. This technical report is essential in identifying any potential habitat areas. This should be undertaken by a zoologist to map areas either for potential or actual foraging and nesting areas for Threatened, Endangered and/or Critically Endangered species.

Cultural significance

The Tuart Woodlands and Forests have considerable cultural heritage value for the Noongar people who are the traditional owners of southwest Western Australia. The Noongar people have a legacy of highly organised, sustainable land management on the Swan Coastal Plain. They have traditionally engaged with the ecological community and surrounding environment

in a way which ensures the sustainable provision of food, shelter, medicine, clothing, tools and spiritual wellbeing and connection. Over the course of their long and enduring relationship to the landscape, the Noongar have accumulated a wealth of traditional knowledge about the land, seasons, plants and animals, as well as the interactions between these elements. This knowledge is strongly associated with culture and spirituality

The Tuart trees themselves are the characteristic species of this ecological community and have the Noongar names Morrol, Duart, Mooarn, Moorun, Mouarn, Tuart and Tooart. The trees can be used for a range of purposes. The gum was used as a mild anaesthetic and the bark was often used as roofing for shelters. Several of the traditional snacks eaten by the Noongar are still found in the woodlands and forests.

The retention and recovery of these culturally significant woodlands is important because it will enable the Noongar people today to continue traditional cultural practices, to pass on traditional knowledge and to nurture their spiritual connection to country.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Environment
Aspiration	To continually care for, protect and enhance our environment for the generations to come
Objective	3.1 Protect and enhance our natural assets, waterways, bushland and biodiversity
Strategy	3.1.1 Collaborate with local environmental community organisations and volunteers

OTHER STRATEGIC LINKS

The following State Planning Policies apply:

- SPP 2.0 Environment and natural resources policy;
The proposal will result in the clearing of 1.9 hectares a of TEC Tuart Woodland and a further 5.6 hectares of remnant vegetation that fringes the National Park. The clearing may likely impact habitat areas for valued, threatened and endangered species of fauna. The industrial nature of the land use, emissions that are associated with it and the excavation pits are at odds with the highly valued and natural landscape of the area.

The proposal will reduce the landscape values, which is associated with a high geological, geomorphological and ecological values, as well as those of aesthetic, cultural or historical value to the community.

This is inconsistent with the objectives and policy measures of the SPP to protect, conserve and enhance the natural environment.

- SPP 2.4 Basic raw materials.
Outlines the broad principles of information required for a development application, objectives and considerations.
The proposal has not satisfactorily demonstrated compliance with Part 6.5, specifically:
(c) identification of the environmental values and those requiring protection; and
(e) proposed transport routes used and site access details.

STATUTORY ENVIRONMENT

Planning and Development (Local Planning Schemes) Regulations 2015

Clause 67 outlines matters to be considered by local government when assessing a development application. The following matters are applicable in this case.

- The aims and provisions of the local planning scheme.
- State Planning Policy.
- The compatibility of the development within its setting.
- The amenity of the locality.
- The effect on the cultural heritage significance of the area.
- The likely effect on the natural environment.
- Whether any trees or vegetation should be preserved.
- The amount of traffic likely to be generated, the capacity of the road system and the effect on traffic flow and safety.
- The impact of the development on the community.
- Comments and submissions received, including from an authority.

Peel Region Scheme

The Department of Planning, Lands and Heritage have not made a determination on a Peel Region Scheme application. When considering an application, the Shire should consider the aims of the Scheme. In this case, the proposal is not consistent with

- (a) *promote the sustainable development of land taking into account relevant environmental, social and economic factors;*

The proposal has not adequately demonstrated that it will promote environmental and social factors and the Department of Parks and Wildlife expressed significant concerns over such matters. Officers from the Shire also have concerns over environmental and social grounds.

Local Planning Scheme No. 7

The development application is subject to the aims, objectives and provisions of the Scheme. The proposal is not consistent with the following aims and officer comments are provided:

Aim (ii)

promote sustainable development that integrates consideration of economic, social and environmental goals for the district;

Officer comments

Is not consistent with the expectations of the community or environmental attributes. Approval of this proposal would be contradictory to the sustainable development goals of the Shire.

Aim (v)

seek to avoid future land use conflicts for extraction of mineral and basic raw material resources

Officer comments

The proposal is in close proximity to the Yalgorup National Park and the Lake Pollard Walk Trail. Potential emissions such as noise and dust are likely to impact the peaceful enjoyment of the National Park and create land use conflict.

Aim (vi)

ensure that appropriately located mining, mineral processing and forestry activities are able to provide significant contributions to the District economy in a manner consistent with protection of the District's environment and landscape; &

Aim (ix)

protect and enhance the environmental values and natural resources of the District and to promote ecologically sustainable land use and development; &

Aim (xvii)

preserve and enhance the amenities of the District and to manage land uses so as to minimise conflicts between otherwise incompatible uses; &

Aim (xx)

conserve, protect and enhance the biodiversity (genetic, species and ecosystem diversity, environmental values and natural heritage) of the municipality and its environs by ensuring that land use and development is undertaken sustainably; &

Aim (xxi)

recognise and, where possible, take account of the adverse cumulative impacts on biodiversity, and environmental and heritage values;

Officer comments

The proposal seeks approval to clear 1.9 hectares of Tuart Woodland and 5.6 hectares of remnant Grass trees, Melaleuca and Acacia. Tuart Woodland is listed as 'Critically Endangered' under the Federal *Environment Protection and Biodiversity Conservation Act 1999*.

The Tuart Woodland over peppermint sub-canopy provide the primary sustenance for the Western Ringtail Possum, which is listed as 'Critically Endangered' in both Western Australian and National jurisdictions. The Woodland may also host or be suitable for providing critical breeding and nesting sites for the Threatened Carnaby's Cockatoo and the Forest Red Tailed Clack Cockatoo.

The proposal may have unacceptable impacts on other fauna of Conservation Significance that are likely to reside in the subject site. The site may provide habitat for Echidna, Chuditch, Quokka, Quenda and Western Brush Wallaby.

This fringing vegetation adjacent to the Yalgorup National Park forms an extension to and protects the National Park's habitat. Clearing of this may likely result in an edging effect.

Aim (xi) protect and enhance the landscape values of the District;

Officer comments

The clearing of endemic vegetation, introduction of industrial operations and heavy vehicle traffic in close proximity to the Yalgorup National Park is at odds with the coastal lakes character and will negatively impact the natural landscape values and rural amenity.

Aim (xxii)

improve the means of access into and around the District and to ensure the safe and convenient movement of people including pedestrians, cyclists and motorists;

Officer comments

The proposal will result in heavy vehicle movements on a road that is not designed and constructed to accommodate the expected traffic (vehicle types and volumes). The rural road is unsealed and channels a significant number of tourists to the Yalgorup National Park. There is significant potential to create an unsafe environment.

Zoning: 'Rural 3A - Coastal'

Land use: Extractive Industry

Land use permissibility: 'A'

means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.

Rural 3A – Coastal Objectives and Policies

“Council’s objective will be to ensure continuation of appropriate rural activities which are consistent with protection of the coastal environment, the ecology of the Yalgorup National Park, the landscape of the environs of Old Coast Road and the traffic management requirements of that road by:

- (a) ensuring that rural pursuits are consistent with achieving the objective;
- (b) permitting, at Council discretion in accordance with the requirements of its Policy, other uses, additional, or special uses, appropriate to the objective and to the location of the zone including establishment of commercial uses in accordance with the provisions of Tables 1 and 2 on lots in the zone subject to:
 - satisfactory advice from the Department of Parks and Wildlife and/or the Environmental Protection Authority, that the proposed use will not impact detrimentally on Yalgorup National Park;
 - a building setback from the lot frontage of Old Coast Road of fifty metres, and satisfactory landscaping within the setback area.”

