



SHIRE OF JERRAMUNGUP

ORDINARY COUNCIL MEETING

Held at the Council Chamber,
Jerramungup, on
Wednesday, 26 March 2025

MINUTES

This page has been left intentionally blank

Shire of Jerramungup

Table of Contents

Ordinary Meeting of Council

Wednesday 26 March 2025

1.0	DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS	5
2.0	RECORD OF ATTENDANCE	5
2.1	ATTENDANCE	5
2.2	APOLOGIES	5
2.3	APPROVED LEAVE OF ABSENCE	5
2.4	ABSENT	5
2.5	DISCLOSURE OF INTERESTS	6
2.5.1	<i>DECLARATIONS OF FINANCIAL INTERESTS.....</i>	<i>6</i>
2.5.2	<i>DECLARATIONS OF PROXIMITY INTERESTS.....</i>	<i>6</i>
2.5.3	<i>DECLARATIONS OF IMPARTIALITY INTERESTS</i>	<i>6</i>
3.0	APPLICATIONS FOR LEAVE OF ABSENCE	6
4.0	ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS.....	6
5.0	RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	7
6.0	PUBLIC TIME.....	7
6.1	PUBLIC QUESTION TIME	7
6.2	PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS	7
7.0	CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS	7
7.1	ORDINARY COUNCIL MEETING HELD 26 FEBRUARY 2025	7
7.2	LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING HELD 10 MARCH 2025	7
8.0	RECOMMENDATIONS AND REPORTS OF COMMITTEES	8
8.1	COMPLIANCE AUDIT RETURN 2024	8
9.0	REPORTS	12
9.1	TECHNICAL SERVICES.....	12
9.1.1	WORKS REPORT FOR FEBRUARY – MARCH 2025	12
9.2	CORPORATE SERVICES.....	15
9.2.1	ACCOUNTS FOR PAYMENT – FEBRUARY 2025.....	15
9.2.2	MONTHLY FINANCIAL REPORT – FEBRUARY 2025	18
9.2.3	BUDGET REVIEW 2024/25	21
9.2.4	TENDER CONSIDERATION – RFT 05-25 BUSHFIRE MITIGATION ACTIVITIES.....	26
9.2.5	TENDER CONSIDERATION – RFT 01-25 OUTRIGHT PURCHASE OF TOYOTA PRADO	30
9.3	DEVELOPMENT SERVICES	33
9.3.1	PROPOSED OUTBUILDING – LOT 770 FREEMAN DRIVE, BREMER BAY.....	33
9.3.2	APPLICATION FOR RETROSPECTIVE PLANNING APPROVAL – CONCRETE BATCHING PLANT – LOT 1566 BORDEN-BREMER BAY ROAD, BREMER BAY	38
9.4	EXECUTIVE SERVICES	42
9.4.1	INFORMATION BULLETIN FEBRUARY – MARCH 2025	42
9.4.2	DISABILITY ACCESS AND INCLUSION PLAN REVIEW	44
9.4.3	PROPOSED BUSH FIRE BRIGADES LOCAL LAW - COMMENCEMENT	48
9.4.4	PROPOSED DOGS LOCAL LAW – COMMENCEMENT	54
9.4.5	PROPOSED DUST, SAND AND EROSION LOCAL LAW - COMMENCEMENT	61
9.4.6	PROPOSED FENCING LOCAL LAW - COMMENCEMENT	67
9.4.7	PROPOSED PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW - COMMENCEMENT ..	74
9.4.8	PROPOSED ANIMALS, ENVIRONMENT & NUISANCE LOCAL LAW - COMMENCEMENT	81
9.4.9	ADOPTION OF AP15 – WHISTLEBLOWER POLICY	88
9.4.10	ADOPTION OF AP16 – LEGISLATIVE COMPLIANCE POLICY	91
10.0	MATTERS FOR WHICH THE MEETING MAY BE CLOSED	94
11.0	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	94

12.0	NEW BUSINESS OF AN URGENT NATURE	95
12.1	PROPOSED PARKING AND PARKING FACILITIES AMENDMENT LOCAL LAW – COMMENCEMENT	95
13.0	CLOSURE	101
13.1	DATE OF NEXT MEETING.....	101
13.2	CLOSURE OF MEETING	101

ORDINARY COUNCIL MEETING MINUTES

1.0 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS

The meeting was opened at 1.01pm by the Shire President.

I would like to begin today by acknowledging the Goreng people who are the Traditional Custodians of the land on which we meet today, and the Shire of Jerramungup would like to pay their respect to their Elders both past and present.

2.0 RECORD OF ATTENDANCE

2.1 ATTENDANCE

ELECTED MEMBERS:

Cr Joanne Iffla	Shire President (Chair)
Cr Julie Leenhouders	Deputy Shire President
Cr Nathan Brown	Councillor
Cr Neil Foreman	Councillor
Cr Gavin Mair	Councillor
Cr Paul Barrett	Councillor

STAFF:

Martin Cuthbert	Chief Executive Officer
Charmaine Wisewould	Deputy Chief Executive Officer
Noel Myers	Manager of Development
Gordon Capelli	Works Supervisor
Glenda Forbes	Executive Administration Officer

VISITORS:

Nil.

GALLERY:

Nil.

2.2 APOLOGIES

Cr Raegan Zacher

2.3 APPROVED LEAVE OF ABSENCE

Nil.

2.4 ABSENT

Nil.

2.5 DISCLOSURE OF INTERESTS

Section 5.65 and 5.70 of the *Local Government Act 1995* requires an Elected Member or officer who has an interest in any matter to be discussed at a Committee/Council Meeting that will be attended by the Elected Member or officer must disclose the nature of the interest in a written notice given to the Chief Executive Officer before the meeting; or at the meeting before the matter is discussed.

An Elected Member who makes a disclosure under section 5.65 or 5.70 must not preside at the part of the meeting relating to the matter; or participate in; or be present during, any discussion or decision making procedure relating to the matter, unless allowed by the Committee/Council. If Committee/Council allow an Elected Member to speak, the extent of the interest must also be stated.

2.5.1 DECLARATIONS OF FINANCIAL INTERESTS

Nil.

2.5.2 DECLARATIONS OF PROXIMITY INTERESTS

Cr Joanne Iffla declared a Proximity Interest in item 9.3.2 Application for Retrospective Planning Approval – Concrete Batching Plant – Lot 1566 Borden-Bremer Bay Road, Bremer Bay. The nature of the interest is that she owns land in proximity.

2.5.3 DECLARATIONS OF IMPARTIALITY INTERESTS

Cr Joanne Iffla declared an Impartiality Interest in item 9.2.4 Tender Consideration – RFT 05-25 Bushfire Mitigation Activities. The nature of the interest is that a family relative is an employee of a business which submitted a tender.

Cr Julie Leenhouders declared an Impartiality Interest in item 9.3.1 Proposed Outbuilding – Lot 770 Freeman Drive, Bremer Bay. The nature of the interest is that a family relative is the applicant.

Charmaine Wisewould declared an Impartiality Interest in item 9.2.4 Tender Consideration – RFT 05-25 Bushfire Mitigation Activities. The nature of the interest is that a family relative is a Director of a business which submitted a tender.

3.0 APPLICATIONS FOR LEAVE OF ABSENCE

MOTION: OCM250301

MOVED: Cr Foreman

SECONDED: Cr Leenhouders

That Cr Gavin Mair be granted Leave of Absence from the Ordinary Council Meetings to be held on 30 April 2025 and 28 May 2025.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

4.0 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS

In accordance with regulation 14A of the *Local Government (Administration) Regulations 1996* Council must approve (by Absolute Majority) the attendance of a person, not physically present at a meeting of Council, by audio contact. The person must be in a 'suitable place' as approved (by Absolute Majority) by Council. A 'suitable place' means a place that is located in a townsite or other residential area and 150km or further from the place at which the meeting is to be held.

5.0 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

6.0 PUBLIC TIME**6.1 PUBLIC QUESTION TIME**

Nil.

6.2 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS

Nil.

7.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**7.1 ORDINARY COUNCIL MEETING HELD 26 FEBRUARY 2025**

That the Minutes of the Ordinary Council Meeting of the Shire of Jerramungup held in the Council Chamber, Jerramungup, on 26 February 2025 be **CONFIRMED**.

MOTION: OCM250302

MOVED: Cr Mair

SECONDED: Cr Barrett

That the Minutes of the Ordinary Council Meeting of the Shire of Jerramungup held in the Council Chamber, Jerramungup, on 26 February 2025 be CONFIRMED.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

7.2 LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING HELD 10 MARCH 2025

7.2 a) Minutes of the Local Emergency Management Committee Meeting held 10 March 2025

That Council **RECEIVE** the Minutes of the Local Emergency Management Committee Meeting held on 10 March 2025.

MOTION: OCM250303

MOVED: Cr Leenhouders

SECONDED: Cr Foreman

That Council RECEIVE the Minutes of the Local Emergency Management Committee Meeting held on 10 March 2025.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

8.0 RECOMMENDATIONS AND REPORTS OF COMMITTEES

8.1 COMPLIANCE AUDIT RETURN 2024

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	GR.AU.1
Author:	Glenda Forbes, Executive Administration Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	15 March 2025
Attachments:	a) Compliance Audit Return 2024
Authority/Discretion:	Legislative

SUMMARY:

For the Council to adopt and authorise the signing of the Compliance Audit Return (CAR) for 2024 prior to it being submitted to the Department of Local Government, Sport and Cultural Industries.

BACKGROUND:

The 2024 CAR was made available to local government authorities by the Department of Local Government, Sport and Cultural Industries via its centralised portal. The structure of the return is similar to previous years with a focus on areas of compliance considered high risk.

In accordance with the *Local Government Act 1995* and *Local Government (Audit) Regulations 1996* a local government is required to complete an annual Compliance Audit Return for the period 1 January to 31 December each year. The CAR is to be forwarded to the Department of Local Government, Sport and Cultural Industries by 31 March each year after being presented to the Audit Committee and adopted by Council.

The aim of the CAR is to build good governance by promoting and enforcing compliance and encouraging all local governments to move beyond minimum compliance through continuous improvement.

The CAR contains the following compliance categories:

- Commercial Enterprises by Local Governments (5)
- Delegation of Power/Duty (13)
- Disclosure of Interest (21)
- Disposal of Property (2)
- Elections (3)
- Finance (7)
- Integrated Planning and Reporting (3)
- Local Government Employees (5)
- Official Conduct (4)
- Optional Questions (9)
- Tenders for Providing Goods and Services (22)

CONSULTATION:

The CAR does not require community consultation, however, a number of officers with compliance responsibilities were consulted.

Source documents such as minutes of meetings, declarations of interest, annual and primary returns, resolutions of Council and various registers were used as evidence when completing the CAR.

The Department of Local Government, Sport and Cultural Industries (the Department) has provided guidance via government circulars, guidelines and direct contact.

COMMENT:

The period examined by this audit is 1 January to 31 December 2024. The completed CAR is required to be:

- Reviewed by the Audit, Risk & Improvement Committee;
- Considered and adopted by Council;
- Certified by the President and Chief Executive Officer following Council adoption;
- Submitted to the Department, together with a copy of the Council Minutes, by 31 March 2025.

The CAR assists the Shire to monitor legislative compliance by examining a range of prescribed requirements under regulation 13 of the *Local Government (Audit) Regulations 1996* in detail. The Shire's findings must be recorded in the CAR pro forma which is duly completed and provided as an attachment.

No areas of non-compliance were identified while completing the 2024 CAR.

STATUTORY ENVIRONMENT:***Section 7.13(i) of the Local Government Act 1995******7.13. Regulations as to audits***

(1) Regulations may make provision—

(i) requiring local governments to carry out, in the prescribed manner and in a form approved by the Minister, an audit of compliance with such statutory requirements as are prescribed whether those requirements are—

- (i) of a financial nature or not; or*
- (ii) under this Act or another written law.*

Local Government (Audit) Regulations 1996 – 14 and 15:***Regulation 14 – Compliance audits by local governments***

- (1) A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.*
- (2) After carrying out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.*
- (3A) The local government's audit committee is to review the compliance audit return and is to report to the council the results of that review.*
- (3) After the audit committee has reported to the council under subregulation (3A), the compliance audit return is to be —*
 - (a) presented to the council at a meeting of the council; and*
 - (b) adopted by the council; and*
 - (c) recorded in the minutes of the meeting at which it is adopted.*

Regulation 15 – Compliance audit return, certified copy of etc. to be given to Executive Director

- (1) *After the compliance audit return has been presented to the council in accordance with regulation 14(3) a certified copy of the return together with –*
- (a) a copy of the relevant section of the minutes referred to in regulation 14(3)(c); and*
 - (b) any additional information explaining or qualifying the compliance audit,*
- is to be submitted to the Executive Director by 31 March next following the period to which the return relates.*
- (2) *In this regulation – certified in relation to a compliance audit return means signed by –*
- (a) the mayor or president; and*
 - (b) the CEO.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;
Implement systems and processes that meet our legal and audit obligations.

FINANCIAL IMPLICATIONS:

There are no financial implications to be considered as part of this report.

WORKFORCE IMPLICATIONS:

There are no workforce implications for this report.

POLICY IMPLICATIONS:

Policy implications do not apply to this report, and it is the opinion of the author that policy development is not required.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council:

- 1. ADOPTS the completed 2024 Compliance Audit Return for the period 1 January 2024 to 31 December 2024 as attached;**
- 2. AUTHORISES the Shire President and Chief Executive Officer to sign the joint certification; and**
- 3. SUBMITS the completed Compliance Audit Return, and any additional information explaining or quantifying the compliance audit, to the Department of Local Government, Sport and Cultural Industries by 31 March 2025.**

MOTION: OCM250304

MOVED: Cr Leenhouders

SECONDED: Cr Mair

That Council:

- 1. ADOPTS the completed 2024 Compliance Audit Return for the period 1 January 2024 to 31 December 2024 as attached;**
- 2. AUTHORISES the Shire President and Chief Executive Officer to sign the joint certification; and**
- 3. SUBMITS the completed Compliance Audit Return, and any additional information explaining or quantifying the compliance audit, to the Department of Local Government, Sport and Cultural Industries by 31 March 2025.**

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.0 REPORTS

9.1 TECHNICAL SERVICES

9.1.1 WORKS REPORT FOR FEBRUARY – MARCH 2025

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	N/A
Author:	Gordon Capelli, Works Supervisor
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	17 March 2025
Attachments:	Nil
Authority/Discretion:	Information

SUMMARY:

For Council to note the works completed for the prior month.

BACKGROUND:

Road Construction

Meechi Road from SLK 0.24 to SLK 5.42 is now complete. The sealing works were carried out at the end of February.

Sealing works have also been completed on Cuiss Road from SLK 0.10 to SLK 4.12, and Rabbit Proof Fence Road from SLK 3.26 to SLK 3.91. This brings to an end the sealing works in the 2024/25 budget.

The Road Construction Crew is now gravel re-sheeting Swamp Road from SLK 15.96 to SLK 18.96.

Road Maintenance

The maintenance grader has been working on Murray Road, Doubtful Island Road, Jacup North Road, Middamidgup Road and Swamp Road. A contractor will also be assisting with maintenance grading in coming months.

The pruning saw has been pruning vegetation on the shoulders and back slopes of Devils Creek Road, from South Coast Highway through to the end.

Town Services

Bremer Bay

Town Services staff have completed the following:

- Pruning of vegetation alongside footpaths.
- Started construction of new footpath between Bennett Street and Roderick Street.
- Maintenance of gardens around town.
- Continued weed control within townsite.
- Pruning of vegetation alongside walk trails.
- Continued watering of Bremer Bay Cemetery.
- Maintenance of gardens around Bremer Bay CRC.
- Assisted with installation of sculpture at Bremer Bay Skate Park.
- Rubbish collection within townsite.
- Rubbish collection from Millers Point.
- Installation of new material signs and information signage at the Waste Transfer Station.
- Aerating and soil conditioning of the lawns at the Skate Park and Pelican Park.
- Continued watering of the oval.

