



SHIRE OF KONDININ

MINUTES OF MEETING

KONDININ SHIRE COUNCIL

held on Wednesday 15th March 2023 at the
Kondinin Council Chambers

David Burton
10th March 2023
CHIEF EXECUTIVE OFFICER

11 Gordon Street, KONDININ WA 6367 Tel (08) 98891006
All communications are to be addressed to the CHIEF EXECUTIVE OFFICER
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Order of Business

1. DECLARATION OF OPENING/ ANNOUNCEMENT OF VISITORS

The Shire President Cr Mouritz read the Statement of Commitment to Indigenous Australians, welcomed those present and declared the meeting open at 3.11 pm.

2. RECORD OF ATTENDANCE/ APOLOGIES/ LEAVE OF ABSENCE

Councillors:	Cr Kent Mouritz (President) Cr Darren Pool Cr Thomas Mulcahy	Cr Paul Green Cr Beverley Gangell Cr Tory Young (MPA) Bruce Browning	Cr Kerrie Green Cr Murray James Cr Brett Smith
Staff:	David Burton (CEO)	Tory Young (MPA)	Hannah Repacholi (Minute Taker)
Apologies:	Nil		

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4. PUBLIC QUESTION TIME

Nil

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6. PETITIONS/ DEPUTATIONS/ PRESENTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS/ INFORMATION REPORT

7.1 MINUTES OF COUNCIL MEETING- 15th February 2023

RESOLUTION #4090:

Moved: Cr K Green

Seconded: Cr P Green

That the minutes of the Council Meeting held on the 15th February 2023, be confirmed.

Carried:9/0

7.2 INFORMATION REPORT- March 2023

RESOLUTION #4091:

Moved: Cr James

Seconded: Cr Browning

That the Council receive and accept the Information Report before this meeting.

Carried:9/0

8. ANNOUNCEMENTS BY PRESIDING MEMBERS WITHOUT DISCUSSION

General discussion on how to proceed with Hyden-Norseman Road

9. ITEMS

- 9.1 MANAGER OF PLANNING & ASSETS**
 - 9.1.1 Proposal to Advertise Closure of Local Public Roads to Incorporate into freehold Lot 2640 on DP 210252 & freehold Lot 2485 on DP 209641 King Rocks Road, Hyden
 - 9.1.2 Proposal to change the name of Hyden Swimming Pool
 - 9.1.3 Proposed Changed to Vesting Order of Crown Reserve 33998 Marshall Street, Hyden
 - 9.1.4 Agreement between Shire of Kondinin and CWA (Hyden)

- 9.2 MANAGER OF CORPORATE SERVICES**
 - 9.2.1 List of Accounts
 - 9.2.2 Financial Reports

- 9.3 MANAGER OF WORKS**

- 9.4 CHIEF EXECUTIVE OFFICER**
 - 9.4.1 Dogs Local Law 2022- Undertaking to JSCDL
 - 9.4.2 Public Places and Local Government Property Local Law 2022- Undertaking to JSCDL
 - 9.4.3 Bush Fire Brigades Local Law 2022- Undertaking to JSCDL
 - 9.4.4 Compliance Audit Return
 - 9.4.5 Annual Electors Meeting

- 9.5 ENVIRONMENTAL HEALTH OFFICER**

- 9.6 COMMUNITY DEVELOPMENT OFFICER**

- 9.7 WORKS COMMITTEE**
 - 9.7.1 2023/2024 Road Works Programs
 - 9.7.2 10-Year Road Works Program

9.1 MANAGER OF PLANNING & ASSETS

9.1.1 Proposal to Advertise Closure of Local Public Roads to Incorporate into Freehold Lot 2640 on DP 210252 & Freehold Lot 2485 on DP 209641 King Rocks Road, Hyden

Applicant:	N/A
Author:	Tory Young, Manager Planning and Assets
Authorising Officer:	David Burton, Chief Executive Officer
Date:	2 nd March 2023
Disclosure of Interest:	Nil
Attachments:	Aerial Tenure Maps; Landowner Support

RESOLUTION #4092:

Moved: Cr Mulcahy

Seconded: Cr Smith

That Council:

1. SUPPORTS advertising the closure of the local road reserve that runs along the eastern boundary of Lot 2640 on DP 210252 King Rocks Road North, Hyden to amalgamate with the adjoining land as outlined in the map attached;
2. SUPPORTS advertising the closure of the local road reserve that runs along the northern boundary of Lot 2485 on DP 209641 King Rocks Road North, Hyden to amalgamate with the adjoining land as outlined in the map attached; and
3. AUTHORISES the Chief Executive Officer to commence the process under Section 58 of the Land Administration Act 1997 and Regulation 9 of the Land Administration Regulations 1998.

Carried:9/0

Summary

The purpose of this report is to seek approval from Council to proceed with the advertising to close the local road reserve that runs along the eastern boundary of Lot 2620 on DP 210252 and the local road reserve that runs along the northern boundary of Lot 2485 on DP 209641 to amalgamate with the adjoining land.