Officer comments

Advice from the Department of Biodiversity, Conservation and Attractions, formerly Department of Parks and Wildlife, has expressed concerns that the proposal is likely to impact the National Park, setbacks are not adequate and that road safety is likely to be compromised.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

- The extractive industry may employ residents of the Shire – estimated to be three persons.

Social - (Quality of life to community and/or affected landowners)

- An extractive industry may negatively impact nearby residents, landowners or visitors to the area with emissions and the visual impact of industrial operations. Typical emissions may include dust and noise.

Environment – (Impact on environment’s sustainability)

- The application seeks to clear important native vegetation, potential habitat areas and is likely to impact Lake Pollard and the Yalgorup National Park.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

Theme	Environmental - Regulatory compliance, contamination, inadequate processes
Description	There is a need to keep negative impacts in the community to a minimum, as well as promote environmental conservation and sustainable economic development.
Consequence	4 - Major
Likelihood	3 - Possible
Rating	Moderate (4-9)

Controls / Review	Assessment of development applications with consideration given to technical advice. Recommendations are made to council, considering the principles of sustainable development – i.e. economy, community and environment.
Review Frequency	Annually
Risk Owner	Director
Acceptance	Monitor - Risk acceptable with adequate control

CONSULTATION

Public consultation

During the public consultation period in 2013, the Shire received 20 submissions (Attachment 2 – Public submissions). An overwhelming majority objected to the proposal - 19 against and one not opposed. This represents 95% of submissions opposed to the proposal. Objections included, but were not limited to:

- Clearing of native vegetation;
- Flora and fauna impacts;
- Inappropriate proximity to a National Park of significant environmental and cultural value; and
- Vehicle impacts to the public road network.

Department of Parks and Wildlife, now Department of Biodiversity, Conservation and Attractions

A summary of the comments provided by the Department are below. The full submission can be found in Attachment 3 – DPAW submission.

- Lake Pollard immediately adjoins the site and is part of the internationally significant Peel-Yalgorup System Ramsar site and the nationally recognised Yalgorup Lakes System.
- The vegetation within and surrounding Lake Pollard is regionally significant.
- The applicant has provided limited ecological and hydrological information and has largely dismissed the potential impacts.
- The proposal will result in a significant change to the immediate landform and catchment of Lake Pollard.
- Any impact to the hydrology and water quality will directly impact the vegetation, invertebrates, avifauna and the ecological character of an internationally significant wetland.
- Concerns about potential heavy vehicle traffic on Yalgorup National Park visitors and recreational users attending the Martins Tank Campsite.
- Concerns with road users, especially on Preston Beach Road North and the intersection with Preston Beach Road.
- Concerns with potential noise, visual and dust impacts on the Martins Tank Campsite.
- Recommended that the proposal be refused.

Main Roads WA and Department of Fire and Emergency Services

- No objection

RESOURCE IMPLICATIONS

Financial and Workforce

Officer time associated with the assessment of a development application is within the Shire's existing operating expenditure.

The applicant may choose to appeal an unfavourable decision at the State Administrative Tribunal. This would require attendance of Shire Officers and may incur some costs.

OPTIONS

Council has the option of:

1. Accepting the officer recommendation to refuse the development application and extractive industry application; or
2. Modifying the officer recommendation; or
2. Rejecting the officer recommendation.

CONCLUSION

The proposal has not adequately demonstrated that it can meet all three principles of sustainable development. It is acknowledged that it will create job opportunities, potentially for a local workforce. However, it is considered that this is not balanced with environmental and social considerations. There are significant concerns around the impacts to flora and fauna, road safety and traffic flow, the amenity, landscape and social and cultural values. It is recommended that the proposal be refused on these principles.

11.2 DIRECTOR CORPORATE & COMMUNITY SERVICES

11.2.1 Listing of Payments for the Month of April 2022	
File Ref:	1/3 - Creditors
Previous Items:	N/A
Applicant:	N/A
Author and Title:	Kathy Simpson, Senior Finance Officer
Voting Requirements:	Simple Majority
Declaration of Interest:	Nil
Appendix Number	11.2.1 - Monthly Report to Council – April 22

RECOMMENDATION

That Council receives the following payments made throughout the month of April 2022;

Municipal	Cheque	99080-09926	\$25,540.09
	EFT	36149 – 36368	\$988,822.65
Direct wages	01/04/22 – 30/04/22 inclusive		\$192,698.80
Direct Debit	01/04/22 – 30/04/22		\$39,537.53
Trust	Cheque – Nil		\$ -
	EFT – Nil		\$ -
GRAND TOTAL			\$1,246,599.07

as per Appendix 11.2.1.

IN BRIEF

The purpose of this report is to present the listing of payments made from the Shire's Municipal and Trust funds throughout the month of April 2022.

BACKGROUND

The attached appendix lists the payments from Council Municipal and Trust funds for the month applicable as per requirements of the Local Government Act 1995 and the Local Government (Financial Management) Regulations 1996.

As per Regulation 13 of the Local Government (Financial Management) Regulations 1996 the following information is required to be presented to Council;

- The Payee's name;
- The amount of the payment;
- The date of the Payment; and
- Sufficient information to identify the transaction

REPORT DETAIL

As Council has delegated authority to the Chief Executive Officer to execute payments from the municipal fund and the trust fund a list of accounts paid are required to be submitted to Council showing the prescribed information.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Leadership
Aspiration	To embed strong leadership through good governance, effective communication and ensuring value for money
Objective	5.1 A sustainable future through embracing change, applying technological advancement and pursuing efficiencies
Strategy	5.1.1 Establish a strong corporate governance framework to ensure high standards of integrity, ethics and accountability, and pursue professional development opportunities
Action	

OTHER STRATEGIC LINKS

Nil

STATUTORY ENVIRONMENT

As per Regulation 13 of the Local Government (Financial Management) Regulations 1996 the following is required;

- (1) If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared
 - (a) the payee's name; and
 - (b) the amount of the payment; and
 - (c) the date of the payment; and
 - (d) sufficient information to identify the transaction.
- (2) A list of accounts for approval to be paid is to be prepared each month showing
 - (a) for each account which requires council authorisation in that month
 - (i) the payee's name; and
 - (ii) the amount of the payment; and
 - (iii) sufficient information to identify the transaction; and
 - (b) the date of the meeting of the council to which the list is to be presented.
- (3) A list prepared under sub regulation (1) or (2) is to be —
 - (a) presented to the council at the next ordinary meeting of the council after the list is prepared; and
 - (b) recorded in the minutes of that meeting.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

Nil

Social - (Quality of life to community and/or affected landowners)

Nil

Environment – (Impact on environment’s sustainability)

Nil

Policy Implications

Nil

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

<i>Theme</i>	Operational - Adverse effects on core business, business continuity, human resource risks, loss of knowledge
<i>Description</i>	Non-compliance with the requirements stipulated by the <i>Local Government Act 1995</i>
<i>Consequence</i>	3 - Moderate
<i>Likelihood</i>	2 - Unlikely
<i>Rating</i>	Moderate (4-9)
<i>Controls / Review</i>	Control measures are in place whereby payments are checked and verified by two authorising officers.
<i>Review Frequency</i>	Monthly
<i>Risk Owner</i>	Operational manager
<i>Acceptance</i>	Accept - Risk acceptable with adequate controls

CONSULTATION

Nil

RESOURCE IMPLICATIONS

Financial

Nil

Workforce

Nil

OPTIONS

Council has the option of:

1. Receive the listing of payments presented for the month of April 2022.
2. Not receive the listing of payments presented for the month of April 2022.

