



10/06/2022

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Dear President and Councillors,

### **NOTICE OF AN ORDINARY COUNCIL MEETING**

Please be advised that an Ordinary meeting of the Council of the Shire of Kent is to be held on

**Wednesday, 15 June 2022**  
**At the Council Chambers,**  
**Nyabing**  
**Briefing Session - 4.30pm**  
**Council Meeting - 5.30pm**

#### **Open Council Meetings – Procedures**

1. All Council meetings are open to the public, except for matters raised by Council under “confidential items”.
2. Members of the public may ask a question at an ordinary Council meeting under “public question time”.
3. Members of the public who are unfamiliar with meeting procedures are invited to seek advice at the meeting. If unsure about proceedings, just raise your hand when the presiding member announces public question time.
4. All other arrangements are in accordance with the Council’s standing orders, policies and decisions of the Shire.

Yours faithfully,

**ADAM MAJID**  
**CHIEF EXECUTIVE OFFICER**

#### **Disclaimer**

*Members of the Public are advised that the recommendations to Council contained within this agenda and decisions arising from the Council Meeting can be subject to alteration. Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council’s decision with respect to any particular issue.*

**AGENDA**  
**15 JUNE 2022**

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**1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS**

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

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

Elected Members:

Staff:

Visitors:

Gallery:

**APOLOGIES****APPROVED LEAVE OF ABSENCE****ABSENT****3. DISCLOSURES OF INTEREST**

Section 5.65 and 5.70 of the *Local Government Act 1995*

Elected Member or officer, who has an interest in any matter for discussion and attends at a Committee/Council Meeting, must disclose the nature of the interest in a written notice give to the Chief Executive Officer before the meeting, or at the meeting prior to discussion on the matter.

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 that interest must be stated.

- Declaration of Financial Interests:
- Declarations of Proximity Interests:
- Declarations of Impartiality Interests:

**4. PUBLIC QUESTION TIME****5. APPLICATIONS FOR LEAVE OF ABSENCE**

Section 5.25 *Local Government Act 1995*

**6. CONFIRMATION AND RECEIVING OF MINUTES/BUSINESS ARISING**

**6.1.1 ORDINARY MEETING OF COUNCIL HELD WEDNESDAY 18 MAY 2022**

**OFFICER RECOMMENDATION**

**That the minutes of the Ordinary Council Meeting of the Shire of Kent held at the Council Chambers, on Wednesday 18 May, 2022 be CONFIRMED.**

**7. ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION**

**8. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**

**9. OFFICER REPORTS**

**9.1.1 MONTHLY FINANCIAL REPORTS TO 31 MAY 2022**

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	N/A
<b>LOCATION:</b>	N/A
<b>AUTHOR:</b>	Christie Smith – Manager Corporate
<b>REPORTING OFFICER:</b>	Christie Smith – Manager Corporate
<b>FILE NO:</b>	FIN.73
<b>ASSESSMENT NO:</b>	N/A
<b>ATTACHMENTS:</b>	Attachment 1 - Monthly Financial Reports to 31 May 2022
<b>DISCLOSURE OF INTEREST:</b>	Nil

**PURPOSE**

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

**BACKGROUND**

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

**COMMENT**

The Monthly Financial Reports as presented indicate that Council continues to be in a sound financial position. The audited financials to 30 June 2021 are now finalized and authorized by the auditors and the Office of the Audit General, Council endorsed these at the Ordinary Meeting of Council held 16 March 2022.

**STATUTORY IMPLICATIONS**

Local Government Act 1995 – Section 6.4

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

**POLICY IMPLICATIONS**

Policy 4.1 Accounting Policies

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

**FINANCIAL IMPLICATIONS**

Ongoing management of Council funds

**STRATEGIC IMPLICATIONS**

Community Strategic Plan 2017-2027

Civic Leadership Objective - Continually enhance the Shire's organisational capacity to service the needs our community

Outcome 4.1 An efficient and effective organisation

4.1.1 Continually improve operational efficiencies and provide effective services.

4.1.2 Continue to enhance communication and transparency.

**RISK IMPLICATIONS**

N/A

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council receive the following Monthly Financial Reports as presented:**