Jerramungup

Town Services staff have completed the following:

- Removal of dead trees alongside South Coast Highway truck bay.
- Aerating and soil conditioning the lawns at Roe Park, Rootpickers Hall, Jerramungup Daycare and Jerramungup Cemetery.
- Fixed damaged reticulation system at the Jerramungup Daycare.
- Maintenance of the topiary plants around Rootpickers Hall.
- Continued spraying throughout the townsite.
- Mowing of the old oval.
- Removal of fallen trees and dead branches around townsite, including within the Biosphere grounds.
- Replaced damaged fence at the Jerramungup Airstrip.
- Watering of gardens around town.
- Installation of new material signs and information signage at the Waste Transfer Station.
- Pruning gardens at the Jerramungup CRC.

CONSULTATION:

Internal

COMMENT:

This report is for information only to advise Council on the previous month's works activities.

STATUTORY ENVIRONMENT:

There are no statutory implications for this report.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031:

Economy

Advocate for improved road and communication connectivity to support rural and agricultural businesses and environmental tourism.

Environment Built

Design, construct and maintain infrastructure in a manner that maximise its life, capacity and function.

Environment Natural

Deliver a sustainable and progressive approach to natural resource and waste management.

FINANCIAL/BUDGET IMPLICATIONS:

The works completed are included in the 2024/2025 Shire of Jerramungup budget.

WORKFORCE IMPLICATIONS:

This report provides an overview of the outside workforce operations for the previous month.

POLICY IMPLICATIONS:

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council RECEIVE the works report for February – March 2025.

MOTION: OCM250305

MOVED: Cr Barrett

SECONDED: Cr Foreman

That Council RECEIVE the works report for February – March 2025.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.2 CORPORATE SERVICES

9.2.1 ACCOUNTS FOR PAYMENT – FEBRUARY 2025

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	N/A
Author:	Sarah Van Elden, Accounts Officer
Responsible Officer:	Charmaine Wisewould, Deputy Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	5 March 2025
Attachments:	<ul style="list-style-type: none"> a) List of Accounts Paid to 28 February 2025 b) Credit Card Statement 28 January 2025 – 28 February 2025 c) Fuel Card Statement – January 2025
Authority/Discretion:	Information

SUMMARY:

For Council to note the list of accounts paid under the Chief Executive Officer’s delegated authority during the month of February 2025.

BACKGROUND:

Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the Shire’s municipal and trust funds. In accordance with regulation 13 of the *Local Government (Financial Management) Regulations 1996*, a list of accounts paid by the Chief Executive Officer is to be provided to Council.

Since 1 September 2023, Local Governments have been required to report on payments by employees via purchasing cards, under new Regulation 13(A).

CONSULTATION:

Internal consultation within the Finance Department.

COMMENT:

All municipal fund expenditure included in the list of payments is incurred in accordance with the 2024/25 Annual Budget as adopted by Council at its meeting held 24 July 2024 (Minute No. OCM240713 refers) and subsequently revised or has been authorised in advance by the President or by resolution of Council as applicable.

The table below summarises the payments drawn on the funds during the month of February 2025. Lists detailing the payments made are appended as an attachment.

FUND	VOUCHERS	AMOUNTS
Municipal Account		
Last Cheque Used	28181	
EFT Payments	22995 - 23114	\$383,701.68
Direct Deposits		\$112,689.90
Municipal Account Total		\$496,391.58
Trust Account		
Trust Account Total		\$0.00
Grand Total		\$496,391.58

Included within the EFT payments from the Shire’s Municipal Account are Fuel Card Statement required to be reported under Regulation 13(A), totalling \$4,019.65.

CERTIFICATE

This schedule of accounts as presented, which was submitted to each member of the Council, has been checked and is fully supported by vouchers and invoices which are submitted herewith and which have been duly certified as to the receipt of goods and the rendition of services and as to prices computation, and costings and the amounts shown have been paid.

It is requested that any questions on specific payments are submitted to the Deputy Chief Executive Officer by 4pm of the day prior to the scheduled meeting time. All answers to submitted questions will be provided at the meeting. This allows a detailed response to be given in a timely manner.

STATUTORY ENVIRONMENT:

Local Government (Financial Management) Regulations 1996

12. Payments from municipal fund or trust fund, restrictions on making

12(1) *A payment may only be made from the municipal fund or a trust fund—*

- (a) *if the local government has delegated to the Chief Executive Officer the exercise of its power to make payments from those funds—by the CEO: or*
- (b) *otherwise, if the payment is authorised in advance by a resolution of the council.*

The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.

13. Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.

(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 subregulation (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.*

As part of the *Local Government Regulations Amendment Regulations 2023*, additional reporting is now required by Local Governments. Regulation 13(A), a new regulation, is required, as follows:

Local Government (Financial Management) Regulations 1996 – Reg 13A

13A. Payments by employees via purchasing cards

(1) *If a local government has authorised an employee to use a credit, debit or other purchasing card, a list of payments made using the card must be prepared each month showing the following for each payment made since the last such list was prepared —*

- (a) *the payee's name;*
- (b) *the amount of the payment;*
- (c) *the date of the payment;*

- (d) *sufficient information to identify the payment.*
- (2) *A list prepared under subregulation (1) must 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.*

Regulation 13(A) came into operation from 1 September 2023.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;
Governance and Leadership

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL IMPLICATIONS:

All expenditure from the municipal fund was included in the annual budget as adopted or revised by Council.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Finance Policy FP5 – Transaction Cards

Finance Policy FP6 – Procurement of Goods and Services

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council, pursuant to regulation 13(1) of the *Local Government (Financial Management) Regulations 1996*, NOTES the Chief Executive Officer's list of accounts paid under delegated authority being:

- a) **The List of Accounts Paid to 28 February 2025 totalling \$496,391.58.**
- b) **The Credit Card Statement 28 January 2025 – 28 February 2025 as detailed in Attachment 9.2.1 (b).**
- c) **The Fuel Card Statement January 2025 as detailed in Attachment 9.2.1 (c).**

MOTION: OCM250306

MOVED: Cr Leenhouders

SECONDED: Cr Brown

That Council, pursuant to regulation 13(1) of the *Local Government (Financial Management) Regulations 1996*, NOTES the Chief Executive Officer's list of accounts paid under delegated authority being:

- a) **The List of Accounts Paid to 28 February 2025 totalling \$496,391.58.**
- b) **The Credit Card Statement 28 January 2025 – 28 February 2025 as detailed in Attachment 9.2.1 (b).**
- c) **The Fuel Card Statement January 2025 as detailed in Attachment 9.2.1 (c).**

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.2.2 MONTHLY FINANCIAL REPORT – FEBRUARY 2025

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	N/A
Author:	Tamara Pike, Finance Manager
Responsible Officer:	Charmaine Wisewould, Deputy Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	17 March 2025
Attachments:	a) Monthly Financial Report for the period ending 28 February 2025
Authority/Discretion:	Information

SUMMARY:

For Council to note the statement of financial activity for the period ended 28 February 2025 as required by the *Local Government Act 1995* ('the Act').

Pursuant to section 6.4 of the *Local Government Act 1995* and regulation 34(4) of the *Local Government (Financial Management) Regulations 1996* ('the Regulations'), a local government is to prepare, on a monthly basis, a statement of financial activity that reports on the Shire's financial performance in relation to its adopted/amended budget.

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the Shire's financial performance on a year to date basis for the period ending 28 February 2025.

BACKGROUND:

At its meeting held 24 July 2024 (Minute No. OCM240713 refers), Council adopted the annual budget for the 2024/25 financial year. The figures in this report are compared to the adopted budget.

It should be noted that these reports do not represent a projection to the end of year position or that there are funds surplus to requirements. It represents the year-to-date position to 28 February 2025 and results from a number of factors identified in the report. There are a number of factors that influence any variances, but it is predominately due to the timing of revenue and expenditure compared to the budget estimates. The notes to the statement of financial activity identify and provide commentary on the individual key material revenue and expenditure variances to date.

The following detail is included in the financial report:

- The annual budget estimates.
- The operating revenue, operating income, and all other income and expenses.
- Any significant variations between year-to-date income and expenditure and the relevant budget provisions to the end of the relevant reporting period.
- Identify any significant areas where activities are not in accordance with budget estimates for the relevant reporting period.
- Provide likely financial projections to 30 June for those highlighted significant variations and their effect on the end of year result.
- Include an operating statement.
- Any other required supporting notes.

Additionally, and pursuant to regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year. At its meeting on 24 July 2024, Council adopted (Minute No. OCM240716 Officer Recommendation 4 refers) the following material variance reporting threshold for the 2024/25 financial year:

Officer Recommendation 4: That Council ADOPT a material variance level of 10% with a minimum \$10,000.00 variance for the 2024/2025 financial year for monthly reporting purposes.

CONSULTATION:

Internal consultation within the Finance Department and Council's financial records.

In accordance with section 6.2 of the *Local Government Act 1995*, the annual budget was prepared having regard to the Strategic Community Plan, prepared under section 5.56 of the *Local Government Act 1995*.

COMMENT:

The financial report contains annual budget estimates, actual amounts of expenditure, revenue and income to the end of the month. It shows the material differences between the budget and actual amounts where they are not associated to timing differences for the purpose of keeping Council abreast of the current financial position.

All expenditure included in the financial statements is incurred in accordance with Council's adopted budget or subsequent approval in advance.

STATUTORY ENVIRONMENT:

Section 34 of the *Local Government (Financial Management) Regulations 1996* provides:

34. Financial activity statement required each month (Act s. 6.4)

- (1) *A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail—*
 - (a) *annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and*
 - (b) *budget estimates to the end of the month to which the statement relates;*

and

 - (c) *actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and*
 - (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) *the net current assets at the end of the month to which the statement relates.*
- (2) *Each statement of financial activity is to be accompanied by documents containing—*
 - (a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and*
 - (b) *an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - (c) *such other supporting information as is considered relevant by the local government.*
- (3) *The information in a statement of financial activity may be shown—*
 - (a) *according to nature and type classification; or*
 - (b) *by program; or*
 - (c) *by business unit.*
- (4) *A statement of financial activity, and the accompanying documents referred to in subregulation (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.

(5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031:

Governance and Leadership

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL IMPLICATIONS:

Expenditure for the period ending 28 February 2025 has been incurred in accordance with the 2024/25 budget parameters, which have been structured on financial viability and sustainability principles.

Details of any budget variation in excess of \$10,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

AP3 – Regional Price Preference

FP1 – Accounting for Non-Current Assets

FP2 – Debt Recovery

FP3 – Investments

FP6 – Procurement of Goods and Services Policy

Significant Accounting Policies as detailed within the Monthly Financial Report

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council RECEIVE the Monthly Financial Report incorporating the Statement of Financial Activity for the period ending 28 February 2025 in accordance with section 6.4 of the *Local Government Act 1995*.

MOTION: OCM250307

MOVED: Cr Leenhouders

SECONDED: Cr Foreman

That Council RECEIVE the Monthly Financial Report incorporating the Statement of Financial Activity for the period ending 28 February 2025 in accordance with section 6.4 of the *Local Government Act 1995*.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.2.3 BUDGET REVIEW 2024/25

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	N/A
Author:	Tamara Pike, Finance Manager Charmaine Wisewould, Deputy Chief Executive Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	18 March 2025
Attachments:	a) Budget Review Report 2024/2025
Authority/Discretion:	Legislative

SUMMARY:

To consider the Shire of Jerramungup financial position as at 28 February 2025 and performance for the period 1 July 2024 to 28 February 2025 in relation to the adopted annual budget and projections estimated for the remainder of the financial year.

BACKGROUND:

The budget review has been prepared to include information required by the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and Australian Accounting Standards. The report for the period 1 July 2024 to 28 February 2025 shown in the attachment has been prepared incorporating year to date budget variations and forecasts to 30 June 2025 and is presented for Council's consideration.

Consideration of the status of various projects and programs was undertaken to ensure any anticipated variances were captured within the attached budget review document where possible.

The material variance levels which have been reported for the budget review are based on management judgement where explanations are considered appropriate.

CONSULTATION:

Internal consultation was undertaken with Executive Staff regarding the status of budget projects included within their area of responsibility.

COMMENT:

The budget review report includes at Note 3 a summary of predicted variances contained within the Statement of Financial Activity, including whether variances are considered to be permanent (where a difference is likely between the current budget and the expected outcome to 30 June) or due to timing (eg where a project is likely to be delayed).

Features of the budget review include:

Annual Federal Assistance Grant increase to income to align to confirmed residual funding amount for 2024/25 (majority of funding pre-released in June 2024 by the WALGGC)	\$27,875
Main Roads WA direct grant adjustment to reflect payment received	\$37,582
Estimated additional interest will receive	\$22,091
LRCI funding reduction as grant funds recognised in 2023/24 as part of annual financial report and this reduced grant funds in 2024/25. However, this is offset by change in the opening surplus position	(\$241,286)
Movement in opening surplus figure due to the recognition of the LRCI grant in 2023/24 instead of 2024/25	\$241,286
Reduction in RADS Airstrip grant, due to project carry over	(\$729,682)
Reduction in RAUP Airstrip grant, due to project carry over	(\$765,564)
Bremer Bay airfield cross runway delayed due to clearing permit assessment being delayed until spring survey can be completed. Project expenditure reduced to reflect the delay as expenditure will occur in 2025/26	\$2,395,246
Proceeds from new borrowing not required for Bremer Bay airstrip project as project will carry over into 2025/26	(\$900,000)
Increase Utilities as swimming pool power and water allocated to Contractors in the budget	(\$34,000)
Reduce Materials and Contractors for the additional swimming pool utility costs	\$34,000
Increase in Point Henry mitigation works	(\$20,895)
Additional Point Henry reserve transfer due to additional mitigation works carried out	\$20,895
Increase in Capital works for Land and Buildings – 4 Derrick Street and 37 McGlade Close	(\$33,224)
Reduced proceeds from sale of Works Supervisor vehicle due to retaining vehicle for CESM	(\$41,800)
Adjusted Loss on disposal \$4,827 due to not selling Works Supervisor vehicle, nil effect on surplus position	\$0
Decrease in net current assets brought forward upon receipt of audited annual financial statements	(\$12,524)
Overall Change (surplus/deficit)	\$0

In considering the above variances and projections within the attached budget review, the closing position has not changed which is reflected in the Statement of Budget Review.

Following completion of the budget review and to properly consider the impact of estimated projections at 30 June 2025, some items have been identified as requiring a budget amendment to properly account for these variances where appropriate. Required budget amendments have been included in Note 3 of the attached budget review document for information and also presented as a separate recommendation to the budget review for Council consideration.

STATUTORY ENVIRONMENT:**Local Government (Financial Management) Regulations 1996**

Regulation 33A of the Local Government (Financial Management) Regulations 1996 requires:

- (1) *Between 1 January and the last day of February in each financial year a local government is to carry out a review of its annual budget for that year.*
 - (2A) *The review of an annual budget for a financial year must –*
 - (a) *consider the local government’s financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year; and*
 - (b) *consider the local government’s financial position as at the date of the review; and*
 - (c) *review the outcomes for the end of that financial year that are forecast in the budget; and*
 - (d) *include the following –*
 - (i) *the annual budget adopted by the local government;*
 - (ii) *an update of each of the estimates included in the annual budget;*
 - (iii) *the actual amounts of expenditure, revenue and income as at the date of the review;*
 - (iv) *adjacent to each item in the annual budget adopted by the local government that states an amount, the estimated end of year amount for the item.*
 - (2) *The review of an annual budget for a financial year must be submitted to the Council on or before 31 March in that year.*
 - (3) *A Council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts of the review or any recommendations made in the review.*
- * Absolute majority required*
- (4) *Within 14 days after a Council has made a determination, a copy of the review and determination is to be provided to the Department.*

Local Government Act 1995

Section 6.8(1) (b) of the *Local Government Act 1995* provides that expenditure can be incurred when not included in the annual budget provided it is authorised in advance by resolution (absolute majority required).

