

MINUTES JUNE 2017

1. DECLARATION OF OPENING & ANNOUNCEMENT OF VISITORS

The Chair Person, Shire President Cr Megan Tuffley, declared the meeting opened at 4.43pm.

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

Members

Cr M Tuffley	Shire President
Cr R Jury	Deputy Shire President
Cr T Borgward	Member
Cr A Smith	Member
Cr S Crosby	Member
Cr M Stephens	Member
Cr G Collins	Member
Cr G Browne	Member

Staff

JP Bentley	Chief Executive Officer
M Bamess	Deputy Chief Executive Officer
DW Long	Works Manager

Members of the Public

Apologies

Members on Leave of Absence

3. DECLARATION OF INTERESTS:

- Financial Interest:
- Members Impartiality Interest -
 - 9.1.12 Proposal – Alternative Hotel Siting - Cr S Crosby
 - Cr M Tuffley
 - Cr G Browne
 - ~~- Cr G Collins~~
- Proximity Interest:

4. PUBLIC QUESTION TIME:

5. APPLICATION FOR MEMBERS FOR LEAVE OF ABSENCE:

6. CONFIRMATION and RECEIVING OF MINUTES/BUSINESS ARISING:

6.1 Ordinary Meeting of Council held on Wednesday 17 May, 2017

That the minutes of the Ordinary Meeting of the Shire of Kent held on Wednesday 17 May, 2017 in the Shire of Kent Council Chambers be confirmed as a true and accurate record of proceedings and duly signed.

4790 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr T Borgward / Cr M Stephens

That the minutes of the Ordinary Meeting of the Shire of Kent held on Wednesday 17 May, 2017 in the Shire of Kent Council Chambers be confirmed as a true and accurate record of proceedings and duly signed.

**CARRIED 8/0
By Simple Majority**

7. ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION:

8. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS:

9. OFFICERS REPORTS:

9.1.1 MONTHLY FINANCIAL REPORTS TO 31 MAY 2017

DATE:	8 June 2017
SUBJECT:	Monthly Financial Reports to 31 May 2017
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Michelle Bamess –Deputy Chief Executive Officer
REPORTING OFFICER:	Michelle Bamess –Deputy Chief Executive Officer
FILE NO:	FIN30.20
ASSESSMENT NO:	N/A

PURPOSE

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

BACKGROUND

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

STATUTORY IMPLICATIONS

Local Government Act 1995 – Section 6.4

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

POLICY IMPLICATIONS

Policy 4.1 Accounting Policies

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

FINANCIAL IMPLICATIONS

Ongoing management of Council funds

STRATEGIC IMPLICATIONS

This matter is not dealt with in the Shire of Kent Community Strategic Plan.

COMMENT

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

ATTACHMENTS

- Monthly Financial Reports to 31 May 2017 (including Statement of Financial Activities, Notes 3-11 and Budget Variances to 31 May 2017)

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the following Monthly Financial Reports be received by Council:

- Monthly Financial Reports to 31 May 2017

4791 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr R Jury/ Cr M Stephens

That the following Monthly Financial Reports be received by Council:

- **Monthly Financial Reports to 31 May 2017**

**CARRIED 8/0
By Simple Majority**

9.1.2 SCHEDULE OF ACCOUNTS PAID TO 31 MAY 2017

DATE:	8 June 2017
SUBJECT:	Schedule of Accounts Paid
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Michelle Bamess – Deputy Chief Executive Officer
REPORTING OFFICER:	Michelle Bamess – Deputy Chief Executive Officer
FILE NO:	N/A
ASSESSMENT NO:	N/A

FUND VOUCHERS AMOUNT

Municipal Fund	\$226,974.11
Trust Fund	\$0.00
Direct Debits	\$146,138.38
Spoiled Cheques	
Cancelled Cheques	

ATTACHMENTS

Schedule of Accounts submitted 21 June 2017.

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That vouchers from the Municipal Fund and Trust Fund as detailed, be approved by Council:

Municipal Fund	\$226,974.11
Trust Fund	\$0.00
Direct Debits	\$146,138.38
TOTAL	\$373,112.49

4792 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr A Smith / Cr T Borgward

That vouchers from the Municipal Fund and Trust Fund as detailed, be approved by Council:

Municipal Fund	\$226,974.11
Trust Fund	\$0.00
Direct Debits	\$146,138.38
TOTAL	\$373,112.49

**CARRIED 8/0
By Simple Majority**

9.1.3 APPOINTMENT OF DUAL FIRE CONTROL OFFICERS FOR 2017/18 FOR SHIRE OF KENT

DATE:	7 th June 2017
SUBJECT:	Appointment of Dual Fire Control Officers
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Kylie Freeman – Customer Service Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	FIR 15.5
ASSESSMENT NO:	N/A

PURPOSE

Council is to appoint the various Dual Fire Control Officers to the Shire of Kent for the 2017/18 year.

BACKGROUND

A letter has been received from Shelley Pike, Chief Executive Officer Shire of Gnowangerup, advising the endorsement of the appointment of the dual fire control officer for the Shire of Kent as well as dual fire control officers for neighbouring Shires.

STATUTORY IMPLICATIONS

Local Government Act 1995
Bush Fires Act 1954

POLICY IMPLICATIONS

There are no known policy implications.

FINANCIAL IMPLICATIONS

There are no known financial implications.

STRATEGIC IMPLICATIONS

There are no known strategic implications.

COMMENT

The following appointment to the Shire of Kent have been received from the Council as shown

Shire of Gnowangerup

Scott Hemley

ATTACHMENTS

Letter from Shelley Pike, Chief Executive Officer Shire of Gnowangerup

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council :

Endorse the appointment of the Dual Fire Control Officers to the Shire of Kent for 2017/18 as listed below:

Shire of Gnowangerup- Scott Hemley

4793 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr R Jury/ Cr M Stephens

That the Council :

Endorse the appointment of the Dual Fire Control Officers to the Shire of Kent for 2017/18 as listed below:

Shire of Gnowangerup- Scott Hemley

**CARRIED 8/0
By Simple Majority**

9.1.4 APPOINTMENT OF DUAL FIRE CONTROL OFFICERS FOR 2017/18 FOR SHIRE OF KENT

DATE:	7 th June 2017
SUBJECT:	Appointment of Dual Fire Control Officers
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Kylie Freeman – Customer Service Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	FIR 15.5
ASSESSMENT NO:	N/A

PURPOSE

Council is to appoint the various Dual Fire Control Officers to the Shire of Kent for the 2017/18 year.

BACKGROUND

A letter has been received from Brent Bailey, Chief Executive Officer Shire of Jerramungup, advising the endorsement of the appointment of the dual fire control officer for the Shire of Kent as well as dual fire control officers for neighbouring Shires.

STATUTORY IMPLICATIONS

Local Government Act 1995
Bush Fires Act 1954

POLICY IMPLICATIONS

There are no known policy implications.

FINANCIAL IMPLICATIONS

There are no known financial implications.

STRATEGIC IMPLICATIONS

There are no known strategic implications.

COMMENT

The following appointment to the Shire of Kent have been received from the Council as shown

Shire of Jerramungup
Quentin Brown

ATTACHMENTS

Letter from Brent Bailey, Chief Executive Officer Shire of Jerramungup

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council :

Endorse the appointment of the Dual Fire Control Officers to the Shire of Kent for 2017/18 as listed below:

Shire of Jerramungup - Quentin Brown

4794 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr S Crosby / Cr A Smith

That the Council :

Endorse the appointment of the Dual Fire Control Officers to the Shire of Kent for 2017/18 as listed below:

Shire of Jerramungup - Quentin Brown

CARRIED 8/0
By Simple Majority

9.1.5 REQUEST TO COLLECT NATIVE PLANT SEEDS

DATE:	12 June 2017
PROPONENT:	Greening Australia
LOCATION:	Whole of Shire
SUBJECT:	Permission to collect Native Plant Seed
AUTHOR:	Kylie Freeman – Customer Service Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	
ASSESSMENT NO:	

PURPOSE

Council to consider an application from Greening Australia to collect Native plant seed within the Shire of Kent Reserves.

BACKGROUND

Greening Australia is required by legislation to seek the permission of the authority which holds control of land prior to collecting seed.

STATUTORY IMPLICATIONS

Local Government Act (1995)

POLICY IMPLICATIONS

The Council has no specific policy regarding this matter.

FINANCIAL IMPLICATIONS

There are no specific financial implications.

STRATEGIC IMPLICATIONS

This matter is not dealt with in the Shire of Kent Community Strategic Plan.

COMMENT

Permission has been granted in the past for such organisations to collect seed from native species for programs such as this and further detail is provided within the letter of request.

ATTACHMENTS

Letter – Greening Australia.

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

Advise Greening Australia that permission is granted to collect native plant seed within the Shire of Kent subject to the following conditions:

- **All persons collecting native seed are licensed according to the Wildlife and Conservation Act (1950) and will abide by the conditions of the licence.**
- **This approval is for the period 1 July 2017 to 30 June 2018.**
- **This approval applies to collection by Greening Australia staff only.**
- **Appropriate hygiene measures will be followed at all times to prevent the spread of plant disease and weeds.**
- **All care is to be taken to avoid the disturbance of fauna habitat.**
- **All care be taken to avoid any disturbance that may lead to soil degradation.**

4795 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr T Borgward/ Cr M Stephens

That the Council :

Advise Greening Australia that permission is granted to collect native plant seed within the Shire of Kent subject to the following conditions:

- **All persons collecting native seed are licensed according to the Wildlife and Conservation Act (1950) and will abide by the conditions of the licence.**
- **This approval is for the period 1 July 2017 to 30 June 2018.**
- **This approval applies to collection by Greening Australia staff only.**

- **Appropriate hygiene measures will be followed at all times to prevent the spread of plant disease and weeds.**
- **All care is to be taken to avoid the disturbance of fauna habitat.**
- **All care be taken to avoid any disturbance that may lead to soil degradation.**

CARRIED 8/0
By Simple Majority

9.1.6 REQUEST FROM NYABING COUNTRY WOMENS ASSOCIATION (CWA) FOR APPROVAL FOR A ROAD CLOSURE FOR MARKET DAY

DATE:	14 th June 2017
PROPONENT:	N/A
LOCATION:	N/A
SUBJECT:	Request from Nyabing CWA for Approval for Road Closure for Market Day
AUTHOR:	Kylie Freeman – Customer Service Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	
ASSESSMENT NO:	

PURPOSE

To consider a request from the Nyabing Country Women's Association (CWA) for a road closure to host the 25th consecutive CWA Market Day on Saturday 14th October 2017.

BACKGROUND

The CWA has hosted community Market days in previous years at the Nyabing Town Hall and this year would like to expand their Market Stall Holders along Richmond Street, Nyabing on Saturday 14th October 2017 from 9.30am to 3.00pm. In the past three years, there have been over 300 people through the doors on Market Day.

This event will promote community engagement with the CWA planning a number of outside market stall holders, in addition to the 20 plus stalls that will be situated within the Nyabing Town Hall. Nyabing CWA is also in discussion with the Hidden Treasures group to host a joint display/point of interest. Nyabing CWA is also in discussion with the WA Museum – New Museum Project which will showcase the Shire of Kent community and its people.

The CWA will be applying to the WA Police to have a portion of Richmond Street closed to traffic during the Market Day and have sent consent request to businesses and residences in the area of the proposed closed zone.

In order to proceed further the CWA is seeking Council approval for closure of the road from the Jury Street intersection near the CWA Hall through to the Eastern Car Park Entry/Exit lanes. Vehicles will still be able to utilise the Car Park and traffic can flow through the intersections unaffected.

Upon receiving Council support for their request, the CWA also seek assistance from Council with the supply of appropriate road closure signage for the event.

STATUTORY IMPLICATIONS

Local Government Act (1995)

POLICY IMPLICATIONS

The Council has no specific policy regarding this matter.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

This matter is not dealt with in the Shire of Kent Community Strategic Plan.

COMMENT

Council are to discuss the request from the CWA for road closure for their 2017 Market Day and decide whether or not they will support this event.

Discussions have been held with representatives from the NPA about the proposed change of venue for the event. As the community have purchased the Nyabing Inn and envisage to turn this into a "Community Hub" it was felt that this would be the perfect opportunity to utilise the community asset.

ATTACHMENTS

Letter from Nyabing Country Women's Association
Application for Road Closure
Map showing proposed road closure.

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

Will / will not support Nyabing Country Women's Association's request for a road closure to host their 2017 Market Day and will / will not assist with appropriate road closure signage for this event.

4796 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr M Stephens / Cr G Browne

That the Council :

Will support Nyabing Country Women's Association's request for a road closure to host their 2017 Market Day and will assist with appropriate road closure signage for this event.

**CARRIED 8/0
By Simple Majority**

9.1.7 DRAFT DISABILITY ACCESS AND INCLUSION PLAN 2017 - 2022

DATE:	8 June 2017
SUBJECT:	Disability Access and Inclusion Plan 2017 - 2022
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Michelle Bamess – Deputy Chief Executive Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	COM25.5
ASSESSMENT NO:	N/A

PURPOSE

Council to endorse a draft Disability Access and Inclusion Plan (DAIP) for 2017 – 2022 as presented for public consultation.

BACKGROUND

The Disability Services Act 1993 requires local government implementation of a Disability Access and Inclusion Plan (DAIP) to ensure people with disability have equal access to its service and facilities. Council's current five year DAIP, which expires on 3 July 2017, outlines seven outcome areas and the strategies to achieve those outcomes. Legislation requires a report (Implementation Plan) to be forwarded to the Disability Services Commission annually and Council's DAIP requires a report to be made to Council on a yearly basis.

Part of the review process for developing a new five year DAIP includes public consultation and as part of the recent Community Needs Survey a questionnaire was included seeking feedback and comments on the current DAIP. The survey identified two persons within our communities as having a disability and a number of respondents provided further feedback on the services and facilities provided in the Shire. No new initiatives were identified in the survey, however we are committed to ensuring that the community continues to be accessible for and inclusive of both able bodied people and people with disability.

STATUTORY IMPLICATIONS

Local Government Act 1995

Disability Services Act 1993

POLICY IMPLICATIONS

There are no known policy implications.

FINANCIAL IMPLICATIONS

No financial implications will occur by endorsing the DAIP.

STRATEGIC IMPLICATIONS

There are no known strategic implications.

COMMENT

A copy of the revised DAIP for the period 2017 – 2022 is attached for Council information, comment and/or discussion.

ATTACHMENTS

Disability Access and Inclusion Plan (DAIP) 2017 - 2022

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

Endorse the attached review of the Disability Access and Inclusion Plan 2017 - 2022.

4797 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr S Crosby / Cr G Coliins

That the Council :

Endorse the review of the Disability Access and Inclusion Plan 2017-2022.

**CARRIED 8/0
By Simple Majority**

9.1.8 CHANGES TO 2016-2017 BUDGETED RESERVE TRANSFERS

DATE:	14 June 2017
PROPONENT:	
LOCATION:	N/A
SUBJECT:	Changes to 2016-2017 Budgeted Reserve Transfers
AUTHOR:	Michelle Bamess – Deputy Chief Executive Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	FIN 32 RESERVES
ASSESSMENT NO:	

PURPOSE

Council to endorse changes to 2016-20217 budgeted Reserves Account funds.

BACKGROUND

Council currently has an account within the Commonwealth Bank Term Deposit which holds funds for various reserve accounts. The purpose for these reserve accounts is for the replacement and/or development of Council's assets and each year provision is made within the Budget to allocate funding towards these. Council also makes provision for various community groups to be able to use this facility for their own purposes with Council co-contributing funds.

Since Council adopted the 2016-2017 Budget there have been some changes requiring some of our Reserve account transfers to be either reduced or increased and it is proposed that the following adjustments be made:

- Reduce the Admin Vehicle Reserve transfer from Reserve Account to Municipal Account from \$30,000 to \$20,000 due to lower vehicle changeover costs than anticipated.
- Increase the Landcare Reserve transfer from Municipal Account to Reserve Account by \$15,000 to take into consideration the unspent salary component for the Landcare Officer.
- Reduce the Pingrup Recreation Reserve transfer from Municipal Account to Reserve Account by \$50,000 due to no expenditure in the 2016-2017 financial year for the Pingrup Pavilion Upgrade. This transfer will now be accounted for in the 2017-2018 Budget.

STATUTORY IMPLICATIONS

Local Government Act (1995)

POLICY IMPLICATIONS

The Council has no specific policy regarding this matter.

FINANCIAL IMPLICATIONS

There will be reduction of \$45,000 in the amount of Reserve Account transfers being required as at 30 June 2017.

STRATEGIC IMPLICATIONS

This matter is not dealt with in the Shire of Kent Community Strategic Plan.

COMMENT

Council endorse changes to 2016-20217 budgeted Reserves Account funds.

ATTACHMENTS

Nil

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

- 1. Reduce the Admin Vehicle Reserve transfer from Reserve Account to Municipal Account from \$30,000 to \$20,000.**
- 2. Increase the Landcare Reserve transfer from Municipal Account to Reserve Account by \$15,000.**

3. Reduce the Pingrup Recreation Reserve transfer from Municipal Account to Reserve Account by \$50,000.

4798 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr M Stephens / Cr R Jury

That the Council :

1. Reduce the Admin Vehicle Reserve transfer from Reserve Account to Municipal Account from \$30,000 to \$20,000.
2. Increase the Landcare Reserve transfer from Municipal Account to Reserve Account by \$15,000.
3. Reduce the Pingrup Recreation Reserve transfer from Municipal Account to Reserve Account by \$50,000.

CARRIED 8/0
By Simple Majority

9.1.9 "WALK ON THE WILD SIDE" REQUEST FOR SUPPORT

DATE:	14 June 2017
SUBJECT:	Request for Support
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Christie Smith – Executive Assistant
REPORTING OFFICER:	Christie Smith – Executive Assistant
FILE NO:	ASS30.55
ASSESSMENT NO:	N/A

PURPOSE

Council to consider a request from Fiona Martin to provide financial and in-kind support to conduct wildflower walks during the Bloom Festival 15 September to 15 October 2017.

BACKGROUND

The following proposal has been received by Fiona Martin:

I am seeking the support from the Shire of Kent to conduct Wildflower walks on a Tuesday and Thursday morning during 15 Sept to 15 Oct 2017.

Proposal:

Walk on the Wild Side

Guided walks departing from Shire of Kent at 9.30am

1hr walk through reserve discovering array of orchids and wildflowers

Moderate Fitness required

Bookings through the Shire of Kent

Cost \$10 per person

The Shire's support is sort for the following to assist with the tours which may been seen as in kind or under existing payments:

- Administration for bookings
- Insurance to cover guide and participants
- Access to the Nyabing Townsite Reserve for tourist purposes
- First Aid Kit

Funding from budget

- Payment for tour guide \$50 per walk (9 x \$50 = \$450)
- Signage on main flag poles advertising it is bloom festival \$500
- Printing pamphlets for participants \$150
- Assistance for large Bloom's displayed throughout the town \$300

Total funding sought \$1400

In return, Nyabing will be actively involved in local tourism industry where Bloom Festival has including Nyabing. The Shire collects the funds from those participating in the walks which reduces outlay on the tour operators.

There may be an opportunity to obtain some NRM funding for walk trials in educating people on the trials on the importance of our natural environment, which I can discuss with Paul.

Thank you for the consideration.

The Bloom Festival is coordinated by the Hidden Treasures of the Great Southern.

STATUTORY IMPLICATIONS

There are no known strategic implications.

POLICY IMPLICATIONS

There are no known policy implications.

FINANCIAL IMPLICATIONS

If Council choose to support this request an allowance can be made in the 2017/18 budget.

STRATEGIC IMPLICATIONS

There are no known strategic implications.

COMMENT

The 2017 Bloom Festival will be the seventh annual Bloom Festival. The event in 2016 had an extensive program with over 52 events and activities on offer throughout the Great Southern region during Spring. The extensive program included a range of wildflower displays, guided tours, open gardens, workshops, long table meals prepared with local produce, art exhibitions, wine tasting, craft activities and more.

Council currently provides a contribution of \$2,500 per annum to be part of the Hidden Treasures. Most of the towns within the Hidden Treasures network provide some program throughout the Bloom Festival.

The requested in-kind support being administration for bookings, access to Nyabing Townsite Reserve and provision of a first aid kit, will not have a major impact and could easily be

factored into administrative support. However, the request for Council to cover insurance for guide and participants is a little more difficult and would suggest a higher financial contribution be made to assist with the group arranging their own insurance.

ATTACHMENTS

Nil

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

Considers the request from Fiona Martin to provide financial and in-kind support to conduct wildflower walks during the Bloom Festival 15 September to 15 October 2017.

4799 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr G Collins / Cr G Browne

That the Council :

Considers the request from Fiona Martin to provide financial and in-kind support to conduct wildflower walks during the Bloom Festival 15 September to 15 October 2017.

**LOST 0/8
By Simple Majority**

4800 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr / Cr

That the Council :

Considers the request from Fiona Martin to provide financial and in-kind support to conduct wildflower walks during the Bloom Festival 15 September to 15 October 2017 and provide up to \$2,000 on a reimbursement basis and in kind support for administration for bookings, access to Nyabing townsite and first aid kit

**CARRIED 7/0
By Simple Majority**

9.1.10 REVIEW OF DELEGATIONS

DATE:	13 June 2017
SUBJECT:	Review of Delegations
PROPONENT:	N/A
LOCATION:	Whole of the Shire
AUTHOR:	Peter Bentley – Chief Executive Officer
REPORTING OFFICER:	Peter Bentley - Chief Executive Officer
FILE NO:	ADM45.5
ASSESSMENT NO:	N/A

PURPOSE

Council is required to review the Delegations Register, with legislative changes that have occurred.

BACKGROUND

Section 5.18 of the Local Government Act 1995, requires a local government to keep a Register of Delegations and review the delegations at least once every financial year.

The aim of delegated authority is to assist with improving the time taken to make decisions subject to any constraints determined by Council or by the relevant legislation. The Delegations Register is consistent with the Shire's Community Strategic Plan directions. In particular it assists Council to achieve the Shire of Kent's Mission and Objectives, including its obligations at law to carry out the statutory responsibilities of Local Government.

The Register identifies the relevant document(s) from which the delegated authority is derived, including legislation and policies. This has been provided to enable cross-referencing between the delegations and other relevant documents.

STATUTORY IMPLICATIONS

Local Government Act 1995 (As Amended)

5.41. Functions of CEO

The CEO's functions are to:

- (a) advise the council in relation to the functions of a local government under this Act and other written laws*
- (b) ensure that advice and information is available to the council so that informed decisions can be made*
- (c) cause council decisions to be implemented*
- (d) manage the day to day operations of the local government*
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions*
- (f) speak on behalf of the local government if the mayor or president agrees*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees)*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

* Absolute majority required.

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

[Section 5.42 amended by No. 1 of 1998 s.13⁸.]

5.43. Limits on delegations to CEO's

A local government cannot delegate to a CEO any of the following powers or duties

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- (e) any of the local government's powers under section 5.98, 5.99 or 5.100;
- (f) borrowing money on behalf of the local government;
- (g) hearing or determining an objection of a kind referred to in section 9.5;
- (h) any power or duty that requires the approval of the Minister or the Governor; or
- (i) such other powers or duties as may be prescribed.

5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty
 - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty and
 - (b) the exercise of that power or the discharge of that duty by the CEO's delegate, are subject to any conditions imposed by the local government on its delegation to the CEO.
- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.
- (5) In subsections (3) and (4)

Conditions include qualifications, limitations or exceptions.

[Section 5.44 amended by No. 1 of 1998 s.14(1).]

5.45. Other matters relevant to delegations under this Division

- (1) Without limiting the application of sections 58 and 59 of the Interpretation Act 1984

- (a) a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely;
 - and
 - (b) any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.
- (2) Nothing in this Division is to be read as preventing –
- (a) a local government from performing any of its functions by acting through a person other than the CEO; or
 - (b) a CEO from performing any of his or her functions by acting through another person.

5.46. Register of, and records relevant to, delegations to CEO's and employees

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

POLICY IMPLICATIONS

There are no known policy implications.

FINANCIAL IMPLICATIONS

There are no known financial implications.

STRATEGIC IMPLICATIONS

The review and adoption of Council's Delegations Register is in line with Council's Community Strategic Plan.

COMMENT

The Draft Delegated Authority Register 2016/17, as presented, shows delegations grouped by area and contains delegations from the Council to CEO (and the Chief Bush Fire Control Officer) authorisations from Council to its Officers and authorisations from the CEO to other staff.

The following definitions are provided to explain the variance between the Sections.

Delegation from the Council to the CEO– Are instances where the Council delegates the role of undertaking certain roles and responsibilities to the CEO or the CBFCO.

Authorisation by Council – Are instances when an officer or class of officers is formally authorised to act on behalf of the local government in respect to policing specific legislation and the legislation requires that the authorisation be provided by the local government rather than the Chief Executive Officer. This applies only to legislation other than that related directly to the Local Government Act 1995, for example the Dog Act 1997 or the Bush Fires Act 1954.

Authorisations by Chief Executive Officer – Are instances where an officer or class of officer is authorised to take relevant action in relation to a specific legislation, regulation or local law. This is an executive function of the Chief Executive Officer in relation to the Local Government Act 1995 and in other Acts the Chief Executive Officer is empowered to authorise individuals or classes of employees.

It should be noted that powers cannot be delegated to individual elected members, except in the case of the President as specified in the Bush Fires Act 1954 (currently under review). A delegation to elected members can only be made to a committee and then the committee must comply with the requirements of the Local Government Act 1995 where a delegated authority exists.

ATTACHMENTS

Draft Delegated Authority Register 2017

VOTING REQUIREMENT

Absolute Majority

RECOMMENDATION

That the Draft Delegated Authority Register 2016/17, as presented be adopted for the period to 30 June 2018.

4800-1 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr [R Jury](#)/ Cr [G Browne](#)

That the Council :

That Council adopt the Draft Delegated Authority Register 2016/17, as presented for the period to 30 June 2018.

**CARRIED [8/0](#)
By Absolute Majority**

9.1.11 PROPOSAL – NYABING – PINGRUP LCDC

DATE:	7 th June 2017
PROPONENT:	Nyabing – Pingrup LCDC
LOCATION:	Whole of Shire
SUBJECT:	Winding up of LCDC
AUTHOR:	Peter Bentley – Chief Executive Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	ASS25.25
ASSESSMENT NO:	

PURPOSE

To consider a proposal from the Nyabing – Pingrup LCDC to wind up the group.

BACKGROUND

The LCDC has written to Council advising that it intends to wind up the committee. The CEO, Cr Brown and Cr Tuffley attended a meeting of the LCDC at the Nyabing Pavilion on 22

March 2017 which was attended by a number of other stakeholders. The meeting was called to discuss the future of the group and to formulate an action plan with regard to the outcomes of the discussions.

Following lengthy discussion involving all parties the following motions were passed by the meeting:

"The Tree Planter to be taken to Mick Townsend for a full upgrade and that John Skipsey (Chairperson) and Hilary Willcocks (Sec/Treasurer) be authorised to approve repairs up to \$15,000"

**Moved Trevor Badger seconded Gordon Browne
Carried**

"On payment of the refurbishment of the Tree Planter, all assets to be transferred to the Shire of Kent for Landcare purposes and any surplus funds be transferred to the Landcare Reserve with the Shire.

**Moved Trevor Badger Seconded Fiona Hobley
Carried**

"The Nyabing – Pingrup Land Conservation District Committee recommend to the Minister for Agriculture and Food that it be wound up due to lack of interest resulting in a lack of members attending meetings and wishing to be office bearers"

**Moved Trevor Badger Seconded Fiona Hobley
Carried**

"That the Bank Account be closed when it has a nil balance"

**Moved Fiona Hobley Seconded Trevor Badger
Carried**

The issue seems to be that there is no lack of interest in Landcare/NRM activities, only in the formalisation of the process through a committee. Many landholders avail themselves of the NRM resource currently provided by the Council through the State NRM grants. People are perhaps time poor with regard to committees.

STATUTORY IMPLICATIONS

Local Government Act (1995)

POLICY IMPLICATIONS

The Council has no specific policy regarding this matter.

FINANCIAL IMPLICATIONS

There are no significant financial implications from this item

STRATEGIC IMPLICATIONS

This matter is not dealt with in the Shire of Kent Community Strategic Plan

COMMENT

There have been difficulties in attracting local landholders to attend these meetings or become committee members and while there is much happening around the Shire within grower groups and with our own NRM Officer, perhaps the structure of the LCDC has outgrown its usefulness. Historically the committees have been a great asset and have provided focus into this area of farming which was not properly formalised many years ago.

The committee has exhausted many avenues to attract new members but many landholders now undertake these activities as a given part of their operations. The objective of the committee to place its assets with the Council is to ensure that NRM services within the Shire continue for as long as possible.

ATTACHMENTS

Letter – Nyabing – Pingrup LCDC

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

- 1. Agrees to further accept the assets of the Nyabing – Pingrup LCDC following its winding up to further the cause of landcare within the Shire;**
- 2. Agree to manage the tree planter on an ongoing basis once fully refurbished,**
- 3. Use any surplus funds from the LCDC to support the ongoing provision of a NRM officer or to further the cause of landcare within the Shire.**

<u>4801--4802</u> COUNCIL RESOLUTION (Officer Recommendation)
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MOVED Cr [G Browne](#)/ Cr [R Jury](#)

That the Council :

- 1. Agrees to further accept the assets of the Nyabing – Pingrup LCDC following its winding up to further the cause of landcare within the Shire;**
- 2. Agree to manage the tree planter on an ongoing basis once fully refurbished,**
- 3. Use any surplus funds from the LCDC to support the ongoing provision of a NRM officer or to further the cause of landcare within the Shire.**

**CARRIED 8/0
By Simple Majority**

9.1.12 PROPOSAL – ALTERNATIVE HOTEL SITING

DATE:	7 th April 2017
PROPONENT:	
LOCATION:	Whole of Shire
SUBJECT:	Alternative Hotel Siting
AUTHOR:	Peter Bentley – Chief Executive Officer
REPORTING OFFICER:	Peter Bentley – Chief Executive Officer
FILE NO:	
ASSESSMENT NO:	

PURPOSE

To consider a proposal from the Lessees of the Nyabing Hotel with regard to the alternative siting of the business at the Nyabing Pavilion for a period of six months.

BACKGROUND

The current Lessees of the Nyabing Inn have written to Council seeking Council's thoughts regarding the potential for running the Nyabing Inn from the Nyabing Pavilion from 1 March 2018 to 31 August 2018.

The proposal comes as a result of the owners of the hotel site, the Nyabing Progress Association, will be demolishing the existing hotel building and constructing the new Nyabing Community Hub. The proposal is to operate the hotel from the Nyabing Pavilion during the construction period for the new facility.

The Lessees have also sent a copy of the attached letter to the Nyabing Sports Club and Nyabing Bowling Club. I have asked the Bowling club to provide me with its thoughts on the proposal as it will be the club most affected by this proposal.

STATUTORY IMPLICATIONS

Local Government Act (1995)

Liquor Control Act (1988)

Liquor Control Act (1988)**36. Two or more licences for same premises, restrictions on**

- (1) *Subject to subsections (2) and (3), 2 or more licences shall not be granted in respect of the same part of any premises, but licences may be granted in respect of defined separate parts of the same premises.*
- (2) *More than one club restricted licence may be granted in respect of the same premises, subject to section 48(4)(a)(i), where at no time or day do the permitted hours specified in the respective licences coincide or overlap.*
- (3) *An occasional licence may be granted in respect of premises, or a part of premises, in respect of which some other licence is granted.*

39. Certificate of local government as to whether premises comply with laws

- (1) *An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises shall be accompanied by a certificate from the local government for the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.*
- (2) *A certificate referred to in subsection (1) shall state —*
- (a) whether or not the premises comply with all relevant requirements of —*
 - (i) the Health (Miscellaneous Provisions) Act 1911; and*
 - (ia) the Food Act 2008; and*
 - (ii) any written law applying to the sewerage or drainage of those premises; and*
 - (iii) the Local Government Act 1995; and*
 - (iv) the Building Act 2011;*
 - and*
 - (b) where the premises do not so comply, the manner in which the premises could be made to comply or that the premises could not reasonably be made to comply.*
- (3) *The licensing authority may, where it is satisfied that it is desirable to do so, impose a condition on a licence relating to the submission, or further submission, to the licensing authority of a certificate referred to in subsection (1).*

[Section 39 inserted by No. 12 of 1998 s. 26; amended by No. 43 of 2008 s. 148(2); No. 24 of 2011 s. 165(2); No. 19 of 2016 s. 101.]

40. Certificate of planning authority as to whether use of premises complies with planning laws

- (1) *An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises must be supported by a certificate from the authority responsible for planning matters in the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.*
- (2A) *The certificate referred to in subsection (1) is not required to be provided at the same time as the application but the application cannot be granted until the certificate has been provided to the licensing authority, unless the licensing authority otherwise determines.*
- (2) *A certificate referred to in subsection (1) shall state that the proposed use of the premises —*
- (a) will comply with the requirements of the written laws relating to planning specified; or*
 - (b) would comply with the requirements specified if consent were to be given by a specified authority, if it is known whether that authority will give the consent, and what specified conditions or specifications should be, or are likely to be, imposed; or*
 - (c) will not comply with the requirements specified for the reasons specified.*

- (3) *In this section —*
specified means *specified in the planning certificate.*
- (4) *The licensing authority may, where it is satisfied that it is desirable to do so, impose a condition on a licence relating to the submission, or further submission, to the licensing authority of a certificate referred to in subsection (1).*

[Section 40 inserted by No. 12 of 1998 s. 26; amended by No. 38 of 2005 s. 15; No. 35 of 2015 s. 5.]

48. Club licence, kinds, conditions and effect of

- (1) *For the purposes of this Act a club licence —*
- (a) *which is expressed to be granted as a club restricted licence; or*
 - (b) *which is subject to conditions prohibiting the sale of liquor for consumption off the premises, or the removal of liquor from the premises, unless subsection (9) applies,*

shall be referred to as a club restricted licence.

- (2) *Subject to this Act a club licence authorises the sale, during permitted hours, of liquor —*

- (a) *to a member and to the guests of that member in the company of that member —*
 - (i) *for consumption on the licensed premises, subject to subsection (4)(b); or*
 - (ii) *ancillary to a meal supplied at the club by or on behalf of the club to a member and to each of the guests of that member (without limitation as to number), being guests of whose attendance prior notice was given to the club in accordance with rules approved by the Director;*

or

- (b) *to a member, for consumption by the guests of that member (without limitation as to number) at a function held by or on behalf of that member at the club if in accordance with rules approved by the Director; or*

- (c) *to a member, if—*

- (i) *the licence is not a club restricted licence; or*
- (ii) *subsection (9) applies,*

and the liquor is packaged liquor, subject to subsections (3) and (4)(c),

if the constitution and rules of the club, as approved by the Director, are not thereby contravened.

- (3) *At a time when a sale of packaged liquor to a member who was not a lodger would not be within permitted hours or at a time authorised by the licence, any authority conferred by a club licence to sell packaged liquor to a member who is a lodger extends only to such quantities as might reasonably be consumed by the lodger on that day.*
- (4) *Every club licence is subject to the conditions that —*

- (a) *unless an extended trading permit otherwise authorises, the club has —*
 - (i) *where a club restricted licence applies — a right to occupy the licensed premises to the exclusion of others during the times when the sale of liquor is authorised by the licence; and*
 - (ii) *in any other case — exclusive right to occupy the licensed premises; and*
 - (b) *the authority to sell liquor for consumption by the guests of a member, otherwise than ancillary to a meal or at a function under subsection (2)(b), extends only to such persons, not exceeding 5 or such lesser number as may be permitted by rules approved by the Director, as are introduced as the guests of that member on that day; and*
 - (c) *packaged liquor be not removed —*
 - (i) *from premises to which a club restricted licence applies, unless subsection (9) applies; or*
 - (ii) *in any other case, from the premises except by or on the instructions of the member to whom it was sold; and*
 - (d) *as soon as is practicable after the making of any proposal for a change —*
 - (i) *in the appointment of a person as trustee to hold the licence for the club; or*
 - (ii) *to the constitution or rules of the club,*
the Secretary of the club shall provide to the Director certified particulars of the change proposed, and that effect is not given to the change without the prior approval of the Director; and
 - (e) *an up to date register of members, in respect of each class of membership, be continually available for inspection at the club premises; and*
 - (f) *the club ensures that its constitution and rules, as approved by the Director, are not contravened.*
- (5A) *Without limiting section 64, the Director may impose a condition on a club licence or club restricted licence requiring that any manager of the licensed premises (other than a person appointed under section 100(3)) be an approved unrestricted manager.*
- (5) *Subject to subsection (6), a person who is on any day visiting a club (the **host club**) as a member or an official of another club —*
- (a) *that is to engage in a pre-arranged event with the host club conducted for the purposes of one of the host club’s principal objects; or*
 - (b) *that is to hold a pre-arranged function at the host club involving the use of the host club’s sporting facilities,*
- may, for the purposes of this Act, be taken to be a person who is accorded temporary membership of the host club on that day in accordance with rules approved by the Director.*

- (6) *Where the Director is satisfied that the circumstances so require the Director may impose a condition on the licence requiring a club specifically to seek the approval of the Director before admitting persons to temporary membership.*
- (7) *Where in relation to the sale of liquor a club permits any contravention of its constitution or rules as approved by the Director a complaint may be lodged under section 95 on the ground that the licensed premises are not properly managed in accordance with this Act.*

[(8) *deleted*]

- (9) *Where the Director is satisfied that the members of a club which holds a club restricted licence cannot, without great inconvenience, obtain supplies of packaged liquor from a supplier other than the club —*
- (a) *the Director may, by endorsement on that licence and subject to such conditions as may be imposed, authorise the sale of packaged liquor to members of the club; and*
- (b) *effect shall be given to the endorsement as a variation of the terms of the licence fixed by this Act.*

[Section 48 amended by No. 12 of 1998 s. 31; No. 73 of 2006 s. 38; No. 56 of 2010 s. 11.]

49. Club licence, pre-requisites for grant of

- (1) *Subject to this section, the licensing authority shall not grant a club licence unless the applicant satisfies the licensing authority —*
- (a) *that the applicant is a society, club, institution or other body of persons which —*
- (i) *is incorporated or deemed to be incorporated under the Associations Incorporation Act 2015 or some other written law; or*
- (ii) *is a body to which Schedule 2 applies or otherwise is of such a size or nature that it is appropriate that the body should be licensed notwithstanding that it is unincorporated, subject to the licence being held for the applicant by a trustee,*
- and that it comprises a body of persons (in this Act referred to as a **club**) associated by reason of a common interest of the kind referred to in section 37(1)(c)(i); and*
- (b) *that the club has been, or in a case where the applicant is formed by the amalgamation of 2 or more clubs each of them has been, well managed for a period of not less than 12 months prior to the application; and*
- (c) *unless subsection (4) applies, that the constitution and rules of the club are of a kind appropriate for the purposes of a club seeking to be licensed, having regard to the terms and conditions of the licence sought,*
- and the content of that constitution and those rules is approved by the Director.*
- (2) *Where the Director finds that the constitution or rules of an applicant club are not adequate to give effect to the requirements of this Act, the licensing authority may —*

- (a) *adjourn the hearing of the application to enable the constitution or rules to be varied; or*
 - (b) *grant the application subject to a condition requiring amendment of the constitution or rules.*
- (3) *Subject to subsection (4), the Director shall not approve the constitution or rules of a club for the purposes of this Act unless satisfied —*
- (a) *that proper provision is made for the management of the affairs of the club by a committee of management elected by the general body of members and for the appointment of a Secretary; and*
 - (b) *that provision is made for regular meetings of the general body of members and of the committee of management; and*
 - (c) *that appropriate conditions governing admission to membership of the club exist and, in particular —*
 - (i) *that a person may not become an ordinary member of the club unless duly nominated on proper notice being given to the ordinary members of the club, and subsequently elected by the general body of members or by a committee in accordance with the constitution and rules; and*
 - (ii) *that the number of persons who may be admitted to membership, or to a particular class of membership, does not exceed any limit imposed by the licensing authority having regard to the nature of the club or the accommodation in respect of which the licence is sought; and*
 - (iii) *where provision is made for honorary or temporary membership — that the number of persons who may be admitted to such membership does not exceed any limit that the licensing authority, having regard to the nature of the club, may impose; and*
 - (iv) *without limiting subparagraph (iii), that any provision for membership of the club by reason of reciprocal arrangements with another club is made in accordance with the regulations;*
- and*
- (d) *that provision is made for payment in advance of a defined annual, half-yearly, quarterly or monthly subscription by the ordinary members of the club; and*
 - (e) *that provision is made —*
 - (i) *for proper records to be kept of the proceedings of the club and of the committee of management; and*
 - (ii) *for proper accounts to be kept of the financial affairs of the club; and*
 - (iii) *in the case of an unincorporated club, for the appointment of a person as trustee to hold the licence for the club.*
- (4) *The licensing authority may approve the constitution or rules of a club for the purposes of this section notwithstanding that subsection (3) is not complied with if it is satisfied that the club is a body to which Schedule 2 applies or that otherwise, having regard to the nature of the club, a proper reason exists for doing so.*

- (5) *Notwithstanding any other provision of this section or of section 48, Schedule 2 has effect in relation to —*
- (a) *the Anzac Club; and*
 - (b) *the Air Force Association (Western Australia Division) Club,*
- respectively.*

- (6) *Where a club licence is held by a body which was not previously incorporated under the Associations Incorporation Act 2015, on a copy of a certificate of incorporation under that Act being lodged with the Director by the Secretary of the club with the consent of the trustee the licence shall be vested in the incorporated body and shall be varied accordingly.*

[Section 49 amended by No. 12 of 1998 s. 32; No. 73 of 2006 s. 39; No. 30 of 2015 s. 232.]

94. Surrendering licences

- (1) *A person who is the holder of a licence or who is under section 86 authorised to carry on the business of a licensee may, by notice in writing to the Director, give notice of intention to surrender the licence and that licence —*
- (a) *shall be deemed to be surrendered; and*
 - (b) *shall cease to have effect,*
- on such date as is, in a notice of acceptance of the surrender given by the Director to that person, specified as the date of surrender.*
- (2) *The surrender of a licence does not affect liabilities incurred by the licensee under this Act up to the date of surrender.*
- (3) *The Director shall not give notice of acceptance of a surrender unless the Director is satisfied —*
- (a) *except where the licence is a club licence, that the written consent of every person entitled to any freehold interest in the licensed premises has been sought; and*
 - (b) *in the case of a club licence, that —*
 - (i) *the members of the club at a duly convened general meeting of members; or*
 - (ii) *where no such meeting is convened, any trustees of the club, have by a majority resolution consented to the surrender, or that the surrender is otherwise appropriate; and*
 - (c) *in all other cases, that so far as is practicable the consent of every person entitled to any interest in the licensed premises has been sought; and*
 - (d) *in all cases, that so far as is practicable the consent of every person entitled to any interest in the licensed premises under —*
 - (i) *a lease; or*
 - (ii) *a mortgage, charge or security affecting the premises, has been sought,*

and that, except where reasonable cause is shown why a consent can not and should not be required to be obtained, all the persons of whom consent has been sought have so consented.

- (4) *In subsection (3), a reference to an interest includes an interest in possession, reversion or remainder.*

98. Hotel licence, permitted hours under

- (1) *The permitted hours under a hotel licence are —*
- (a) *on a day other than a Sunday — from 6 a.m. to midnight;*
 - (b) *on a Sunday — from 10 a.m. to 12 midnight;*
 - [(c) *deleted*]
 - (d) *on New Year's Day — from immediately after 12 midnight on New Year's Eve to 2 a.m.;*
 - (e) *on Good Friday or Christmas Day — from 12 noon to 10 p.m., but only for liquor sold ancillary to a meal supplied by the licensee;*
 - (f) *on ANZAC Day — from 12 noon to 12 midnight.*
- (2) *The permitted hours under a hotel licence for the sale of liquor to a lodger are unrestricted.*

[Section 98 inserted by No. 73 of 2006 s. 68; amended by No. 35 of 2015 s. 12.]

98E. Club licence and club restricted licence, permitted hours under

- (1) *The permitted hours under a club licence (other than a club restricted licence), excluding Good Friday, Christmas Day or ANZAC Day, are —*
- (a) *on a day other than a Sunday —*
 - (i) *from 6 a.m. to 12 midnight; and*
 - (ii) *then continuing, if the following day is other than a Sunday or New Year's Day, to 12.30 a.m., but only for liquor sold ancillary to a meal supplied by or on behalf of the licensee;*
 - (b) *on a Sunday that is not New Year's Eve —*
 - (i) *from immediately after 12 midnight on the previous day to 1 a.m.; and*
 - (ii) *from 10 a.m. to 10 p.m.;*
 - (c) *on a Sunday that is New Year's Eve —*
 - (i) *from immediately after 12 midnight on the previous day to 1 a.m.; and*
 - (ii) *from 10 a.m. to 12 midnight;*
 - (d) *on New Year's Day — from immediately after 12 midnight on the previous day to 2 a.m.*
- (2) *The permitted hours under a club licence (other than a club restricted licence) on Good Friday, Christmas Day and ANZAC Day are —*
- (a) *on Good Friday — from immediately after 12 midnight on the previous day to 12.30 a.m., but only for liquor sold ancillary to a meal supplied by or on behalf of the licensee;*

- (b) *on Christmas Day —*
- (i) *from immediately after 12 midnight on the previous day to 12.30 a.m.; and*
 - (ii) *from 12 noon to 10 p.m.,*
but only for liquor sold ancillary to a meal supplied by or on behalf of the licensee;
- (c) *on ANZAC Day —*
- (i) *that is a Sunday — from immediately after 12 midnight on the previous day to 1 a.m. and from 12 noon to 12 midnight; or*
 - (ii) *that is not a Sunday — from 12 noon to 12 midnight.*
- (3) *The permitted hours under a club licence (other than a club restricted licence) for the sale of liquor to a lodger who is a member of the club are unrestricted.*
- (4) *The permitted hours under a club restricted licence are as specified in the particular licence.*
- [Section 98E inserted by No. 73 of 2006 s. 68.]*

POLICY IMPLICATIONS

The Council has no specific policy regarding this matter.

FINANCIAL IMPLICATIONS

Various if the proposal is sanctioned

STRATEGIC IMPLICATIONS

This matter is not dealt with in the Shire of Kent Community Strategic Plan

COMMENT

There are a range of different issues to consider with this proposal, the existing licence at the pavilion, the effect on the various community groups and the general public, and on the Council with its obligations to hold various regional meetings.

Existing Licence

I have discussed this matter at great length with two different officers from the Department for Racing, Gaming and Liquor. The primary issue from the perspective of the Sports Club is that there is no guarantee that the existing licence would be re-issued. The officers, while understanding of the position, were not able to offer any certainty that the Sports Club would regain the ability to sell alcohol from the venue. Neither were they of the opinion that a suspension could be granted as there was no legislative framework to do this.

Some of the issues raised with me were that there would probably be a full review and investigation of the need for the licence, that the conditions of the licence may well be more stringent than the existing procedures and that there would be a

greater requirement for compliance with the conditions and regulations than had been the case in the past. The issue of population and the number of existing licences was also raised with the Hotel/Hub, Pistol Club, Golf Club also holding licences in a town of approximately 120 people.

Council will need to consider the possible impact of such a situation and whether it is prepared to take the risk that the licence will not be re-issued and what the effect on community groups will be given that the bar at the pavilion is a major fundraiser.

Effect – Nyabing Bowling Club

I have asked the Nyabing Bowling Club to provide me with its position regarding the proposal as it is the most affected club. A copy of its response is attached.

Income Loss

The Nyabing Bowling Club would normally operate until mid to late April so the club may well lose 6 weeks or more of revenue from bar sales. Historically the season finishes around the second week in April with the closing day following a week or two after the Semi Final and Grand Finals Days (two consecutive days Saturday and Sunday at the same location). The proponents have indicated that they would be prepared to negotiate a compensation position with the club.

League Events/Fixturing

Unfortunately the league fixturing will not be known until August and so the timing of league events will not be known until then. Once again these events are a great source of revenue for the club and they may well cross over this period. While the club may be able to affect the timing through its representation, there is no guarantee. At these events the club will be expected to provide catering for the bowlers at these events and this would not be possible if the event timing corresponds with the hotel manager's request.

Should the Club host finals at the end of the year there would be some significant difficulties in catering for the events as well, as it is expected that the host club provides meals and/or afternoon teas etc for open days. The partitioning off of a section of the facility may not work given that there could be 50 bowlers plus spectators at some of these events. Even for a pennant day it may well be a very tight fit.

The Bowling Club did at a time in the past try to use the tennis pavilion which was too small even for a pennant fixture. While it is acknowledged that this would be only a six or eight week incursion into the season it could have quite a significant effect on the club.

Member Costs

The Proponents have very graciously agreed to honour bowling club pricing for the members while the season is current and the bowling club welcomes this offer.

Kitchen Use

Use of the kitchen is a difficult issue as the club would be required to purchase food from the hotel rather than provide its own catering whether it be for club functions or league events. This may be costly for the club and its members as the catering is usually a volunteer driven process with members donating their time and goods to cater for the variety of events.

Effect – Community General

The move to have a temporary hotel at the Pavilion presents a number of challenges with regard to community groups using the facility.

Community Access

The community has access to the current facility for meetings, functions, funerals and other fundraising events. The Pavilion has for many years been the venue of choice for these community events. Fundraising events will be significantly affected if they are unable to be redirected to another facility.

Historically the community has used the pavilion for funerals and birthday celebrations and the kitchen facility has been used to cater for these events. By agreeing to this proposal the Council will need to ensure that the community is not disadvantaged. Once again this would preclude people from catering for these type of events through their own resources.

Functions such as quiz nights, winter social events have also been held and while somewhat less now in number the ability to have these events at the pavilion will not exist during this time.

Likewise the facility is significantly utilised for community body meetings, fitness club, commercial presentations and the like and a while the evening meetings will be well catered for there may be some issues with all day use and the requirement to utilise the hotel for food and refreshments. There also may be issues of confidentiality at meetings held where they encroach into hotel opening hours.

Effect – Shire of Kent**Utility Charges**

The proponents have suggested that they would be happy to visit this with regard to the lease fees that apply their usage of the facility and Council would need to review both its own average costs at the site and the hotel's average costs to make a determination on the value of any charges or lease additions.

Existing Cleaner

Council employs a cleaner at the facility and there would need to be some discussions as to how the situation would work with the existing employee and the lessee in terms of duties, hours and the like.

Town Planning Scheme

Part II of the Shire of Kent Town Planning Scheme No 2 deals with development on Reserves where that land is Parks & reserves, Public Purpose, Railway Reserve or Major Road Reserve.

To agree to the conduct of the Hotel business the Council would need to grant temporary planning approval to accommodate the business at the site as the land is zoned Parks and Reserves. This is because the TPS zoning table and Part III of the TPS are silent on the use of this type of reserve for any other purpose. The TPS states;

“Where an application for planning consent is made with respect to land within a Reserve, the Council shall have regard to the ultimate purpose intended for the reserve and the Council shall, in the case of land reserved for the purposes of a public authority, confer with that authority before granting consent.”

The granting of planning consent would require that a public comment period be put in place and advertised locally for a period of at least 21 days. Following this the Council would be required to approve or disallow the application based upon any submissions received. The Council does not have the power to grant planning consent without public consultation in this case.

Potential for anti-social behaviour/after Hours Activity

Although this potential exists at the current location as well it is not at a location owned by the Council. At times at the current location members of the public have milled around after closing time, sometimes for hours. While there is not necessarily any problems that arise from this behaviour, on occasion, some issues have arisen.

Historically at the pavilion, following functions, there has been a practice of doing the same, even lighting fires during winter to keep warm. Given that the facility is council owned there is a greater chance of potential damage to the facility itself or the other sporting facilities surrounding.

It is not seen as a huge problem as generally the behaviours are quite benign however the potential, as in the current location, for noise issues and poor behaviours do exist. The facility is somewhat out of the way and this could contribute to a more liberal view by patrons.

Public Liability

Regarding the hotel management's temporary use of the kitchen/bar facilities for their guests at the Shire owned pavilion it is noted that this is a temporary period while the hotel undergoes re-construction works.

I have discussed the issue with the Public Liability Scheme Manager and it has agreed to cover the Shire for the temporary additional use of the pavilion, should the Shire decide to proceed.

If Shire does proceed, LGIS request that the Shire has a formal legal agreement drawn up for both parties during this temporary arrangement. The agreement will legally clarify and distinguish the responsibilities of each party to the arrangement.

Additionally the agreement should contain an Indemnity clause that each party is responsible for its own negligence and where relevant agree to co-defend in any third party litigation. The hotel owners must provide proof of current liability insurance and that their insurer is aware of a second temporary location for their guest services.

Community Use

The Council may well need to assist in managing the expectations of the community should it agree to alternative siting. There would be a reduced level of service at this facility for six months and while some parts of the community may well support and understand the change, there are those who will oppose it and want the status quo to remain.

The Council will need to sell any decision to provide the facility to the proponents because of this reduced service level.

Caravan Park Users

While it is acknowledged that the caravan park usage is infrequent there is a potential for conflict between the use of the pavilion and the caravan park where the pavilion/hotel operates until midnight and there are patrons at the caravan park. This would be particularly evident where patrons are using shower facilities at times where the pavilion/hotel is busy. Council staff would likely need to step in to deal with these issues and could lead to conflict or potentially dangerous situations for staff.

It is acknowledged that this is likely to be an infrequent issue but would need to be taken into consideration through the decision making process.

Meetings and Functions

Council hosts a number of regional meetings throughout the year, zone meetings, GSRRAC, LG Pro and a number of others. The pavilion has been the best option for these meetings as the facilities and location are the most suitable we have. There may be some issues with these meetings as the Council would provide catering or the various bodies source it themselves.

This would mean that these meetings would be locked into catering from the hotel management which may not suit by reason of cost.

Some of these meetings would carry over into hotel hours and this also may cause some issues with multi use.

Commercial Operations at Public Facility

The Council must be mindful that it will be stepping into a commercial environment and it will in essence be providing an alternative location for a business to operate from.

The Council is charged with providing good governance and applying fairness to the entire local community. Sometimes this is achieved through providing such alternative arrangements and while on the one hand that is good the Council must be aware of setting precedents, will it be prepared to provide such alternative business premises to other businesses, will the alternative arrangements create an unrealistic expectation in the community that whenever there is a problem of some sort that the Council will always provide a solution or premises. This aspect needs to be considered for future potential requests of Councils resources.

There is no doubt that the hotel in any country town is an important meeting place. It provides a place for business meetings, for social interaction and is a place where people can unwind after a hard days or weeks work. The proponents are quite genuine in their approach and are attempting to overcome as many issues as they can through this process and I applaud this approach.

The Council needs to take into consideration many things before making a decision as to what direction it takes with this proposal. What are the positive aspects of the proposal, what are the limitations that the community and community organisations will face, is there a potential to create a precedent that may prove difficult in the future, what are the negative issues around having no hotel for six months and a whole host more.

Certainly the proposal provides some negative outcomes but of course there are positive aspects that cannot be denied. If Council agrees to the proposal, what kind of conditions will it wish to impose on the lessees, what level of payment will be required to provide the facility, how will it determine liability for damage if it occurs? There are many questions and issues to deal with before the proposal can be approved.

From an operational perspective it is probably not ideal to have a hotel co-located within a council sporting/meeting facility but generally I am quite ambivalent as to whether the proposal is approved or not as long as there is a detailed set of conditions and requirements for the proponents, however the licence issue is one that is slightly worrying given that there is no legislative framework for the suspension of a licence temporarily with automatic repeal of the suspension.

Much of the resistance from the Nyabing Bowling Club could be taken out of the proposal by changing the period from 1 March to 1 May but we would need to ascertain whether this would be acceptable to the proponent. With a four month window it may well not be

viable to change the venue. On the other hand if there are construction delays and the project delivery is delayed by two or three months this may well again have repercussions for the community.

It may well prove that there is no easy way to allay the concerns of the community or meet the expectations of all parties involved no matter which way the Council sees this issue. Even with stringent conditions the community may not be on side and the reverse may apply if the conditions are too onerous. Likewise there may be other problems with conditions that are too lax.

The Council must now decide whether it wishes to invest further time and effort in trying to find a universally palatable way forward regarding this proposal.

ATTACHMENTS

Letter – Victoria & Pepe Dart
Letter – Nyabing Bowling Club

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Council:

1. **Agrees/Declines to further consider the proposal for the hotel to transfer its operation to the Nyabing Pavilion for a period of six months as outlined within this item,**
2. **Delegate authority to the CEO, should the Council agree to further consider this proposal, to further negotiate with all parties to identify a suite of conditions that will be the best compromise situation,**
3. **Report the result of those negotiations to the Council for final consideration of the proposal.**

4803 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr S Crosby / Cr R Jury

That the Council :

1. **Agrees/Declines to further consider the proposal for the hotel to transfer its operation to the Nyabing Pavilion for a period of six months as outlined within this item,**
2. **Delegate authority to the CEO, should the Council agree to further consider this proposal, to further negotiate with all parties to identify a suite of conditions that will be the best compromise situation,**
3. **Report the result of those negotiations to the Council for final consideration of the proposal.**

LOST 0/8
By Simple Majority

4804 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr G Collins / Cr S Crosby

That the Council :

1. Delegate authority to the CEO, should the Council agree to further consider this proposal, to further negotiate with all parties to identify a suite of conditions that will be the best compromise situation,
2. Report the result of those negotiations to the Council for final consideration of the proposal.

CARRIED 8/0
By Simple Majority

10. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN
11. NEW BUSINESS OF AN URGENT NATURE AGREED TO BY RESOLUTION OF COUNCIL
12. INFORMATION BULLETIN

4805 - COUNCIL RESOLUTION (Officer Recommendation)

MOVED Cr T Borgward/ Cr R Jury

That the Information Bulletin be received by Council.

CARRIED 8/0

13. **MATTERS BEHIND CLOSED DOORS**

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

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

14. **MEETING CLOSED**

There being no further business the Shire President, Cr Megan Tuffley, closed the meeting at 5.46pm.