- **Monthly Financial Reports to 31 May 2022**

**9.1.2 SCHEDULE OF ACCOUNTS PAID TO 31 MAY 2022**

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	N/A
<b>LOCATION:</b>	N/A
<b>AUTHOR:</b>	Adele Collins – Finance Officer
<b>REPORTING OFFICER:</b>	Christie Smith – Manager Corporate
<b>FILE NO:</b>	NAM45
<b>ASSESSMENT NO:</b>	N/A
<b>ATTACHMENTS:</b>	Attachment 1 - Schedule of accounts paid Attachment 2 - Schedule of direct debits
<b>DISCLOSURE OF INTEREST:</b>	Nil

**PURPOSE**

Council endorsement of payment to Creditors under CEO Delegated Authority 2.1.2.

**BACKGROUND**

Details payments made to creditors since last Council Meeting.

**COMMENT**

The Schedule of Accounts Reports as presented, indicate that Council continues to be in a sound financial position.

**STATUTORY IMPLICATIONS**

Local Government Act 1995 – Section 6.4;

Local Government (Financial Management) Regulations 1996 – Part 2 – Regulation 11 & 12

**POLICY IMPLICATIONS**

Policy 4.1 Accounting Policies

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

**FINANCIAL IMPLICATIONS**

Ongoing management of Council funds

**STRATEGIC IMPLICATIONS**

Community Strategic Plan 2017-2027

Civic Leadership Objective - Continually enhance the Shire's organisational capacity to service the needs our community

Outcome 4.1 An efficient and effective organisation

4.1.1 Continually improve operational efficiencies and provide effective services.

4.1.2 Continue to enhance communication and transparency.

**RISK IMPLICATIONS**

N/A

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

That Council endorse the payments from the Municipal Fund and Trust Fund for the period ending 31 May 2022:

<b>Municipal Fund</b>	<b>\$381,485.21</b>
<b>Trust Fund</b>	<b>\$ 0.00</b>
<b>Direct Debits</b>	<b>\$ 85,057.81</b>
<b><u>TOTAL</u></b>	<b><u>\$466,543.02</u></b>



**9.1.3 STATUS OF COUNCIL DECISIONS – MAY 2022**

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	N/A
<b>LOCATION:</b>	N/A
<b>AUTHOR:</b>	Christie Smith – Manager Corporate
<b>REPORTING OFFICER:</b>	Adam Majid – Chief Executive Officer
<b>FILE NO:</b>	NAM35
<b>ASSESSMENT NO:</b>	N/A
<b>ATTACHMENTS:</b>	Attachment 1 - Action Sheet Attachment 2 - Outstanding Matters List
<b>DISCLOSURE OF INTEREST:</b>	Nil

**PURPOSE**

To inform the Council of the actions taken in relation to Council decisions.

**BACKGROUND**

By providing this report to Council as an agenda item on a monthly basis will keep Council informed on the progress of decisions made.

**COMMENT**

The status of Council decisions/resolutions is included as an attachment and updated monthly.

It is requested that action items be reviewed at each Council meeting.

**STATUTORY IMPLICATIONS**

Local Government Act 1995 – Section 5.41

The CEO's functions are to:-

- c) cause Council decisions to be implemented

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Community Strategic Plan 2017-2027

Civic Leadership Objective - Continually enhance the Shire's organisational capacity to service the needs our community

Outcome 4.1 An efficient and effective organisation

4.1.1 Continually improve operational efficiencies and provide effective services.

4.1.2 Continue to enhance communication and transparency.

**RISK IMPLICATIONS**

N/A

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**That the following be received by the Council:**

- 1. The Action Sheet for the Council Meeting 18 May 2022;**
- 2. The Outstanding Matters list dated 15 June 2022.**

**9.1.4 DRAFT DISABILITY ACCESS AND INCLUSION PLAN 2022 - 2027**

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	N/A
<b>LOCATION:</b>	N/A
<b>AUTHOR:</b>	Nathanael Taekema – Governance Officer
<b>REPORTING OFFICER:</b>	Adam Majid – Chief Executive Officer
<b>FILE NO:</b>	GOV.231
<b>ASSESSMENT NO:</b>	N/A
<b>ATTACHMENTS:</b>	<ul style="list-style-type: none"> <li>• Attachment 1 - DRAFT Shire of Kent Disability Access and Inclusion Plan 2022 – 2027</li> <li>• Attachment 2 - Survey - All Response Data</li> <li>• Attachment 3 - Survey - Open Ended Responses</li> </ul>
<b>DISCLOSURE OF INTEREST:</b>	Nil