STRATEGIC IMPLICATIONS:

The budget review has been developed having regard for the Shire of Jerramungup’s integrated planning and reporting documents.

FINANCIAL IMPLICATIONS:

Authorisation of expenditure through budget amendments recommended. Other specific financial implications are as outlined in the body of this report.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

There are no known policy implications arising from this report.

VOTING REQUIREMENT:

Absolute Majority

OFFICER RECOMMENDATION 1

That Council adopt by **ABSOLUTE MAJORITY** the 2024/2025 mid year budget review as attached and notes that the estimated closing funds are based on current revenue and expenditure trends.

MOTION: OCM250308**MOVED: Cr Barrett****SECONDED: Cr Brown**

That Council adopt by **ABSOLUTE MAJORITY** the 2024/2025 mid year budget review as attached and notes that the estimated closing funds are based on current revenue and expenditure trends.

CARRIED BY ABSOLUTE MAJORITY: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

OFFICER RECOMMENDATION 2

That Council adopt by **ABSOLUTE MAJORITY** the following budget amendments to the 2024/2025 adopted annual budget:

Operating Revenue	Grants and Subsidies	Increase provision	\$65,457
Operating Revenue	Interest	Increase provision	\$22,091
Operating Expenditure	Materials and Contracts	Reduce provision	\$13,105
Operating Expenditure	Utilities	Increase provision	\$34,000
Operating Expenditure	Depreciation	Increase provision	\$45,000
Operating Expenditure	Loss on Sale Asset	Reduce provision	\$4,827
Capital Revenue	Capital Grant	Reduce provision	\$1,736,532
Capital Revenue	Loan	Reduce provision	\$900,000
Capital Revenue	Proceeds Sale of Asset	Reduce provision	(\$41,800)
Capital Expenditure	Other Infrastructure	Reduce provision	\$2,395,246
Capital Expenditure	Land and Buildings	Increase provision	\$33,224
	Transfer from Reserve	Increase provision	\$20,895
	Surplus Carried Fwd	Increase provision	\$228,762

MOTION: OCM250309**MOVED: Cr Leenhouders****SECONDED: Cr Foreman**

That Council adopt by ABSOLUTE MAJORITY the following budget amendments to the 2024/2025 adopted annual budget:

Operating Revenue	Grants and Subsidies	Increase provision	\$65,457
Operating Revenue	Interest	Increase provision	\$22,091
Operating Expenditure	Materials and Contracts	Reduce provision	\$13,105
Operating Expenditure	Utilities	Increase provision	\$34,000
Operating Expenditure	Depreciation	Increase provision	\$45,000
Operating Expenditure	Loss on Sale Asset	Reduce provision	\$4,827
Capital Revenue	Capital Grant	Reduce provision	\$1,736,532
Capital Revenue	Loan	Reduce provision	\$900,000
Capital Revenue	Proceeds Sale of Asset	Reduce provision	(\$41,800)
Capital Expenditure	Other Infrastructure	Reduce provision	\$2,395,246
Capital Expenditure	Land and Buildings	Increase provision	\$33,224
	Transfer from Reserve	Increase provision	\$20,895
	Surplus Carried Fwd	Increase provision	\$228,762

CARRIED BY ABSOLUTE MAJORITY: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

Cr Joanne Iffla declared an Impartiality Interest in Item 9.2.4 but did not leave the room.

Charmaine Wisewould declared an Impartiality Interest in Item 9.2.4 but did not leave the room.

9.2.4 TENDER CONSIDERATION – RFT 05-25 BUSHFIRE MITIGATION ACTIVITIES

Location/Address:	Shire of Jerramungup
Name of Applicant:	Shire of Jerramungup
File Reference:	N/A
Author:	Daniel Biddulph, Bushfire Risk Mitigation Officer Patrick Steinbacher, Consultant Works Manager
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	18 March 2025
Attachments:	a) RFT 05-25 Bushfire Mitigation Tender Documentation b) CONFIDENTIAL – Evaluation Report c) CONFIDENTIAL – Tender Submission Received – Asset Land Management d) CONFIDENTIAL – Tender Submission Received – Great Southern Tree Services e) CONFIDENTIAL – Tender Submission Received – Indiji Flora f) CONFIDENTIAL – Tender Submission Received – Bremer Bay Civil
Authority/Discretion:	Executive

SUMMARY:

This item addresses the outcome of a Request for Tender issued for the delivery of the Mitigation Activity Fund Grants Program 2025 Round 2.

BACKGROUND:

The Shire of Jerramungup is seeking a suitable Contractor(s) for the Delivery of the Mitigation Activity Fund Grants Program 2025 Round 2 funded through the Mitigation Activities Fund (MAF). The MAF funding is delivered through the State Government Royalties for Regions program. The Shire of Jerramungup has completed its Bushfire Risk Management Plan and is eligible for ongoing funding to implement treatments identified through the program on State owned land.

The contract consists of sixteen (16) individual bushfire mitigation treatments to be delivered across the Shire of Jerramungup. The treatments are both chemical and mechanical in nature and will suit both large and small mechanical contractors.

Works include but are not limited to:

- Chemical control of woody and annual weeds
- Mulching
- Parkland clearing
- Slashing
- Tree lopping and pruning

The Shire of Jerramungup and community is highly committed to maintaining the amenity and preserving biodiversity where possible. Works must be carried out in an environmentally sensitive manner.

A detailed description of the scope can be found in the attached technical specification.

Four (4) Tenders were received by the Deadline of the Request for Tender.

The Tender submissions were reviewed by an Evaluation Panel consisting of the Shire of Jerramungup Bushfire Risk Mitigation Coordinator and Consultant Works Manager.

Each Tender was evaluated, the key qualitative criteria were as follows:

Qualitative Criteria		Weighting
a)	<p>Relevant Experience</p> <p>Describe your experience in delivering similar scope of work and provide details of similar work.</p>	40%
b)	<p>Cost</p> <p>Complete the price schedule.</p>	60%

CONSULTATION:

Executive Staff

COMMENT:

All submissions received were processed through to the qualitative and price evaluation on the basis that all compliance criteria had been met for the purposes of assessment.

Alternatively, Council can elect to reject all Tenders and direct the Chief Executive Officer to negotiate a lower service level with the preferred tenderer.

The Evaluation Panel recommends that Council:

1. Accepts the Tender submitted by Bremer Bay Civil (ABN : 97 674 279 997), as the most advantageous Tender to form a Contract for the delivery of the **Chemical and Mechanical (minus Supplementary funding) component** of the Shire of Jerramungup Mitigation Activity Fund Grants Program 2025 Round 2 Program. The estimated start date for the contract is the week commencing 31 March 2025 and the estimated completion date is set to be 28 November 2025. The total contract value is a fixed price as detailed in the confidential attachment.
2. Accepts the Tender submitted by Indiji Flora (ABN: 49 354 104 732) as the most advantageous Tender to form a Contract for the delivery of the **Supplementary treatments and prescribed burning component** of the Shire of Jerramungup Mitigation Activity Fund Grants Program 2025 Round 2 Program. The estimated start date for the contract is the week commencing 31 March 2025 and the estimated completion date is set to be 28 November 2025. The total contract value is a fixed price as detailed in the confidential attachment.

STATUTORY ENVIRONMENT:

Tendering for this supply contract was undertaken in accordance with the *Local Government (Functions and General) Regulations 1996*. Part 4 – Tenders for Provision of Goods or Services.

STRATEGIC IMPLICATIONS:

This item relates to the following components from the Shire of Jerramungup Community Plan 2021 – 2031:

Environment Natural

Deliver a sustainable and progressive approach to natural resource and waste management.

FINANCIAL/BUDGET IMPLICATIONS:

The Mitigation Activity Fund Grants 2025 Round 2 Program is funded under the Mitigation Activity Fund (MAF) grants.

WORKFORCE IMPLICATIONS:

There are no workforce implications for this report.

POLICY IMPLICATIONS:

Tendering for this supply contract is in accordance with Council's Administration Policy AP3 – Regional Price Preference Policy and Finance Policy FP6 – Procurement of Goods and Services.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council:

- a) Agree to award the works for the Delivery of the Chemical and Mechanical (minus Supplementary funding) component, as per the Request for Tender 05-25 Bushfire Mitigation Activities in Jerramungup and Bremer Bay, to Bremer Bay Civil as recommended in the Confidential evaluation report.
- b) Agree to award the works for the Delivery of the Supplementary Funding and Prescribed Burning component, as per the Request for Tender 05-25 Bushfire Mitigation Activities in Jerramungup and Bremer Bay, to Indiji Flora as recommended in the Confidential evaluation report.
- c) Agree the estimated start date for the Contract is the week commencing 31 March 2025, and all works outlined in the Schedule of Works must be completed by 28 November 2025.
- d) Delegates the formation and execution of the Contract to the Chief Executive Officer, subject to any variations (of a minor nature) prior to entry to Contract.
- e) Should a Contract not be formed within thirty (30) business days with Bremer Bay Civil for the Delivery of the Chemical and Mechanical (minus Supplementary funding) component that the Chief Executive Officer may review alternative options, within the same price range as that provided by Bremer Bay Civil.
- f) Should a Contract not be formed within thirty (30) business days with Indiji Flora for the Delivery of the Supplementary Treatments and Prescribed Burning component that the Chief Executive Officer may review alternative options, within the same price range as that provided by Indiji Flora.

MOTION: OCM250310**MOVED: Cr Mair****SECONDED: Cr Leenhouders****That Council:**

- a) Agree to award the works for the Delivery of the Chemical and Mechanical (minus Supplementary funding) component, as per the Request for Tender 05-25 Bushfire Mitigation Activities in Jerramungup and Bremer Bay, to Bremer Bay Civil as recommended in the Confidential evaluation report.
- b) Agree to award the works for the Delivery of the Supplementary Funding and Prescribed Burning component, as per the Request for Tender 05-25 Bushfire Mitigation Activities in Jerramungup and Bremer Bay, to Indiji Flora as recommended in the Confidential evaluation report.
- c) Agree the estimated start date for the Contract is the week commencing 31 March 2025, and all works outlined in the Schedule of Works must be completed by 28 November 2025.
- d) Delegates the formation and execution of the Contract to the Chief Executive Officer, subject to any variations (of a minor nature) prior to entry to Contract.
- e) Should a Contract not be formed within thirty (30) business days with Bremer Bay Civil for the Delivery of the Chemical and Mechanical (minus Supplementary funding) component that the Chief Executive Officer may review alternative options, within the same price range as that provided by Bremer Bay Civil.
- f) Should a Contract not be formed within thirty (30) business days with Indiji Flora for the Delivery of the Supplementary Treatments and Prescribed Burning component that the Chief Executive Officer may review alternative options, within the same price range as that provided by Indiji Flora.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.2.5 TENDER CONSIDERATION – RFT 01-25 OUTRIGHT PURCHASE OF TOYOTA PRADO

Location/Address:	Shire of Jerramungup
Name of Applicant:	Shire of Jerramungup
File Reference:	PE.AC.1
Author:	Charmaine Wisewould, Deputy Chief Executive Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	18 March 2025
Attachments:	a) CONFIDENTIAL – Tender Submissions Received (x4)
Authority/Discretion:	Executive

SUMMARY:

This item addresses the outcome of a Request for Tender issued for the disposal of one (1) x 2022 Toyota Prado as identified in the 2024/25 annual budget. The recommendation is to sell the vehicle to the highest tendered offer.

BACKGROUND:

Council's 2024/25 annual budget identified the disposal of one (1) x 2022 Toyota Prado GXL as per Council's plant replacement program.

The sale was advertised in the West Australian on 22 February 2025 as well as locally and invited interested persons to submit a tender for the outright purchase of the vehicle. The submission period for tenders closed on 14 March 2025 at 4.00pm AWST. Please refer to the Confidential attachment for compliant tenders submitted.

A total of four (4) responses were received by the closing date.

CONSULTATION:

Consultation has occurred between the Shire's Executive team.

COMMENT:

The Shire invited Tenders for the Outright Purchase of one (1) x 2022 Toyota Prado GXL. The vehicle is tendered as is and is a lump sum contract for the Outright Purchase.

Qualitative Criteria does not apply. The Respondent submitting the highest price will be accepted.

Description of Criteria	Weighting
Submitted Price	100%

The request for tender closed at 4:00pm on Friday, 14 March 2025 with four (4) submissions received.

Online Car Valuation website "Redbook.com" indicates the estimated trade-in is between \$51,850 and \$64,300 for a similar vehicle with approximately 70,000km.

The submissions were reviewed by an Evaluation Panel consisting of Shire of Jerramungup staff: Chief Executive Officer and Deputy Chief Executive Officer.

STATUTORY ENVIRONMENT:**Local Government Act 1995****3.58. Disposing of property**

(1) In this section —

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;

property includes the whole or any part of the interest of a local government in property, but does not include money.

(2) **Except as stated in this section, a local government can only dispose of property to —**

(a) the highest bidder at public auction; or

(b) **the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.**

(3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*

(a) *it gives local public notice of the proposed disposition —*

(i) *describing the property concerned; and*

(ii) *giving details of the proposed disposition; and*

(iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*

and

(b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

(4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*

(a) *the names of all other parties concerned; and*

(b) *the consideration to be received by the local government for the disposition; and*

(c) *the market value of the disposition —*

(i) *as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*

(ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*

(5) *This section does not apply to —*

(a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*

(b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*

(c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*

(d) *any other disposition that is excluded by regulations from the application of this section.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;
Maintenance and renewal of assets is environmentally and financially sustainable.

FINANCIAL IMPLICATIONS:

The sale of this asset has been factored into the 2024/2025 annual budget. Council budgeted for a trade in value of \$52,000.

WORKFORCE IMPLICATIONS:

There are no additional workforce implications as a result of this item.

POLICY IMPLICATIONS:

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council:

- 1) **ACCEPTS** the Tender offer submitted by Michael Sage for the purchase of Council's 2022 Toyota Prado GXL, registration 1ICO 579 for \$50,001, inclusive of GST.

MOTION: OCM250311

MOVED: Cr Leenhouders

SECONDED: Cr Barrett

That Council:

- 1) **ACCEPTS** the Tender offer submitted by Michael Sage for the purchase of Council's 2022 Toyota Prado GXL, registration 1ICO 579 for \$50,001, inclusive of GST.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

Cr Julie Leenhouders declared an Impartiality Interest in Item 9.3.1 but did not leave the room.

9.3 DEVELOPMENT SERVICES

9.3.1 PROPOSED OUTBUILDING – LOT 770 FREEMAN DRIVE, BREMER BAY

Location/Address:	Lot 770 Freeman Drive, Bremer Bay
Name of Applicant:	B Tapscott
File Reference:	A81151
Author:	Noel Myers, Manager of Development
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	19 March 2025
Attachments:	a) Concept Drawings – Lot 770 Freeman Drive, Bremer Bay b) Site Plan – Lot 770 Freeman Drive, Bremer Bay
Authority/Discretion:	Legislative

SUMMARY:

This report assesses a proposal for a new outbuilding on a property located near the entry to the Bremer Bay townsite. The proposal seeks approval to exceed the Planning Policy provisions regarding wall height, ridge height, and floor area.

The new building is intended to replace an existing shearing shed that has fallen into significant disrepair and is no longer viable for use, both structurally and functionally.