CONCLUSION

The listing of payments as per the attached appendix is a true reflection of the expenditure from the Municipal and Trust Fund accounts for the month of April 2022. All expenditure is accordance with the 2021/22 adopted budget and is presented as per the prescription within regulation 13 of the Local Government (Financial Management) Regulation 1996.

11.2.2 Monthly Statement of Financial Activity for the period ending 30 April 2022	
File Ref:	1/1 – Annual Statements
Previous Items:	N/A
Applicant:	N/A
Author and Title:	Kirsty Ferraro, Manager Corporate Services
Voting Requirements:	Simple Majority
Declaration of Interest:	Nil
Appendix Number	11.2.2 - Monthly Agenda Report 21-22 April

RECOMMENDATION

That Council receives the Monthly Statement of Financial Activity for the period ending 30 April 2022, as per Appendix 11.2.2.

IN BRIEF

The purpose of this report is to present the financial position of Council as at the reporting date as per requirements of the Local Government Act 1995 and the Local Government (Financial Management) Regulation 1996.

BACKGROUND

The Local Government Act 1995 in conjunction with regulation 34(1) of the Local Government (Financial Management) Regulations 1996 requires a monthly Statement of Financial Activity to be presented to Council detailing the prescribed information within 2 months after the end of the month to which the statement relates.

REPORT DETAIL

The monthly financial report recognises the financial position of Council at the reporting date and contains the following information;

- a) Annual budget estimates taking into account any expenditure incurred for an additional purpose under section 6.8(1) (b) or (c) of the Local Government Act 1995;
- b) Budget estimates to the end of the month to which the statement relates;
- c) Actual amounts of expenditure, revenue and income to the end of the month to which the statements relate;
- d) The material variance between the comparable amounts referred to in the paragraphs (b) and (c); and
- e) The net current assets at the end of the month to which the statement relates.

The following information is included in the report;

- o Statement of Financial Activity by Programme
- o Statement of Financial Activity by Nature and Type, and
- o Statement of Financial Position
- o Note 1 – Significant Accounting Policies
- o Note 2 – Graphical Representation
- o Note 3 – Net Current Funding Position
- o Note 4 – Cash and Investments
- o Note 5 – Major Variances
- o Note 6 – Budget Amendments
- o Note 7 – Receivables
- o Note 8 – Grants & Contributions
- o Note 10 – Capital Disposals and Acquisitions

- Note 11 – Significant Capital Projects
- Note 12 – Trust
- Note 13 - Borrowings

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Leadership
Aspiration	To embed strong leadership through good governance, effective communication and ensuring value for money
Objective	5.1 A sustainable future through embracing change, applying technological advancement and pursuing efficiencies
Strategy	5.1.1 Establish a strong corporate governance framework to ensure high standards of integrity, ethics and accountability, and pursue professional development opportunities
Action	

OTHER STRATEGIC LINKS

Shire of Waroona 2021/22 Annual Budget

STATUTORY ENVIRONMENT

Local Government Act 1995 – Section 6.4

Local Government (Financial Management) Regulations 1996 – Section 34

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)
Nil

Social - (Quality of life to community and/or affected landowners)
Nil

Environment – (Impact on environment’s sustainability)
Nil

Policy Implications
All financial policies from Policy FIN002 through to Policy FIN035

Risk Management Implications
(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

<i>Theme</i>	Operational - Adverse effects on core business, business continuity, human resource risks, loss of knowledge
<i>Description</i>	Non-compliance with the requirements stipulated by the <i>Local Government Act 1995</i>
<i>Consequence</i>	3 - Moderate
<i>Likelihood</i>	2 - Unlikely
<i>Rating</i>	Moderate (4-9)
<i>Controls / Review</i>	Monthly scheduled review of statements.
<i>Review Frequency</i>	Monthly
<i>Risk Owner</i>	Operational manager
<i>Acceptance</i>	Accept - Risk acceptable with adequate controls

CONSULTATION

Nil

RESOURCE IMPLICATIONS

Financial

Nil

Workforce

Nil

OPTIONS

Council has the option of:

1. Receiving the monthly financial statements.
2. Not receiving the monthly financial statements.

CONCLUSION

That Council receives the monthly financial statements prepared in accordance with the Local Government Act 6.4 and Local Government (Financial Management) Regulations 1996 section 34.

11.2.3 Annual Review of Policies – CGP002 and CGP004	
File Ref:	35/1
Previous Items:	Nil
Applicant:	Not applicable
Author and Title:	Brad Vitale, Corporate Compliance Officer
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Appendix Number	APP 11.2.3 A - CGP002 - Elected Members Fees Allowances and Reimbursements APP 11.2.3 B - CGP004 - Elected Member Continuing Professional Development - Proposed Amendment

RECOMMENDATION

That Council:

- 1. acknowledges the review of policy CGP002 – Elected Members’ Fees, Allowances and Reimbursements, and accepts no amendments are to be made, as attached as Appendix 11.2.3 A; and**
- 2. adopts the reviewed policy CGP004 – Elected Member Continuing Professional Development, as attached as Appendix 11.2.3 B.**

IN BRIEF

Council must review policies CGP002 and CGP004 annually to ensure consistency with strategy and legislation.

BACKGROUND

The policies review included consultation with the updated Determination of the Salaries and Allowances Tribunal for Local Government Chief Executive Officers and Elected Members released on 7 April 2022 and effective from 1 July 2022. The key conclusions in the updated determination are as follows:

- The Tribunal has determined that remuneration, fees, and annual allowance ranges provided to CEOs and elected members be increased by 2.5%. The increase is appropriate within the wider framework of senior public offices and the current economic climate.
- The Tribunal notes that each local government must set remuneration within the band to which it is allocated. Any increase, within the bands, must be determined by each local government through its own assessment of whether changes are justified.
- In reviewing the band allocation model and all other relevant information, the Tribunal has examined local governments with potential to change band classification. However, the Tribunal considers no change is warranted for any local government at this time.
- The Tribunal received submissions requesting changes to the specific levels of allowances, such as the Regional/Isolation Allowance, childcare reimbursement rate, or annual allowances provided to elected members in lieu of expenses. Recognition of compulsory training through the allowance framework was also considered. The Tribunal has reviewed these allowances and has determined the childcare reimbursement rate will increase to \$35 per hour. All other allowances are to remain unchanged.

- The Tribunal noted a couple of submissions raised issues involving performance management, governance standards, workplace culture, qualifications and training, among others. Such issues are outside the Tribunal’s powers. The Tribunal’s functions are narrow and strictly defined in the SA Act (as identified in paragraphs 1 and 2). The Tribunal sets the appropriate levels of remuneration for the offices within its jurisdiction, not specific office holders.
- It is emphasised that fees and allowances, in lieu of reimbursement of expenses, provided to elected members are not considered payment for work performed in a manner akin to regular employment arrangements. Elected members are provided these fees and allowances to recognise the commitment of their time and to ensure they are not out of pocket for expenses properly incurred in the fulfilment of their duties. The Tribunal’s original 2013 determination stated that “fees and allowances provided to elected members are not intended to be full time salaries for members”. The Tribunal continues to recognise the degree of voluntary community service in the role of elected members.

REPORT DETAIL

There are no amendments recommended to Policy CGP002 – Elected Members’ Fees, Allowances and Reimbursements as the policy is compliant and relevant, whilst providing flexibility for Council to consider applicable fee, allowance and reimbursement amounts each year during the budget preparation process.