**PURPOSE**

Council to endorse a draft Disability Access and Inclusion Plan (DAIP) for 2022 – 2027 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 2022, outlines seven outcome areas and the strategies to achieve those outcomes. Legislation requires a report (Implementation Plan) 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 Survey a questionnaire was included seeking feedback and comments on the current DAIP. The survey identified four 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. The consultation found a common community call for more accessible doors, more handrails in certain ramped areas, better signage, and more wheelchair accessible footpaths.

**COMMENT**

The Shire of Kent has a number of projects relevant to community feedback underway.

The Shire of Kent is considering installing an automatic door and wheelchair accessible service desk at the Administration Office as part of a future upgrade. Council has nominated a works schedule for Local Roads and Community Infrastructure Program (LRCIP) Phase 3 and submitted to the Department of Infrastructure, Transport, Regional Development and Communications the following projects in the 2022-23 period:

- Pingrup Pavilion – Upgrade Ladies Ablutions; reconfigure/design ramps, steps and concrete areas including installation of balustrade where required.
- Pingrup Caravan Park - Renovations to camp kitchen, including new oven and stand along TV room; realign caravan bays to 45 degree angles and concrete; upgrade to lighting, water and new power domes; concrete pathways; installation fire pit.
- Back Lane behind the commercial businesses in Nyabing - Drainage and reseal.
- Pingrup Silo Trail – Capital works including redevelopment; signage and furniture.
- Nyabing and Pingrup Footpath Upgrade

See Attachment 3 to read the communities' specific disability and inclusion feedback and suggestions.

**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**

Community Strategic Plan 2017-2027

Civic Leadership Objective - Continually enhance the Shire's organisational capacity to service the needs our community

Outcome 4.1 An efficient and effective organisation

4.1.1 Continually improve operational efficiencies and provide effective services.

4.1.2 Continue to enhance communication and transparency.

**RISK IMPLICATIONS**

N/A

**VOTING REQUIREMENT**

Simple Majority

**RECOMMENDATION**

**That Council endorse the attached review of the Disability Access and Inclusion Plan 2022 - 2027.**

**9.1.5 NYABING COMMUNITY CHURCH**

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	Nyabing Community Church
<b>LOCATION:</b>	Lots 30, 31 and 32 Aspendale Street, Nyabing
<b>AUTHOR:</b>	Adam Majid – Chief Executive Officer
<b>REPORTING OFFICER:</b>	Adam Majid – Chief Executive Officer
<b>FILE NO:</b>	SERV.58
<b>ASSESSMENT NO:</b>	A192
<b>ATTACHMENTS:</b>	Correspondence
<b>DISCLOSURE OF INTEREST:</b>	Nil

**PURPOSE**

Council's further consideration is required in respect of the proposal by the Nyabing Community Church to surrender their building and land to the Shire.

**BACKGROUND**

An initial meeting between representatives from the church committee met with the CEO on 11 March 2022 to discuss the Nyabing Community Church building.

At the meeting, representatives identified that as a committee, their numbers have decreased to four in number and no services are held in the building. This has led to an inability to adequately provide care and maintenance to the building.

Initial correspondence was presented to Council at the April 2022 Ordinary meeting where the committee had suggested that the Shire assume control of the Church building. There was no additional evidence of any other suggested solutions in relation to maintain the building and previous efforts by the committee to find an alternative user was unsuccessful. Accordingly, Council resolved as follows:

*That Council:*

1. *Notes the correspondence from the Nyabing Community Church Committee in relation to ongoing care and maintenance of the Church building.*
2. *Requests the Chief Executive Officer to enter into further discussions regarding potential alternative arrangements including discussions pertaining to future uses of the freehold land titles then report back to Council.*

Since the above, a further meeting between the committee and CEO has taken place. In essence, the committee is no longer able to meet the needs of maintaining the building and it is no longer being used. As the building is no longer being used for religious purposes, the committee is also unable to maintain its insurance policy which will lapse at the end of the financial year.