The application is recommended for approval subject to conditions.

BACKGROUND:

- Lot 770 Freeman Drive, Bremer Bay has an area of 2.0147ha in area and is zoned Rural Residential under the Shire of Jerramungup Local Planning Scheme No.2 (the Scheme).
- The property is located on the intersection of Freeman Drive and Garnett Road and its southern boundary abuts the Borden Bremer Bay Road reserve;
- The property is developed with two buildings, the former shearing shed and another outbuilding which were used in conjunction with the past rural use of the property. Existing development does not include any residential accommodation;
- The surrounding Rural Residential zoned properties that are located to the west of the subject lot and extend along the length of the southern side of Freeman Drive are of similar dimensions. Land to the north of Freeman Drive is zoned Residential and is currently held in lots of generally 5,000m² with the potential for further comprehensive development. Land to the east of Garnett Road is identified for the future development of the new Town Centre;
- The existing shearing shed, which has been a feature of the property for many years, is now a visual blight in the landscape. Situated in a prominent location, close to the town entrance, the dilapidated structure detracts from the aesthetic and visual appeal of the area. Its current condition and unsuitability for any functional use contribute to the overall negative visual amenity of the property and surrounding area.
- The proposed outbuilding aims to replace the current structure with a more functional, visually appealing, and structurally sound building that aligns with the owner's needs for personal property storage.

CONSULTATION:

As a departure from the adopted Outbuildings Local Planning Policy is proposed, the outbuilding is required to be referred to neighbouring landowners for comment. The consultation period had not been concluded at the time of preparing this report and any submissions received prior to the Council Meeting will be distributed to Councillors under separate advice.

COMMENT:**Local Planning Policy 16 – Outbuildings**

Council has adopted Local Planning Policy No 16. The objective of this Policy is:

- (a) To establish clear guidelines for the development of outbuildings in the Residential, Townsite, Rural Residential and Rural zones; and
- (b) To achieve a balance between providing for the various legitimate needs of residents for outbuildings, and minimising any adverse impacts outbuildings may have on neighbours, a street, a neighbourhood or locality, of the Shire as a whole.

The table below shows the applicable size requirements.

	LPP requirement	Proposed
Floor Area	150m ² maximum (up to two sheds)	342m ² – replicates floor area of the existing building
Roof Height	4.8m to apex	6.3m
Wall Height	4.0m	4.7m

As detailed above, the construction of the new outbuilding means that development would exceed that permitted by as by right requirements of the Policy and therefore needs to be considered on its planning merits.

It is important that Council recognises that the Policy is a guideline only and each application still needs to be based on its individual merit. The main considerations in examining the proposed outbuilding are compliance with the Policy objectives, visual impact and streetscape.

The new building is designed to replicate the existing floor area of the old shearing shed and will be constructed in the same position on the lot, which is centrally located and set approximately 65m away from the rear western boundary of the lot, and approximately 80m back from the northern boundary (Freeman Drive), ensuring that the spatial arrangement of buildings remains consistent with the current structure. The applicant has sought to provide some relief to the appearance of the wall height by incorporating openings on each of the buildings side walls to help offset the visual bulk and appearance of the additional 700mm wall height.

The rationale for the requested variation is as follows:

Replicating Floor Area: The new outbuilding will maintain the same floor area as the old shed, ensuring that the size remains consistent with the current use of the land while still improving the overall functionality of the building.

Functional Improvements: The proposed outbuilding will provide a more efficient and usable space for the owner's storage needs, replacing the existing shed that is no longer fit for purpose. This new building will provide a safer, more efficient environment for storing personal property.

Visual Amenity and Aesthetic Improvements: One of the key benefits of the proposal is the visual upgrade it will provide to the site and surrounding area. By replacing a dilapidated structure with a more modern and well-designed building, the proposal will enhance the aesthetic quality of this prominent location near the entrance to Bremer Bay. The new building will improve the visual amenity of the location, reducing the current visual blight and contribute positively to the local environment.

By siting the new building on the same the footprint as the existing building, the bulk of the new structure will not introduce any major impact to those surrounding properties given the significant setbacks that exist.

The alternative option to granting support towards the new development is that, should the building be demolished, any new development would be required to be constructed in accordance with the current Policy. The recommendation in this case is that this alternative option not be pursued, given the application generally seeks to replicate the existing pattern of development on the lot which provides some precedent to the development of this specific property.

Conclusion

The proposed outbuilding, while exceeding certain Policy provisions regarding wall height, ridge height, and floor area, is justified based on the need to replace a structurally and functionally deficient building.

The new structure will improve the functionality of the property, provide the owner with a more efficient storage space, and most importantly, enhance the visual amenity of a prominent location near the entry to Bremer Bay.

Given these benefits, it is recommended that the proposal be supported, with due consideration for the positive impact it will have on both the local community and the townsite's overall aesthetic quality.

STATUTORY ENVIRONMENT:

The applicant has a right of review to the State Administrative Tribunal if aggrieved by any decision made by the Council.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Environment Built

Deliver sustainable long-term planning for the built environment that meets the needs of the community

FINANCIAL/BUDGET IMPLICATIONS:

There are no financial implications for Council.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Policy implications do not apply to this report and it is the opinion of the author that Policy development is not required.

VOTING REQUIREMENT:

Simple Majority, Absolute Majority where indicated.

OFFICER RECOMMENDATION:

That Council:

- 1. APPROVE the application for an outbuilding on Lot 770 Freeman Drive, Bremer Bay subject to the following conditions:**
 - (a) Development shall be carried out in full and fully implemented in accordance with the approved plans and details submitted with the planning application.**
 - (b) The outbuilding being used for domestic storage only and not for commercial or industrial use or human habitation.**
 - (c) All stormwater from roofed and paved areas shall be collected and disposed of on-site to the satisfaction of Council.**
 - (d) The outbuilding is to be clad in factory applied colour finished sheet metal and final details of external materials and colour pallets to be used are to be submitted and approved by the Manager of Development prior to the Building Permit being submitted for approval. Note, the use of reflective building materials and colour palettes is not permitted unless otherwise approved by the Council.**
- 2. AUTHORISES the administration to advertise the proposal in accordance with the provisions of Local Planning Scheme No.2 for a minimum of 14 days;**
- 3. By ABSOLUTE MAJORITY, delegates authority to the Chief Executive Officer to issue Planning Approval with conditions following the conclusion of the advertising period on the condition that no substantive objections are received from the advertising period.**

Determination Advice Note:

Any approval of this application is made having due regard to the individual circumstances particular to the property and cannot be or should not be inferred as precedent to future applications.

MOTION: OCM250312

MOVED: Cr Barrett

SECONDED: Cr Foreman

That Council:

- 1. APPROVE the application for an outbuilding on Lot 770 Freeman Drive, Bremer Bay subject to the following conditions:**
 - (a) Development shall be carried out in full and fully implemented in accordance with the approved plans and details submitted with the planning application.**
 - (b) The outbuilding being used for domestic storage only and not for commercial or industrial use or human habitation.**
 - (c) All stormwater from roofed and paved areas shall be collected and disposed of on-site to the satisfaction of Council.**
 - (d) The outbuilding is to be clad in factory applied colour finished sheet metal and final details of external materials and colour pallets to be used are to be submitted and approved by the Manager of Development prior to the Building Permit being submitted for approval. Note, the use of reflective building materials and colour palettes is not permitted unless otherwise approved by the Council.**

2. **AUTHORISES the administration to advertise the proposal in accordance with the provisions of Local Planning Scheme No.2 for a minimum of 14 days;**
3. **By ABSOLUTE MAJORITY, delegates authority to the Chief Executive Officer to issue Planning Approval with conditions following the conclusion of the advertising period on the condition that no substantive objections are received from the advertising period.**

Determination Advice Note:

Any approval of this application is made having due regard to the individual circumstances particular to the property and cannot be or should not be inferred as precedent to future applications.

CARRIED BY ABSOLUTE MAJORITY: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

Cr Joanne Iffla declared a Proximity Interest in Item 9.3.2 but did not leave the room.

**9.3.2 APPLICATION FOR RETROSPECTIVE PLANNING APPROVAL – CONCRETE BATCHING PLANT
– LOT 1566 BORDEN-BREMER BAY ROAD, BREMER BAY**

Location/Address:	5495 (Lot 1566) Borden-Bremer Bay Road, Bremer Bay
Name of Applicant:	Cast-Tech Group
File Reference:	A80359
Author:	Noel Myers, Manager of Development
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	18 March 2025
Attachments:	a) Site Plan – Lot 1566 Bremer Bay Road, Bremer Bay
Authority/Discretion:	Legislative

SUMMARY:

This report seeks Retrospective Approval for the operation of a Concrete Batching Plant from Lot 1566 Borden-Bremer Bay Road, Bremer Bay.

A Concrete Batching Plant is an Unlisted Use within the Rural Zone and Council is requested to consider whether the Use may be consistent with the objectives of the particular Zone.

It is the recommendation of this report that the Use may be deemed consistent with the objectives of the Zone and that the application may be supported.

BACKGROUND:

- Lot 1566 Borden-Bremer Bay Road is located approximately 15km west of the Bremer Bay townsite;
- The property has an overall area of approximately 1,156ha and is put to productive agricultural uses in addition to having an established Extractive Industry located on a portion of the property from which lime products are sourced.

CONSULTATION:

Prior to any advertising taking place, Clause 4.4.2 of the Shire of Jerramungup Local Planning Scheme No.2 (the Scheme) requires that Council must first determine that the proposed Use is consistent with the objectives of the Zone and thereafter undertake consultation in accordance with Clause 9.4 of the Scheme.

This requires that the application be advertised for a minimum of 14 days. Following the conclusion of that advertising and on the basis there are no substantive objections received, only then may Council issue Planning Approval.

Should Council determine that they consider the application to be consistent with the Zone Objectives, it is proposed that Council, by Absolute Majority, delegate the Chief Executive Officer authority to issue Planning Approval upon conclusion of the necessary advertising period.

Such delegation would be granted on the basis that there were no substantive objections received following the conclusion of the advertising period. In the event objections were received that could not reasonably be resolved, the application would be referred back to the next available Council Meeting for determination.

COMMENT:

The ability to consider Planning Approval for uses already commenced or carried out is provided for by Clause 8.4.1 and 8.4.2 of the Scheme.

Clause 8.4.1 states: *The local government may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme.*

Clause 8.4.2 states: *Development which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of planning approval, and the continuation of the development unlawfully commenced is taken to be lawful development upon the grant of planning approval.*

The effect of these two clauses is that Council may consider an application for Planning Approval post the commencement of the Use on the basis it is satisfied the Use is consistent with the various provisions of the Scheme.

Zoning and Landuse Permissibility:

The subject lot is zoned Rural under the Shire of Jerramungup Local Planning Scheme No.2. (the Scheme).

Clause 4.3 and 4.3.1, Table 1 – Zoning Table of the Scheme indicates, subject to the provisions of the Scheme, the uses permitted in the Scheme Area in the various zones.

A Batching Plant is a Use not specifically mentioned within Table 1 of the Scheme and therefore Council is to have regard to the following Clauses of the Scheme:

4.4 INTERPRETATION OF THE ZONING TABLE

4.4.2 *If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use the local government may:*

- a) *determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
- b) *determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.*

There is an argument that a Batching Plant can be determined as being consistent with the definition of *Industry–General* which is classified as an “X” Use within the Rural Zone and therefore is not permitted. However, this interpretation can be considered against the Objectives for the Rural Zone which are listed as being:

Objectives - Rural Zone

- *To ensure the continuation of broad-hectare farming as the principal land use in the district and encouraging where appropriate the retention and expansion of agricultural activities where the land is capable of such development.*
- *To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.*
- *To allow for facilities for tourists and travellers, and for recreation uses.*

It is put that the second objective, to provide for “non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment”, is of relevance to the current application.

The applicant has correctly identified in their submission that the provision of a local supply of concrete within proximity to Bremer Bay affords significant benefits to the region, with the closest alternative sources being located in Gnowangerup (which is approximately 150km away) and in Albany (which is approximately 180km away). The presence of a local concrete supply supports the local housing construction industry which has experienced significant growth over the past four years and is anticipated to continue to grow. The business also provides local employment, which benefits the local economy.

The Concrete Batching Plant has been established in a disused Gravel Pit on the subject property and is located adjacent to an existing approved Extractive Industry (Bremer Bay Lime). The nature, operation and materials used within the operation of the Batching Plant is considered to be incidental and complimentary to the current approved use of the property and does not introduce any substantial new or additional environmental impacts beyond that which currently exist. The operation of the Batching Plant is the subject of a Works Approval issued by the Department of Water and Environment Regulation (DWER), subject to the grant of Planning Approval.

Having regard to scope of matters outlined above, it is considered that the Use would meet with the Objectives of the Zone, necessary to support the establishment of a Non-Rural Use in the Rural Zone.

SUMMARY:

A degree of caution needs to be exercised in supporting applications for land use proposals falling within the definition of Unlisted Uses as this can, in some circumstances, be counterproductive to the orderly and proper planning of the district and should only be supported where there is sound justification and reasoning.

In this situation, it is considered that the formalisation of the Use will have a direct benefit to the area through the provision of an essential building material which, in turn, will support the continued growth of the local economy.

The Concrete Batching Plant is located on a property which, as previously stated, is the location of an approved Extractive Industry, and this Use can be considered to be ancillary and incidental to the existing industrial type Use. The operation of the Batching Plant will be undertaken in accordance with a Works Approval issued by DWER which will ensure there are no unforeseen or unmanaged environmental impacts arising from the business. The existing access point onto the Borden-Bremer Bay Road has been previously approved by Main Roads WA and the traffic generated by the business over the period of its operation has not caused any concern to be raised to date, however, Main Roads WA would be consulted again as part of the advertising required to be undertaken.

Whilst there is the opportunity to consider support towards the operation of the Batching Plant from the subject site given the current lack of suitably zoned alternative options, it is also acknowledged that supporting Non Rural Uses within the Rural Zone also has the potential to dilute critical mass that may encourage the release of more suitably zoned land in the short to medium term. As such, it is recommended that any approval that may be issued by Council be time limited to a maximum period of two years so that Council may reconsider the suitability of the Use in the location in the future.

STATUTORY ENVIRONMENT:

Local Planning Scheme No.2 regarding land use;

DWER – Works Approval regarding the operation of the premises.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031:

Economy

Work with the business community to attract investment, create jobs and support small business growth

FINANCIAL/BUDGET IMPLCATIONS:

There are no financial implications regarding the issue of a Planning Approval.

WORKFORCE IMPLICATIONS:

There are no workforce implications for this report.

POLICY IMPLICATIONS:

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

VOTING REQUIREMENT:

Simple Majority, Absolute Majority where indicated.

OFFICER RECOMMENDATION:

That Council:

1. In accordance with the provisions of Local Planning Scheme No.2, DETERMINE that the application for retrospective approval to establish a Batching Plant on a portion of No.5495 (Lot 1566) Borden-Bremer Bay Road, Bremer Bay is consistent with the Scheme Objectives for the Rural Zone;
2. AUTHORISE the administration to advertise the proposal in accordance with the provisions of Local Planning Scheme No.2 for a minimum of 14 days;
3. By ABSOLUTE MAJORITY, delegate authority to the Chief Executive Officer to issue Planning Approval with conditions and for a maximum period of two years following the conclusion of the advertising period, on the condition that no substantive objections are received during advertising.