Background

Council at its Ordinary Meeting held on the 20th of July 2022 resolved to approve a request from Synergy to utilize the road reserves adjacent to Lot 2640 on DP 210252 and Lot 2485 on DP 209641 King Rocks Road North, Hyden to facilitate the proposed wind farm. At the time this was considered a short-term arrangement that could be put in place to accompany the Development Application. The Development Application for the proposed wind farm was considered as a JDAP application and was approved on the 15th of November 2022.

With the wind farm development application now approved Synergy is now seeking permanent closure of these roads to be amalgamated into adjoining Lots 2620 and 2485 King Rocks Road North, Hyden. The affected landowners are supportive of the proposal as shown in the letters of support attached.

To formalise this change, under section 58 of the Land Administration Act 1997 and Regulation 9 of the Land Administration Regulations 1998 the proposal first needs to be advertised for a minimum of 35 days before being reported back to council with any accompanying submissions made to formally resolve to request the Minister to close these two local road reserves.

This process from advertising to final determination by the Minister may take up to 18 months, however given the approval already given by the Shire to Synergy to utilize these local road reserves this time frame will not impact the progression of the wind farm development.

Statutory Environment

- Land Administration Act 1997
- Land Administration Regulations 1998

Policy Implications

Nil

Financial Implications

Nil.

Strategic Implications

Supports the following section of the Shire's Strategic Community Plan 2022 – 2032

"CIVIC LEADERSHIP

4.2 We are a compliant and resourced Local Government."

Voting Requirement

Simple majority

9.1.2 Proposal to Change the Name of the Hyden Swimming Pool

Applicant: N/A
Author: Tory Young, Manager Planning and Assets
Authorising Officer: David Burton, Chief Executive Officer
Date: 2nd March 2023
Disclosure of Interest: Nil
Attachments: Nil

RESOLUTION #4093:

Moved: Cr Smith

Seconded: Cr James

That Council:

1. SUPPORTS IN PRINCIPLE the proposed change of the Hyden Swimming Pool from 'Hyden and Districts Swimming Pool' to 'Hyden Aquatic Centre';
2. ADVERTISES the proposed name change for a minimum two (2) week period; and
3. REQUESTS the Chief Executive Officer to present the matter back to Council for final determination with a summary of any submissions received following the advertising period.

Carried:7/2

Cr P Green and Cr K Green voted against this motion with a preference to retain 'District' in the title.

Summary

The purpose of this report is to seek in-principle support from Council to change the name of the Hyden Swimming Pool from 'Hyden and Districts Swimming Pool' to 'Hyden Aquatic Centre' and authorise for the proposal to be advertised within the local community for public comment before being reported back to Council for final determination.

Background

Within the Hyden Swimming Pool Manager's report submitted to Council at its Ordinary Meeting held on the 15th of February 2023, it was suggested consideration be given to changing the name of the Hyden Swimming Pool from 'Hyden and Districts Swimming Pool' to 'Hyden Aquatic Centre' or 'Hyden Leisure Centre.'

Consideration has been given to the two options and it is viewed that 'Hyden Aquatic Centre' presents a better representation of the use of the facility, with 'Leisure Centre' inferring uses beyond a swimming pool.

The Hyden Swimming Pool Change Rooms are currently undergoing refurbishment comprising a new internal fit-out, a new roof and the external rendering of the whole change room and kiosk building presenting a good opportunity to rename the pool.

The existing lettering on the brickwork at the pool entrance 'Hyden and Districts Swimming Pool' has been removed to make way for the new rendering, providing the opportunity for new signage/lettering once the rendering work has been completed.

Statutory Environment

Nil

Policy Implications

Nil

Financial Implications

New signage can be accommodated in Hyden Swimming Pool 2023/2024 Budget.

Strategic Implications

Supports the following section of the Shire's Strategic Community Plan 2022 – 2032

"CIVIC LEADERSHIP

4.2 We are a compliant and resourced Local Government."

Voting Requirement

Simple majority

9.1.3 Proposed Change to Vesting Order of Crown Reserve 33998 Marshall Street, Hyden

Applicant: N/A
Author: Tory Young, Manager Planning and Assets
Authorising Officer: David Burton, Chief Executive Officer
Date: 3rd March 2023
Disclosure of Interest: Nil
Attachments: Current Vesting Order; Aerial Map; Certificate of Title

OFFICER'S RECOMMENDATION

Moved: Cr Gangell

Seconded: Cr P Green

That Council:

1. SUPPORTS a new Management Order be sought with the power to lease/license in favour of the Shire of Kondinin for Crown Reserve 33998 Marshall Street, Hyden;
2. SUPPORTS the purpose of the Crown Reserve be amended from 'Recreation' to 'Recreation and Community Use'; and
3. AUTHORISES the Chief Executive Officer to complete a Crown Enquiry Form and supporting documentation and submit to the Department of Planning, Lands and Heritage to amend the vesting orders and purpose of the Reserve.

AMENDMENT

Moved: CR Browning

Seconded: Cr P Green

Council would like to add a fourth point to the Officers Recommendation:

4. Support a boundary realignment between Reserve 33998 and Reserve 38659 to better reflect the historical and current land use of these two reserves.

Carried 9/0

RESOLUTION #4094:

That Council:

1. SUPPORTS a new Management Order be sought with the power to lease/license in favour of the Shire of Kondinin for Crown Reserve 33998 Marshall Street, Hyden;
- 2.SUPPORTS the purpose of the Crown Reserve be amended from 'Recreation' to 'Recreation and Community Use'; and
- 3.AUTHORISES the Chief Executive Officer to complete a Crown Enquiry Form and supporting documentation and submit to the Department of Planning, Lands and Heritage to amend the vesting orders and purpose of the Reserve.
- 4.Support a boundary realignment between Reserve 33998 and Reserve 38659 to better reflect the historical and current land use of these two reserves.

Carried 9/0

The resolution was amended to include aligning the boundaries with current uses.

Summary

The purpose of this report is to seek approval from Council for a new management order being sought with the power to licence/lease in favour of the Shire of Kondinin for Crown Reserve 33998 Marshall Street, Hyden. As part of this process, it is also asked that Council support the purpose of the reserve to be amended to include 'Recreation and Community Use', to better reflect the current land uses on the Reserve.

Background

To streamline the roles and responsibilities of the Shire and the two respective Community Resource Centres which are long-term occupants of Shire buildings, the Shire engaged professional services to prepare formal leases with the two entities. In the preparation of the lease for the Hyden Community Resource Centre, it was found that the current vesting order for this reserve does not afford the Shire the power to licence or lease.

Given this finding, to proceed in the finalisation of this lease and any other licencing/leases on this reserve it is recommended that the vesting orders are amended to enable this.

Statutory Environment

- Land Administration Act 1997

Policy Implications

Nil

Financial Implications

Nil.

Strategic Implications

Supports the following section of the Shire's Strategic Community Plan 2022 – 2032

"CIVIC LEADERSHIP

4.2 We are a compliant and resourced Local Government."

Voting Requirement

Simple majority

9.1.4 Agreement Between the Shire of Kondinin & CWA (Hyden)

Author: Tory Young, Manager Planning and Assets
Authorising Officer: David Burton, Chief Executive Officer
Date: 3rd March 2023
Disclosure of Interest: Cr K Green declared an impartiality interest in this item as a member of CWA.
Attachments: Agreement

RESOLUTION #4095:

Moved: Cr K Green

Seconded: Cr Smith

That Council:

APPROVES the agreement attached between the Shire of Kondinin and the Country Women's Association (CWA) – Hyden Branch for the management of the CWA grounds and utilities to be adopted and signed with a Common Seal by Order of Council.

Carried:9/0

Summary

The Hyden CWA building is located on freehold Lot 17 on DP5661 (No. 1) Lynch Street, Hyden owned by the CWA and shares a common wall with the Hyden Hall on freehold Lot 16 (No.3) Lynch Street, Hyden owned by the Shire of Kondinin.

Background

A question has been presented to the Shire's Administration on who is responsible for the maintenance of the grounds of the CWA Lot 17 on Lynch Street, Hyden. A loose arrangement has been in place in which the Shire and the CWA share the responsibility on an ad hoc basis. An arrangement also exists in that the Shire pay the electricity bills for the CWA building which is on a separate meter in the Town Hall with a contribution of \$25.00 being received from the CWA to the Shire per month. The Shire currently pays for the service and all water use of the CWA grounds and building.

This agreement intends to streamline the current arrangement between the Shire and the CWA and provide greater clarity to both parties.

With the CWA being a local not-for-profit group and the grounds being adjacent to the Hyden Hall and Coronation Park, it does not seem unreasonable for the Shire to assist in the maintenance of the grounds and continue to subsidise the utilities of the Hyden CWA.

Statutory Environment

Nil

Policy Implications

Nil

Financial Implications

The Shire currently pays for the utilities of the power and water with a \$25.00 contribution received per month from the CWA. There will be no change in this regard. It is anticipated that on average providing a Shire crew member and any associated plant and equipment for two hours per week would amount to around \$200 per week.

Strategic Implications

Supports the following section of the Shire's Strategic Community Plan 2022 – 2032

“1. COMMUNITY

1.4 Recreational and social spaces encourage active and healthy lifestyles

Parks, nature reserves and community spaces are green, tidy, accessible and activated. ”

Voting Requirement

Simple majority

9.2 MANAGER OF CORPORATE SERVICES

9.2.1 List of Accounts

Applicant: Shire of Kondinin
Author: Vince Bugna, Manager of Corporate Services
Disclosure of Interest: Nil
Date: 3rd March 2023
Attachment(s): List of Accounts 01/02/2023 to 28/02/2023

RESOLUTION #4096:

Moved: Cr Gangell

Seconded: Cr Smith

That Council receives the attached report – List of Accounts Due & Submitted to Council for the month of February 2023:

• Municipal Fund payment cheque numbers 19288 to 19301	= \$ 43,733.98
• Municipal EFT16435 – 16508; 16510 – 16578	= \$ 539,590.89
• Direct Debits – Transport – Hyden Office	= \$ 46,687.65
• Direct Debits – Transport – Kondinin Office	= \$ 19,590.15
• Direct Debits – Credit Cards DD19641.1	= \$ 555.46
• Direct Debits – Other	= \$ 222,096.22
• EFTPOS Merchant Fees	= \$ 797.38
• Bank Fees – NAB Connect & Tyro	= \$ 173.15
• Payroll	= \$ 135,752.46
• Trust Fund EFT16509	= \$ 140.00
TOTAL	= \$ 1,009,117.34

Carried:9/0

Tory Young leaves at 4.13pm

SUMMARY

To present to Council a list of accounts paid from Municipal and Trust Funds (when applicable) under the delegated authority to the CEO.

BACKGROUND

The Chief Executive of a local government has delegated authority to make payments from Municipal and Trust Fund accounts under Regulation 13 of the *Local Government (Financial Management) Regulations 1996*.

As required by sub-regulation (1), a list of accounts paid by the CEO each month should show the—

- the payee's name;*
- the amount of the payment;*
- the date of the payment;*
- sufficient information to identify the transaction*

Sub regulation (3), a list prepared under sub-regulations (1) and (2) is to be –

- presented to the council at the next ordinary meeting of the council after the list is prepared;*
- and*
- recorded in the minutes of that meeting.*

STATUTORY ENVIRONMENT

Local Government (Financial Management) Regulations 1996

POLICY IMPLICATIONS

Nil

PUBLIC CONSULTATION

Nil

FINANCIAL IMPLICATIONS

All payments made to the Shire creditors have been in accordance with the 2022/23 Adopted Budget.

STRATEGIC IMPLICATIONS

Shire's Strategic Community Plan 2022 – 2032

"4. Civic Leadership

4.1 Skilled, capable and transparent team:

- We engage with the community on key projects and we provide regular, transparent communication*
- The capability of our organisation is continually improved*

4.2 We are a compliant and resourced Local Government:

- External audits and reviews confirm compliance with relevant Local Government legislation*
- Financial sustainability in achieving community aspirations."*

VOTING REQUIREMENTS

Simple Majority

9.2.2 Financial Reports

Applicant: Shire of Kondinin
Author: Vince Bugna, Manager of Corporate Services
Disclosure of Interest: Nil
Date: 9th March 2023
Attachment(s): Monthly Financial Report for the period ended 28 February 2023

RESOLUTION #4097:

Moved: Cr Browning

Seconded: Cr Mulcahy

That Council receives the attached reports entitled Monthly Financial Report (Containing the Statement of Financial Activity) for the period ended 28 February 2023.

Carried:9/0

SUMMARY

To present to Council the Monthly Financial Report for the period ended 31 December 2022.

BACKGROUND

The monthly Financial Report (Containing the Financial Activity) is presented in accordance with the Local Government Act 1995 and the Local Government (Financial Management) Regulation 1996.

Regulation 4(4) states that *a statement of financial activity, and the accompanying documents (notes) referred to in sub-regulation (2), are to be –*

- (a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
- (b) recorded in the minutes of the meeting at which it is presented.*

The Statement of Financial Activity summarizes the Shire's financial activities for the period to which it relates.

STATUTORY ENVIRONMENT

Local Government Act 1995

Local Government (Financial Management) Regulation 1996

POLICY IMPLICATIONS

Nil

PUBLIC CONSULTATION

Nil

FINANCIAL IMPLICATIONS

In accordance with the approved material variances of 10% or \$10,000 whichever is greater within the monthly Statement of Financial Activity during the 2022/23 financial year.

STRATEGIC IMPLICATIONS

Shire's Strategic Community Plan 2022 – 2032

"4. Civic Leadership

4.1 Skilled, capable and transparent team:

- We engage with the community on key projects and we provide regular, transparent communication

- The capability of our organisation is continually improved

4.2 We are a compliant and resourced Local Government:

- External audits and reviews confirm compliance with relevant Local Government legislation
- Financial sustainability in achieving community aspirations.”

REPORTING OFFICER’S COMMENT

The highlights of the February 2023 financial reports are as follows:

Item	Reference
<ul style="list-style-type: none"> • Cash at Bank The Shire’s total cash as of 28th February 2023 was \$7,472,418 comprising the \$3,244,759 in cash-backed reserves (restricted); \$12,850 in Trust account (restricted); \$48,059 LCDC funds; \$2,042,352 Term deposit investments; \$6,047 ODCF and \$2,118,351 Muni operating funds. 	<p>Page 09 – Note 4 Cash and Financial Assets</p> <p>Page 13 – Note 8 Cash Reserves</p>
<ul style="list-style-type: none"> • Receivables Rates and Rubbish – net collectable as of 28th February 2023 was down to \$360,717 equivalent to 10% remaining. Other receivables (Sundry Debtors) – a total of \$212,957, 80% of which belong to Main Roads for RRG Grant progress funding payment. 	<p>Page 12 – Note 7 Receivables</p>
<ul style="list-style-type: none"> • Grants, Subsidies and Contributions Operating grants – 80% collected as of 28th February 2023, major payments came from Grants Commission three-quarters allocation for roads and general purpose as well as MRWA direct grant for road maintenance. Non-Operating grants – 32% as of 28th February 2023, major source came from the Wheatbelt Secondary Freight Network (WSFN) grant, Roads to Recovery (R2R) and MRWA Regional Road Group (RRG) capital projects grant. 	<p>Page 17 – Note 12(a) Operating grants, subsidies and contributions</p> <p>Page 18 – Note 12(b) Non-Operating grants, subsidies and contributions</p> <p>Page 02 – Monthly Information Summary Grants, Subsidies and Contribution</p>
<ul style="list-style-type: none"> • Closing Funding Surplus (Deficit) YTD actual is \$3,913,832 – composed of \$8,151,141 Current Assets less \$843,755 Current Liabilities and \$3,393,555 Net Adjustments to Net Current Assets. 	<p>Page 8 – Note 3 Net Current Funding Position</p> <p>Page 5 – Statement of Financial Activity (By Nature or Type)</p>

For material variances, refer to page 07, Note 2 – Explanation of Material Variances.

VOTING REQUIREMENTS

Simple Majority

9.3 MANAGER OF WORKS

Nil

9.4 CHIEF EXECUTIVE OFFICER

9.4.1 Dogs Local Law 2022 – Undertaking to JSCDL

Applicant:	N/A
Author:	Chief Executive Officer – David Burton
Date:	28 February 2023
Disclosure of Interest:	None CONFIDENTIAL – letter from Joint Standing Committee on Delegated Legislation

RESOLUTION #4098:

Moved: Cr James

Seconded: Cr Browning

The Council of the Shire of Kondinin resolves to undertake to the Joint Standing Committee on Delegated Legislation that–

1. Within 6 months amend clause 7.2(2) to replace the reference to clause 5.1(2) to clause 6.2(2);
2. The local law will not be enforced in a manner contrary to undertaking 1;
3. All consequential amendments arising from undertaking 1 will be made;
4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.

Carried:9/0

Summary

To consider providing an undertaking to the Joint Standing Committee on Delegated Legislation to amend the Dogs Local Law.

Background

Advice has been received from the Joint Standing Committee on Delegated Legislation regarding the Dogs Local Law adopted by Council, published in the Government Gazette on 10 November 2022 and now in force.

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

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

The Joint Standing Committee on Delegated Legislation (JSCDL) has delegated power from Parliament to review local laws etc. and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

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

1. A commitment to amend the local law within a specified time or timeframe may not be specified; and

2. That the local law provisions that are to be amended will not be enforced until the amendment is made.

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

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

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

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

An amendment to the Dogs Local Law 2022 is required to be made within 6 months.

The one amendment required is in clause 7.2(2) where the clause incorrectly refers to clause 5.1(2) when it should refer to 6.2(2)

If necessary, consequential amendments to other clauses may be made, but this is not expected.

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

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 21 March 2023, should Council agree to give it.

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

Statutory Environment

Interpretations Act 1984 –

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

Shire of Kondinin Dogs Local Law 2022

Policy Implications

Amendment to current local law.

Financial Implications

None

Strategic Implications

This action supports the following sections of the Shire's Strategic Community Plan 2022-2032:

"Goal 4: Civic Leadership

We are a compliant and resourced Local Government"

Voting Requirement

Simple majority

9.4.2 Public Places and Local Government Property Local Law 2022 – Undertaking to JSCDL

Applicant: N/A
Author: Chief Executive Officer – David Burton
Date: 28 February 2023
Disclosure of Interest: None
Attachments: CONFIDENTIAL – letter from Joint Standing Committee on Delegated Legislation

RESOLUTION #4099:

Moved: Cr Smith

Seconded: Cr Mulcahy

The Council of the Shire of Kondinin resolves to undertake to the Joint Standing Committee on Delegated Legislation that–

1. Within 6 months –
 - exclude cats from the operation of clauses 4.8(b) and 7.2(2)(a)
 - amend clause 9.5 to ensure that any lost property covered by the regulatory gap is dealt with appropriately, such as being handed to WA Police;
 - correct the typographical errors in clauses 2.7(1)(i), 9.2 and 11.3(2)(b)
2. Not enforce the local law to the contrary before it is amended in accordance with undertaking 1;
3. Ensure all consequential amendments arising from undertakings will be made;
4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.

Carried:9/0

Summary

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

Background

Advice has been received from the Joint Standing Committee on Delegated Legislation regarding the Public Places and Local Government Property Local Law adopted by Council, published in the Government Gazette on 10 November 2022 and now in force.

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

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

The Joint Standing Committee on Delegated Legislation (JSCDL) has delegated power from Parliament to review local laws etc. and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

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

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

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

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

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

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

An amendment to the Public Places and Local Government Property Local Law 2022 is required to be made within 6 months.

The amendments required are to

- clause 2.7(1)(i) – incomplete wording and an additional definition to be inserted;
- clause 4.8(b) – where the clause can be read to apply to cats, inconsistent with the Cat Act 2011;
- clause 7.2(2)(a) – again, the clause can be read to apply to cats, inconsistent with the Cat Act 2011;
- clause 9.2 – considers there is a spelling error in the first 2 lines (no such error), and that the word “or” should be deleted, but as the word is used twice, it is unclear which instance the JSCDL has concerns with;
- clause 9.5 – a gap in the application of the clause relating to the lost property has been identified;
- clause 11.3. (2)(b) – delete the commencing words “do the”.

These amendments are requested, despite identical wording having been accepted in other local laws.

All amendments requested are accepted as valid.

If necessary, consequential amendments to other clauses may be made, but this is not expected.

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

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 21 March 2023, should Council agree to give it.

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

Statutory Environment

Interpretations Act 1984 –

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

Shire of Kondinin Public Places and Local Government Property Local Law 2022

Policy Implications

Amendment to current local law.

Financial Implications

None

Strategic Implications

This action supports the following sections of the Shire’s Strategic Community Plan 2022-2032:

“Goal 4: Civic Leadership

We are a compliant and resourced Local Government”

Voting Requirement

Simple majority

9.4.3 Bush Fire Brigades Local Law 2022 – Undertaking to JSCDL

Applicant: N/A
Author: Chief Executive Officer – David Burton
Date: 7 March 2023
Disclosure of Interest: None
Attachments: CONFIDENTIAL – letter from Joint Standing Committee on Delegated Legislation

RESOLUTION #4100:

Moved: Cr Pool

Seconded: Cr K Green

The Council of the Shire of Kondinin resolves to undertake to the Joint Standing Committee on Delegated Legislation that–

1. Within the next 6 months the local law is amended by making the required amendments, which could include attaching the Procedures to the local law;
2. Ensure all consequential amendments arising from undertakings will be made;
3. That the local law will not be enforced in a manner contrary to undertaking 1;
4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings.

Carried:9/0

Summary

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

Background

Advice has been received from the Joint Standing Committee on Delegated Legislation regarding the Bush Fire Brigades Local Law adopted by Council, published in the Government Gazette on 10 November 2022 and now in force.

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

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

The Joint Standing Committee on Delegated Legislation (JSCDL) has delegated power from Parliament to review local laws etc. and make a recommendation for disallowance if considered appropriate. The JSCDL will only review local laws after they have been published in the Government Gazette.

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

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

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

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

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

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

Amendments to the Bush Fire Brigades Local Law 2022 are requested to be made within 6 months.

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

That the current model is inadequate, not just for small local governments but also large local governments is evidenced by the adoption of many cuts down local laws by the City of Wanneroo, City of Greater Geraldton, Shire of Carnarvon and the City of Rockingham (Gazetted, but then revoked as the City handed over responsibility for brigades to DEFS).

The amendments required are to –

- clause 7(2)(e) – Duties of captain and bush fire brigade officers
- clause 8 – Appointment, employment, payment, dismissal and duties of fire control officers
- clause 9 – Maintenance and equipment with compliances and apparatus of bush fire brigades

The amendment requested for clause 7(2)(e) is not considered valid for the following reasons –

- the Bush Fires Act s.62 clearly states “*may adopt local laws*”,
- section 42 permits adjoining local governments to establish bush fire brigades by agreement, with no requirement on either local government or both, to validate its establishment by local law. To be consistent with the JSCDL interpretation and application of section 41(1), both local governments would have to adopt a local law if the brigade was to operate in their district.

The requested amendment to clause 8 is not accepted as valid, since the position of JSCDL is inconsistent with the lack of undertaking requested from the City of Greater Geraldton and Shire of Carnarvon.

The requested amendment to clause 9 is not accepted as valid, due to–

- it is considered that the Bush Fires Act s.62(1) allows for such a provision as it states –
(c) any other matters affecting the exercise of any powers or authorities conferred and the performance of any duties imposed upon the local government by this Act.
- the position of JSCDL is inconsistent with the lack of undertaking requested from the City of Greater Geraldton and the Shire of Carnarvon.

Despite considering each of the requested undertakings to be invalid, it is suggested that Council agree to make the requested undertaking. Deletion of the clauses does diminish the local law, but does not create any impediment to –

- adoption of operating procedures, guidelines, policies or instructions
- the appointment etc of fire control officers, whether paid or volunteer

- Council funding and maintaining bush fire brigades in addition to Dept of Fire and Emergency Services grants

Please note that the wording of Recommendation 1 is not the same as the wording suggested by the JSCDL which is –

1. Within the next six months, the local law is amended to ensure compliance with section 62(1) of the Bush Fires Act 1954 by making all required amendments, which could include attaching the Procedures to the local law.

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

In their advice the JSCDL has provided the draft text for the recommendation and requested that the undertakings be provided to them by 21 March 2023, should Council agree to give it.

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

Statutory Environment

Interpretations Act 1984 –

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

Shire of Kondinin Bush Fire Brigades Local Law 2022

Policy Implications

Amendment to current local law.

Financial Implications

None

Strategic Implications

This action supports the following sections of the Shire's Strategic Community Plan 2022-2032:

"Goal 4: Civic Leadership

We are a compliant and resourced Local Government"

Voting Requirement

Simple majority

9.4.4 Compliance Audit Return

Applicant: Shire of Kondinin
Author: Chief Executive Officer – David Burton
Authorising Officer: Chief Executive Officer – David Burton
Date: 7th March 2023
Disclosure of Interest: Nil
Attachments: Compliance Audit Return

RESOLUTION #4101:

Moved: Cr Smith

Seconded: Cr Gangell

That Council adopts the Shire of Kondinin Compliance Audit Return for the period 1/1/2022 to 31/12/2022 under Regulation 14(3A) of the Local Government (Audit) Regulations 1996.

Carried:9/0

Summary

To consider the Compliance Audit Return for 2022.

Background

Every Year, Local Governments are required to complete the Compliance Audit Return which is a list of various sections of the Local Government Act 1995. This is presented to the Audit Committee and then Council. Returns must be completed and sent to the Department of Local Government by 31st March.

Comment

Attached for Councillors' information and review is the Compliance Audit Return (CAR) for the period 1/1/2022 to 31/12/2022, which report is a requirement of the Department of Local Government.

The report has been completed by the CEO and Manager of Corporate Services and is required to be reviewed by Council's Audit Committee and then presented by the Audit Committee to the Council of the Shire of Kondinin, with any recommendations that the Committee may require Council to consider. The Compliance Audit Return (CAR) is to be adopted by the Council and recorded in the minutes of the meeting at which it is adopted. The certified copy of the return together with a relevant copy of the Council Minutes is to be submitted to the Director General of the Department of Local Government through the Smart Hub portal by 31 March.

Statutory Environment

Local Government (Audit) Regulations 1996 – Regulation 14 (3A) Regulation 15
Local Government Act 1995 – Section 7.13(1)(i)

Policy Implications

Nil

Financial Implications

Nil

Strategic Implications

This action supports the following sections of the Shire's Strategic Community Plan 2022-2032:

"Goal 4: Civic Leadership

We are a compliant and resourced Local Government"

Voting Requirement
Simple Majority

9.4.5 Annual Electors Meeting

Applicant: Shire of Kondinin
Author: Chief Executive Officer – David Burton
Authorising Officer: Chief Executive Officer – David Burton
Date: 8th March 2023
Disclosure of Interest: Nil
Attachments: Draft Minutes

RESOLUTION #4102:

Moved: Cr James

Seconded: Cr K Green

That Council notes the Minutes of the Annual Electors Meeting for 2023.

Carried:9/0

Summary

For Council to note the Minutes of the Annual Electors Meeting 2023 and act if required.

Background

The Annual Electors Meeting was held on 15th February 2023 at the Karlgarin Town Hall.

Comment

The Annual Electors Meeting was attended by Members, staff and members of the public. All reports included in the Annual Report for 2021/2022 were accepted.

During General Business, several questions were raised by the Public. Most questions were able to be answered at the time, however, we are still following up on the request for carbon footprint for the Shire of Kondinin.

All other matters were answered on the night or to be taken into future consideration by Council when looking at the relevant matters.

Statutory Environment

Local Government Act 1995 – Section 5.33

- a) All decisions made in Electors Meetings are to be considered at the next Ordinary Meeting of Council, or; if that is not practicable;
- b) At the first Ordinary Meeting after that meeting or;
- c) Have a special meeting called for that purpose, whichever happens first.
- d) If at a meeting of the Council, the Local Government decides in response to a decision made at an Electors Meeting, the reason for the decision is to be recorded in the minutes of the Council Meeting.

Policy Implications

Nil

Financial Implications

Nil

Strategic Implications

This action supports the following sections of the Shire's Strategic Community Plan 2022-2032:

"Goal 4: Civic Leadership

We are a compliant and resourced Local Government"

Voting Requirement

Simple Majority

9.5 ENVIRONMENTAL HEALTH OFFICER

NIL

9.6 COMMUNITY DEVELOPMENT OFFICER

NIL

9.7 WORKS COMMITTEE

9.7.1 2023/2024 Road Works Programs

Applicant: Shire of Kondinin
Author: Chief Executive Officer – David Burton
Manager of Works – Mark Burgess
Disclosure of Interest: Nil
Date: 2nd March 2023
Attachment(s): Road Works 10-year program
Gravel Sheeting 10-year program
Road Submissions from Councillors

RESOLUTION #4103:

Moved: Cr Mulcahy

Seconded: Cr P Green

That consideration is given for the 2023/2024 Works Program to be included in the 2023/2024 Budget.

Carried:9/0

SUMMARY

To provide information on the 2023/2024 Road works Program, including consideration of Members' concerns.

BACKGROUND

As part of the process for the 2023/2024 Works Program, we requested Members to list any issues of significance. This had good responses from Members on a range of issues. Some of these may be able to be rectified as part of the 2022/2023 maintenance works, others will be carried forward into future years.

REPORTING OFFICER'S COMMENT

The current 2023/24 program will be presented to members for consideration and to work through. While some works may have some flexibility, projects under the Regional Road Group Funding will have specific requirements to be met and may be established for the financial year.

Projects and concerns raised by Council Members will be taken into consideration for Shire-funded projects for discussion.

The Shire will be starting on the Hyden-Norseman Road Pilot Project which will be completed over two years.

Road works are broken into several different programs including Regional Road Group (RRG), Roads to Recover (RTR) and General Funds.

RRG – Funded on a 2/3 grant 1/3 Shire basis and does require an MCA score for the works

RTR – Can be used on any road providing it has not been funded previously.

This funding also requires the Shire to maintain its level of normal expenditure on the roads or funding may be reduced.

General Funds – Can be used at the Shire’s discretion.

Recently we have seen significant cost increases for road construction that may require some jobs to be shortened or carried over into future years.

STATUTORY ENVIRONMENT

Local Government Act 1995

Adopted works program – budgetary constraints and potential cost increase implications.

POLICY IMPLICATIONS

Nil

PUBLIC CONSULTATION

Nil

FINANCIAL IMPLICATIONS

The proposed program is reliant on funding being made available and any reduction in grants would impact the proposed programs and the final actual program(s) scheduled.

STRATEGIC IMPLICATIONS

Shire’s Strategic Community Plan 2022-2032

2 *“Economy*

2.2 *Safe and efficient transport network enables economic growth*

4 *Civic Leadership*

4.1 *Skilled, capable and transparent team*

4.2 *We are a compliant and resourced Local Government”*

VOTING REQUIREMENT

Simple Majority

9.7.2 10-Year Road Works Program

Applicant: Shire of Kondinin
Author: Chief Executive Officer – David Burton
Manager of Works – Mark Burgess
Disclosure of Interest: Nil
Date: 3 March 2023
Attachment(s): Road Works 10-year program
Gravel Sheeting 10-year program

RESOLUTION #4104:

Moved: Cr Smith

Seconded: Cr Browning

That the Roads Works 10-Year Program be adopted as future works for the Shire.

Carried:9/0

SUMMARY

To provide information on the Road Works 10-Year program.

BACKGROUND

The Plant Replacing Program is taken over 10 years to fit in with the Long-Term Financial Plans for the Shire and to ensure that machines are replaced at regular intervals so that the Shire always has machines capable of performing the tasks as required.

REPORTING OFFICER'S COMMENT

The current 10-year program will be updated further to represent the next 10 years of road works for consideration. This will feed into the Long-Term Financial Plans for the Shire and assist in the long-term planning of works and asset preservation.

It should be noted that at times, funding opportunities do come along which can add to this program or allow work to be completed earlier. This can be seen with the Local Roads and Community Infrastructure Program (LRCI) funding and also the recent major increase in funding with the Remote Roads Upgrades Pilot Project. By having a planned long-term program, changes can be easily made when surplus funds are available or projects restricted when funds or resources are limited, but ensure that the jobs are not simply forgotten about.

Road works are broken into several different programs including Regional Road Group (RRG), Roads to Recover (RTR) and General Funds.

RRG – Funded on a 2/3 grant 1/3 Shire basis and does require an MCA score for the works.

RTR – Can be used on any road providing it has not been funded previously. This funding also requires the Shire to maintain its level of normal expenditure on the roads or funding may be reduced.

General Funds – Can be used at the Shire's discretion.

The Long Term is still being developed for future years and discussion about priority roads will be a part of this process.

The 10-year Gravel re-sheet program has been included as well. Previously Council indicated that in the long term, additional funding will be required so more work can be done to ensure that our gravel roads are kept to standard.

STATUTORY ENVIRONMENT

Local Government Act 1995

Adopted works program – budgetary constraints and potential cost increase implications.

POLICY IMPLICATIONS

Nil

PUBLIC CONSULTATION

Nil

FINANCIAL IMPLICATIONS

The proposed program is reliant on funding being made available and any reduction in grants would impact the proposed programs and the final actual program(s) scheduled.

STRATEGIC IMPLICATIONS

Shire's Strategic Community Plan 2022-2032

2 *"Economy*

2.2 *Safe and efficient transport network enables economic growth*

4 *Civic Leadership*

4.1 *Skilled, capable and transparent team*

4.2 *We are a compliant and resourced Local Government."*

VOTING REQUIREMENT

Simple Majority

10 BUSINESS OF AN URGENT NATURE

Confidential discussions had regarding the doctor service.

11 CLOSURE

Meeting closed at 5.43pm.