Clarity has been obtained in relation to the freehold titles where it is proposed that the committee are willing to transfer ownership for use at the Shire's discretion.

**COMMENT**

Ultimately, the committee is resolute in its position that it is no longer able to provide guardianship of the Church building and surrounds.

The building itself is relatively well maintained and outgoings on an annual basis are very minor. Should Council decide to take control of the building, it would need to include it on both its asset and insurance registers. An adjustment to insurance premiums would be made by the Shire's insurer which is expected not to exceed \$200-\$400 over a period of 12 months.

**STATUTORY IMPLICATIONS**

*Local Government Act 1995*  
*Land Administration Act 1997*

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Should Council decide to take control of the Church building and ownership of the freehold titles, transfer costs would be required. This could be adequately covered by annual budget allocations for legal services.

**STRATEGIC IMPLICATIONS**

Nil

**RISK IMPLICATIONS**

Where council takes on assets, there are financial risks associated with ongoing care and maintenance that will need to be factored into ongoing asset management.

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**That Council:**

- 1. Notes the correspondence from the Nyabing Community Church Committee dated 6 June 2022 in relation to ongoing discussions relating to the care and maintenance of the Nyabing Community Church building.**
- 2. Agrees to assume all control, care and maintenance of the Nyabing Community Church and requests the Minister for Lands to amend the Crown Land Title accordingly;**
- 3. Accepts the offer to transfer ownership of Lots 30 and 32 Aspendale Street, Nyabing (DP 79324) at no cost to the Shire; and**
- 4. Requests the Chief Executive Officer to arrange for legal services to undertake the land transfer and authorise the Shire President and Chief Executive Officer to sign and apply the Shire Common Seal to all necessary documents.**

**9.1.6 REQUEST FOR FEE WAIVER FOR NYABING PAVILION HIRE FEES**

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	N/A
<b>LOCATION:</b>	
<b>AUTHOR:</b>	Adele Collins – Finance Officer
<b>REPORTING OFFICER:</b>	Christie Smith – Manager Corporate
<b>FILE NO:</b>	FIN.102 – Debtor Invoicing
<b>ASSESSMENT NO:</b>	Nil
<b>ATTACHMENTS:</b>	Nil
<b>DISCLOSURE OF INTEREST:</b>	Nil

**PURPOSE**

Council to consider a request for fee waiver for hire fees of the Nyabing Pavilion for Active Farmers to allow the continuation and growth of the not-for-profit organisation.

**BACKGROUND**

The following email has been received from Boyd Rae, Active Farmers:

*Hi, my name is Boyd Rae, I am the Active Farmers - West Australian Trainer Manager. I want to firstly thank you for your time and secondly ask you for some support to ensure the continuation of Active farmers within your community.*

*Active Farmers is a registered Not For Profit Organisation and Health Promotion Charity that brings together farmers and other locals in small farming communities through regular group fitness in a fun and interactive environment.*

*Designed especially for farmers with limited or no local access to fitness expertise and equipment, Active Farmers provides motivational, challenging and fun training sessions to help promote great physical health and mental wellbeing, and that suit all levels of fitness and experience.*

*Active Farmers also provides a range of other services to complement our ultimate aim of improving mental health in regional areas, including health related workshops (mental health first aid, nutrition, mindfulness) and larger events such as Active Farmers Games.*

*For financial details, please visit the Australian Charities and Not-for-profits Commission and search for Active Farmers. The funds received from participants goes into a pool which in turn funds/supports existing and new Active Farmers communities. The trainers are paid \$50 per class regardless of attendance, this is to ensure the continuation of a very much needed service in small rural communities during trying times such as harvest and seeding.*

*Many Active Farmers communities across Australia appreciate and understand the importance of improving/ maintaining their residents health and wellbeing and have chosen to support the Not-for-profit by heavily reducing venue hire fees. Over half of the communities currently running have completely removed the venue fee; helping ensure the continuation and growth of Active Farmers.*

*Any help is greatly appreciated and our goal at Active Farmers is the build stronger and more resilient communities. Thank you so much for you time and consideration*

**COMMENT**

Active Famers currently run two sessions weekly on Wednesdays in Nyabing.