MOTION: OCM250313

MOVED: Cr Mair

SECONDED: Cr Barrett

That Council:

1. In accordance with the provisions of Local Planning Scheme No.2, DETERMINE that the application for retrospective approval to establish a Batching Plant on a portion of No.5495 (Lot 1566) Borden-Bremer Bay Road, Bremer Bay is consistent with the Scheme Objectives for the Rural Zone;
2. AUTHORISE the administration to advertise the proposal in accordance with the provisions of Local Planning Scheme No.2 for a minimum of 14 days;
3. By ABSOLUTE MAJORITY, delegate authority to the Chief Executive Officer to issue Planning Approval with conditions and for a maximum period of two years following the conclusion of the advertising period, on the condition that no substantive objections are received during advertising.

CARRIED BY ABSOLUTE MAJORITY: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4 EXECUTIVE SERVICES

9.4.1 INFORMATION BULLETIN FEBRUARY – MARCH 2025

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	N/A
Author:	Glenda Forbes, Executive Administration Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	17 March 2025
Attachments:	a) February – March 2025 Information Bulletin
Authority/Discretion:	Information

SUMMARY:

To advise Council on the information items for February - March 2025 including actions that have been undertaken in relation to decisions of Council and actions performed under delegated authority.

BACKGROUND:

There is no specific requirement to report on actions performed under delegated authority to Council. However, to increase transparency this report has been prepared for Council and includes actions performed under delegated authority for the month of February 2025.

CONSULTATION:

Internal, all officers that have been deemed responsible for enacting each Council decision has provided an update on its status.

COMMENT:

The Council Resolution Register is an important administrative tool used by the Shire to monitor the implementation of Council decisions. Any Council resolution that has not yet been fully implemented will remain on the list until it has been completed.

Once the minutes of each Council meeting have been completed, the Executive Administration Officer uploads each decision of Council into the spreadsheet and allocates it to the relevant Shire officer for actioning and comment. The spreadsheet is accessible by all relevant Shire officers.

The Shire enters into various agreements by affixing its Common Seal. The *Local Government Act 1995* states that the Shire is a body corporate with perpetual succession and a Common Seal. Those documents that are to be executed by affixing the Common Seal or signed by the Shire President and the Chief Executive Officer are reported to Council for information on a regular basis.

STATUTORY ENVIRONMENT:

Local Government (Administration) Regulations 1996

19. Delegates to keep certain records (Act s. 5.46(3))

Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is to keep a written record of –

- a) how the person exercised the power or discharged the duty; and*
- b) when the person exercised the power or discharged the duty; and*
- c) the persons or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;
Provide informed and transparent decision making that meets our legal obligations and the needs of our diverse community.

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL IMPLICATIONS:

There are no financial implications for this report.

WORKFORCE IMPLICATIONS:

There are no workforce implications for this report.

POLICY IMPLICATIONS:

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council RECEIVE the Information Bulletin including the actions performed under delegated authority for the months of February – March 2025.

MOTION: OCM250314

MOVED: Cr Leenhouders

SECONDED: Cr Foreman

That Council RECEIVE the Information Bulletin including the actions performed under delegated authority for the months of February – March 2025.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.2 DISABILITY ACCESS AND INCLUSION PLAN REVIEW

Location/Address:	Shire of Jerramungup
Name of Applicant:	Shire of Jerramungup
File Reference:	
Author:	Danielle Wisewould, Records/WHS Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	17 March 2025
Attachments:	a) Draft Disability Access and Inclusion Plan 2024-2029
Authority/Discretion:	Legislative

SUMMARY:

The purpose of this report is for Council to review the Disability Access and Inclusion Plan (DAIP) 2024-2029 in accordance with the *Disability Services Act 1993*.

BACKGROUND:

Under the *Disability Services Act 1993* (the Act) local governments in Western Australia are required to develop, implement, and report on a Disability Access and Inclusion Plan. The purpose of a DAIP is to set out strategies that a local government will undertake to ensure that people with disability can access its services, and that the services provided will facilitate increased independence, opportunities and inclusion for people with disability in the community.

‘Disability’ is defined as any continuing condition that restricts everyday activities and can be attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments.

DAIPs contain strategies in seven (7) key outcome areas, which are established in the *Disability Services Regulations 2013* (Regulations). These seven areas are:

- People with disability have the same opportunities as other people to access the services of, and any event organised by, a public authority.
- People with disability have the same opportunities as other people to access the buildings and other facilities of a public authority.
- People with disability receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.
- People with disability receive the same level and quality of service from the staff of a public authority as other people receive from the staff of the public authority.
- People with disability have the same opportunities as others to provide feedback to a public authority.
- People with disability have the same opportunity as other people to participate in any public consultation by a public authority.
- People with disability have the same opportunities as other people to obtain and maintain employment with a public authority.

Under the Act, local governments are required to review and update their DAIP every five (5) years. The draft DAIP 2024-2029 has been prepared to fulfil this requirement.

Once the DAIP has been adopted by Council, it will be forwarded to the Department of Communities – Disability Services for final endorsement. Implementation of the DAIP will be ongoing and guided by an internal implementation plan which allocates each strategy to a Shire team or teams that will be charged with overseeing and reporting on that strategy. It is important to note, however, that the success of the DAIP will require a whole of organisation approach, as many of the strategies have application across multiple service areas.

CONSULTATION:

Department of Communities – Disability Services, Internal Staff and local health professionals.

Further public consultation will occur by placing a notice on the Shire website, Facebook page, local papers and a newspaper circulating throughout the district.

COMMENT:

In accordance with section 28(7) of the *Disability Services Act 1993* a full review of the DAIP must occur at least every five years.

Disability Services Act 1993

28. Disability access and inclusion plans

(7) Not more than 5 years is to elapse —

- (a) between the day on which a public authority first lodges its disability access and inclusion plan with the Commission and the day it lodges a report of a review of the plan with the Commission; or*
- (b) between the lodgement of the report of one review of a plan and the lodgement of the report of another review of the plan.*

Council officers have undertaken a full review of the Shire of Jerramungup Disability Access and Inclusion Plan 2018-2024 in consultation with the Department of Communities – Disability Services and have prepared a Draft document for 2024-2029 which is now required to be advertised seeking public submissions.

STATUTORY ENVIRONMENT:

Local Government Act 1995

Disability Services Act 1993

Equal Opportunity Act 1984

Disability Discrimination Act 1992

Disability Services Act 1993

28. Disability access and inclusion plans

- (1) Each public authority must have a disability access and inclusion plan to ensure that in so far as its functions involve dealings with the general public, the performance of those functions furthers the principles in Schedule 1 and meets the objectives in Schedule 2.*
- (2) A disability access and inclusion plan must meet any prescribed standards.*
- (3) A public authority must lodge its disability access and inclusion plan with the Commission —*
 - (a) if the authority was established before the commencement of the Disability Services Amendment Act 2004, without delay;*
 - (b) if the authority is established after the commencement of the Disability Services Amendment Act 2004, within 12 months after the day on which it is established.*

- (4) *A public authority may amend its disability access and inclusion plan at any time.*
- (5) *A public authority may review its disability access and inclusion plan at any time.*
- (6) *After reviewing its disability access and inclusion plan, a public authority must lodge a report of the review with the Commission in accordance with subsection (7).*
- (7) *Not more than 5 years is to elapse —*
 - (a) *between the day on which a public authority first lodges its disability access and inclusion plan with the Commission and the day it lodges a report of a review of the plan with the Commission; or*
 - (b) *between the lodgement of the report of one review of a plan and the lodgement of the report of another review of the plan.*
- (8) *After reviewing its disability access and inclusion plan, a public authority may amend the plan or prepare a new plan.*
- (9) *If at any time a public authority amends its disability access and inclusion plan or prepares a new plan, whether after a review or not, it must lodge the amended or new plan with the Commission as soon as practicable after doing so.*
- (10) *A public authority must undertake public consultation in accordance with the procedure specified in the regulations when preparing, reviewing or amending a disability access and inclusion plan.*

Disability Services Regulation 2004

10. Procedure for public consultation by authorities (s. 28)

- (1) *For the purposes of section 28(10) of the Act, a public authority is to undertake consultation in relation to its disability access and inclusion plan by calling for submissions either generally or specifically —*
 - (a) *by notice in a newspaper circulating throughout the State or, in the case of a local government, the district of that local government under the Local Government Act 1995; and*
 - (b) *on any website maintained by or on behalf of the public authority.*
- (2) *Nothing in sub regulation (1) prevents a public authority from also undertaking any other consultation.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031:

Community

Deliver sustainable long-term planning for the built environment that meets the needs of the community.

Governance and Leadership

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

The implementation of the DAIP is integrated into the Shire’s annual programs and services through operating procedures, plans and budgets.

WORKFORCE IMPLICATIONS:

The DAIP provides direction for all Shire of Jerramungup employees.

POLICY IMPLICATIONS:

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council:

1. **ENDORSES** the Draft Shire of Jerramungup Disability Access and Inclusion Plan 2024-2029 as presented and attached to this Agenda; and
2. **ADVERTISE** the Draft Disability Access and Inclusion Plan 2024-2029 for a period of four weeks and consider any submissions received.

MOTION: OCM250315

MOVED: Cr Barrett

SECONDED: Cr Brown

That Council:

1. **ENDORSES** the Draft Shire of Jerramungup Disability Access and Inclusion Plan 2024-2029 as presented and attached to this Agenda; and
2. **ADVERTISE** the Draft Disability Access and Inclusion Plan 2024-2029 for a period of four weeks and consider any submissions received.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.3 PROPOSED BUSH FIRE BRIGADES LOCAL LAW - COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Bush Fire Brigades Local Law 2025 b) Draft Bush Fire Brigades Local Law 2025 – Proposed Consolidation
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft Bush Fire Brigades Local Law has been prepared, based on that adopted by the Shire of Pingelly, and accepted by both Department of Fire and Emergency Services (DFES) and the Parliamentary Joint Standing Committee on Delegated Legislation (JSCDL).

This report is to commence the necessary statutory procedures for adoption of a new local law.

BACKGROUND:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

As noted in the Review, the current local law is very out of date with various matters either not compliant with legislation or internally inconsistent.

The *Local Government Act 1995* requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to revoke the *Shire of Jerramungup Bylaws Relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades* published in the Government Gazette on 13 July 1990, and make provisions for establishment, management and administration of Bush Fire Brigades in accordance with the *Bush Fires Act 1954*.

Effect – to align the requirements for bush fire brigades with legislation and local practice.

CONSULTATION:

Internal consultation with Members of the Shire’s Executive Team and Governance Officer.

COMMENT:

The WALGA model as it stands is considered deficient, although it is strongly supported by DFES.

Much shorter Bush Fire Brigade Local Laws have been previously accepted by DFES and JSCDL, but in recent years, JSCDL have not been prepared to accept significant changes to the model, and are supported in this by DFES. The JSCDL have entrenched their views in a report published by them in November 2023. Accordingly, to comply with the *Bush Fires Act 1954* requirement for a local law in relation to the roles and duties of captain and lieutenants, also means substantial compliance with the requirements of DFES and the JSCDL.

The local law does not address fire hazards, fire breaks etc. It is suggested that this be done by the preparation and adoption of a formal notice in accordance with the *Bush Fires Act 1954* s.33. A notice has all the effect and weight of a local law, and is actionable through infringements or court action if necessary.

The draft local law now presented to Council creates a consolidation essentially identical to that made by the Shire of Pingelly, which was accepted by the JSCDL without requirement for an undertaking. As well as the local government name and date, several minor changes for local circumstances and as informally suggested by Department of Fire and Emergency Services in submissions for other local governments, have been made.

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of six (6) weeks (reduced period only if substantially in the form of the WALGA model)
- During this time, submit to Department of Local Government and Department of Fire and Emergency Services
- At the end of public comment, summary of public comments and any changes recommended by the Departments to Council for decision regarding those comments, and consideration of any changes to the draft local law
- Final adoption of the amendment local law by Council
- Publication in the Government Gazette
- Local public notice to be given of the adoption, publication and commencement date of the local law
- Submission of all necessary documents to the JSCDL for their review

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire's website and at least three other places.

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

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

STATUTORY ENVIRONMENT:Local Government Act 1995 –**3.12. Procedure for making local laws**

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *Subject to subsection (3A), the local government is to –*
- (a) *give local public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*
- (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must –*
- (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*

- (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made — the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making a local law, the local government must –*
 - (a) *publish the local law in the Gazette; and*
 - (b) *give a copy of the local law to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made — the chief executive officer of that other department.*
 - (6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*
 - (a) *stating the title of the local law; and*
 - (b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*
 - (6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*
 - (a) *if the local government proceeded under subsection (3) — by local public notice;*
 - (b) *if the local government proceeded under subsection (3C) — by notice published on the local government’s official website.*
 - (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
 - (8) *In this section —*

making *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

Bush Fires Act 1954**35A. Terms used**

In this Division, and in section 41 –

volunteer fire fighter means a bush fire control officer, a person who is a registered member of a bush fire brigade established under this Act or a person working under the direction of that officer or member.

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.*
- (2) *A local government shall keep a register of bush fire brigades and their members in accordance with the regulations and shall register therein each bush fire brigade established by it under subsection (1) and each member of each such brigade.*
- (2a) *A local government is to notify the FES Commissioner as soon as practicable after any changes occur in any of the details required to be recorded in the register under subsection (2).*
- (3) *A local government may at any time cancel the registration of a bush fire brigade.*

43. Election and duties of officers of bush fire brigades

A local government which establishes a bush fire brigade shall by its local laws provide for the appointment or election of a captain, a first lieutenant, a second lieutenant, and such additional lieutenants as may be necessary as officers of the bush fire brigade, and prescribe their respective duties.

62. Local government may make local laws

- (1) *A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the Local Government Act 1995 for and in relation to –*
 - (a) *the appointment, employment, payment, dismissal and duties of bush fire control officers; and*
 - (b) *the organisation, establishment, maintenance and equipment with appliances and apparatus of bush fire brigades to be established and maintained by the local government; and*
 - (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.*
- (2) *Where a regulation made by the Governor under this Act is inconsistent with or repugnant to a local law previously made by a local government under subsection (1) and still in force, the regulation prevails and the local law to the extent by which it is inconsistent with or repugnant to the regulation is deemed to be repealed.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of the Fire Control Policies is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That –

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Bush Fire Brigades Local Law, and invite submissions for a minimum six (6) week period –
 Purpose – to revoke the *Shire of Jerramungup Bylaws Relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades* published in the Government Gazette on 13 July 1990, and make provisions for establishment, management and administration of Bush Fire Brigades in accordance with the *Bush Fires Act 1954*.
 Effect – to align the requirements for bush fire brigades with legislation and local practice.
2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries, and the Commissioner for Fire and Emergency Services;
 - made available to any other person requesting a copy.

MOTION: OCM250316

MOVED: Cr Leenhouders

SECONDED: Cr Foreman

That –

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Bush Fire Brigades Local Law, and invite submissions for a minimum six (6) week period –
 Purpose – to revoke the *Shire of Jerramungup Bylaws Relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades* published in the Government Gazette on 13 July 1990, and make provisions for establishment, management and administration of Bush Fire Brigades in accordance with the *Bush Fires Act 1954*.
 Effect – to align the requirements for bush fire brigades with legislation and local practice.
2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries, and the Commissioner for Fire and Emergency Services;
 - made available to any other person requesting a copy.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.4 PROPOSED DOGS LOCAL LAW – COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Dogs Local Law 2025
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft Dogs Local Law has been prepared.

This report is to commence the necessary statutory procedures for adoption of a new local law.

BACKGROUND:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

As noted in the Review, the current local law is out of date with various matters either not compliant with legislation or internally inconsistent. The current local law is now inconsistent with a number of legislative changes that have been made.

The *Local Government Act 1995* requires the following statements be made in the agenda and minutes of the meeting –

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

Effect – to repeal the existing Dogs Local Law published in the Government Gazette on 7 February 2003 and provide for the controls of dogs within the district and impose penalties for non-compliance.