There is only one minor amendment which is recommended and has been included in Appendix 11.2.3 B - CGP004 - Elected Member Continuing Professional Development - Proposed Amendment. This is the inclusion of a reference to the Determination of the Salaries and Allowances Tribunal for Local Government Chief Executive Officers and Elected Members in Part 7 of the policy. The remainder of the policy is still compliant and relevant, whilst providing flexibility for Council to consider applicable fee, allowance and reimbursement amounts each year during the budget preparation process.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Leadership
Aspiration	To embed strong leadership through good governance, effective communication and ensuring value for money
Objective	5.1 A sustainable future through embracing change, applying technological advancement and pursuing efficiencies
Strategy	5.1.1 Establish a strong corporate governance framework to ensure high standards of integrity, ethics and accountability, and pursue professional development opportunities
Action	Nil

OTHER STRATEGIC LINKS

Nil.

STATUTORY ENVIRONMENT

Salaries and Allowances Act 1975

s.7B – Determinations as to fees and allowances of local government councillors

(1) In this section —

“elected council member” means a person elected under the *Local Government Act 1995* as a member of the council of a local government.

- (2) The Tribunal is to, from time to time as provided by this Act, inquire into and determine —
- (a) the amount of fees, or the minimum and maximum amounts of fees, to be paid under the *Local Government Act 1995* to elected council members for attendance at meetings; and
 - (b) the amount of expenses, or the minimum and maximum amounts of expenses, to be reimbursed under the *Local Government Act 1995* to elected council members; and
 - (c) the amount of allowances, or the minimum and maximum amounts of allowances, to be paid under the *Local Government Act 1995* to elected council members.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

Nil.

Social - (Quality of life to community and/or affected landowners)

Nil.

Environment – (Impact on environment’s sustainability)

Nil.

Policy Implications

Nil.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

<i>Theme</i>	Operational - Adverse effects on core business, business continuity, human resource risks, loss of knowledge
<i>Description</i>	Failing to review the policies will result in non-compliance with Council policy.
<i>Consequence</i>	2 - Minor
<i>Likelihood</i>	2 - Unlikely
<i>Rating</i>	Moderate (4-9)
<i>Controls / Review</i>	Council’s endorsement of the recommendation of this report will mitigate the likelihood of this risk coming into effect.
<i>Review Frequency</i>	Annually
<i>Risk Owner</i>	Chief executive officer
<i>Acceptance</i>	Accept - Risk acceptable with adequate controls

CONSULTATION

Nil.

RESOURCE IMPLICATIONS

Financial

Nil.

Workforce

Nil.

OPTIONS

Council has the option of:

1. Accepting the officer recommendation.
2. Amending or rejecting the officer recommendation.

CONCLUSION

As there were no applicable amendments in the updated Determination of the Salaries and Allowances Tribunal for Local Government Chief Executive Officers and Elected Members, policy CGP002 – Elected Members' Fees, Allowances and Reimbursements does not require changing.

However, the inclusion of a reference to the Determination of the Salaries and Allowances Tribunal for Local Government Chief Executive Officers and Elected Members in policy CGP004 – Elected Member Continuing Professional Development will ensure this document is consulted in future reviews.

11.2.4 Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy – Stakeholder Reference Group Nomination	
File Ref:	7/5; 35/1
Previous Items:	Nil
Applicant:	Not applicable
Author and Title:	Brad Vitale, Corporate Compliance Officer
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Appendix Number	11.2.4 – Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy Letter & Factsheet

RECOMMENDATION

That Council:

- 1. supports the nomination of either Cr Odorisio or Cr Snell to the Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy Stakeholder Reference Group; and**
- 2. requests the Chief Executive Officer to nominate a suitably qualified and experienced officer to the Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy Stakeholder Reference Group.**

IN BRIEF

Alcoa has invited the Shire of Waroona to nominate two representatives to the Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy Stakeholder Reference Group – with preference for a combination of a staff representative with related planning & community skills and a Council nominee to provide a mix of professional and community input to the process.

BACKGROUND

For more than twenty years, Alcoa Wagerup has prepared Long Term Residue Management Strategy (LTRMS) plans to provide guidance and direction for the future management of the Wagerup Residue Storage Area. These documents have been updated every five years and are due for review in 2022.

In response to discussion with regulatory authorities, Alcoa will be expanding this process in 2022 to develop a Wagerup Refinery Closure Plan, of which the LTRMS will be incorporated and become a key component going forward. This approach is being undertaken to inform local and state governments and the wider community of Alcoa's management strategies and commitments for residue management and eventual refinery site closure.

The final document will outline current short term (5-7 year) and mid-term (25 year) management strategies for residue storage and closure planning activities including issues such as:

- Where future residue areas will be located;
- Proposed height requirements for the residue areas;
- How environmental risks associated with residue storage will be managed;
- Potential refinery site rehabilitation;
- Environmental risks and liabilities as part of the refinery closure process;
- Opportunities for alternative use of assets post refinery closure; and

- Information gaps and areas for further research in preparation for closure.

REPORT DETAIL

Alcoa has commenced a call for nominees to create a Stakeholder Reference Group (SRG) to gather local input on the draft Wagerup Closure Plan (inclusive of LTRMS). It is anticipated that participants on the SRG will be engaged to review a preliminary draft of the document and then participate in several workshops to collectively provide feedback before Alcoa finalises the document for submission to the Department of Mines, Industry Regulation and Safety.

The responsibilities of the SRG are to:

- Consider the long-term planning and strategic issues related to refinery closure and residue management (e.g. health impacts, dust management, land use management, options for use and reuse of residue and refinery, rehabilitation and clean up);
- Provide advice to Alcoa on:
 - Long term local and regional land use planning issues which may impact or be impacted by refinery closure and residue management; and
 - Factors that influence long-term refinery closure and residue management;
- Provide a summary of their deliberations to be included in the development of the 2022 Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy; and
- Conform to the Terms of Reference of the Group.

Consultation with the SRG may include written submissions, one to one meetings and group meetings.

As participants in the Alcoa Community Consultative Network, Cr Odorisio and Cr Snell have been provided with the option to consider being part of the SRG and provide input towards the document.

Nominations for the SRG must be submitted to Alcoa no later than Tuesday, 31 May 2022.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Leadership
Aspiration	To embed strong leadership through good governance, effective communication and ensuring value for money
Objective	5.1 A sustainable future through embracing change, applying technological advancement and pursuing efficiencies
Strategy	5.1.1 Establish a strong corporate governance framework to ensure high standards of integrity, ethics and accountability, and pursue professional development opportunities
Action	Nil

OTHER STRATEGIC LINKS

Nil.

STATUTORY ENVIRONMENT

Nil.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

Nil.

Social - (Quality of life to community and/or affected landowners)

Nil.

Environment – (Impact on environment’s sustainability)

Nil.

Policy Implications

Nil.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

<i>Theme</i>	Environmental - Regulatory compliance, contamination, inadequate processes
<i>Description</i>	Failing to nominate a Council representative to the Stakeholder Reference Group may result in limited input to the Wagerup Refinery Closure Plan and Long-Term Residue Management Strategy
<i>Consequence</i>	3 - Moderate
<i>Likelihood</i>	3 - Possible
<i>Rating</i>	Moderate (4-9)
<i>Controls / Review</i>	Council’s endorsement of the recommendation of this report will mitigate the likelihood of this risk coming into effect.
<i>Review Frequency</i>	Annually
<i>Risk Owner</i>	Chief executive officer
<i>Acceptance</i>	Accept - Risk acceptable with adequate controls

CONSULTATION

Nil.

RESOURCE IMPLICATIONS

Financial

Nil.

Workforce

Nil.

OPTIONS

Council has the option of:

- 2. Accepting the officer recommendation.
- 2. Amending or rejecting the officer recommendation.

CONCLUSION

The Stakeholder Reference Group will be provided the opportunity to contribute to and review the draft Wagerup Refinery Closure Plan (inclusive of LTRMS) prior to Alcoa finalising the document and submitting to the Department of Mines, Industry Regulation and Safety.

This is an opportunity for two Council representatives to be involved in this process and provide input from the local community and local government.