**STATUTORY IMPLICATIONS**

Local Government Act 1995: Section 6.17

**POLICY IMPLICATIONS**

Policy 3.1.8 Request for Donations and Financial Assistance

Objective: to provide guidelines for the application; assessment and determination of requests received for funding from not for profit community based organisations, event organisers and individuals to support the promotion and development of projects with social, economic, recreational and cultural benefits to the community.

**Halls and Pavilions – Hire Fees**

The fee rate for Halls, Pavilions and equipment hire shall be as set annually by Council.

Where the following bodies hire Halls, Pavilions, furniture and equipment, the hire fee will be donated subject to the usual conditions of hire:-

- Health Department of WA Clinics
- Doctors
- Police
- Kent District Based Groups:-
  - Church Groups
  - Country Women’s Association
  - Dancing Schools (volunteer only)
  - Guides & Brownies
  - Kindergartens
  - Music Teachers (volunteer only)
  - Schools
  - Parents & Citizens Associations (for the purpose of fundraising only)
  - Service Clubs
  - Sporting Association
  - St. John Ambulance Association
  - Craft Groups
  - “Other non-profit Community Groups”

**FINANCIAL IMPLICATIONS**

Active Farmers are currently being charged the low impact usage fee of \$12 per hour. Donation of the Nyabing Pavilion usage fees will not have a major impact on the overall finances.

**STRATEGIC IMPLICATIONS**

There are no strategic implications for this report.

Shire of Kent Community Strategic Plan 2017 – 2027

Social – to provide community facilities and promote social interaction

- Maintaining a healthy and safe community
- Existing strong community spirit and pride to be fostered, promoted and encouraged.

**RISK IMPLICATIONS**

N/A

**VOTING REQUIREMENT**

Absolute Majority

**OFFICER RECOMMENDATION**

That Council consider Active Farmers as “other non-profit community groups” under Policy 3.1.8 and donate all future fees for hire of the Nyabing Pavilion for Active Farmer sessions to take place.



### 9.1.7 LEGISLATIVE IMPACTS AND OPPORTUNITIES FOR VOLUNTEER BUSH FIRE BRIGADES – PROPOSED WALGA ADVOCACY POSITION

<b>PROPOSED MEETING DATE:</b>	15 June 2022
<b>PROPONENT:</b>	N/A
<b>LOCATION:</b>	N/A
<b>AUTHOR:</b>	Matt Castaldini Community Emergency Services Manager
<b>REPORTING OFFICER:</b>	Adam Majid – Chief Executive Officer
<b>FILE NO:</b>	SAFE.99
<b>ASSESSMENT NO:</b>	N/A
<b>ATTACHMENTS:</b>	<ul style="list-style-type: none"> <li>• Attachment 1 - Ferguson Report</li> <li>• Attachment 2 - Overview of WHS Act 2020</li> </ul>
<b>DISCLOSURE OF INTEREST:</b>	Nil

#### PURPOSE

The purpose of this item is for Council to consider the adoption of an advocacy position as proposed by WALGA for the future management of local Bush Fire Brigades, namely transferring brigades to state government control.

#### SUMMARY

- On 30 March 2022 the provisions of the new *Work Health and Safety Act 2020 (WHS Act 2020)* were enacted, clearly detailing the high standard with regards to duty of care that Persons Conducting a Business or Undertaking (PCBU) who are responsible for volunteers now carry.
- Emergency response is beyond the capacity, capability and resources of local government.
- While Western Australian health and safety legislation is now in alignment with the rest of Australia, we are the only state where the rural firefighting capability does not sit with the State or Territory Government.
- The *WHS Act 2020* provides a new model of concurrent duty of care, detailing how local governments now have a concurrent duty of care to volunteer responders from neighboring areas when they respond within our district and for our neighbours when our volunteers provide support to them. *The key challenge here is that there are no legislated statewide standards for Personal Protective Clothing and Equipment being used OR training standards.*
- The State Government has agreed on a review of the three emergency services Acts, the Fire Brigades Act 1942, the Bush Fires Act 1954 and the Fire and Emergency Services Act of 1998, to create a single comprehensive Emergency Services Act to improve community safety and better support all of our emergency services workers into the future. This work is being undertaken by DFES. (<https://www.dfes.wa.gov.au/site/about-us/corporate-information/legislation/legislation.html>).
- This review represents a once in a generation opportunity have this matter addressed and give volunteer bush fire brigades the level of overarching support they need, through a State Government agency or department with new legislation designed to undertake this role more effectively than under resourced local governments.
- It is not appropriate that the current hybrid responsibility sharing arrangement continue between Local Government and the State Government, for either historic or power sharing reasons. This will perpetuate the current mixed message and unclear lines of responsibility that comes from a legislative underpinning of volunteer bush fire brigades as local government entities, while management, training, operational support and limited funding are provided through DFES. This will not ultimately be in the best interests of the volunteers and their ability to be supported in the important role they undertake in managing bush fire risk for both our local communities and the state.
- WALGA has issued a Proposed Advocacy Position and InfoPage which proposes a hybrid model allowing local governments to opt in or out of management of volunteer bush fire brigade models. A 6-week consultation is underway with the matter to be presented to WALGA State Council in September 2022, with responses required by 8 July 2022.

#### BACKGROUND

Volunteer Bush Fire Brigades have been a vital part of the regional Western Australian emergency services fabric since 1954 in a formal legislated system, but before that in heart of the unsupported community

volunteer service groups. The continuation of this service by the volunteers, ensuring the continuity of the brigades along with the safety of the members, remain as the key priorities.

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

The Ferguson Report into the 2016 Waroona Fire highlights parallels that we have noted already such as the following summary comment from page 12;

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

Several recommendations and opportunity statements were made in the report, include specific items regarding the management of bush fire brigades and the perceived need to bring these brigades under state management in an effective and supportive manner.

The *WHS Act 2020* brings a suite of changes as our health and safety legislation is harmonised with the rest of Australia. For volunteer bush fire brigades, we generally talk to a few key points to help them understand how it impact them, which is equally relevant here.

- Section 7: The meaning of the term ‘Worker’ and that it now defines volunteers as workers, in our case volunteer firefighters are workers of the Shire.
- Section 16: Concurrent duty of care provisions where more than 1 person can have a duty at one time. (e.g. Farmer to their workers when a fire is on their property AND the Shire is in control of the fire, and Shire volunteers responding into neighbouring Shire to provide support.)
- Section 19: Primary duty of care which we summarise to the requirement to train and equip workers for the task they are undertaking, or the situations they are entering or exposed to in the course of their ‘work’.
- Section 28: Workers have a duty to follow and comply with the requirements set by the organisation with respect to the ‘work’ they are completing on their behalf.
- Section 47: Duty to consult with workers prior to the implementation of policies or directions given with respect to Work Health and Safety in the ‘workplace’.

A key challenge for the local government derived from Section 16 is that as there is no consistent approach to the management of bush fire brigades across the state. One highlighted risk to local government is where either our responders support emergency response outside our boundaries or neighbouring volunteers enter our boundaries to provide support we have a legislated duty of care. The issue is worrying when we examine and compare personal protective clothing and equipment requirements, training requirements and standards, fire management practises and protocols from our neighbours to our own and identify the differences.

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

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

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

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

### Maximum penalties for breach of health and safety duty offences

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

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

### Exceptions (section 34)

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

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

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

#### **COMMENT**

Based on our current state and the low level of provision of personal protective clothing and equipment, I believe we could be liable for not fulfilling our Primary Duty to our volunteer 'workers'.

The fire and emergency services industry is evolving with health and safety concerns and practises that are common in the Perth metropolitan area not being communicated clearly to, or the protections been rolled out in rural areas. Key examples are the provision of helmets for the protection from falling tree limbs or debris and provision of respiratory protection equipment to minimise harm from the exposure to smoke, considered toxic and carcinogenic.

Volunteers are now considered the same as our Shire staff and should be provided for as such. The proposed budget line items for the Bush Fire Brigades has been updated to, if approved, take steps to close the gap of issued safety equipment.

Additionally, we are actively taking measures to make training available to our volunteers to meet our primary duty of care.

Consultation was sought from and received from bush fire service volunteers of the Shire. Feedback that was received was entirely supportive of transitioning brigades and management to the 'State' with a primary concern around the liability and risk to the Shire that was deemed as unacceptable.

Concerns were raised as to the model of how services would be delivered in the new environment with key concerns being raised around issuing of Harvest and Vehicle Movement Bans, Restricted burning times and permits to burn. It was requested that these concerns be reflected in the resolution of council that is submitted to WALGA.

It was also noted from volunteers that the hybrid approach seemed fraught with danger due to the ability for different standards and requirements to be set across the state.

**STATUTORY IMPLICATIONS**

*Work Health and Safety Act 2020*

*Bush Fires Act 1954*

**POLICY IMPLICATIONS**

N/A

**FINANCIAL IMPLICATIONS**

There are significant financial implications to ensure active progression towards compliance with the WHS Act 2020 with respect to the management and operation of our Bush Fire Brigades.

*It is important to note that this resolution to demonstrate our position to WALGA does not remove the financial implications until legislation is changed and/or brigade management is transferred to the state government.*

- Supply of fit for purpose Personal Protective Clothing and Equipment for all Volunteers estimated at \$195,000.00 for initial issue for 130 registered volunteers at \$1,500.00 each. (Not all volunteers are registered yet, with our membership number expected to rise.)
- Fair Wear and Tear replacement of personal protective clothing and equipment estimated at \$39,000.00 per annum for 130 volunteers
- Increasing insurance premiums through LGIS due to the high risk rating. Personal accident/ injury premiums are currently \$91.20 per volunteer and expected to rise.
- A total Cost of delivering a comprehensive training program to provide the required training for our volunteers is estimated at \$84,680.00 including catering and provision of training materials and resources. This does not include salaries, training contractor costs, travel and accommodation for volunteers, or emergency driver training for brigades with supplied fire appliances. The annual cost will be lower as not all the courses would be completed in one year.
- Fire Stations to be audited and renovated to the relevant building codes where required. (Not undertaken.)

**STRATEGIC IMPLICATIONS**

Shire of Kent Community Strategic Plan 2017-2027

Civic Leadership – Continually enhance the Shire's organisational capacity to service the needs of our community community values

Outcomes: An efficient and effective organisation

**RISK IMPLICATIONS**

N/A

**VOTING REQUIREMENT**

Simple Majority

**RECOMMENDATION**

That Council endorses:

1. **The WALGA proposed advocacy position to the State Government for the: “Transfer - Responsibility for management of all BFBs is transferred to the State Government, consistent with the arrangements in other States and Territories”.**
2. **In addition to the WALGA position Option 4, the Shire of Kent notes the following items of significance:**
  - **Key local stakeholders are to be included in legislation for the enactment of Harvest and Vehicle Movement Bans**
  - **Key Local stakeholders are to be included in decisions regarding amendment of Prohibited and Restricted Burning Times.**
  - **Key local stakeholders are to be utilised for the issuance of permits to set fire to the bush**

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

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

### 11.1.1 CONFIDENTIAL - APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER

<b>PROPOSED MEETING DATE</b>	15 June 2022
<b>PROPOSER:</b>	NA
<b>LOCATION:</b>	NA
<b>AUTHOR:</b>	Christie Smith, Manager Corporate
<b>REPORTING OFFICER:</b>	Cr Scott Crosby, Shire President
<b>FILE NO:</b>	NAM45
<b>ASSESSMENT NO:</b>	NA
<b>ATTACHMENTS:</b>	NA
<b>DISCLOSURE OF INTEREST</b>	Nil

#### **PURPOSE**

Council to consider and approve the appointment of the preferred external candidate as Acting CEO of the Shire of Kent for the period of approximately **9 August 2021** on an ongoing basis until a permanent Chief Executive Officer (CEO) is appointed.

#### **BACKGROUND**

At the Special Council Meeting held on Thursday 1 July 2021, council endorsed the special leave arrangements between Mr Rick Miller and the Shire of Kent. Mr Miller will commence leave on approximately 6 August 2021, following completion of the required tasks as identified in Item No 3 of the Deed of Release.

Upon recommendation to Council by Mr Miller that it seek to appoint an Acting CEO during his leave and until a permanent CEO is appointed, Mr Clarke was approached and indicated that he would accept this role, subject to Council approval. Mr Clarke is suitably qualified for this position.

Although Mr Clarke retired in 2020, he returned to Local Government to take up the role of Acting CEO at the Shire of Capel. This appointment is due to cease at the end of July 2021 and Mr Clarke would be available to commence as Acting CEO of the Shire of Kent by 23 August 2021. He has a pre-booked event to attend at the end of his tenure at Capel, but if this prior arrangement is cancelled then Mr Clarke would be available to commence once his position at the Shire of Capel ends.

#### **COMMENT**

Where the role of CEO is not fulfilled for a significant period, this leads to increased risk to the operations and governance of the local government. Therefore, local governments are to make arrangements to temporarily replace a CEO for any period less than twelve months, for example, when a CEO is on planned or unplanned leave or in between CEOs.

Mr Clarke is a highly experienced CEO with over **33 years** experience in the WA local government industry. He held the position of CEO at the **Shire of Plantagenet for over 19 years and is very familiar with many of the local governments that make up Great Southern region, including the Shire of Kent.**

Mr Clarke has indicated that he would be happy to reside in the **one bedroom unit at 21A George Street Nyabing until a permanent CEO is appointed. As this unit is currently unfurnished the Shire President has indicated that this unit will require to be furnished for the Acting CEO to reside in and an additional allowance of up to \$10,000 will be required for the purchase of appliances, furniture, linen, crockery and cutlery.**

While recognising that the Deputy Chief Executive Officer and the Manager of Works are both capable of fulfilling the Acting CEO role, any such appointment would compromise their existing duties. Without ready replacements, their capacity would be heavily impacted. It is recommended that Mr Clarke be appointed to

the Acting CEO position on an ongoing basis, with a one (1) month notice period, while the CEO recruitment activity is being conducted.

### **STATUTORY IMPLICATIONS**

Section 5.39C of the Local Government Act 1995 Policy for temporary employment or appointment of CEO states that:

1. A local government must have a policy that sets out the process to be followed by the local government in relation to the following:
  - a. the employment of a person in the position of CEO for a term not exceeding 1 year; and
  - b. the appointment of an employee to act in the position of CEO for a term not exceeding 1 year.

### **POLICY IMPLICATIONS**

Council is to adopt the Temporary Employment or Appointment of Chief Executive Officer Policy at the Ordinary Meeting of Council to be held on **23 July 2021**.

### **FINANCIAL IMPLICATIONS**

The 2021/2022 budget includes an allocation for the CEO position. Leave entitlements are fully cash backed from Reserves. The Acting CEO will reside at **21A George St** Nyabing. As directed by the Shire President, **furniture, appliances, linen, crockery and cutlery, up to \$10,000, will be required to furnish the property**. This is unbudgeted expenditure and therefore requires approval by Council to be included in the 2021/2022 budget.

### **STRATEGIC IMPLICATIONS**

#### **Community Strategic Plan 2017-2027**

**Civic Leadership Objective** - Continually enhance the Shire's organisational capacity to service the needs of our community.

**Outcome 4.1** An efficient and effective organisation

- 4.1.1 Continually improve operational efficiencies and provide effective services.
- 4.1.2 Continue to enhance communication and transparency.

### **RISK IMPLICATIONS**

N/A

### **VOTING REQUIREMENT**

Absolute Majority

### **RECOMMENDATION**

That Council:

1. **Appoint Mr Peter Clarke to the position of Acting Chief Executive Officer of the Shire of Kent on an ongoing basis from **9 August 2021**, subject to a satisfactory result of a National Police Clearance;**
2. **Confirms that the Council believes that Mr Peter Clarke is suitably qualified for the position and that the Council is satisfied with the provisions of the proposed employment contract; and**
3. **Authorise the Shire President to enter into employment contract negotiations with Mr Peter Clarke, in accordance with the provisions of the Contract of Casual Employment between the Shire of Kent (Shire of Kent) and Mr Peter Clarke (Employee) effective **9 August 2021**.**
4. **To provide furnished accommodation at **21A George Street** Nyabing for the Acting CEO, Council authorises **expenditure of up to \$10,000 to be included in the 2021/2022 budget for the purchase of **appliances, furniture, linen, crockery and cutlery**.****

**12. MATTERS BEHIND CLOSED DOORS**

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

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

**13. MEETING CLOSED**