CONSULTATION:

Internal consultation with Members of the Shire’s Executive Team and Governance Officer.

COMMENT:

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

(1) Terms used –

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

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

- (b) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the Chief Executive Officer, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to the Chief Executive Officer, nor to mean administratively.
- (c) Council, Chief Executive Officer (CEO) or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
- (d) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to a person who has been given the power to make a decision rather than the Council.

- (2) Use of policy to specify standards and activities. In accordance with the *Local Government Act 1995* s.2.7, policies are to be set by Council, not the Chief Executive Officer, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.

(3) Application of the local law –

- (a) the local law applies throughout the district, but then limits that application to land with specific zoning in clauses 3.2, 3.3 and 3.5.
- (b) Local Planning Scheme No.2 has a Special Use zoning. The provision of the local law will apply to the purpose of the approved use of the zone, as determined by an authorised person.

Comments in relation to specific Parts, Divisions or clauses –

- Preference throughout to use the term “authorised person” which requires only an appointment consistent with the *Local Government Act 1995* and can apply to a contract ranger etc, rather than “the local government” which requires a delegation of power to be made, and can only be given to an employee.
- Clauses 3.3 to 3.8 dealing with additional dogs – new provisions often dealt with as policy, but included within the local law for certainty and enforceability. Rural and Rural Enterprise zones are excluded from compliance.

- Part 4 dealing with kennels – while kennels can be managed directly under the *Dog Act 1976*, included within the local law for certainty and enforceability. The *Dog Act 1976* permits a maximum of 6 dogs or lesser number as determined by Council, but more than 6 dogs requires a kennel licence.
- Part 5 prohibited areas and exercise areas – these are now required to be set by absolute majority of Council, and cannot be included in the local law. It is noted that concern in relation to a number of places was expressed in the public comment of the Local Laws Review, and if dogs in these areas are able to be controlled, it is suggested that any current policy be reviewed.
- Clause 6.2 – False or misleading statement applies if a decision has been made based on the incorrect information supplied. Not a common provision in local laws, but has been accepted by both DLGSC and JSCDL
- Cl.7.2 – recent *Local Government Act 1995* amendments permit a general penalty of up to \$10,000, with daily penalty remaining at \$500 per day. These amounts can only be applied by a Court and cannot be imposed at Council’s discretion.
- Sch.1 – the recent Act amendments also permitted an increase of modified penalties (infringements) to 20% of the general penalty that is listed in the local law. Penalties are suggested on the basis of whether the offender is likely to be an individual or a business, health and safety risk or impact to the community etc. A penalty for Item 4 is unlikely to be accepted by the JSCDL

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of six (6) weeks (reduced period only if substantially in the form of the WALGA model)
- During this time, submit to Department of Local Government
- At the end of public comment, summary of public comments and any changes recommended by the Department to Council for decision regarding those comments, and consideration of any changes to the draft local law
- final adoption of the amendment local law by Council
- publication in the Government Gazette
- local public notice to be given of the adoption, publication and commencement date of the local law
- submission all necessary documents to the JSCDL for their review.

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire’s website and at least three other places.

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

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

STATUTORY ENVIRONMENT:Local Government Act 1995 –**3.12. Procedure for making local laws**

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *Subject to subsection (3A), the local government is to –*
- (a) *give local public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*
- (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must –*
- (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*

- (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making a local law, the local government must –*
 - (a) *publish the local law in the Gazette; and*
 - (b) *give a copy of the local law to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made – the chief executive officer of that other department.*
 - (6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*
 - (a) *stating the title of the local law; and*
 - (b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*
 - (6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*
 - (a) *if the local government proceeded under subsection (3) – by local public notice;*
 - (b) *if the local government proceeded under subsection (3C) – by notice published on the local government’s official website.*
 - (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
 - (8) *In this section –*

making *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

Dog Act 1976 –**49. Local laws**

A local government may make local laws –

- (a) for its district and any other area that is to be regarded, for the purposes of this Act, as being within that district; and*
- (b) in accordance with Subdivision 2 of Division 2 of Part 3 of the Local Government Act 1995; and*
- (c) for the purposes permitted by section 51.*

51. Local law making powers

A local government may so make local laws –

- (a) providing for the registration of dogs;*
- [(b) deleted]*
- (c) specifying areas within which it shall be an offence (unless the excreta are removed) for any person liable for the control of a dog to permit that dog to excrete on any street or public place or on any land without the consent of the occupier;*
- (d) requiring that in specified areas a portion of the premises where a dog is kept must be fenced in a manner capable of confining the dog;*
- (e) providing for the establishment and maintenance of dog management facilities and other services and facilities necessary or expedient for the purposes of this Act;*
- (f) providing for the detention, maintenance, care and release or disposal of dogs seized;*
- (g) as to the destruction of dogs pursuant to the powers hereinbefore conferred;*
- [(h) deleted]*
- (i) providing for the licensing, regulating, construction, use, and inspection of approved kennel establishments.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of Policies is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Dogs Local Law, and invite submissions for a minimum six (6) week period –

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

Effect – to repeal the existing Dogs Local Law published in the Government Gazette on 7 February 2003 and provide for the controls of dogs within the district and impose penalties for non-compliance.

2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

MOTION: OCM250317

MOVED: Cr Leenhouders

SECONDED: Cr Barrett

That –

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Dogs Local Law, and invite submissions for a minimum six (6) week period –

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

Effect – to repeal the existing Dogs Local Law published in the Government Gazette on 7 February 2003 and provide for the controls of dogs within the district and impose penalties for non-compliance.

2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.
3. Clause 3.2(3)(a) be amended by replacing “three” with “two”.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

Note: Due to the amendment to Clause 3.2(3)(a), there is a consequential change to clause 3.3(1)(a) required to give effect.

9.4.5 PROPOSED DUST, SAND AND EROSION LOCAL LAW – COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Dust, Sand and Erosion Local Law 2025
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft local law has been prepared.

This report is to commence the necessary statutory procedures for adoption of a new local law.

BACKGROUND:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

As noted in the Review, the current local law has a number of issues, including blanket application to the whole of the district, and also applying to local government activities. While appropriate provisions could be included in the proposed Animal, Environment and Nuisance Local Law, staff have expressed a preference that this local law remain separate.

The *Local Government Act 1995* requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to repeal the *Shire of Jerramungup Dust and Sand Local Law 2011*, and make provisions about the control of dust and sand, and activities which may cause erosion on land and create offences for non-compliance.

Effect – to provide for the controls of activities creating a nuisance from dust and sand, and those which may cause erosion, and impose penalties for non-compliance.

CONSULTATION:

Internal consultation with members of the Shire’s Executive Team and Governance Officer.

COMMENT:

A new local law is proposed, although the resolution from the Local Laws Review was to amend the current local law. When reviewing the current local law and preparing amendments, it was considered that given the number of the amendments and the changes in discretionary actions and separation of function of a Dust and Sand Management Plan (DSMP) and an Erosion Management Plan (EMP), that a replacement local law would be simpler and more straight forward.

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

(1) Terms used –

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

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

- (b) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the Chief Executive Officer, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to Chief Executive Officer, nor to mean administratively.
- (c) Council, Chief Executive Officer (CEO) or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
- (d) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to a decision a person who has been given the power to make a decision rather than the Council.

(2) Application of the local law –

The local law applies throughout the district, but excludes the operations of the local government.

Comments in relation to specific Parts, Divisions or clauses –

- Preference throughout to use the term “authorised person” which requires only an appointment consistent with the *Local Government Act 1995* and can apply to a contract ranger etc, rather than “the local government” which requires a delegation of power to be made, and can only be given to an employee.
- Clauses 2.3 and 2.4 – The local law separates development applications from dust and sand concerns and from erosion issues. Discretion for an authorised person to require either or both a Dust and Sand Management Plan, or an Erosion Management Plan, separate from a development application. The provisions for each are quite similar, but are not identical.
- Not every instance of development needs a DSMP or EMP. A delegated person may also require a DSMP or EMP after development has commenced or has been completed.
- Clause 3.2 – False or misleading statement applies if a decision has been made based on incorrect information supplied. Not a common provision in local laws, but has been accepted by both DLGSC and JSCDL.
- Clause 3.3 undertaking requirements of a notice where compliance has not occurred. This clause permits the local government to complete the requirements of a notice, subject to completion of the necessary process as per clause 3.1.

- Cl.5.2 – recent *Local Government Act 1995* amendments permit a general penalty of up to \$10,000, with daily penalty remaining at \$500 per day. These amounts can only be applied by a Court and cannot be imposed at Council’s discretion.
- Sch.1 – the recent Act amendments also permitted an increase of modified penalties (infringements) to 20% of the general penalty that is listed in the local law. Penalties are suggested on the basis of whether the offender is likely to be an individual or a business, health and safety risk or impact to the community etc.

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of six (6) weeks (reduced period only if substantially in the form of the WAGA model)
- During this time, submit to the Department of Local Government
- At the end of public comment, summary of public comments and any changes recommended by the Department to Council for decision regarding those comments, and consideration of any changes to the draft local law
- final adoption of the amendment local law by Council
- publication in the Government Gazette
- local public notice to be given of the adoption, publication and commencement date of the local law
- submission of all necessary documents to the JSCDL for their review.

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire’s website and at least three other places.

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

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

STATUTORY ENVIRONMENT:

Local Government Act 1995 –

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *Subject to subsection (3A), the local government is to –*
 - (a) *give local public notice stating that –*

- (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
- (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
- (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
- (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*
- (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must –*
- (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*

** Absolute majority required.*

- (5) *After making a local law, the local government must –*
- (a) *publish the local law in the Gazette; and*
 - (b) *give a copy of the local law to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made – the chief executive officer of that other department.*
- (6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*
- (a) *stating the title of the local law; and*
 - (b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*
- (6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*
- (a) *if the local government proceeded under subsection (3) – by local public notice;*
 - (b) *if the local government proceeded under subsection (3C) – by notice published on the local government’s official website.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
- (8) *In this section –*
- making** *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of Policies is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Dust, Sand and Erosion Local Law, and invite submissions for a minimum six (6) week period –

Purpose – to repeal the *Shire of Jerramungup Dust and Sand Local Law 2011*, and make provisions about the control of dust and sand, and activities causing erosion on land and create offences for non-compliance.

Effect – to provide for the controls of activities creating a nuisance from dust and sand, and those which may cause erosion, and impose penalties for non-compliance.

2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

MOTION: OCM250318

MOVED: Cr Brown

SECONDED: Cr Leenhouders

That –

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Dust, Sand and Erosion Local Law, and invite submissions for a minimum six (6) week period –

Purpose – to repeal the *Shire of Jerramungup Dust and Sand Local Law 2011*, and make provisions about the control of dust and sand, and activities causing erosion on land and create offences for non-compliance.

Effect – to provide for the controls of activities creating a nuisance from dust and sand, and those which may cause erosion, and impose penalties for non-compliance.

2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.6 PROPOSED FENCING LOCAL LAW - COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Fencing Local Law 2025
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft Fencing Local Law has been prepared.

This report is to commence the necessary statutory procedures for adoption of a new local law.

BACKGROUND:

There is no current local law dealing with the matters addressed by the draft.

The *Local Government Act 1995* requires the following statements be made in the agenda and minutes of the meeting –

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

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

CONSULTATION:

Internal consultation with Members of the Shire’s Executive Team and Governance Officer.

COMMENT:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

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

(1) Terms used –

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

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

- (b) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the Chief Executive Officer, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to Chief Executive Officer, nor to mean administratively.
 - (c) Council, Chief Executive Officer (CEO) or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
 - (d) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to a person who has been given the power to make a decision rather than the Council.
- (2) Use of policy to specify standards and activities. In accordance with the *Local Government Act 1995* s.2.7, policies are to be set by Council, not the Chief Executive Officer, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.
- (3) Application of the local law –
- (a) the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various Parts, Division or clauses, eg: clause 2.3(1)
 - (b) Local Planning Scheme No.2 has a special use zoning. The provision of the local law will apply to the purpose of the approved use of the zone, as determined by an authorised person.

Comments in relation to specific Parts, Divisions or clauses –

- Although reference is made in the local law to the *Dividing Fences Act 1961*, this Act has no local law making provisions, and so is not a head of power for the local law.
- The provisions are on the basis of the use of the land (zoning) not on whether in a townsite or not. The exception to this is in clause 5.3(3)(b) & (c).
 - It is important to note that “townsite” is the area, but ‘townsite zone’ is the use.
- Preference throughout to use the term “authorised person” which requires only an appointment consistent with the Local Government Act and can apply to a contract ranger etc, rather than “the local government” which requires a delegation of power to be made, and can only be given to an employee.
- Cl.2.4 – is an important clause allowing an authorised person to approve other than a sufficient fence, provided there is written consent between the adjoining owners. This does not extend to a dangerous fence or where one neighbour imposes on another. It also prevents one owner from requiring more than 50% of the cost of a sufficient fence, where one of a higher standard is built at the behest of one party and without the consent of the other. The neighbours can agree on 50% each of the greater expense, but the person requesting cannot require it.
- Cl.5.1 – controls over barbed wire fencing are intended to have minimal impact on farming properties.
- Cl.5.2 – controls for electrified stock fencing are also as relaxed as possible for farming areas. There are conditions that have to be met.

- Cl.5.3 – controls over electrified security fencing require approval, other than in a rural zone. There are standards that are to be met, otherwise, no approval for the rural zone is required.
- Cl.5.4 – razor wire fencing can only be approved in certain areas and by a person with delegated power to do so, not simply an authorised person.
- Part 6 – standard operation through all proposed new local laws.
- Cl.6.6 – False or misleading statement applies if a decision has been made based on the incorrect information supplied. Not a common provision in local laws, but has been accepted by both DLGSC and JSCDL
- Cl.8.1 – are powers of the Council where non-compliance has occurred. This clause allows where the offender is known, to –
 - (a) Issue a notice to repair, pay for repairs or carry out works needed for compliance with the local law. Generally, if there is damage, it is suggested that paying for reinstatement or repairs is most appropriate as the local government would then control the standard of works.
 - (b) If the recipient of the notice does not comply with the notice, they can be infringed or prosecuted.
 - (c) The local government may carry out the works and recover the cost as a debt, applying interest to the outstanding amount if necessary, or taking legal action. This is consistent with the provisions of the *Local Government Act 1995* s.3.25 and 3.26 in relation to notices issued concerning Schedule 3.1 matters.
- Cl.8.1(5) – entry onto private land has statutory requirements that must be complied with.
- Cl.8.2 – recent *Local Government Act 1995* amendments permit a general penalty of up to \$10,000, with daily penalty remaining at \$500 per day. These amounts can only be applied by a Court and cannot be imposed at Council’s discretion.
- Sch.1 to 3 – requirements for a sufficient fence according to the zoning.
- Sch.4 – the recent Act amendments also permitted an increase of modified penalties (infringements) to 20% of the general penalty that is listed in the local law. Penalties are suggested on the basis of whether the offender is likely to be an individual or a business, health and safety risk or impact to the community etc.

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of six (6) weeks (reduced period only if substantially in the form of the WALGA model)
- During this time, submit to Department of Local Government
- At the end of public comment, summary of public comments and any changes recommended by the departments to Council for decision regarding those comments, and consideration of any changes to the draft local law
- final adoption of the amendment local law by Council

- publication in the Government Gazette
- local public notice to be given of the adoption, publication and commencement date of the local law
- submission all necessary documents to the JSCDL for their review.

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire’s website and at least three other places.