11.3 CHIEF EXECUTIVE OFFICER

11.3.1 Legislative Impacts and Opportunities for Volunteer Bush Fire Brigades	
File Ref:	23/1
Previous Items:	Nil
Applicant:	Shire of Waroona
Author and Title:	Mark Goodlet, Chief Executive Officer
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Appendix Number	APP 1.3.1 A – “Reframing Rural Fire Management” Report of the Special Inquiry Into the January 2016 Waroona Fire, Volume 1, by E. Ferguson (Ferguson Report) APP 11.3.1 B – Overview of Western Australia’s Work Health and Safety Act 2020, by Department of Mines, Industry Regulation and Safety and Worksafe Western Australia

RECOMMENDATION

That Council requests:

- 1. WA Local Government Association (WALGA) to advocate for the:**
 - a. Modernisation of Western Australian emergency services legislation, including alignment of the WA Bush Fires Act 1954 with the rest of Australia by removing the legislative requirement for WA Local Governments to manage Volunteer Bush Fire Brigades (VBFB); and**
 - b. Provision of a legislated State Government department or agency to do so, fully implementing recommendation 15 of the “Reframing Rural Fire Management” Report of the Special Inquiry Into the January 2016 Waroona Fire (Ferguson Report), which states;**

“The State Government to create a Rural Fire Service to enhance the capability for rural fire management and bushfire risk management at a State, regional and local level. The proposed Rural Fire Service will:

- be established as a separate entity from the Department of Fire and Emergency Services or, alternatively, be established as a sub-department of the Department of Fire and Emergency Services;**
- have an independent budget;**
- be able to employ staff;**
- have a leadership structure which, to the greatest degree possible, is regionally based and runs the entity;**
- be led by a Chief Officer who reports to the responsible Minister on policy and administrative matters; and to the Commissioner for Fire and Emergency Services during operational and emergency response;**
- have responsibilities and powers relating to bushfire prevention, preparedness and response; and**
- operate collaboratively with the Department of Fire and Emergency Services, the Department of Parks and Wildlife, Local Government and volunteer Bush Fire Brigades.**

“In creating the Rural Fire Service, the State Government to consider whether back office and corporate support services could be effectively provided by an existing Department, such as the Department of Fire and Emergency Services or the Department of Parks and Wildlife.

“The State Government to review the creation of the Rural Fire Service two years after its establishment, to assess whether its structure and operations are achieving the intended outcome.

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

IN BRIEF

In 1954 local government was legislated through the Bush Fires Act, as the entity responsible for establishing and managing the Volunteer Bush Fire Brigades, as decentralized self-managed groups of volunteers. Over the intervening years, State Government intervention to improve funding, coordination, management expertise and training is now at a point where the Department of Fire and Emergency Services takes a primary lead in this support.

In 2016 following the major Waroona and Yarloop fire the Ferguson Report found that there was the need for establishment of an entity that had responsibility for rural bush firefighting and its volunteers.

In March 2022 the provisions of the new Work Health and Safety Act 2020 were fully transitioned. They clearly detail the standard of duty of care that entities responsible for volunteers now carry.

This standard has brought into focus the fact that local government is no longer the right entity to be discharging the duty of care and the duty of provision of extreme risk bush fire management services in Western Australia. Western Australia, while its health and safety legislation is now in alignment with the rest of Australia, is now at odds with the rest of Australia in terms of State Government responsibility for volunteer bush fire brigades.

Local government is clearly unable to meet the management and duty of care expectations enunciated in the Work, Health and Safety Act 2020 in the extreme risk area of bush

firefighting. This new legislation exposes the gap between the extreme risk of bush fires and the capabilities of local governments to meet this risk. It has set up local government for failure if nothing is done to fix the fundamental question - what entity is best able to meet the responsibility for supporting volunteer bush fire brigades. This responsibility must be placed in the hands of a State Government department or agency with appropriate expertise, capabilities and resourcing under the emergency services banner to adequately address and manage the risks associated with bush fires and support volunteers in this endeavour.

Cabinet has agreed on a review of the three emergency services Acts, the Fire Brigades Act 1942, the Bush Fires Act 1954 and the Fire and Emergency Services Act of 1998, to create a single comprehensive Emergency Services Act which will improve community safety and better support all of our emergency services workers into the future. This work is being undertaken by DFES. (<https://www.dfes.wa.gov.au/site/about-us/corporate-information/legislation/legislation.html>).

This review represents a once in a generation opportunity have this matter addressed and give volunteer bush fire brigades the level of overarching support they need, through a State Government agency or department with new legislation designed to take over this role from local governments.

It is not appropriate that the current hybrid responsibility sharing arrangement continue between Local Government and the State Government, for either historic or power sharing reasons. This will perpetuate the current mixed message and unclear lines of responsibility that comes from a legislative underpinning of volunteer bush fire brigades as local government entities, while management, training, funding and operational support are provided through DFES. This will not ultimately be in the best interests of the volunteers and their ability to be supported in the important role they play in managing bush fire risk.

BACKGROUND

History

The Volunteer Bush Fire Brigades have been a vital part of the regional Western Australian emergency services fabric since 1954 in a formal legislated system, but before that in heart of the community unsupported volunteer service groups. The continuation of this service by the volunteers, ensuring the continuity of the brigades along with the safety of the members, remain as the key priorities. How this is best achieved given findings of the 2016 Ferguson Report and the new safety mandates of the Work Health & Safety Act 2020 (WHS Act) for volunteers, is a primary issue.

Long gone are the days of a group of farming neighbours fronting up to a fire, with the Shire sending down some crew with machinery to assist. Volunteer bush fire brigades replaced this loose affiliation in 1954 through the commencement of the Bush Fires Act with local governments being given responsibility to establish and run the brigades. Over time the State Government has increasingly mandated duty of care requirements to the members and those charged with their management, to the point where the duty of care now extends to the volunteers themselves.

2016 “Reframing Rural Fire Management” Report of the Special Inquiry Into the January 2016 Waroona Fire (Ferguson Report)

Following the 2016 Waroona Yarloop bush fires the Public Sector Commission tasked a special inquiry led by Mr. Euan Ferguson AFSM into the matter. His report (Pg. 18) summarises the losses of these fires as follows:

“Tragically, during the fire, two residents of Yarloop lost their lives. The fire burned a total area of 69,165 hectares comprising 31,180 hectares of private property and 37,985 hectares of public land. One hundred and eighty one properties were destroyed. At time of writing, it is estimated that the cost of the fire, including the costs of suppression, losses, damage and recovery (including estimated insurance losses) totals approximately \$155 million.

In his report prologue (pg.12) he summarises his findings thus:

“It is my view that there exists a need to effect fundamental changes to the system of rural fire management in Western Australia. My conclusion, which has been very carefully considered, is that the current system for managing bushfire in Western Australia is failing citizens and the government.

The recommendations for change were provided in two categories; Strategic and Agency opportunities for improvement. 17 Recommendations and 23 Opportunity statements were made. Critical to the context of this Council Report, is Recommendation 15, which is about rural fire management and its recommends:

“The State Government to create a Rural Fire Service to enhance the capability for rural fire management and bushfire risk management at a State, regional and local level. The proposed Rural Fire Service will:

- be established as a separate entity from the Department of Fire and Emergency Services or, alternatively, be established as a sub-department of the Department of Fire and Emergency Services;
- have an independent budget;
- be able to employ staff;
- have a leadership structure which, to the greatest degree possible, is regionally based and runs the entity;
- be led by a Chief Officer who reports to the responsible Minister on policy and administrative matters; and to the Commissioner for Fire and Emergency Services during operational and emergency response;
- have responsibilities and powers relating to bushfire prevention, preparedness and response; and
- operate collaboratively with the Department of Fire and Emergency Services, the Department of Parks and Wildlife, Local Government and volunteer Bush Fire Brigades.

“In creating the Rural Fire Service, the State Government to consider whether back office and corporate support services could be effectively provided by an existing Department, such as the Department of Fire and Emergency Services or the Department of Parks and Wildlife.

“The State Government to review the creation of the Rural Fire Service two years after its establishment, to assess whether its structure and operations are achieving the intended outcome.

This recommendation has only been partially implemented and the independent entity with the capabilities and resourcing described in the recommendation is far from realization. This is in part because this requires legislative change, one that removes local government as the head of power body establishing and underpinning this entity. The opportunity for this change is now available with the review of the emergency services legislation.

Bush Fire Fighting Risk

The prologue to the Ferguson Report provides an excellent description of the complexities of fighting bush fires and making judgment following the event (pg. 11):

“Hindsight is a wonderful thing. But we must act with disciplined caution when exercising this hindsight. It must always be remembered that those who were key players in this fire emergency were not afforded such luxury. Many individuals, be they citizens or members of agencies or in community teams, worked in extreme and challenging conditions. Many were hot, hungry, dehydrated and sometimes sick with worry and exhaustion. Dangers were ever present. Fast decisions had to be made with information that was incomplete and sometimes conflicting. There were many unknowns. People made decisions. Assumptions changed. Best laid plans failed. Teams used their initiative and adjusted. Even the most straightforward of tasks became complex. Emergency and essential services worked to create order out of chaos. Everyone worked against time and the progression of the fire.

“It would be easy to look at any shortcomings and be tempted to fall into the trap of finding fault and allocating blame. This must be resisted. In striving for excellence in bushfire emergency management, it must be recognised that there are many parts of the system: the fire, the weather, the terrain and the actions and reactions of people that are subject to sudden and unpredictable change. Under these conditions, much is unknown. Almost everything is shrouded by uncertainty. People make judgements and those judgements are not infallible. Errors can and do occur, despite the best intentions and best efforts of people.

While the Ferguson Report wasn't written with the aim of “finding fault and allocating blame”, the new Work Health and Safety Act 2020 is. It is specifically designed and written to provide standards and responsibilities for health and safety, in order to provide a path for finding fault, allocating blame and then punishing those who are at fault.

Work Health and Safety Act 2020

Key feature of the WHS Act are provided in the following extract from the “Overview of Western Australia's Work Health and Safety Act 2020” put out by the Department of Mines, Industry Regulation and Safety, and Worksafe (pg. 2):

- The primary duty holder is the ‘person conducting a business or undertaking’ (PCBU) which is intended to capture a broader range of contemporary workplace relationships.
- A primary duty of care requiring PCBUs to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work.
- Duties of care for persons who influence the way work is carried out, as well as the integrity of products used for work, including the providers of WHS services.
- A requirement that ‘officers’ exercise ‘due diligence’ to ensure compliance.
- The new offence of industrial manslaughter, which provides substantial penalties for PCBUs where a failure to comply with a WHS duty causes the death of an individual, in circumstances where the PCBU knew the conduct could cause death or serious harm.
- The voiding of insurance coverage for WHS penalties, and imposition of penalties for providing or purchasing this insurance.
- The introduction of WHS undertakings, which are enforceable, as an alternative to prosecution.

- Reporting requirements for ‘notifiable incidents’ such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking.
- A framework to establish a general scheme for authorisations such as licences, permits and registrations (for example, for persons engaged in high-risk work or users of certain plant or substances), including provisions for automated authorisations.

Importantly, the WHS Act captures the duty of care requirements for bush fire brigades and volunteers.

Work Health and Safety Act 2020 Duty of Care Failure and Penalties

Hefty fines now apply to local governments and criminal charges may be imposed on executive staff should they fail in their duty of care under the new Work Health and Safety Act 2020. A sevenfold increase in the maximum fine is now applicable to executives along with a 20 year jail term. The local government body is now subject to an uninsurable fine up to \$10M, up 2.85 times from \$3.5M.

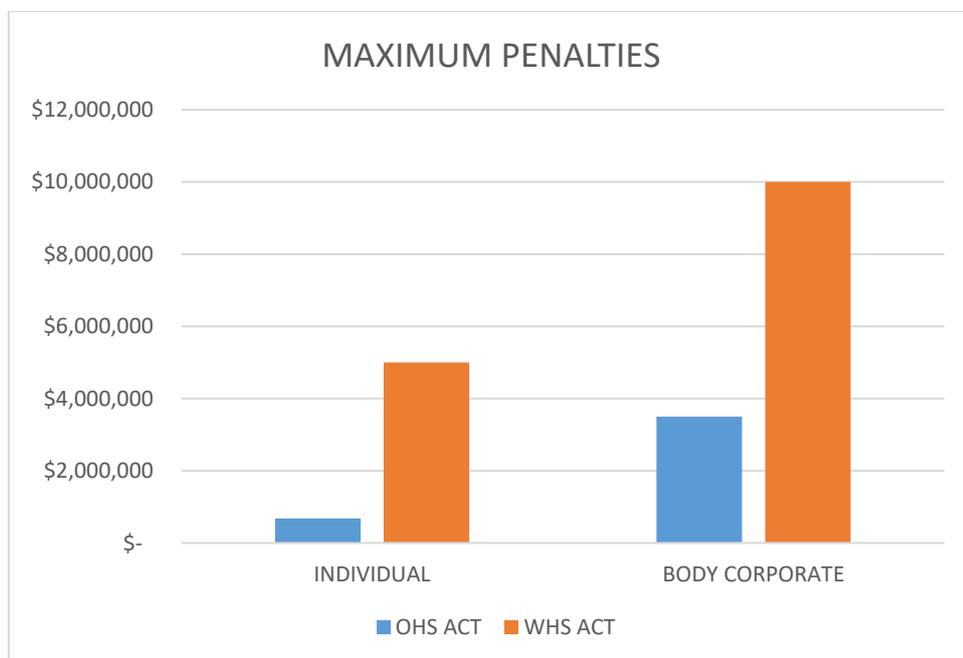


Figure 1. Maximum Individual and Body Corporate Penalties Comparison Between the Previous OHS Act (blue) and the WHS Act (orange)

Maximum penalties for breach of health and safety duty offences

Offence	Duty holder		
	Body corporate	Individual as a PCBU or officer	Individual as worker or other
Industrial manslaughter	\$10 000 000	\$5 000 000, 20 years in jail	Not applicable
Category 1	\$3 500 000	\$680 000, 5 years in jail	\$340 000, 5 years in jail
Category 2	\$1 800 000	\$350 000	\$170 000
Category 3	\$570 000	\$120 000	\$55 000

Note: Where a penalty provides for a fine or term of imprisonment, the Court may impose a sentence that includes either or both penalties.

Exceptions (section 34)

Volunteers are not liable for a failure to comply with a health and safety duty except in their capacity as a worker (section 28) or other person at a workplace (section 29).

Table 1. Maximum Penalties. Department of Mines, Industry Regulation and Safety, and Worksafe, “Overview of Western Australia’s Work Health and Safety Act 2020”, pg. 36.

LEVEL	INDIVIDUAL 1ST OFFENCE	INDIVIDUAL SUBSEQUENT OFFENCE	BODY CORPORATE 1ST OFFENCE	BODY CORPORATE SUBSEQUENT OFFENCE
1	\$ 100,000	\$ 120,000	\$ 450,000	\$ 570,000
2	\$ 250,000	\$ 350,000	\$1,500,000	\$1,800,000
3	\$ 400,000	\$ 500,000	\$2,000,000	\$2,500,000
4	\$ 550,000	\$ 680,000	\$2,700,000	\$3,500,000

Table 2. Maximum Penalties Under the Previous Occupational, Health and Safety Act 1984”, pg. 36.

The State Government has made crystal clear its overarching expectations regarding duty of care, including to volunteers. In doing so, however, it has raised a fundamental question about the appropriate provision of leadership and support for volunteer bush fire brigades in the extreme risk environment in which they operate.

REPORT DETAIL

The new WHS Act safety mandate has brought into focus two related questions. Who is best placed to manage bush fire brigades, given the systems, expertise and control hierarchy needed to operate within the new WHS Act requirements? Secondly, is the current legislation, which provides for local governments to establish and run bush fire brigades, still appropriate, given these mandated safety management requirements? Recommendation 15 of the Ferguson Report answers these questions.

Local governments, and particularly those in executive level management, see a chasm between their risk management capabilities, expertise, control, financial support and the standards mandated in the new WHS Act for the extremely high-risk and complex activity of

fighting bushfires. They also see that the State Government, through the Department of Fire and Emergence Services (DFES), which has the expertise, knowledge, systems, training support and control, is much more capable in fighting fires than local government as an entity will ever be. In fact, in all of these areas DFES currently provides support to the bush fire brigades, with local government effectively simply providing a legacy legislative platform for their existence, along with some administrative support, assets and land for VBFB facilities.

The disparate, disjointed management by individual local governments, may provide some tailored local focus, but it has no strategic, management expertise, operational expertise, coordination or cohesiveness, nor State Government consistent operational budget funding outside of grants; despite now carrying safety expectations well above local government primary expertise and risk management capabilities.

The WHS Act was ostensibly enacted, in part, to bring Western Australia in line with the rest of the Australian states, including responsibility for volunteers. Perhaps as an unintended consequence, this has highlighted a significant disparity across Australia, with every other state having their volunteer bushfire brigades run by State Government agencies rather than local governments. Many in local government charged with management oversight of the VBFBs, believe that a handover to the State Government is the necessary next step for Western Australia, if coming into line with the rest of Australia.

As an alternative way of viewing this issue, local governments would not be expected, or able, to competently manage the emergency services currently within DFES areas of responsibility. Nor would Local government manage ambulance services, and nor should they. These are matters outside of local government core business and expertise. As a risk response, government, agencies and departments must operate within their core business and competencies. With a new focus on health and safety it is no longer appropriate that local government be required to operate in a highly specialized extreme risk area, when suitable alternatives exist, or should exist, as stated in the Ferguson Report.

Bush Fire Brigade Volunteers

The Ferguson Report (pp. 237 – 245) details the public response to the question of DFES involvement in fighting bush fires:

- DFES staff do not have sufficient expertise in rural fire management and don't understand our needs; and
- Inappropriate training is provided.

Anecdotally, similar concerns have been voiced to the Shire CEO, though no analysis is available as to whether these matters remain as prominent as they were in 2016. There is some skepticism and reluctance among some VBFB members regarding leaving the local governments, where they believe there is often more autonomy, local knowledge and a local focus.

A review of the emergency legislation needs to ensure that bush fire brigades are at the table in terms of consultation and that their legitimate concerns are aired and resolved.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Leadership
Aspiration	To embed strong leadership through good governance, effective communication and ensuring value for money
Objective	5.2 Develop a skilled, safe and compliant organisation
Strategy	5.2.1 Employ, maintain and retain a skilled workforce

OTHER STRATEGIC LINKS

Nil

STATUTORY ENVIRONMENT

In light of, *the Local Government Act of 1995: Division 3 — Executive functions of local governments, Subdivision 1 — Performing executive functions, 3.18. Performing executive functions: 3(b)*; as the WA Department of Fire and Emergency Services (DFES), is already providing a rural fire division (ref. 2), it could be considered that the further provision of Local Government controlled Fire & Emergency Services Brigades is an inappropriate duplication of “services or facilities provided by the ... State”.

Division 3 — Executive functions of local governments

Subdivision 1 — Performing executive functions

a. Performing executive functions

- (1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.
- (2) In performing its executive functions, a local government may provide services and facilities.
- (3) A local government is to satisfy itself that services and facilities that it provides
 - (a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body; and
 - (b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private;** and
 - (c) are managed efficiently and effectively.

The *WA Bush Fire Act 1957, 41. Bush fire brigades: (1)* states, a local government may, in accordance with its local laws made for the purpose, establish and maintain one or more bush fire brigades. As such, the local government could also decide not to maintain one or more bush fire brigades.

Bush Fire Act 1957,

41. Bush fire brigades:

- (1) For the purpose of carrying out normal brigade activities a local government may, in accordance with its local laws made for the purpose, establish and maintain one or more bush fire brigades and may, in accordance with those local laws, equip each bush fire brigade so established with appliances, equipment and apparatus.

The Shire of Waroona does not currently have local law to manage its BFBs. The Shire’s BFB local law was revoked in 2003. As an interim measure, in order to provide an adequate head of power for the existing BFB in the Shire of Waroona, Council should request a new BFB local law be prepared.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

- Accepting the risk of managing ‘employees’ whom the Shire of Waroona has very limited capacity to direct or manage, could have significant economic implications in the event of a reportable event occurring.

Social - (Quality of life to community and/or affected landowners)

- Nil.

Environment – (Impact on environment’s sustainability)

- Nil.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

Theme	Operational - Adverse effects on core business, business continuity, human resource risks, loss of knowledge
Description	The Shire of Waroona is currently operating Volunteer Bush Fire Brigades outside the area of its core business and competencies.
Consequence	5 - Catastrophic
Likelihood	3 - Possible
Rating	High (10-19)
Controls / Review	Council’s endorsement of the recommendation of this report may mitigate the likelihood of this risk occurring.
Review Frequency	Annually
Risk Owner	Chief executive officer
Acceptance	Treat - Risk acceptable with excellent controls

CONSULTATION

Special Inquiry into the Waroona bush fires

The Special Inquiry into the Waroona bush fires was conducted by Euan Ferguson AFSM. In a letter dated 26 April 2016, to Mr Wauchope, the Public Sector Commissioner, Mr Ferguson described the consultation process as follows:

“The Special Inquiry started in early February, ran for 13 weeks and held formal hearings on 22 days. The Special Inquiry has evoked a significant response. One hundred and sixty five written submissions have been received. One hundred people appeared at formal hearings and five people gave evidence via telephone. We have met and interacted with 42 organisations and interest groups.

The report prologue further describes the consultation and the outcomes sought by the witnesses and submissions:

“All of the people the Special Inquiry met with: citizens, landowners, farmers, business owners, personnel from agencies, essential services and from emergency services, were genuine in their commitment to do the best they could during this crisis. The Special Inquiry noted a strong urge from all the witnesses and submissions to understand the failings in the current systems of work, to learn from this tragic experience, and to change the future.

Other Consultation

Correspondence with the Hon Stephen Dawson MLC, Minister for Emergency Services, and with the Emergency Services Commissioner Klemm, has commenced. Letters advising of

the Council decision of February 2022 and seeking an explanation of the terms under which a transfer of a volunteer bush fire brigade would be accepted have been sent. There has been a question asked as to whether, in addition to a Council position supporting a handover to DFES, the Commissioner would require agreement by the bush fire brigades also for a handover. This has been requested by the Shire's volunteer bush fire brigades. The Commissioner has now advised that his expectation is for consultation with the bush fire brigades and an agreed position with Council in relation to moving VBFBs across to DFES.

The Department of Emergency Services is currently reviewing the three emergency services Acts. This represents a one in a generation opportunity to consider the best and most competent delivery of volunteer bush fire brigade services. Ensuring that WALGA is at the table in this review is critical to good outcomes for local government.

The Shire of Waroona Chief Executive Officer and Shire President have actively engaged with Robyn Clarke MLA on the issue, and she is providing facilitation for access to State Government contacts and information. Her continued dialogue and facilitation is appreciated.

WALGA has been dealing with the implications of the new WHS Act, and through legal advice it has received, has confirmed that the requirements of this Act certainly apply to VBFBs, though the industrial manslaughter charge is only likely to apply to executive level local government employees rather than to any volunteers or paid officers outside of the Executive. WALGA ran a forum with Worksafe and the Local Government Insurance Scheme presenting to confirm its application.

The Chief Executive Officer has met the Shire's Chief Bush Fire Control Officer to establish communications with the volunteer bush fire brigade service and is seeking advice on the best way to communicate with the volunteers on an ongoing basis. The Chief Executive Officer is also in communication with Worksafe to seek a clear position on the duty of care that volunteer bush fire brigade members have.

RESOURCE IMPLICATIONS

Financial

Up to \$10M in uninsurable organisational penalties for failure to comply with the new WHS regulations.

The State Government has in place an Emergency Services Levy. This is a pre-existing suitable funding mechanism for volunteer bush fire brigades services to be run by the State Government.

A legal opinion on the local law meeting the needs of the WHS Act 2020 will cost in the order of \$7,000.

Workforce

Annual cost of providing and supporting an appropriately trained and qualified CESH or similar and adequate resourced, trained and managed volunteers.

OPTIONS

Council has the option of accepting, modifying or rejecting the officer recommendations.

CONCLUSION

There is an urgent need for Local Governments and the State Government to review the suitability of local governments role in delivery of volunteer bush fire brigades, given the spotlight on volunteer management raised by the new Work Health and Safety Act 2020. The

Ferguson Report, in 2016, provided a pathway for a new entity to do this, with a State Government core business emergency services entity tailored to bush firefighting and meeting the needs of volunteers. The current review of the three emergency services Acts represents a one in a generation opportunity to modernise the legislation underpinning volunteer bush firefighting in Western Australia to align under a suitable agency.

11.3.2 Deferral of Extraordinary Election	
File Ref:	
Previous Items:	OCM22/02/015
Applicant:	Shire of Waroona
Author and Title:	Mark Goodlet, Chief Executive Officer
Declaration of Interest:	Nil
Voting Requirements:	Absolute Majority
Appendix Number	APP 11.3.2 Fixing an extraordinary election date – response from the Electoral Commissioner

RECOMMENDATION

That Council, under s4.17(3) of the Local Government Act 1995:

- 1. Resolves to allow the current councillor vacancy to remain unfilled until the October 2023 Local Government Ordinary Elections; and**
- 2. Requests the Chief Executive Officer to apply to the Electoral Commissioner for approval to allow the current councillor vacancy to remain unfilled until the October 2023 Local Government Ordinary Elections.**

IN BRIEF

- A councillor vacancy exists at the Shire of Waroona, post disqualification of a councillor.
- Council has commenced a review of the wards and councillor numbers and has sought direction from the Electoral Commissioner to delay any extraordinary election until the review has concluded.
- The Electoral Commissioner has advised that Council may resolve to allow the councillor vacancy to remain until the next ordinary election and request approval from the Electoral Commissioner to do so.

BACKGROUND

A Councillor vacancy occurred on 23 February 2022 at the Shire of Waroona, post disqualification of a Councillor.

Council resolved to commence a review of the wards and councillor numbers. This review is currently being advertised.

Advice from the Electoral Commissioner has been sought regarding the process to delay an extraordinary election given the review is underway. The Electoral Commissioner has advised that Council may resolve to allow the Councillor vacancy to remain until the next ordinary election and may request approval from the Electoral Commissioner to do so.

REPORT DETAIL

The Electoral Commissioner has written to the Shire as per Appendix 11.3.2 to provide a mechanism for delaying the extraordinary election until the next ordinary election in October 2023. In the intervening time, Council is undertaking its review and seeking the Governor's approval, should Council so determine, to reduce the number of Councillors at the Shire of Waroona. If the Governor grants approval the need to fill the position will become then redundant when the next ordinary election occurs.

STRATEGIC COMMUNITY PLAN & CORPORATE BUSINESS PLAN

Focus Area	Our Leadership
Aspiration	To embed strong leadership through good governance, effective communication and ensuring value for money
Objective	5.3 Actively increase the level of engagement with the community, and respond efficiently and effectively to the evolving needs of the community
Action	Seek approval for a delay in the extraordinary election.

OTHER STRATEGIC LINKS

N/A.

STATUTORY ENVIRONMENT

Local Government Act 1995

Table to section 2.28 Terms of office

Item	Kind of office	How elected	Term begins	Term ends
4	Councillor	Elected at an ordinary election	On the day after the ordinary election day	On the third Saturday in October in the fourth year after the year in which the term began

4.4. Ordinary elections

(1) When the term of office of an elector mayor or president or a councillor is going to end under the Table to section 2.28 an election to fill the office is to be held.

4.6. Election day for ordinary elections

Any poll needed for an ordinary election is to be held on the day on which the previous term of office referred to in section 4.4(1) ends.

4.17. Cases in which vacant offices can remain unfilled

(3) If a councillor’s office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow* the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

(4A) Subsection (3) applies —

(a) if —

- (i) the office is for a district that has no wards; and
- (ii) at least 80% of the number of offices of member of the council in the district are still filled;

(4) If an ordinary or an extraordinary election is to be held in a district then an election to fill any vacancy in the office of councillor in that district that was allowed to remain unfilled under subsection (3) is to be held on the same election day and Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.

SUSTAINABILITY & RISK CONSIDERATIONS

Economic - (Impact on the Economy of the Shire and Region)

Nil.

Social - (Quality of life to community and/or affected landowners)

Nil.

Environment – (Impact on environment’s sustainability)

Nil.

Policy Implications

Nil.

Risk Management Implications

(Please refer to the Shire of Waroona Risk Framework when reviewing this section)

<i>Theme</i>	Reputation - Public perception, poor customer service, sub standard work, corruption
<i>Description</i>	Maintaining a strong, efficient and capable Council
<i>Consequence</i>	2 - Minor
<i>Likelihood</i>	3 - Possible
<i>Rating</i>	Moderate (4-9)
<i>Controls / Review</i>	Ensure community consultation is undertaken in the councillor numbers review process.
<i>Review Frequency</i>	Choose an item.
<i>Risk Owner</i>	Chief executive officer
<i>Acceptance</i>	Accept - Risk acceptable with adequate controls

CONSULTATION

As part of the decision-making process about Councillor numbers a public consultation process is underway. This will inform the community’s view on the number of councillors needed for the Shire of Waroona.

RESOURCE IMPLICATIONS

Financial

Delaying the extraordinary Councillor election until the next ordinary election will save approximately \$20,000 in election direct and in-kind costs.

Workforce

Delaying the extraordinary councillor election until the next ordinary election will save in-kind administrative, Councillor and executive time.

OPTIONS

Council has the option of:

1. seeking the delay in the extraordinary election; or
2. not seeking the delay in the extraordinary election.

CONCLUSION

The information provided by the Electoral Commissioner provides a way for the Shire of Waroona to delay the extraordinary election until the next ordinary election. By this time Council will have certainty about the appropriate number of Councillors, so it is recommended that Council seek the delay offered by the Electoral Commissioner.

- 11.4 ITEMS FOR INFORMATION**
- 12. BUSINESS LEFT OVER FROM A PREVIOUS MEETING**
- 13. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 14. NOTICE OF MOTIONS FOR CONSIDERATION AT A FOLLOWING MEETING**
- 15. NEW BUSINESS OF AN URGENT NATURE APPROVED BY THE PERSON PRESIDING OR BY DECISION OF THE MEETING**
- 16. MEETING CLOSED TO THE PUBLIC**
- 17. CLOSURE OF MEETING**