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

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

STATUTORY ENVIRONMENT:

Local Government Act 1995 –

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *Subject to subsection (3A), the local government is to –*
 - (a) *give local public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made — the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*

- (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must –*
- (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made — the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making a local law, the local government must –*
- (a) *publish the local law in the Gazette; and*
 - (b) *give a copy of the local law to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made — the chief executive officer of that other department.*
- (6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*
- (a) *stating the title of the local law; and*
 - (b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*
- (6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*
- (a) *if the local government proceeded under subsection (3) — by local public notice;*

- (b) *if the local government proceeded under subsection (3C) — by notice published on the local government’s official website.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
- (8) *In this section —*
making *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of any Policies covering relevant matters is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That –

1. **In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Fencing Local Law, and invite submissions for a minimum six (6) week period –**

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

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

2. **In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –**
 - **sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;**
 - **made available to any other person requesting a copy.**

MOTION: OCM250319**MOVED: Cr Leenhouders****SECONDED: Cr Barrett****That –**

- 1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Fencing Local Law, and invite submissions for a minimum six (6) week period –**

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

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

- 2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –**
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;**
 - made available to any other person requesting a copy.**

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.7 PROPOSED PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW - COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Public Places & Local Government Property Local Law 2025
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft Public Places & Local Government Property Local Law has been prepared.

This report is to commence the necessary statutory procedures for adoption of a new local law.

BACKGROUND:

The *Local Government Act 1995* requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to make provisions for the management of public places, thoroughfares and all local government property.

Effect – to repeal existing local laws, establish necessary controls for public places, thoroughfares and local government property, provide for permitted and prohibited use and activities, and create offences for non-compliance.

CONSULTATION:

Internal consultation with Members of the Executive Team and Governance Officer.

COMMENT:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

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

(1) Terms used –

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

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

- (b) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the Chief Executive Officer, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to Chief Executive Officer, nor to mean administratively.
 - (c) Council, Chief Executive Officer (CEO) or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
 - (d) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to a person who has been given the power to make a decision rather than the Council.
- (2) Use of policy to specify standards and activities. In accordance with the *Local Government Act 1995* s.2.7, policies are to be set by Council, not the Chief Executive Officer, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.
- (3) Application of the local law –
- (a) the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various Parts, Division or clauses, eg: clause 2.3(1)
 - (b) Local Planning Scheme No.2 has a special use zoning. The provision of the local law will apply to the purpose of the approved use of the zone, as determined by an authorised person.

Comments in relation to specific Parts, Divisions or clauses –

- clause 1.6 Terms used – the defined terms are critical to understanding the operation of the local law. These include –
 - authorised person;
 - community notice, not local public notice;
 - restricted local government property;
 - set fee – defined only once but used in a number of places. If there is no fee listed in the Schedule of Fees and Charges adopted each year, the property or place can still be used, but no fee can be charged;
 - trading.
- clause 1.8 – to comply with State and Commonwealth legislation.
- clause 1.9 – the origin of the power to hire reserves, buildings, lease reserves etc.
- Part 2 Determinations – provides an avenue for Council to make decisions that have the effect of a local law. Following the same principle that a local law is made subject to the Act, a determination is made subject to the local law. The determination has the effect of the local law and can be enforced under the local law.

Terminology used in any determination is critical, for instance one current determination is that **Council** approval in writing is required before a permit can be issued by a Clerk of Courts. Use of the word “Council” prevents delegation or it simply being an administrative matter, and a Council decision cannot bind a State government instrumentality.

The JSCDL will not accept any changes to the wording of this Part.

- clause 4.2 -restricts trespass, on property or land owned or vested in the local government but hired or leased etc, but hired to another person eg: a residence rented to an employee, tennis courts on a recreation ground etc.
- clause 4.6 gives the authority to an authorised person to require an individual to leave land or buildings, and to then subsequently ban them for a period, e.g. recreation centre, skate park, swimming pool etc.
- clause 4.7 – unless a special purpose or emergency vehicle, or with the approval of an authorised person.
- clause 4.8 – while (1) is standard, particularly for grounds also in use at the time by other people.
- Subclause (2) was created for another local government where aerial fire fighting operations had to be suspended for more than an hour due to someone flying a drone in the path of the aircraft. The clause has not been tested by the Department or JSCDL as yet.
- clause 5.2 and 5.3 – these clauses are increasingly causing some confusion. However, the JSCDL are still accepting this wording. If difficulty is created, the option is to change the signage where appropriate privacy can be assured, or to make structural alterations.
- clauses 5.4 to 5.6 – refer also to definition of beach. These three clauses are quite standard.
- Part 6 – the power to control and manage road reserves rests in the Land Administration Act s.55.
- clauses 6.1 to 6.7 – Most of these clauses appear in current local laws in one form or another.
- clauses 6.8 to 6.12 – applying only to specific zoning. Please note that “townsite” is not the same as ‘townsite zone’. This Division specifies the minimum requirements for permitted verge treatments without further application and approval are stipulated, as are prohibited treatments. Treatments more than those listed in the local law can be listed in a policy or other administrative document, detailing the circumstances in which an authorised person may give approval.
- clauses 6.14 to 6.15 – are quite standard
- clause -6.16 – is not common, but has been accepted by the Department and JSCDL.
- Part 7 – these clauses are not in a current local law.
- Part 8 – allows for temporary signs and trade displays that are not permanent fixtures, requiring planning approval. Where a person wishes to exceed the minimum provisions, application can be made, and approval is then considered by an authorised person subject to any policy or administrative document.
- Clause 9.4 – the detail is required by JSCDL to comply with legislation regarding disposal of property. The clause has been accepted by both the Department and JSCDL
- Part 10 – has been developed to all provisions of the local law where a licence, permit, approval etc is needed. Not all matters will need to be addressed in every request for a licence, but the authorised person may use discretion as appropriate.
- clause 10.7 – provision for false or misleading statement is not usual in local laws, but has been accepted by both the Department and JSCDL.
- clauses 10.9 to 10.25 deal with a range of matters – power to place conditions, provisions for transfer, variation, suspension, cancellation etc.
- clauses 10.16 and 10.19 – deal with suspension of a licence and generally requires notice of proposed suspension being given. However, note clause 10.16(4) where suspension may be immediate in the cases of public health or safety. These provisions are not usual, but have been accepted by the Department and JSCDL.
- clause 10.20 – generally requires that notice of intended cancellation be given, except in clause 10.20(1)(e) where there is a risk to public health or safety. These provisions are not usual, but have been accepted by the Department and JSCDL.
- Part 11 – as for Part 10, it is intended that all written notices as defined in clause 1.6 be consistent throughout the local law, wherever required.
- clause 12.1 is required by the Department and JSCDL.
- clause 13.2 – recent *Local Government Act 1995* amendments permit a general penalty of up to \$10,000, with daily penalty remaining at \$500 per day. These amounts can only be applied by a Court and cannot be imposed at Council’s discretion.

- Schedule 1 – the recent Act amendments also permitted an increase of modified penalties (infringements) to 20% of the general penalty that is listed in the local law. Penalties are suggested on the basis of whether the offender is likely to be an individual or a business, health and safety risk or impact to the community etc.

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of 6 weeks (reduced period only if substantially in the form of the WAGA model)
- During this time, submit to Department of Local Government
- At the end of public comment, summary of public comments and any changes recommended by the departments to Council for decision regarding those comments, and consideration of any changes to the draft local law
- final adoption of the amendment local law by Council
- publication in the Government Gazette
- local public notice to be given of the adoption, publication and commencement date of the local law
- submission all necessary documents to the JSCDL for their review.

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire’s website and at least three other places.

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

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

STATUTORY ENVIRONMENT:

Local Government Act 1995 –

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *Subject to subsection (3A), the local government is to –*
 - (a) *give local public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*

- (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*
 - (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must –*
 - (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
 - * Absolute majority required.*
- (5) *After making a local law, the local government must –*
 - (a) *publish the local law in the Gazette; and*
 - (b) *give a copy of the local law to –*

- (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made — the chief executive officer of that other department.*
- (6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*
- (a) *stating the title of the local law; and*
 - (b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*
- (6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*
- (a) *if the local government proceeded under subsection (3) — by local public notice;*
 - (b) *if the local government proceeded under subsection (3C) — by notice published on the local government’s official website.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
- (8) *In this section —*
- making** *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of any policies covering relevant matters is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Public Places and Local Government Property Local Law, and invite submissions for a minimum six (6) week period –

Purpose – to make provisions for the management of public places, thoroughfares and all local government property.

Effect – to repeal existing local laws, establish necessary controls for public places, thoroughfares and local government property, provide for permitted and prohibited use and activities, and create offences for non-compliance.

2. in accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

MOTION: OCM250320**MOVED: Cr Barrett****SECONDED: Cr Foreman**

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Public Places and Local Government Property Local Law, and invite submissions for a minimum six (6) week period –

Purpose – to make provisions for the management of public places, thoroughfares and all local government property.

Effect – to repeal existing local laws, establish necessary controls for public places, thoroughfares and local government property, provide for permitted and prohibited use and activities, and create offences for non-compliance.

2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.8 PROPOSED ANIMALS, ENVIRONMENT & NUISANCE LOCAL LAW - COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Animals, Environment and Nuisance Local Law 2025
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft Animals, Environment and Nuisance Local Law has been prepared.

This report is to commence the necessary statutory procedures for adoption of a new local law.

BACKGROUND:

There is no current local law dealing with the matters addressed by the draft.

The *Local Government Act 1995* requires the following statements be made in the agenda and minutes of the meeting –

Purpose – to provide for the regulation, control and management of animals and the prevention of environmental damage and nuisances.

Effect – to establish the requirements with which any person keeping animals, or undertaking activities that have the potential to impact the environment or create nuisance must comply.

CONSULTATION:

Internal consultation with Members of the Executive Team and Governance Officer.

COMMENT:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

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

(1) Terms used –

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

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

- (b) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the Chief Executive Officer, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to Chief Executive Officer, nor to mean administratively.
 - (c) Council, Chief Executive Officer (CEO) or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
 - (d) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to a person who has been given the power to make a decision rather than the Council.
- (2) Use of policy to specify standards and activities. In accordance with the *Local Government Act 1995* s.2.7, policies are to be set by Council, not the Chief Executive Officer, who may still issue executive instructions. Care needs to be exercised since policy should be seen as instructions by Council to employees on what they may approve, or when to act. Policy should not be used as a direct control of the public, unless the necessary processes are undertaken.
- (3) Application of the local law –
- (a) the local law applies throughout the district, but then limits that application to townsites or land with specific zoning in various Parts, Division or clauses, eg: clause 2.3(1).
 - (b) Local Planning Scheme No.2 has a special use zoning. The provision of the local law will apply to the purpose of the approved use of the zone, as determined by an authorised person.

Comments in relation to specific Parts, Divisions or clauses –

- Preference throughout to use the term “authorised person” which requires only an appointment consistent with the Local Government Act and can apply to a contract ranger etc, rather than “the local government” which requires a delegation of power to be made, and can only be given to an employee.
- Clauses 2.4 and 2.5 dealing with cats – new provisions not in any other local law, and must comply with the *Cat Act 2011*. Rural and rural enterprise zones are excluded from compliance.
- Cl.2.6 – there are often members of the community willing to care for sick or injured animals. Keeping of native animals requires Departmental approval, which often contains restrictions or conditions.
- Part 4 Division 2 – applies throughout the district.
- Part 8 – standard operation through all proposed new local laws.
- Cl.8.15 – False or misleading statement applies if a decision has been made based on the incorrect information supplied. Not a common provision in local laws, but has been accepted by both DLGSC and JSCDL.
- Cl.9.2, 9.3 and 9.4 are powers of the Council where damage, nuisance or other non-compliance has occurred. Similar to an infringement notice or a prosecution, these also rely on knowing the identity of the offender. These clauses allow, where the offender is known, to –
 - (i) Issue a notice to repair, pay for repairs or carry out works needed for compliance with the local law. Generally, if there is damage, it is suggested that paying for reinstatement or repairs is most appropriate as the local government would then control the standard of works.

- (ii) If the recipient of the notice does not comply with the notice, they can be infringed or prosecuted.
- (iii) The local government may carry out the works and recover the cost as a debt, applying interest to the outstanding amount if necessary, or taking legal action. This is consistent with the provisions of the *Local Government Act 1995* s.3.25 and 3.26 in relation to notices issued concerning Schedule 3.1 matters.

- Cl.9.5 – entry onto private land has statutory requirements that must be complied with.
- Cl.11.2 – recent *Local Government Act 1995* amendments permit a general penalty of up to \$10,000, with daily penalty remaining at \$500 per day. These amounts can only be applied by a Court and cannot be imposed at Council’s discretion.
- Sch.1 – the recent Act amendments also permitted an increase of modified penalties (infringements) to 20% of the general penalty that is listed in the local law. Penalties are suggested on the basis of whether the offender is likely to be an individual or a business, health and safety risk or impact to the community etc.

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of six (6) weeks (reduced period only if substantially in the form of the WAGA model)
- During this time, submit to Department of Local Government
- At the end of public comment, summary of public comments and any changes recommended by the departments to Council for decision regarding those comments, and consideration of any changes to the draft local law
- final adoption of the amendment local law by Council
- publication in the Government Gazette
- local public notice to be given of the adoption, publication and commencement date of the local law
- submission all necessary documents to the JSCDL for their review.

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire’s website and at least three other places.

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

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

STATUTORY ENVIRONMENT:

Local Government Act 1995 –

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*

- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *Subject to subsection (3A), the local government is to –*
- (a) *give local public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*
- (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must –*
- (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*

- (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making a local law, the local government must –*
- (a) *publish the local law in the Gazette; and*
 - (b) *give a copy of the local law to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made – the chief executive officer of that other department.*
- (6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*
- (a) *stating the title of the local law; and*
 - (b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*
- (6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*
- (a) *if the local government proceeded under subsection (3) – by local public notice;*
 - (b) *if the local government proceeded under subsection (3C) – by notice published on the local government’s official website.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
- (8) *In this section –*
- making** *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

Cat Act 2011 –

79. Local laws

- (1) *A local government may make local laws prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.*
- (2) *A local law made under this Act does not apply outside the local government’s district unless it is made to apply outside the district under section 80.*

- (3) Without limiting subsection (1), a local law may be made as to one or more of the following –
- (a) the registration of cats;
 - (b) removing and impounding cats;
 - (c) keeping, transferring and disposing of cats kept at cat management facilities;
 - (d) the humane destruction of cats;
 - (e) cats creating a nuisance;
 - (f) specifying places where cats are prohibited absolutely;
 - (g) requiring that in specified areas a portion of the premises on which a cat is kept must be enclosed in a manner capable of confining cats;
 - (h) limiting the number of cats that may be kept at premises, or premises of a particular type;
 - (i) the establishment, maintenance, licensing, regulation, construction, use, record keeping and inspection of cat management facilities;
 - (j) the regulation of approved cat breeders, including record keeping and inspection;
 - (k) fees and charges payable in respect of any matter under this Act.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of any policies covering relevant matters is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make an Animals, Environment and Nuisance Local Law, and invite submissions for a minimum six (6) week period –

Purpose – to provide for the regulation, control and management of animals and the prevention of environmental damage and nuisances.

Effect – to establish the requirements with which any person keeping animals, or undertaking activities that have the potential to impact the environment or create nuisance must comply.

2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
- sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

MOTION: OCM250321

MOVED: Cr Foreman

SECONDED: Cr Barrett

That –

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make an Animals, Environment and Nuisance Local Law, and invite submissions for a minimum six (6) week period –
- Purpose – to provide for the regulation, control and management of animals and the prevention of environmental damage and nuisances.**
- Effect – to establish the requirements with which any person keeping animals, or undertaking activities that have the potential to impact the environment or create nuisance must comply.**
2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
- sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.9 ADOPTION OF AP15 – WHISTLEBLOWER POLICY

Location/Address:	Shire of Jerramungup
Name of Applicant:	Shire of Jerramungup
File Reference:	N/A
Author:	Martin Cuthbert, Chief Executive Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	19 March 2025
Attachments:	a) Draft – AP15 – Whistleblower Policy
Authority/Discretion:	Legislative

SUMMARY:

The purpose of this report is for Council to consider and adopt the Whistleblower Policy as detailed.

BACKGROUND:

Although not a requirement of the *Local Government Act 1995*, it is considered good practice for Council to review its Policies on a regular basis.

In addition to any annual review, any changes to existing Policies or the need for new Policies identified during the course of the year will be presented through the appropriate meetings for Council consideration.

Policies are determined by Council and may be amended or waived according to circumstances. This power is conveyed to Council in section 2.7(2)(b) of the *Local Government Act 1995*. Policies cannot be made in relation to those powers and duties given directly to the CEO by the Act.

The objectives of Council's Policies are:

- to provide Council with a formal written record of all Policy decisions;
- to provide the staff with clear direction to enable them to respond to issues and act in accordance with Council's general direction;
- to enable Councillors to adequately handle enquiries from electors without undue reference to the staff or the Shire;
- to enable Council to maintain a continual review of Council Policy decisions and to ensure they are in keeping with community expectations, current trends and circumstances;
- to enable electors to obtain immediate advice on matters of Council Policy.
- Policies are to relate to issues of an on-going nature; Policy decisions on single issues are not to be recorded in the manual.

Policies should not be confused with management practices or operational procedures, which are determined by the Chief Executive Officer, as a mechanism for good management and implementation of Council Policies.

Changes to Council Policy shall be made only on:

1. The outcome of the Annual Review; or
2. An agenda item clearly setting out details of the proposed amendment.

Users should be mindful of the fact that, in simple terms:

- Policy provides what can be done;
- Procedures provide for how to do it;
- Delegation provides for who can do it.

It is important to note that the Shire’s adopted Policies have been made to facilitate:

- Consistency and equity in decision making;
- Promptness in responding to customer needs; and
- Operational efficiency.

CONSULTATION:

Internal – Relevant Shire staff have been consulted.

COMMENT:

The Shire of Jerramungup is committed to fostering a culture of integrity, transparency, and accountability. As part of this commitment, the Shire has developed a Whistleblower Policy aimed at encouraging the reporting of misconduct, unethical behaviour, and other issues of public concern. This Policy is essential in ensuring that individuals feel safe and supported when coming forward with information that is in the interest of the Shire and more broadly in the interest of the public.

The introduction of the Whistleblower Policy represents a step in the Shire’s ongoing efforts to enhance its governance framework as identified in the Regulation 17 Review conducted by Australian Audit during 2024.

The Whistleblower Policy outlines the procedures for making and handling disclosures, ensuring that all reports are thoroughly investigated and that whistleblowers are protected from retaliation. This Policy aligns with best practice and complies with relevant State and Federal legislation.

STATUTORY ENVIRONMENT:

Local Government Act 1995 s.2.7(2)(b)

2.7. Role of council

1. *The council —*
 - (a) *governs the local government’s affairs; and*
 - (b) *is responsible for the performance of the local government’s functions.*
2. *Without limiting subsection (1), the council is to —*
 - (a) *oversee the allocation of the local government’s finances and resources; and*
 - (b) *determine the local government’s policies.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community.

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

There are no financial implications for this report.

WORKFORCE IMPLICATIONS:

Policies provide direction for all Shire of Jerramungup Councillors and employees.

POLICY IMPLICATIONS:

As detailed in each Policy.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council:

- 1. ADOPTS new Council Policy AP15 – Whistleblower Policy, as attached to this Report.**

MOTION: OCM250322

MOVED: Cr Leenhouders

SECONDED: Cr Barrett

That Council:

- 1. ADOPTS new Council Policy AP15 – Whistleblower Policy, as attached to this Report.**

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

9.4.10 ADOPTION OF AP16 – LEGISLATIVE COMPLIANCE POLICY

Location/Address:	Shire of Jerramungup
Name of Applicant:	Shire of Jerramungup
File Reference:	N/A
Author:	Martin Cuthbert, Chief Executive Officer
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	19 March 2025
Attachments:	a) Draft – AP16 – Legislative Compliance Policy b) Draft – Legislative Compliance Management Procedure
Authority/Discretion:	Legislative

SUMMARY:

The purpose of this report is for Council to consider and adopt the Legislative Compliance Policy as detailed.

BACKGROUND:

Although not a requirement of the *Local Government Act 1995*, it is considered good practice for Council to review its Policies on a regular basis.

In addition to any annual review, any changes to existing Policies or the need for new Policies identified during the course of the year will be presented through the appropriate meetings for Council consideration.

Policies are determined by Council and may be amended or waived according to circumstances. This power is conveyed to Council in section 2.7(2)(b) of the *Local Government Act 1995*. Policies cannot be made in relation to those powers and duties given directly to the CEO by the Act.

The objectives of Council's Policies are:

- to provide Council with a formal written record of all Policy decisions;
- to provide the staff with clear direction to enable them to respond to issues and act in accordance with Council's general direction;
- to enable Councillors to adequately handle enquiries from electors without undue reference to the staff or the Shire;
- to enable Council to maintain a continual review of Council Policy decisions and to ensure they are in keeping with community expectations, current trends and circumstances;
- to enable electors to obtain immediate advice on matters of Council Policy.
- Policies are to relate to issues of an on-going nature; Policy decisions on single issues are not to be recorded in the manual.

Policies should not be confused with management practices or operational procedures, which are determined by the Chief Executive Officer, as a mechanism for good management and implementation of Council Policies.

Changes to Council Policy shall be made only on:

1. The outcome of the Annual Review; or
2. An agenda item clearly setting out details of the proposed amendment.

Users should be mindful of the fact that, in simple terms:

- Policy provides what can be done;
- Procedures provide for how to do it;
- Delegation provides for who can do it.

It is important to note that the Shire's adopted Policies have been made to facilitate:

- Consistency and equity in decision making;
- Promptness in responding to customer needs; and
- Operational efficiency.

CONSULTATION:

Internal – Relevant Shire staff have been consulted.

COMMENT:

In order to meet the requirements under Regulation 5 (2)(c) of the *Local Government (Financial Management) Regulations 1996* and Regulation 17 of the *Local Government (Audit) Regulations 1996*, an independent consolidated report was prepared by Audit Australia following a review undertaken during 2024 of the Shire's financial management, risk management, legislative compliance, and internal control systems.

One of the findings of that report reads:

“That the Shire consider implementation of a Legislative Compliance Policy which outlines the responsibility for compliance with legislative requirements and how such compliance is to be met.

That consideration be given to developing various legislative compliance checklists to enable various areas to undertake regular self-assessment checks on an ongoing basis.”

The formulation of the attached policy and procedure will satisfy the Audit Australia's recommended action and audit finding No. 8 can be noted as completed on Council's Review Register.

STATUTORY ENVIRONMENT:***Local Government Act 1995 s.2.7(2)(b)******2.7. Role of council***

- a. *The council —*
 - (a) *governs the local government's affairs; and*
 - (b) *is responsible for the performance of the local government's functions.*
- b. *Without limiting subsection (1), the council is to —*
 - (a) *oversee the allocation of the local government's finances and resources; and*
 - (b) *determine the local government's policies.*

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community.

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

There are no financial implications for this report.

WORKFORCE IMPLICATIONS:

Policies provide direction for all Shire of Jerramungup Councillors and employees.

POLICY IMPLICATIONS:

As detailed in each Policy.

VOTING REQUIREMENT:

Simple Majority

OFFICER RECOMMENDATION:

That Council:

- 1. ADOPTS new Council Policy AP16 – Legislative Compliance Policy, as attached to this Report.**
- 2. NOTES the Management Procedure – Legislative Compliance, as attached to this Report.**

MOTION: OCM250323

MOVED: Cr Barrett

SECONDED: Cr Brown

That Council:

- 1. ADOPTS new Council Policy AP16 – Legislative Compliance Policy, as attached to this Report.**
- 2. NOTES the Management Procedure – Legislative Compliance, as attached to this Report.**

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

10.0 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil.

11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

12.0 NEW BUSINESS OF AN URGENT NATURE**PROCEDURAL MOTION**

That Council accept the late item, **12.1 Proposed Parking and Parking Facilities Amendment Local Law – Commencement.**

MOTION: OCM250324**MOVED: Cr Barrett****SECONDED: Cr Foreman**

That Council accept the late item, 12.1 Proposed Parking and Parking Facilities Amendment Local Law – Commencement.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

12.1 PROPOSED PARKING AND PARKING FACILITIES AMENDMENT LOCAL LAW – COMMENCEMENT

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	
Author:	Niel Mitchell (Consultant)
Responsible Officer:	Martin Cuthbert, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 March 2025
Attachments:	a) Draft Parking and Parking Facilities Amendment Local Law 2025 b) Draft Parking and Parking Facilities Local Law 2025 – Proposed Consolidation
Authority/Discretion:	Legislative

SUMMARY:

In accordance with the Local Laws Review presented to Council in August 2024, a draft Parking and Parking Facilities Amendment Local Law has been prepared.

This report is to commence the necessary statutory procedures for adoption of an amendment local law.

BACKGROUND:

The current local law, Gazetted in 2005, adopted the Parking and Parking Facilities Local Law of the Town of Cottesloe which was published in the Government Gazette on 10 December 2001.

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

Purpose – to make amendments to the local law updating for use of disability parking permits, and modified penalties.

Effect – to amend references to be consistent with legislation, and increase offences for non-compliance.

CONSULTATION:

Internal consultation with Members of the Shire’s Executive Team and Governance Officer.

COMMENT:

The purpose of this report –

- to allow the presiding person to give notice to the meeting of the proposal to make a new local law, in accordance with the requirements of the *Local Government Act 1995*;
- for Council to approve the proposed local law for public comment;
- for Council to give notice of the purpose and effect of the proposed local law; and
- to authorise the advertising of the proposed local law for public comment.

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

(1) Terms used –

- (a) “the local government” – depending on the context, may mean the organisation, so that where a matter is administrative (a form, notice to the administration, etc) no delegation is required. However, where a decision is required, consistent with Dept of Local Government Guidelines, it should be read as being the highest possible decision making level, which is the Council. In line with the Guidelines these decisions may be delegated to the CEO unless specified. There are important legislative and administrative differences between appointment as an authorised person and delegation of power.
- (b) “by resolution” – limits the decision to Council at a meeting, and cannot be delegated to the CEO, since it requires a resolution. This is consistent with the Department’s interpretation of the term “Council” to mean the elected members in session, and is not to be interpreted as being able to be delegated to CEO, nor to mean administratively.
- (c) Council, CEO or other specific position – the function, role or power cannot be removed from that position or role, nor over-ridden.
- (d) Authorised person / delegation – an authorised person’s function and actions are defined by the local law and is able to act within previously defined parameters. A delegation relates to decision a person who has been given the power to make a decision rather than the Council.

(2) Application of the local law –

The local law applies throughout the district.

Comments in relation to specific Parts, Divisions or clauses –

- Terminology generally follows the usage in the local law adopted by reference, although several changes are proposed.
- New clause 7.7 to be inserted – False or misleading statement applies if a decision has been made based on the incorrect information supplied. Not a common provision in local laws, but has been accepted by both DLGSC and JSCDL
- Amended clause 8.1 – recent Local Government Act amendments permit a general penalty of up to \$10,000, with daily penalty remaining at \$500 per day. These amounts can only be applied by a Court and cannot be imposed at Council’s discretion.

- Sch.2 – increases to modified penalties
- Sch.3 – deleted since no provisions, and no reference through the amendment local law or text of the principal local law.
- Sch.4 – noted as “Nil” to be clear.

The statutory process is the same for making, amending or revoking a local law –

- The text of the proposed local law must be approved by Council
- Local public notice inviting public comment – minimum of 6 weeks (reduced period only if substantially in the form of the WAGA model)
- During this time, submit to Dept of Local Government and Dept of Fire and Emergency Services
- At the end of public comment, summary of public comments and any changes recommended by the departments to Council for decision regarding those comments, and consideration of any changes to the draft local law
- final adoption of the amendment local law by Council
- publication in the Government Gazette
- local public notice to be given of the adoption, publication and commencement date of the local law
- submission all necessary documents to the JSCDL for their review.

Local public notice of a proposed local law requires that the community be given the opportunity to comment for a minimum of six (6) weeks. The notice is required to be published on the Shire’s website and at least three other places.

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

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

STATUTORY ENVIRONMENT:

Local Government Act 1995 –

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2A) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*

- (3) *Subject to subsection (3A), the local government is to –*
- (a) *give local public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3A) *The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification –*
- (a) *a model local law; or*
 - (b) *a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.*
- (3B) *In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.*
- (3C) *If the local government determines to proceed under this subsection, the local government must–*
- (a) *publish a notice on the local government’s official website stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published; and*
 - (b) *as soon as the notice is published, give a copy of the notice to –*
 - (i) *the Departmental CEO; and*
 - (ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made – the chief executive officer of that other department; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*

(4) *After the last day for submissions under subsection (3) or (3C) (as the case requires), the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*

** Absolute majority required.*

(5) *After making a local law, the local government must –*

(a) *publish the local law in the Gazette; and*

(b) *give a copy of the local law to –*

(i) *the Departmental CEO; and*

(ii) *if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made – the chief executive officer of that other department.*

(6) *After the local law has been published in the Gazette the local government is to give notice in the required way –*

(a) *stating the title of the local law; and*

(b) *summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and*

(c) *advising that the local law is published on the local government’s official website and that copies of the local law may be inspected at or obtained from the local government’s office.*

(6A) *For the purposes of subsection (6), the **required way** for giving a notice is as follows –*

(a) *if the local government proceeded under subsection (3) – by local public notice;*

(b) *if the local government proceeded under subsection (3C) – by notice published on the local government’s official website.*

(7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*

(8) *In this section –*

making *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

STRATEGIC IMPLICATIONS:

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031:

Governance and Leadership

Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community;

Implement systems and processes that meet our legal and audit obligations.

FINANCIAL/BUDGET IMPLICATIONS:

Advertising and Gazettal costs are included in the annual budget process.

WORKFORCE IMPLICATIONS:

There are no workforce implications for Council.

POLICY IMPLICATIONS:

Review of Policies is advised to ensure consistency with the proposed local law.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Parking and Parking Facilities Amendment Local Law, and invite submissions for a minimum six (6) week period – Purpose – to make amendments to the local law updating for use of disability parking permits, and modified penalties.
Effect – to amend references to be consistent with legislation, and increase offences for non-compliance.
2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

MOTION: OCM250325

MOVED: Cr Brown

SECONDED: Cr Leenhouders

That -

1. In accordance with the *Local Government Act 1995* s.3.12(2) and (3) and all other legislation enabling it, local public notice be given that COUNCIL intends to make a Parking and Parking Facilities Amendment Local Law, and invite submissions for a minimum six (6) week period – Purpose – to make amendments to the local law updating for use of disability parking permits, and modified penalties.
Effect – to amend references to be consistent with legislation, and increase offences for non-compliance.
2. In accordance with the *Local Government Act 1995* s.3.12(3), copies of the proposed local law be –
 - sent to the Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries;
 - made available to any other person requesting a copy.

CARRIED: 6/0

For: President Iffla, Cr Leenhouders, Cr Brown, Cr Foreman, Cr Mair, Cr Barrett

Against: Nil

13.0 CLOSURE

13.1 DATE OF NEXT MEETING

The next ordinary meeting of Council will be held Wednesday, 30 April 2025, commencing at 1.00pm, in Bremer Bay.

13.2 CLOSURE OF MEETING

The Presiding Member closed the meeting at 1.26pm

These minutes were confirmed at a meeting held

.....

Signed:

Presiding Person at the meeting at which these minutes were confirmed

Date: