5.0 Governance Framework

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GOVERNANCE FRAMEWORK

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1. Introduction

While good governance doesn't guarantee success, poor governance guarantees failure.

John McKechnie QC, CCC Commissioner

Good governance is about the processes for making and implementing decisions. It is not about making "correct"

decisions, but about the best possible process for making those decisions.

Good decision-making processes have a positive effect on various aspects of local government including consultation policies and practices, meeting procedures, service quality processes, elected member and employee conduct, role clarification and good working relationships.

Good governance leads to good management, good performance, good stewardship of public money, good public engagement and ultimately good outcomes for residents and service users. Good governance enables Shire of Wongan-Ballidu to pursue its vision effectively as well as underpinning that vision with mechanisms for control and the management of risk.

This Governance Framework examines the principles and practices of good governance at the Shire of Wongan-Ballidu.

2. Definitions

Term	Meaning
Act	The Local Government Act 1995.
Administration	The employees and contractors of the Shire of Wongan-Ballidu
ССС	Western Australia's Corruption and Crime Commission
CEO	The Chief Executive Officer, who is the most senior employee in the organisation. The CEO is appointed by and directly accountable to the Council.
Community	The entire population within the Shire of Wongan-Ballidu district. It includes those who work or invest in the district or visit the area for recreational or similar reasons.
Committee member	A member of a committee appointed by the Council, but does not include an elected member.
Council	The elected members meeting as a Council under the Act.
Councillor	An individual elected member.
Committee	A Committee of Council established by the Council under the Act and constituted of elected members, employees and/or members of the public.
Council meeting	A meeting of Council conducted in accordance with the Act.
CPA Australia	Certified Practising Accountants of Australia
District	The area of the State prescribed by legislation that a local government is required to control.
Elected member	The Shire President, Deputy Shire President and Councillors of the Shire.
Local government	A body corporate established under the Act.
Regulations	The Local Government (Administration) Regulations 1996.
Senior Management Group	The CEO and Senior Officers. Can be abbreviated as SMG.
Senior Officer	A senior position in the organisation engaged by and directly responsible to the CEO.
Shire	The local government of the Shire of Wongan-Ballidu. Includes the Council and the administration.
Shire employees	People employed by the CEO to undertake activities to achieve the objectives of the Shire of Wongan-Ballidu.
Shire President	Elected member elected by the Council from amongst elected members.
Strategic Community Plan	The overarching plan that provides strategic direction for all activities and guides the development and provision of the Shire's services and programs.

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3. Local Government Defined

Local government in Western Australia is established under the Act and is the third sphere of government in Australia. Local government has legislative responsibility for many functions and activities that are relevant to a local community. As the level of government often seen as the 'closest' to the community, local government activities relate to matters that are fundamental to people's lives and impact strongly on their quality of life.

Under section 2.5 of the Act each local government throughout the state is established as a corporate body, with perpetual succession and a Common Seal. It has the legal capacity of a natural person which means that it can sue and be sued. However, the State government may dissolve, suspend or amalgamate local governments and may override Council decisions.

2.5.	Local governments created as bodies corporate	
(1)	When an area of the State becomes a district, a local government is established for the district.	
(2)	The local government is a body corporate with perpetual succession and a common seal.	
(3) The local government has the legal capacity of a natural person.		
(4)	The corporate name of the local government is the combination of the district's designation and name.	
	Example: City of (name of district)	
(5)	If the district's name incorporates its designation, the designation is not repeated in the corporate name of the local government.	
	Example: district's name : Albany (Town) corporate name : Town of Albany	
(6)	Proceedings may be taken by or against the local government in its corporate name.	

A local government consists of a Council – the Shire President and Councillors are the Shire's elected members and form the Council, and an organisation – consisting of the CEO and employees.

In accordance section 2.7 of the Act, Council's role is to govern the local government's affairs and be responsible for the performance of the local government's functions. Council must oversee the allocation of the local government's finances and resources and determine the local government's policies.

The following principles apply:

- Elected Members are able to exercise decision-making authority as a member of Council after they are elected and formally sworn in and when they meet as a Council.
- All lawful decisions are made at Council meetings or through delegations that are formally made by Council to the CEO (or a committee). The CEO can also sub-delegate his/her decision-making authority to other employees.

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2.7.	Role of council
(1)	The council —
	(a) governs the local government's affairs; and
	(b) is responsible for the performance of the local government's functions.
(2)	 Without limiting subsection (1), the council is to — (a) oversee the allocation of the local government's finances and resources; and
	(b) determine the local government's policies.
	[Section 2.7 amended: No. 17 of 2009 s. 4.]

The CEO is the only employee appointed by Council and is therefore ultimately accountable to Council. The role of the CEO is detailed in section 5.41 of the Act. All Shire employees are accountable to the CEO.

<mark>5.41</mark> .	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; and	
	(b) ensure that advice and information is available to the council so that informed decisions can be made; and	
	(c) cause council decisions to be implemented; and	
	 (d) manage the day to day operations of the local government; and 	
	(e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and	
	(f) speak on behalf of the local government if the mayor or president agrees; and	
	 (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); and 	
	(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. 	

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3.1 Functions of Local Government

In order to understand good governance in the context of local government, it is necessary to understand the functions of local government, including the following:

Strategic Planning

Planning for the development and wellbeing of the community is a critical role for a local government. The Act requires local governments to develop and adopt a "plan for the future", consisting of two key documents - Strategic Community Plan and Corporate Business Plan – which are informed by resourcing and delivery strategies such as the Long-Term Financial Plan, the Workforce Plan and Asset Management Plan. These plans drive the development of the local government's annual budget and provide the direction for the ongoing management of Shire activities.

Lawmaking and enforcement

Local government makes decisions in areas over which it has legislative authority but cannot duplicate or contradict state or federal law. Laws made by local governments are called local laws and cover such issues as the activities permitted on public land, animal management and use of local government infrastructure. Local laws are enforced by Shire employees.

Local government is also responsible for administering and enforcing state legislation under which it has authority, such as the *Local Government Act 1995*, *Building Act 2011*, *Planning and Development Act 2005*, *Dog Act 1976*, *Cemeteries Act 1986*, *Bush Fires Act 1954*, *Cat Act 2011*, *Caravan Parks and Camping Grounds Act 1995* etc. and associated regulations.

Decisions made by local government must be based on relevant considerations and facts, be procedurally fair and follow the principles of natural justice.

Stewardship of public assets

Effective stewardship of public assets is a key element in ensuring that local government optimises the use of its financial, physical and intellectual resources for the benefit of its residents and ratepayers.

Policy development

An important role of Council is to make policy decisions on behalf of the community, in accordance with its role of providing strategic direction. An essential element of policy making is identifying community needs, setting objectives to meet those needs, establishing priorities between competing needs and allocating appropriate resources. A policy is a decision of Council and sets out agreed views and direction concerning a particular area of responsibility.

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Representation

Elected members represent the interests of and are accountable to all electors, which encompasses ratepayers and residents of the Shire.

Advocacy

Local governments have a role advocating on behalf of their community to state and federal levels of government, statutory authorities and private interests whose activities may have an impact on the community.

Service delivery

Local governments must ensure that services are delivered in the most efficient and effective manner. The Act provides a degree of autonomy to local governments to determine policies, in consultation with their community, about the nature and level of services provided. A local government should ensure the equitable delivery of quality services for which it has responsibility.

3.2 Community Defined

When discussed in connection with good governance the term "community" is often used as if it is a homogenous entity and assumes that there is a single community interest, community demand or community need.

The population of the Shire of Wongan-Ballidu consists of a diverse range of communities, for example, the resident community, the business community, the visitor community, the seniors community, youth community, indigenous community etc.

Often these various communities do not share the same aspirations, goals and interests. One of the challenges for local government is how to govern so that different and often competing interests are recognised, addressed and managed.

When "community" is referred to in this Framework, it means all groups, individuals and interests represented within the Shire of Wongan-Ballidu.

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4. Governance in Local Government

4.1 **Definition of Governance**

Whilst the definitions of governance can vary between the public and private sector, CPA Australia in its publication *"Excellence in Governance for Local Government"* defines governance as follows:

"Governance is the process by which decisions are made and implemented; the process by which organisations go about achieving their goals and producing their outputs and the process by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, ethics, values and culture within the organisation.

Excellence in governance occurs when it is underpinned by accountability, integrity and openness. It involves a focus on clarity of roles and responsibilities, robust systems which support both internal and external accountability and public access to decision-making and information" (CPA 2005).

4.2 Good Governance in Local Government

Shire of Wongan-Ballidu plays a key role in leading its community as well as ensuring the delivery of high quality services to its community. Good governance is important for several reasons: it not only gives the local community confidence in its Council, but it also improves the faith that elected members and employees have in their own local government and its decision-making processes.

Characteristics of Good Governance

Accountable –

Local government has an obligation to report, explain and be answerable for the consequences of decisions it makes on behalf of the community it represents.

Transparent -

The community should be able to follow and understand the decision-making process and the reasons for the decision.

Follows the Rule of The Law -

Decisions are consistent with legislation and are within the powers of Council.

Responsive -

Local government should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.

Equitable and Inclusive –

Community members should be satisfied that their interests have been considered with opportunities provided for all to participate.

Effective and Efficient –

Includes developing the capacity and capability of elected members to be effective and ensuring employees have the capacity and capability and are provided the opportunity to deliver effectively.

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Participatory -

Anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision.

Benefits of Good Governance:

- Promotes community trust and confidence;
- Leads to better decisions for the benefit of the community;
- Encourages elected members and Shire officers to be confident;
- Helps the Shire to meet its legislative responsibilities;
- Supports ethical decision making.

5. Governance Principles

For the purposes of the Shire of Wongan-Ballidu's *Governance Framework*, the principles contained in the *'Excellence in Governance in Local Government'* developed by CPA Australia have been adopted. The principles provide the foundation for good governance and a means for assessing the extent to which good governance is applied at the Shire.

Principle 1 - Culture and Vision

There is a clear **vision** and a *Strategic Community Plan* that is produced through a comprehensive and inclusive process, which is owned by all sectors of the community.

There is a positive *culture* and value system in place that promotes trust, openness and honesty, in which constructive and respectful questioning is encouraged and accountability is clear.

Principle 2 - Roles and Relationships

There is clarity about the roles of local government and there exists a sophisticated approach to defining and implementing these.

There are effective working relationships that are promoted and supported within and between the Shire President, Councillors, CEO and employees.

Principle 3 - Decision-Making and Management

There are effective *decision-making processes* in place that reflect the transparency and accountability which underpin excellence in governance.

There should be robust and transparent *financial management* established and maintained to meet Shire's accountability to its stakeholders, particularly in terms of stewardship of community assets, both now and into the future.

An effective approach to the identification, assessment, monitoring and *management of risks* should be established and maintained.

Effective *delegations* should be implemented and maintained to enable Council to focus on strategic issues.

Principle 4 - Accountability

Local government must account for its activities and have systems and processes that support this *accountability*.

There should be an active *performance management* system in place that enables elected members and the administration to be openly accountable for their performance.

Local governments should establish internal structures that provide for *independent review* of processes and decision-making to assist the Council to meet its accountability to stakeholders.

Consultation should be undertaken that is appropriate to the scope and potential impact of the matter. It should respect the position and opinion of all stakeholders. The outcomes of the consultation should be taken into account when the decision is made and feedback should be provided to those who participated.

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6. Principle 1 – Culture and vision

6.1 Vision

In accordance with section 5.56 of the Act and regulations 19C – 19D of the *Local Government (Administration) Regulations 1996*, the Shire is required to implement an Integrated Planning and Reporting Framework. This involves the development of three key documents and other informing strategies that reflect the priorities and vision of the community.

5.56. Planning for the future

- (1) A local government is to plan for the future of the district.
- (2) A local government is to ensure that plans made under subsection (1) are in accordance with any regulations made about planning for the future of the district.

The *Strategic Community Plan (SCP)* outlines the strategic directions and priorities for action over a ten year period. Developed with the input of the community, Elected Members and Shire officers, the Plan articulates the community's vision and values.

19C. Strategic community plans, requirements for (Act s. 5.56)

- (1) A local government is to ensure that a strategic community plan is made for its district in accordance with this regulation in respect of each financial year after the financial year ending 30 June 2013.
- (2) A strategic community plan for a district is to cover the period specified in the plan, which is to be at least 10 financial years.
- (3) A strategic community plan for a district is to set out the vision, aspirations and objectives of the community in the district.
- (4) A local government is to review the current strategic community plan for its district at least once every 4 years.
- (5) (a) In making or reviewing a strategic community plan, a local government is to have regard to —the capacity of its current resources and the anticipated capacity of its future resources; and

(b)strategic performance indicators and the ways of measuring its strategic performance by the application of those indicators; and

(c) demographic trends.

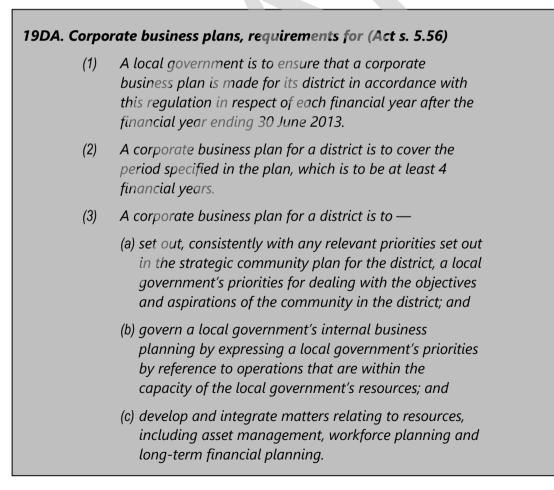
(6) Subject to sub regulation (9), a local government may modify its strategic community plan, including extending the period the plan is made in respect of.

(7) A council is to consider a strategic community plan, or modifications of such a plan, submitted to it and is to determine* whether or not to adopt the plan or the modifications.

*Absolute majority required.

- (8) If a strategic community plan is, or modifications of a strategic community plan are, adopted by the council, the plan or modified plan applies to the district for the period specified in the plan.
- (9) A local government is to ensure that the electors and ratepayers of its district are consulted during the development of a strategic community plan and when preparing modifications of a strategic community plan.
- (10) A strategic community plan for a district is to contain a description of the involvement of the electors and ratepayers of the district in the development of the plan or the preparation of modifications of the plan.

The <u>Long Term Financial Plan</u> (LTFP) outlines how the priorities outlined in the SCP will be financed over the ten year period. The Shire's <u>Corporate Business Plan (CBP)</u> is a business planning tool that translates Council's priorities into operations within the resources available and informs the annual budget process.



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- (4) A local government may modify a corporate business plan, including extending the period the plan is made in respect of and modifying the plan if required because of modification of the local government's strategic community plan.
- (5) A council is to consider a corporate business plan, or modifications of such a plan, submitted to it and is to determine* whether or not to adopt the plan or the modifications.

*Absolute majority required.

- (6) If a corporate business plan is, or modifications of a corporate business plan are, adopted by the council, the plan or modified plan applies to the district for the period specified in the plan.
- (7) If a corporate business plan is, or modifications of a corporate business plan are, adopted by the council, the plan or modified plan applies to the district for the period specified in the plan.

The Shire of Wongan-Ballidu Plans contain the following:

Vision:	Inclusive communities and thriving places, offering a vibrant future for all.
Mission:	To provide the foundations for community and business to lead and flourish into the future.
Community Values:	We value highly: Professionalism
	 Empowerment Resourcefulness
	IntegrityDiversity

6.2 Culture

A positive culture promotes openness and honesty, makes accountability and responsibility clear and encourages debate on important issues. It assists the organisation to retain high calibre employees who want to work and participate in the activities of the Shire.

6.2.1 Organisational Values

The following values are characteristic of a positive culture: *Professionalism*:

- We get things done in a timely and thorough manner.
- We maintain a positive attitude and demeanour.
- We are flexible and cooperative.
- We are organised and punctual.
- We listen diligently.
- We respect the privacy and boundaries of others.
- We communicate and share information ineffectively, openly and thoroughly.

Resourcefulness:

- We contribute actively to new ideas and ways of doing things.
- We constantly look for ways to do things more effectively.
- We have mindsets that encourages us to find a way through our problems.
- We plan carefully and avoid waste.
- Asking for help is not a weakness but a sign of a resourceful individual.
- We are not afraid to operate outside our comfort zone to discover the best for ourselves and our organisation.
- We are fluid and flexible in our working arrangements, bringing the best teams together to get the job done.

Integrity:

- We serve with honesty, pride and loyalty.
- We engender trust in our colleagues and those we serve.
- We are responsible for our own actions and accountable for our mistakes.
- We practice and encourage open and honest communication.
- We lead by example and live our values.
- We respect other's opinions, even if we don't agree with them.

Diversity:

- We value diversity in our community our team, our ideas, experience and skills.
- We are agile in the face of change.
- We recognise that every team member contributes to our success.
- We are forward thinkers.

Empowerment:

- We empower others by being respectful and non-judgemental.
- We value each other's skills and abilities
- We focus on individual strengths and abilities
- We support and encourage involvement in decision making.
- We provide objective feedback in a supportive, non-critical way.

6.2.2 Ethical Behaviour and The Code of Conduct

For people to have faith in those who govern and participate in the governance process, they must have trust that governments are acting for the common good. They must believe that governance is characterised by honesty and integrity and that those in government will behave accordingly.

In June 2020, a review of the *Local Government Act 1995* resulted in the introduction of priority reforms under the *Local Government Amendment Act 2019*. On 2 February 2021, as part of these reforms, the *Model Code of Conduct Regulations 2021* were gazetted prescribing a Model Code of Conduct for Council Members, Committee members and candidates, with effect from 3 February 2021.

The purpose of the Model Code is to guide the decisions, actions and behaviours of members, both in council and on council committees, and of candidates running for election as a council member.

The Shire of Wongan-Ballidu Code of Conduct for Council Members, Committee Members and Candidates 2021 outlines the principles, values and behaviours that the community is entitled to expect of all elected members, committee members and candidates for election. These are to:

- act with reasonable care and diligence
- act with honesty and integrity
- act lawfully
- identify and appropriately manage any conflict of interest
- avoid damage to the reputation of the Shire
- be open and accountable to the public
- base decisions on relevant and factually correct information
- treat others with respect and fairness
- not be impaired by mind affecting substances.

This should be read in conjunction with the <u>Shire of Wongan-Ballidu Standing Orders Local Laws</u> (2010).

Council has adopted policy **5.27** Complaints of alleged breach of the Code of Conduct for Council *Members, Committee Members and Candidates* which outlines the Shire's approach to the management of such complaints.

6.2.3 Reporting serious misconduct to the Corruption and Crime Commission

Both elected members and the CEO have a mandatory duty under section 28 of the *Corruption Crime and Misconduct Act 2003* to report to the CCC any reasonable suspicion of serious misconduct on the part of elected members or employees. Serious misconduct is the type of conduct which involves the misuse of an elected member's or employee's position to obtain a financial advantage; bribery and corruption where money or gifts are provided to coerce an elected member or employee to make a decision in a certain way; stealing from the Shire, lying, fraudulent behaviour and other criminal type behaviours.

28. Certain officers obliged to notify serious misconduct

- (1) This section applies to the following persons
 - (a) the Parliamentary Commissioner;
 - (b) the Inspector of Custodial Services;
 - (c) the principal officer of a notifying authority;
 - (d) an officer who constitutes a notifying authority.
- (2) Subject to subsections (4), (5) and (6), a person to whom this section applies must notify the Commission in writing of any matter
 - (a) which that person suspects on reasonable grounds concerns or may concern serious misconduct; and
 - (b) which, in the case of a person referred to in subsection (1)(c) or (d), is of relevance or concern to that person in his or her official capacity.
- (3) The Commission must be notified under subsection (2) as soon as is reasonably practicable after the person becomes aware of the matter.

6.2.4 Comprehensive Induction Programs

The Shire 's positive culture is passed on to new elected members and employees through effective induction programs.

New elected members come from a variety of backgrounds and may not have experience in governance, local government, organisational behaviour or other fields that are relevant to their roles as elected members. Induction should help elected members to operate in the unique environment of local government to produce good outcomes for their communities.

The Shire's induction programs for elected members and employees focus on:

- the differing and complementary roles and functions of elected members and employees
- communication and working relationships between elected members and employees
- decision-making processes
- responsibility, accountability and delegations
- Code of Conduct, including organisational values and culture

- access to information and confidentiality.
- Council shall ensure adequate resources are allocated in each Council Election year in the Shire Budget to provide for external qualified organisation/persons to undertake the formal induction process of Elected Members.

The Shire of Wongan-Ballidu also invests in and actively encourages training for both elected members and employees to assist in the development of skills required to fulfil their roles.

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7. Principle 2 – Roles and Relationships

7.1 Roles

An understanding and acceptance of the different roles of Council, the Shire President, Councillors, the Chief Executive Officer and employees, together with strong cooperation between all parties, underpins good governance at the Shire of Wongan-Ballidu. While elected members are responsible for strategy and policy, the administration (Chief Executive Officer and employees) is responsible for advice, implementation and operations. This separation of roles is essential for local governments to govern effectively.

While each element of local government has its own role, each may also have a legitimate interest in the role of the others. For instance, while the management structure is the responsibility of the Chief Executive Officer, elected members will have an interest in the management structure and whether it achieves the Council's goals. While the Chief Executive Officer takes the ultimate decision, an astute Chief Executive Officer will always consult the Council before establishing or making significant changes to the management structure.

Similarly, while policy and strategy are elected members' roles, the Chief Executive Officer and employees should be consulted and offer advice when policy or strategy is being developed.

7.1.1 Shire President

At the Shire of Wongan-Ballidu, Council elects the Shire President by secret ballot immediately after local government elections held every two (2) years.

Section 2.8 of the Act outlines the responsibilities of the Shire President which recognises the role of Shire president to represent the Shire at civic and ceremonial functions and to preside at Council meetings.

2.8. Role of mayor or president

- (3) The mayor or president
 - (a) presides at meetings in accordance with this Act; and
 - (b) provides leadership and guidance to the community in the district; and
 - (c) carries out civic and ceremonial duties on behalf of the local government; and
 - (d) speaks on behalf of the local government; and
 - (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
 - (f) liaises with the CEO on the local government's affairs and the performance of its functions.
- (4) Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

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A very specific role for the Shire President is to represent and advocate the decisions of Council and speak on behalf of the Shire. The position of Shire President is pre-eminent and when speaking on behalf of the Shire, the Shire President should set aside personal views and articulate the views and decisions of Council.

The Shire places great importance on the role of the Shire President as the Presiding Member of Council to facilitate good decision-making. It is therefore important that the Shire President has a good knowledge of the *Shire of Wongan-Ballidu's Standing Orders Local Law*.

The Shire President's leadership role is very important when it comes to good governance. While the Shire President has no statutory authority over other elected members in such areas as behaviour or adherence to Council policy, the Shire President is to ensure that all elected members are part of the decision-making process and are well and equally informed. The Shire President must reinforce the need for elected members to represent the interests of the whole community, not just the constituents in specific areas or interest groups.

The Shire President should also facilitate good relationships between elected members and the administration and help to create an environment where good communication thrives.

Section 5.34 of the Act states that the Deputy Shire President may perform the functions of the Shire President if that office is vacant or the Shire President is not available or unwilling to perform the functions of Shire President.

5.34. When deputy mayors and deputy presidents can act
If —

(a) the office of mayor or president is vacant; or
(b) the mayor or president is not available or is unable or unwilling to perform the functions of the mayor or president,

then the deputy mayor may perform the functions of mayor and the deputy president may perform the functions of president, as the case requires.

7.1.2 Council and Elected Members

As outlined in Part 3 above, Section 2.7 stipulates the role of the Council.

While these powers include responsibility for defining the policy and setting the overall strategic direction of the Shire, Council is not responsible for the day-to-day running of the business of the Shire. Such operational matters are the responsibility of the CEO.

The role of elected members is defined the Act as follows:

2.10. Role of councillors A councillor — (a) represents the interests of electors, ratepayers and residents of the district; and (b) provides leadership and guidance to the community in the district; and (c) facilitates communication between the community and the council; and (d) participates in the local government's decision-making processes at council and committee meetings; and

(e) performs such other functions as are given to a councillor by this Act or any other written law.

Elected members are elected for a four (4) year term at elections held every two (2) years. There is no limit on the number of times they can be re-elected.

Elected members sitting formally as Council make and are accountable for all decisions taken at Council level.

Decisions are made through formal Council meetings.

Individual elected members do not have any powers to make decisions.

7.1.3 Chief Executive Officer (CEO)

The Chief Executive Officer has a statutory responsibility to manage the organisation through the implementation of the goals and strategies that have been endorsed by Council. The Chief Executive Officer plays a critical role in achieving excellence in governance through the development of a culture that sees Council as the peak decision-making body, supported and advised by the administration.

The Chief Executive Officer's promotion and personal adoption of the Shire's culture and vision set the standards which permeate the whole organisation.

A key accountability of the Chief Executive Officer is financial management: ensuring that the Shire is soundly managed from a financial perspective and regularly reporting the results and performance to Council.

The functions of the Chief Executive Officer are outlined in section 5.4.1 of the Act:

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; and
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and
- (c) cause council decisions to be implemented; and
- (d) manage the day to day operations of the local government; and
- (e) liaise with the mayor or president on the local government's affairs and the performance of the

local government's functions; and

- (f) speak on behalf of the local government if the mayor or president agrees; and
- (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); and
- (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 written law as a function to be performed by the CEO.

7.2 Working Relationships

Effective working relationships are an important part of good governance and decision-making and should be promoted and supported within and between Shire President, Councillors, Chief Executive Officer and employees. At times, the very nature of local government business leads to conflict. How this conflict is addressed has implications for good governance and should be underpinned by principles of respect, courtesy and goodwill.

7.2.1 Relationship between Shire President and Councillors

The important aspects of this relationship are summarised as follows:

- the relationship needs to be based on mutual respect;
- the Shire President should facilitate an inclusive approach to decision-making and involvement in Council activities, ensuring that each elected member has access to the same information prior to making their decision;
- the Shire President should assist Councillors to have their issues considered by Council;
- the Shire President should take some responsibility for elected member training and development and should work with the CEO to ensure that elected members receive appropriate training opportunities; and
- the Shire President is responsible for facilitating resolution of any conflict between elected members.

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7.2.2 Relationship between Shire President and Chief Executive Officer

The Shire President as leader of the Council, and the Chief Executive Officer as leader of the administration, are required to work closely together, often dealing with pressing and potentially controversial issues, when they may not have known each other before they were drawn together to lead the Shire.

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The Act requires each to liaise with the other on the Council's activities and its performance. However, the relationship between both roles is much more complicated than this, involving an inevitable intersection of roles.

The essential principles for an effective Shire President / Chief Executive Officer relationship are:

- a) Communication
 - Both parties brief and inform the other about information each is privy to and which would assist the other in their job. Agreement about what information is important and what should be passed on to each other is well understood and constantly negotiated.
 - Regular meetings and electronic communications, as well as meetings called to progress unexpected and important matters, will enhance planning and communication.
 - The "no surprises" principle ensures that neither the Shire President nor the Chief Executive Officer is caught off guard in any circumstance.

b) Role clarity

- The Shire President and Chief Executive Officer understand and respect one another's role.
- The Shire President and Chief Executive Officer work within the bounds of their authority. The Shire President has status and leadership capacity at Council and in the district. The CEO has statutory authority under the Act and leadership of the Shire workforce.
- c) Effective relationship
 - The relationship is symbiotic. The Shire President and the Chief Executive Officer put conscientious effort into making the relationship successful for the good of the Shire.
 - The relationship between the Shire President and the Chief Executive Officer aims to facilitate involvement and inclusion amongst elected members and administration rather than concentrating power in the relationship.

At Shire of Wongan-Ballidu, the Shire President and Chief Executive Officer communicate on a regular basis, at least monthly but more frequently depending on emerging issues, either in person, by phone or email.

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7.2.3 Relationship between elected members

Elected members need each other to achieve their individual and collective goals. Effective relationships between elected members help to promote a successful Council, a pleasant working environment and a Council with public credibility.

Features of an effective relationship are:

- While they may have different views, elected members treat each other with respect and courtesy.
- Disagreements are expressed in ways that are not personal attacks and do not cause detriment to individual elected members or Council as a whole.
- Elected members are not to undermine each other, either within the Shire or in public.
- Elected members have effective working relationships in order to succeed individually and collectively.

7.2.4 Relationship between elected members and Chief Executive Officer

The relationship between elected members and Chief Executive Officer is critical to good governance.

Elected members need support to manage pressures in such a way that their constituents feel their issues or concerns are being heard but appreciate that their demands cannot always be met. Advice and support on consultation and engagement, good systems that refer complaints and queries to the relevant area for resolution, and responsive services and processes all assist in furthering good governance.

Elected members must have a clear understanding that the role of the Chief Executive Officer is to implement Council's goals, policies, strategies and services and to advise and support Council.

The Chief Executive Officer is accountable to elected members when they sit as Council. Elected members, sitting as Council, are responsible for the performance management of the Chief Executive Officer.

Features of an effective relationship are as follows:

- goodwill and trust
- a good understanding of each other's role
- good communication
- agreed processes and protocols
- an appreciation of legislative requirements
- clear delegations.

7.2.5 Relationship between elected members and employees

The fundamental role difference between Council and the administration underpins this relationship. Elected members should focus on strategy, policy and outcomes, while the administration's role is to focus on advice, implementation and operations.

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In light of these role differences, the features of an effective relationship are highlighted below:

- the role of elected members is one of strategic leadership, not management or administration;
- the Chief Executive Officer is responsible for implementing the decisions and policies of Council;
- employees are responsible to the Chief Executive Officer and the Chief Executive Officer is responsible to Council;
- elected members do not direct or instruct employees;
- elected members do not undertake a task that contributes to the administration of the Shire, unless the activities are undertaken in relation to a meeting or the express authority of Council or the Chief Executive Officer has been obtained prior to undertaking the task;
- elected members undertake their day-to-day communications with the Shire directly through the Chief Executive Officer, unless the Chief Executive Officer has established a protocol for communications on particular matters to occur directly with specified employees;
- when entering a Shire business location, elected members seek approval from the Chief Executive Officer before engaging in discussion with employees; and
- an employee undertakes direct communication with an elected member only when the employee is acting within the functions and responsibilities of their position or is acting under the direction of the Chief Executive Officer.

8. Principle 3 – Decision-Making and Management

8.1 Effective Decision-Making

Decision-making is the most important activity undertaken by the Shire, both by Council and by employees. Effective decision-making processes increase the likelihood that the decisions themselves will be in the best interests of the entire community.

Good processes will also mean that decisions will be owned and that individual elected members, even though they may be on the losing side of an issue, should not be able to find fault with the way in which the decision was made.

Good decision-making requires that:

- decisions must be those which the local government can lawfully make;
- decisions must be consistent with and in accordance with legislation;
- relevant Council policy/policies should be considered during the decision-making process;
- elected members should have all the relevant information before them in order to make a considered and informed decision;
- elected members should be impartial, objective, free from bias and act in the public interest of Shire residents;
- decisions should be made on a reasonable basis.

Decisions made at meetings are recorded in the form of resolutions which are binding on the Council until they are formally amended or repealed. Resolutions, once recorded, take effect immediately.

8.2 Decision-Making Meetings and Processes

8.2.1 Council Meetings

The Council meeting is the formal debating and decision-making forum of Council. Elected members, Chief Executive Officer and Managers attend all Council meetings. Under section 5.23(1) of the Act, Council meetings are required to be open to the public.

5.23. Meetings generally open to public

- (1) Subject to subsection (2), the following are to be open to members of the public
 - (a) all council meetings; and

(b) all meetings of any committee to which a local government power or duty has been delegated.

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However, when any of the matters listed in section 5.23(2) of the Act are to be considered, Council may resolve to close the meeting and proceed behind closed doors. In order to promote the transparency and accountability required for good governance, the closure of meetings should be applied prudently and as infrequently as possible.

5.23 (2)	If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —			
	(a) a matter affecting an employee or employees; and			
	(b) the personal affairs of any person; and			
	 (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and 			
	(e) a matter that if disclosed, would reveal —			
	(i) a trade secret; or			
	(ii) information that has a commercial value to a person; or			
	(iii) information about the business, professional, commercial or financial affairs of a person,			
	ade secret or information is held by, or is about, a person other than the ament; and			
(f) a matter that if disclosed, could be reasonably expected to —				
	(i)	impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or		
	(ii)	endanger the security of the local government's property; or		
	(iii)	prejudice the maintenance or enforcement of a lawful measure for protecting public safety;		
	and			
(g) information which is the subject of a direction given under section 23(1a) of Parliamentary Commissioner Act 1971; and				
	(h) such other r	natters as may be prescribed.		
(3)		ose a meeting or part of a meeting and the reason for the decision are to the minutes of the meeting.		

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Examples of matters that may require the meeting to be closed to the public:

- Chief Executive Officer annual performance reviews, contract renewals, remuneration reviews, (s.5.23(2)(a)) a matter affecting an employee or employees);
- Reports discussing legal advice obtained or to be obtained in relation to the subject of the report (s.5.23(2)(d)) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting);
- Nomination of elected members eligible for WALGA Honours (s.5.23(2)(b)) the personal affairs of any person);
- Planning reports that could affect the value of neighbouring properties (s.5.23(2)(e)(ii)) a matter that if disclosed would reveal information that has a commercial value to a person).

Good decision-making at a Council meeting is enhanced when the meeting is well run. This requires a clear and informative agenda, good chairing and facilitation and adherence to meeting procedures and to statutory requirements. It is the fundamental statutory obligation and duty of an elected member to vote on every item of business discussed at a Council meeting.

At Council meetings and where Council has granted a Committee delegated authority, Council can make a decision or pass a resolution.

Council has adopted the *Standing Orders Local Law (2010)* which provides a set of enforceable meeting procedures and rules to –

- ensure better decision-making processes during Council and committee meetings;
- assist in the orderly conduct of meetings dealing with Council business;
- provide a better understanding of the process of conducting meetings; and
- allow a more effective and efficient use of time at meetings.

Shire of Wongan-Ballidu Council meetings are not livestreamed or recorded. The written agenda and minutes can be accessed from the Shire website a few days after each Council meeting.

8.2.2 Council Meeting Schedule

Council operates the following monthly meeting cycle:

- fourth Wednesday of the month: ordinary council meeting;
- third Friday of the month: agenda is released
- Councillors may submit requests for further information or clarification to Chief Executive Officer

In December, the ordinary council meeting is held on the third Wednesday with the Councillor request for more information moves forward accordingly. No Ordinary Council meeting is held in January.

8.2.3 Councillor Requests for More Information or Clarification

For proper decision making, Councillors must have the opportunity to fully understand any issue that is being presented for decision. While officers' reports should contain all of the relevant information, the complexity of some issues means that Councillors need to be given the opportunity to ask questions, request information and seek further clarity regarding an agenda item.

Councillors are at liberty to submit written requests to Chief Executive Officer for further information or clarification of an agenda item prior to the Ordinary Council Meeting. 8.2.4 Council Forum/Workshop

Council forums provide an opportunity for two-way communication between elected members and the Chief Executive Officer on strategic or complex issues. Forums are open to all elected members, the Chief Executive Officer, Managers and other employees designated by the Chief Executive Officer as required. No decisions are made at Forums, which are relatively informal and are not open to the public.

At Council Forums elected members and staff can propose, discuss, and formulate philosophies, ideas, strategies and concepts for the development of the Shire.

Forums often involve projects that are in the early planning stage and are some time away from being presented to Council for decision.

Matters listed on the agenda of the Council meeting are not to be discussed during a Council Forum.

In discussing such issues, employees are looking for guidance from elected members to assist in researching the matter and drafting the report. Elected members and employees are also looking to present ideas and concepts for future consideration.

- Council forums are held every fourth Wednesday of each month directly after the Ordinary Council Meeting.
- Council workshops are held as and when required as agreed between Chief Executive Officer and Elected Members.

8.2.5 Committee Meetings

To assist with its decision-making responsibilities, Council may establish committees in accordance with section 5.8 of the Act. When Council establishes a committee, it must determine in clear terms of reference the purpose, reporting and other accountability requirements that will apply in relation to that committee. Committees report to Council and are subject to the requirements of the Act.

5.8. Establishment of committees

A local government may establish* committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

* Absolute majority required.

Current committees of Council are listed below:

- Audit and Risk Committee (a requirement under section 7.1A of the *Local Government Act* 1995)
- Bush Fire Advisory Committee (as described under section 67 of the *Bush Fires Act 1954*)
- Local Emergency Management Committee (a requirement under section 38 of the *Emergency Management Act 2005*)
- The Regional Road Group (RRG) Wheatbelt North Moora Subgroup
- Doctors Agreement Committee
- Works and Services Committee
- Sports Ground Management Agreement Committee

Committees meet as and when required and make recommendations to Council. However, where a committee has delegated authority for some of its functions, it is able to make a decision in its own right:

Note: Council has not delegated any authority to any Committee.

8.26 Council Representatives to Government/Local Government Organisations

Following local elections Council is required to renominate representatives to each of the organisations and committees that it has representation on.

These organisations and groups include:

Innovation Central Midlands Incorporated

An organisation formed by the Shires of Dalwallinu, Moora and Wongan Ballidu for the purpose of Economic Development. Its members are made up of Councillors and/or community members who may provide expertise and guidance in local government. Usually one or two Councillors may be appointed from each Shire.

Avon Midland Zone of The Western Australia Local Government Association

The WA Local Government Association (WALGA) is the peak industry body for Local Government in Western Australia, advocating on behalf of WA's 139 Local Governments. WALGA is not a government department or agency.

The WALGA governance structure comprises of the State Council and Zones. Zones are groups of geographically aligned Member Councils who are responsible for direct elections of State Councillors, providing input into policy formulation and providing advice on various

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matters.

The Avon-Midland Country Zone of WALGA represents the Shires of Chittering, Dalwallinu, Dandaragan, Gingin, Goomalling, Moora, Northam, Toodyay, Victoria Plains, Wongan-Ballidu and York.

The nominated Councillors attend Zone meetings which are held guarterly.

Regional Road Group – Wheatbelt North Subgroup

There are 10 Regional Road Groups (RRG) in WA, established under the State Road Funds to Local Government Agreement which is overseen by a State Advisory Committee (SAC). The RRGs make recommendations to the SAC regarding the Annual Local Government Roads Program for their Region and any other relevant issues.

The RRGs are comprised of elected representatives from each Local Government within the road group. Most groups are supported by a sub-group or technical committee comprised of Local Government staff. Administrative support is provided by Main Roads WA. RRGs importantly provide Local Government with a voice in how the State Government's contribution to local roads is spent. RRG members serve a vital and valuable role in ensuring road funding decisions maximise community benefits and preserve and improve the public road network across Western Australia.

Council nominates two elected members as representatives to Regional Road Group -Wheatbelt Subgroup.

8.27 Agendas and Minutes

The most important records produced by a local government are the agendas that drive council meetings and the minutes that record the decision-making process and the actual decisions.

Matters to be considered at meetings of Council or Committees are presented in a formal agenda prepared by the Chief Executive Officer.

Agendas comprise of reports prepared by officers. Reports are structured to include information on the background, financial, strategic, legislative, policy, risk and workforce implications of the proposal under consideration. All reports include the professional advice of the officer who has authored the report and contain recommendations as to the most appropriate course of action to take, based on the information presented.

Managers are responsible for authorising the reports from their department. Once finalised, all reports are reviewed by the Chief Executive Officer. The Chief Executive Officer should be satisfied and confident that all aspects of the matter which is the subject of a report have been suitably covered in such a way that the report can be included in the agenda and released to elected members and the public.

The agenda and supporting documents are distributed five (5) days before the Council meeting date. Distribution includes posting on Shires' website, emailing to elected members and Executive Team, emailing to registered members of public and display at Administration Building, Ballidu and Cadoux

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The minutes of a meeting comprise all reports considered at the meeting and also include attendance, all motions, movers and seconders, the results of the motions and the decisions that have been made.

5.33. Decisions made at electors' meetings
(1) All decisions made at an electors' meeting are to be considered at the next ordinary council meeting or, if that is not practicable —

(a) at the first ordinary council meeting after that meeting; or
(b) at a special meeting called for that purpose, whichever happens first. (2) If at a meeting of the council a local government makes a decision in response to a decision made at an electors' meeting, the reasons for the decision are to be recorded in the minutes of the council meeting.

Unconfirmed Ordinary Council Minutes must be made available for public inspection no later than ten working days after the meeting (five working days for committee meeting minutes). At the next meeting of Council or a committee these minutes will be confirmed as a correct and accurate record of the proceedings. Minutes may be amended to correct any identified inaccuracy prior to being confirmed.

8.27 Information Bulletin

An Information Bulletin is to be distributed to Elected Members of Council prior to the Ordinary Council Meeting. The information bulletin will contain:

- 1. Chief Executive Officers Report
- 2. Council Calendar Ordinary Council Meetings, Compliance Deadlines and Council Events.
- 3. Policy Review Timetable
- 4. Finance and Administration Deputy Chief Executive Officer Report
- 5. Regulatory Services Manager of Regulatory Service Report
- 6. Works and Services Manager of Works and Services
- 7. Community Services Manager of Community Services

8.28 Elected Members' Meeting Preparation

Preparation before attending a meeting is critical: all reports should be read thoroughly, and the main points well understood. If anything is not clear, the elected member may seek further clarification and raise any concerns with the Chief Executive Officer or the responsible Manager, preferably well in advance of a meeting. Asking questions of a complex or technical nature at a Council meeting is to be avoided, as employees present may not be able to respond adequately off the cuff, there is a risk of a factually incorrect answer being given or the question may have to be taken on notice.

Reports affecting Shire planning, finance or legal matters can be quite complex and clarification of points prior to the meeting is essential. The Chief Executive Officer or relevant Manager should be emailed at the earliest opportunity to enable a written reply to be provided in advance of the meeting. This reply will be provided to all elected members, not just to the enquiring elected member.

The decision to adopt, amend or reject a recommendation rests with Council. Where a Council decision is different to the recommendation, reasons for that decision must be stated and recorded in the minutes in accordance with Local Government Act 1995 Administration Regulation 11(da)

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A decision to defer a matter should be seen as a last resort and occur only where it is clear that additional information is required or where circumstances have come to light after the agenda was distributed. A failure to consult with the community or key stakeholders may also give cause to defer a matter.

8.3 Local Government Rules of Conduct

The Local Government (Rules of Conduct) Regulations 2007 (Rules of Conduct) provide a disciplinary framework to deal with individual misconduct by Elected Members. The Rules of Conduct provide a mechanism to take action against individual Elected Members where they do not comply with the 'rules' or they contravene particular laws applying to them in legislation.

The Rules of Conduct prescribe uniform rules of conduct for Elected Members in relation to:

- Standards of general behaviour
- Use of confidential information
- Securing personal advantage of advantaging/disadvantaging others
- Misuse of local government resources
- Prohibition against involvement with the organisation
- Relations with employees
- Disclosing interests that may affect impartiality
- Receipt and disclosure of gifts of a prescribed value

The Rules of Conduct do not limit the provisions within the Shire's Code of Conduct, however, the Rules of Conduct, the Regulations as well as the Shire's Local Law relating to meeting procedures are enforceable and disciplinary action can be taken for any breach.

8.4 Decisions on Land Use Planning and Development

8.4.1 Quasi-Judicial Role

Quasi-judicial functions are those which involve the making of a decision by Council in the exercise of a discretionary power. Elected members (and employees when acting under delegated authority) perform quasi- judicial functions when deciding to approve or refuse applications for planning or development approval and for other approvals, licences, consents and permits. They must therefore act in a judicial manner ("judge-like").

To act in a quasi-judicial manner, elected members must apply the principles of natural justice and without bias or conflict of interest make decisions in a judicial manner based on:

- The law and the relevant Shire policies as they exist, specifically the Shire's Local Planning Scheme and Planning Policies; and
- The facts and merits of the case.

Applicants submitting documents for approval may attempt to persuade individual elected members in favour of their proposals; however elected members must remain objective and deal

impartially with applicants or affected persons.

Determining applications must be based on sound legislative rationale and not on specific public perception. The role of an elected member in the decision-making process is to determine the application on the information and recommendation provided by the Shire's employees. The role of the employee is to assess the application and provide an impartial, professional opinion and recommendation to elected members. To avoid prejudicing the eventual decision, elected members must not make up their minds about a development application until they have read the employee's report, clearly understood the relevant facts and law, and heard all the meeting debate.

Elected members must not lose sight of the fact that when making decisions on development applications they have to apply the rules and discretions as they exist, not as they might want them to be.

Elected members must be aware of the Shire's adopted procedures for dealing with a development application to ensure a clear distinction between the role of the employee assessing the application and the role of Council determining the application. There should be no opportunity for the two roles to be confused and no opportunity for those determining applications to unduly influence those carrying out the assessment and vice versa.

An elected member acting when biased and without disclosing an interest affecting impartiality may breach the Rules of Conduct Regulations. Non-compliance with quasi-judicial principles could result in Council decisions being invalidated.

8.5 Conflict of Interest

Conflict of interest is about being transparent. Understanding what this means in the context of local government is essential to good governance.

The Act defines the specific circumstances that lead to a conflict of interest and describes what elected members and employees must do if they believe there is a conflict. This includes direct and indirect interests, disclosure requirements, exemptions, provision of advice and registers of interest.

8.5.1 Conflict of Interest in Local Government

Elected members and employees should always be aware of the potential for conflict of interest. They have been entrusted to govern on behalf of the community and as such they must ensure that they do not gain personal benefit from their position with the Shire.

If they have personal interests in any of the decisions that they are part of, they must declare their interests and withdraw, if necessary, from the decision-making process. It is very important for elected members and employees to understand and adhere to the legislative requirements (sections 5.59 to 5.73 of the Act).

8.5.2 Good Governance and Conflict of Interest

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The following points are important for good governance.

Individuals must make their own decisions

Elected members and employees must individually take responsibility for assessing whether they have conflicts of interest in any matter relating to their formal roles. If the answer is yes, then they must act appropriately. This includes making a proper disclosure and not participating in the relevant decision-making process.

Seeking advice is appropriate

Elected members and employees should seek assistance or advice from the CEO, Shire President or fellow elected members when they think they may have a conflict of interest. In some circumstances elected members may need to obtain their own independent legal advice.

Individuals are accountable

Elected members or employees must ultimately assess whether they have a conflict of interest. Each elected member or employee is accountable for that assessment and the obligation to make the relevant declaration. This is regardless of any assistance or advice they may have received.

Conflict of interest is not a political weapon

Elected members should not use conflict of interest as a weapon against each other. No elected member can determine that another elected member has a conflict of interest. That is for the individual alone to decide. Using conflict of interest inappropriately compromises its importance as a principle of good conduct and natural justice.

8.5.3 Conflict of Interest and Community Representation

Sometimes elected members will be in a position where they are required to declare a conflict of interest even though their community expects them to participate in a decision. For example, an elected member may have a conflict of interest in a local planning decision which the community feels strongly about.

Because conflict of interest can impact on governance and perceptions of governance, it is important that –

- elected members ensure they thoroughly analyse the situation (and seek appropriate advice) to determine what is required by the legislation;
- elected members clearly explain the situation to their community; and
- Council and administration provide support to elected members, when required, to explain conflict of interest requirements to the community.

Elected members should not, however, hide behind conflict of interest as a way of avoiding a vote on difficult issues in which they don't have a conflict.

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8.5.4 Protection from Liability

Elected members, unlike state and federal members of parliament do not have parliamentary privilege. An elected member can be subject to civil action by a person who considers that the elected member has defamed them or has acted in a way that improperly harms them, whether this occurs in the council chamber or not.

Section 9.56 of the Act protects elected members, committee members and employees for any actions that they have, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. This however does not relieve the Shire of liability for the actions of elected members, committee members and employees.

Elected members should be careful, especially in the heat of a Council debate, not to make defamatory statements which could give rise to a civil action.

If an elected member is subject to civil action, they will have to deal with the matter as an individual, even if the Shire is paying the legal costs. In some cases, the Shire's insurers may refuse to provide indemnity for the elected member's actions or statement if it is considered not to have occurred in the course of performing a council duty or to be done in good faith.

For further guidance, please refer to Shire's policy <u>5.28 – Legal Representation Costs</u> <u>Indemnification</u>.

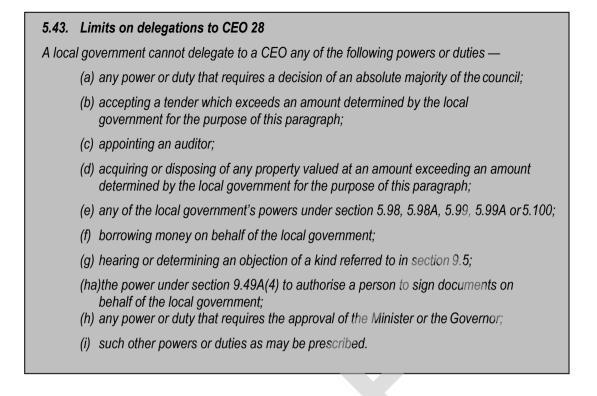
8.5.5 Decisions by Delegation

Delegations form part of the Shire's decision-making approach. Delegations entrust certain types of decisions to the Chief Executive Officer. The Chief Executive Officer may on-delegate certain types of decisions to officers. Delegates exercise the delegated decision-making function in their own right; in other words, they have discretionary decision-making powers.

The use of delegated authority means that a large volume of routine work can be effectively managed and acted on promptly, which in turn facilitates efficient service delivery to the community. Delegated authority allows Council to concentrate on policy development, representation, strategic planning and community leadership.

The Shire's Delegations Register contains all current delegations from Council to the Chief Executive Officer and committees and from the Chief Executive Officer to employees. It sets out unequivocally which statutory power and functions are delegated, which part of the legislation allows such delegation and what the conditions and policy compliance requirements are.

Section 5.43 of the Act outlines those powers or duties that may not be delegated to the CEO. The Shire's Delegations Register is reviewed by Council on an annual basis.



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8.6 Financial Management

8.6.1 Role of The Chief Executive Officer

The Chief Executive Officer is accountable to Council for the financial performance of the Shire and must ensure that certain fundamentals are in place, including but not limited to:

- appropriate financial systems, plans, strategies and protocols;
- adequate resources to support the Shire's activities and financial monitoring and performance;
- suitable internal review and audit mechanisms;
- an organisational culture where responsibility and accountability are clearly delineated and understood; and
- adherence to and compliance with legislative provisions.

8.6.2 Financial Management Planning and Principles

Council is ultimately responsible for the financial management of the Shire. Good financial management requires both Council and the administration to play their role.

As part of the Integrated Planning Framework, the Shire has developed its Long Term Financial Plan (LTFP). The Plan is consistent with the strategic initiatives in the Strategic Community Plan (SCP) and includes:

- projected income and expenditure, balance sheet and cash flow statements;
- planning assumptions underlying the plan;
- an analysis of the factors and/or assumptions that are most likely to affect the plan;
- modelling for alternative financial scenarios; and
- methods of monitoring financial performance.

The Plan outlines the Shire's approach to delivering infrastructure and services to the community in a financially sustainable way that minimises the financial impact on the Shire's ratepayers. It is the primary planning tool for future Shire budgets.

8.6.3 Annual Budget

One of the responsibilities of Council under section 6.2 of the Act is to prepare, set and adopt the Shire's Annual Budget. Based on the leadership of Council, it determines the Shire's priorities for the year ahead and the allocation of resources to achieve those priorities.

The annual budget must be reviewed before 31 March each year, taking into account changes in the operating environment since the beginning of the financial year with a view to forecasting the financial impacts likely to arise for the remainder of the year.

6.2. Local government to prepare annual budget

(1) During the period from 1 June in a financial year to 31 August in the next financial year, or such extended time as the Minister allows, each local government is to prepare and adopt*, in the form

and manner prescribed, a budget for its municipal fund for the financial year ending on the 30 June next following that 31 August.

* Absolute majority required.

(2) In the preparation of the annual budget the local government is to have regard to the contents of

the plan for the future of the district made in accordance with section 5.56 and to prepare a detailed estimate for the current year of —

- a. the expenditure by the local government; and
- b. the revenue and income, independent of general rates, of the local government; and
- c. the amount required to make up the deficiency, if any, shown by comparing the estimated expenditure with the estimated revenue and income.
- (3) For the purposes of subsections (2)(a) and (b) all expenditure, revenue and income of the local government is to be taken into account unless otherwise prescribed.
- (4) The annual budget is to incorporate
 - a. particulars of the estimated expenditure proposed to be incurred by the local government; and
 - b. detailed information relating to the rates and service charges which will apply to land within the district including
 - I. the amount it is estimated will be yielded by the general rate; and
 - II. the rate of interest (if any) to be charged by the local government on unpaid rates and service charges;

and

- c. the fees and charges proposed to be imposed by the local government; and
- d. the particulars of borrowings and other financial accommodation proposed to be entered into by the local government; and
- e. details of the amounts to be set aside in, or used from, reserve accounts and of the purpose for which they are to be set aside or used; and
- f. particulars of proposed land transactions and trading undertakings (as those terms are defined in and for the purpose of section 3.59) of the local government; and
- g. such other matters as are prescribed.

Regulations may provide for ---

- (a) the form of the annual budget; and
- (b) the contents of the annual budget; and
- (c) the information to be contained in or to accompany the annual budget

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8.6.4 Other Management Plans

Asset Management Plans provide strategic direction in the management of Shire assets. Good governance requires the Shire to manage its assets in a financially viable, efficient and sustainable manner.

The Workforce Management Plan was developed to provide a strategic framework for organisational workforce planning and management. It guides the Shire in attracting and retaining a suitable, committed and professional labour force that is structured to achieve the priorities of the Strategic Community Plan and to deliver quality services to the community.

The Recordkeeping Plan sets out the matters about which records are to be created and how the Shire must keep and maintain its records in accordance with the *State Records Act 2000*. It applies to elected members, employees and contractors.

The Risk Management Policy and Procedure contains practical guidelines to develop the Shire's capacity to appropriately manage risk. Risk management is critical to the organisation's ability to achieve the strategic objectives contained in its Strategic Community Plan and Corporate Business Plan. By fostering a dynamic risk management culture that encourages all employees to systematically apply the procedures outlined in this framework, the Shire seeks to minimise resource waste and ensure that all Shire events, activities and projects are undertaken with properly managed risk to employees and the general community.

9. Principle 4 - Accountability

9.1 Accountability

Excellence in governance is based on the principle that those who are involved in governance, both elected members and employees, are held to account for what they do, the decisions they make and their performance in undertaking their role. The public trust that elected members and officers act in the public interest.

Accountability systems that provide disclosure and review of decision-making processes are integral to good governance and are reflected through –

- Open and transparent government, so that the community can follow decision making processes and outcomes;
- Consultation and engagement, so that the community has confidence that it is being heard; and
- Good communication processes so that the community is kept informed.

The fundamental importance of accountability though comes from the fact that the Shire exists to govern for and on behalf of its community. Systems and values must reflect this accountability. Key systems are outlined in the following sections.

9.1.1 Performance Management

Council is accountable for monitoring the Shire's performance in the achievement of its strategic direction, goals and financial outcomes, which are set through the Strategic Community Plan, Corporate Business Plan, Long Term Financial Plan and Annual Budget.

Managing and reporting the Shire's performance is achieved in several ways.

9.1.2 Strategic Reporting

Key performance indicators, derived from the Strategic Community Plan, help drive the Corporate Business Plan. The Shire's Corporate Planning System captures all Corporate Business Plan projects.

Performance against each of the Strategic Themes in the Strategic Community Plan is reported in the Annual Report.

9.1.3 Financial Reporting

The Shire undertakes its financial reporting as follows:

- The monthly Financial Activity Statement and List of Payments are prepared and presented to Council; and
- The audited Annual Financial Report is considered by the Audit and Risk Committee before being submitted to Council for adoption and inclusion in the Annual Report.

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9.1.4 Annual Report

The Shire's *Annual Report* provides detailed information to the community and the Shire's stakeholders about how the Shire intends to operate in a sustainable manner whilst addressing the many challenges it faces. The report reviews the Shire's key achievements and progress made against the many initiatives outlined in the Strategic Community Plan. The Annual Report is reviewed by elected members at a workshop before being adopted by Council for presentation to the electors of the Shire at the Annual Electors' Meeting.

9.1.5 Chief Executive Officer Performance Review

Council is accountable for managing the Chief Executive Officer's performance and is responsible for setting the Chief Executive Officer's performance plan and monitoring the Chief Executive Officer's performance. Council is to communicate its expectations to the Chief Executive Officer's and is required to seek independent professional advice when undertaking the annual performance evaluation of the Chief Executive Officer's.

9.1.6 Employee Performance Review

In accordance with the Act the performance of all employees must be reviewed at least once a year.

5.38. Annual review of employees' performance

- (1) A local government must review the performance of the CEO if the CEO is employed for a term of more than 1 year.
- (2) The CEO must ensure that the performance of each other employee who is employed for more than 1 year is reviewed.
- (3) A review under subsection (1) or (2) must be conducted at least once in relation to each year of the person's employment.

Individual performance reviews and identification of development needs are formally carried out in August each year. The process involves a review of progress against the previous year's targets and plans the setting of new ones for the coming year.

During each performance review, recommendations for training and development programs to either complement existing skills or to develop new skills will be made. In addition, staff will have performance indicators set during the first few months of employment to monitor progress against goals and objectives.

Council has adopted policy 5.25 Model Standards for CEO Recruitment and Selection, Performance and Termination.

9.1.7 Compliance Audit Return

Regulation 14 of the *Local Government (Audit) Regulations 1996* that the Shire conducts an annual audit of its compliance with statutory requirements and responsibilities placed on it under the Act.

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

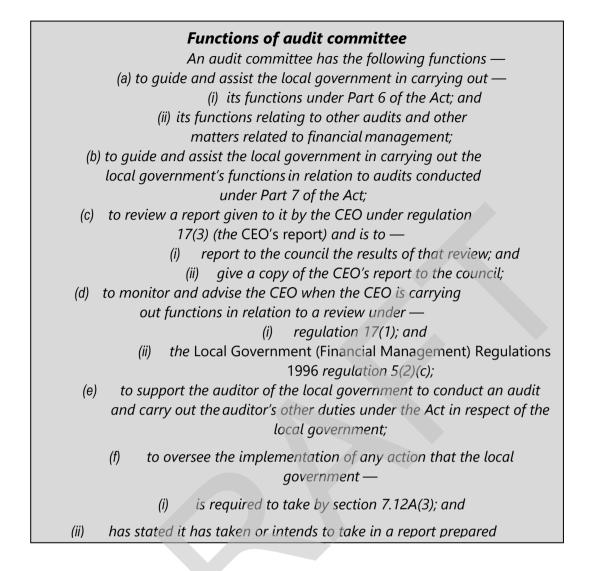
The Department of Local Government's Compliance Audit Return (CAR) comprises a checklist of the Shire's statutory obligations in areas such as local laws, tenders, meeting procedures, disclosures of financial interests and financial management.

The CAR is completed by the Deputy Chief Executive Officer with input from the Executive Management Group. The completed return is then reviewed by the Audit and Risk Committee and presented for adoption by Council. A certified copy must be forwarded to the Department no later than 31 March of each year.

9.1.8 Audit and Risk Committee

The Act requires Council to establish an Audit Committee to guide and assist Council on matters of internal and external audit, risk management and the Shire's compliance functions. The Shire's Audit and Risk Committee meets regularly and in accordance with Regulation 16 of Lcoal Government (Audit) Regulations 1996.

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Council has adopted a *Shire of Wongan-Ballidu Finance Review Terms of Reference* which guides the operation and responsibilities of the Audit and Risk Committee.

9.1.9 Community Consultation and Engagement

A Community Engagement Framework has been developed which formalises the Shire's approach to engagement and affirms its commitment to delivering meaningful, best practice community engagement as an integral part of its strategic priorities.

Council policy 2.5 Public Consultation Outcomes currently provides guidance to officers on Council's expectations regarding how and when to undertake engagement activities.

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9.1.10 Customer Service Charter

Council has adopted a *Customer Service Charter* which outlines the customer service standards the community can expect from the Shire.

9.1.11 Statement of Business Ethics

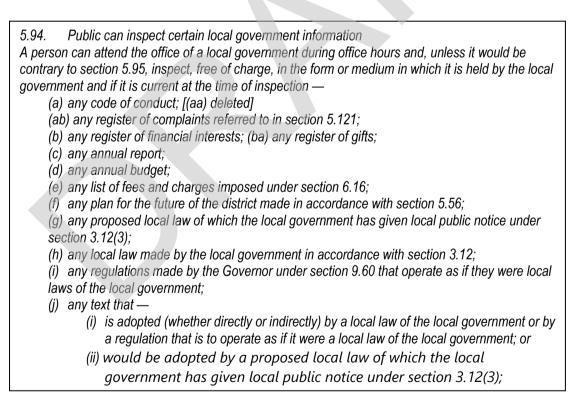
A **5.29** <u>Statement of Business Ethics</u> has been adopted which outlines what the Shire expects from its suppliers and what its suppliers can expect from the Shire.

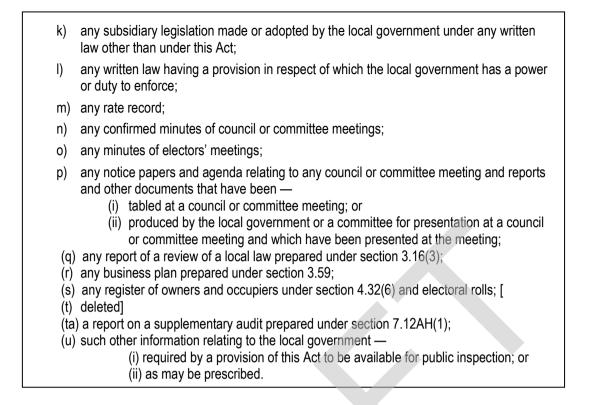
9.1.12 Complaints Management

Council has adopted a <u>5.30 Community Complaints</u> policy to provide a framework and basis for all complaints relating to Shire services, processes or decisions to be resolved in a consistent, fair, and structured manner.

9.1.13 Access to Information

Under section 5.94 of the Act any member of the public can access certain information held by the Shire. Other documents – subject to their sensitivity – may be obtained through the Freedom of Information (FOI) process under the provisions of the *Freedom of Information Act 1992*.





All elected members and staff should be aware of the FOI implications when creating internal or external documents. As a general rule, any written material generated by elected members or employees may become public knowledge and may become the subject of an FOI request.

10. Council and Elected Member Self-Assessment

10.1 Council Self-Assessment and Evaluation

To assess whether the governance principles are being enacted, a self-assessment tool has been included in the Governance Framework. The questionnaire was originally developed by WALGA for use by the WALGA State Council. It is intended that the results are used to develop action plans to improve governance performance.

The self-assessment aims to:

- assess what level of performance has been achieved in the period under review;
- assist in the development of a better understanding of individual Elected Member performance and the Council's objectives;
- focus on strategic goals;
- assist in the developing of a better understanding of performance orientated relationships;
- develop an action plan for improvement;
- encourage a program of ongoing personal and professional development for Elected

Members. The self-assessment tool has two components, being:

- 1. The Council Self-Assessment
- 2. Elected Member Self-Assessment.

Elected Members as a group should complete the Council Self-Assessment annually in September/October and the results used to assess the Council's performance as a whole against the governance principles. This should assist the Council in developing an action plan to improve performance (including the ongoing training and development program for Council).

The Elected Member Self-Assessment should also be completed by individual Elected Members to provide an assessment of that individual's contribution to good governance and assist in the development of an individualised training and development program.

10.2 Council Performance Assessment Questionnaire

Please circle your responses as per the following scale:

1. Strongly Disagree	2. Disagree	3. Unsure	4. Agree	ļ	5. Stro	ongly	/ Agr	ee
	Questio	n			R	ating	9	
1. The Council has been effective in setting the overall direction of the Shire to achieve the objects and purpose of the Shire				1	2	3	4	5
2. The Council is effective in	considering and deter	mining all major poli	cyissues	1	2	3	4	5
3. The Council monitors app indicators	ropriate financial and r	non-financial perforn	nance	1	2	3	4	5
4. The Council has a clear un	derstanding of busine	ss risk		1	2	3	4	5
5. The Council does not beco	ome drawn into operat	tional management n	natters	1	2	3	4	5
6. Roles of the Shire Presider	nt, Councillors and the	CEO are clearly defin	ned and understood	1	2	3	4	5
7. The Council understands t	he Shire's vision, missi	on, values, philosoph	y and plans	1	2	3	4	5
8. The Council regularly inpu	its into strategy develo	opment and review		1	2	3	4	5
9. The CEO and employees h	nave commitment, capa	acity and enthusiasm		1	2	3	4	5
10. The Shire has relevant an	nd reliable internal repo	orting and compliand	ce systems	1	2	3	4	5
11. Elected Members are aw external stakeholders	are of the Shire's respo	onsibilities to regulat	ors and	1	2	3	4	5
12. The Council communicat	es effectively with its c	community		1	2	3	4	5
13. Elected Members bring v	valuable experience and	d skills t <mark>o the</mark> Counci	I	1	2	3	4	5
14. The Council has legitima	cy and retains confider	nce in the eyes of the	e community	1	2	3	4	5
15. The Shire President ensu / debated in a structure		chaired and matters	are discussed	1	2	3	4	5
16. The Shire President make strategic issues	es sure that the Counci	il addresses all of the	e appropriate	1	2	3	4	5
17. The Shire President make the agenda	es sure there is sufficie	nt time to discuss the	e important issues on	1	2	3	4	5
18. The Shire President enco them	urages contributions b	by Elected Members	to get the best out of	1	2	3	4	5
19. The Shire President liaises effectively with the CEO				1	2	3	4	5
20. The CEO is receptive to the Council's input					2	3	4	5
21. The CEO assists Elected M	Members in meeting th	neir governance oblig	gations	1	2	3	4	5

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Question		Ra	ting	J	
22. The Council is effective in monitoring and evaluating the performance of the CEO	1	2	3	4	5
23. The Council papers, including agenda, minutes and briefing notes are timely, accurate and informative	1	2	3	4	5
24. The Council meetings address the key issues facing the community	1	2	3	4	5
25. The duration of meetings of the Council are appropriate	1	2	3	4	5
26. Elected Members come to meetings well prepared and participate effectively in debate and discussions	1	2	3	4	5
27. The Council adheres to effective governance practices	1	2	3	4	5
28. Appropriate records from Council meetings are documented in Minutes		2	3	4	5
29. The relationship between the Shire President and Elected Members is effective in enabling the Council to fulfil its duties and responsibilities	1	2	3	4	5
30. The relationship between the Council and the CEO is effective in enabling Council to fulfil its duties and responsibilities	1	2	3	4	5
Additional comments on the performance of the Council?					

Thank you for completing this questionnaire.

The information provided will not identify your individual response, but it will be used to assist Council to identify areas and actions for improvement and the priorities for training and ongoing development. Individual questionnaires will be treated in the strictest of confidence and will be destroyed once the information has been aggregated.

10.3 Elected Member Performance Assessment Questionnaire

Please circle your responses as per the following scale:

1. Strongly Disagree	2. Disagree	3. Unsure	4. Agree	5. S	Stron	igly A	Agre	е
	Questio	n			Rat	ing		
1. I understand my roles, duti Shire of Wongan-Ballidu	es and responsibilitie	s as an Elected Membe	er of the	1	2	3	4	5
2. I come to the Council mee	tings fully prepared			1	2	3	4	5
3. I understand the mission,	vision, values, philosc	ophy and strategy of th	ne Shire	1	2	3	4	5
4. I participate in and enhand	ce discussion and deb	pate at the Council mee	etings	1	2	3	4	5
5. I have made a significant p the Shire	personal contribution	to the Council achievi	ng the objects for	1	2	3	4	5
 I encourage openness and opportunity to put forw 		that others have a rea	sonable	1	2	3	4	5
7. I challenge those who side	track discussions or o	dwell on minutiae		1	2	3	4	5
8. I am a team player				1	2	3	4	5
9. I listen to and consider oth	ner people's views on	issues		1	2	3	4	5
10. I am open and willing to o	change my views			1	2	3	4	5
11. I accept challenge from o	thers without being c	defensive		1	2	3	4	5
12. I have the courage to say	what is on my mind			1	2	3	4	5
13. I keep myself free from co	onflicts of interest and	d understand when a c	onflict may arise	1	2	3	4	5
14. The Council has legitimac	y and retains confide	nce in the eyes of the	community	1	2	3	4	5
15. I exercise independent jud	dgement when consid	dering or voting on an	y matter	1	2	3	4	5
16. I am responsive to reques and good- spirited cond	5	Member that aim to e	ensure the orderly	1	2	3	4	5
17. I understand and focus or	n the key issues of the	e Shire's business		1	2	3	4	5
18. I consider the viewpoints	of all stakeholders in	forming a position on	an issue	1	2	3	4	5
19. I carry a fair workload whe	en compared with my	/ fellow Elected Memb	ers	1	2	3	4	5
20. I regularly liaise with the S outside of Council meet		ther Elected Members	of the Council	1	2	3	4	5
21. I regularly liaise with the (CEO and senior emplo	oyees outside Council	meetings	1	2	3	4	5
22. I have adhered to all of th Code of Conduct	e behavioural and et	hical requirements of t	the Council	1	2	3	4	5

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Question		Rat	ing		
23. Outside the Council meeting and when acting in my capacity as an Elected Member, I support Council decisions that have been made	1	2	3	4	5
Are you satisfied with the level of support you are provided in undertaking your role as an Elected Member of the Shire of Wongan-Ballidu? Are there any areas that can be improved?					

Are there any specific areas in which you would like professional development to enhance your effectiveness as an Elected Member of the Shire of Wongan-Ballidu?

Are you satisfied with the process of evaluating performance as an Elected Member of the Shire of Wongan-Ballidu? Are there improvements you consider could be made?

Thank you for completing this questionnaire.

The information provided will not identify your individual responses, but it will be used to assist Council to identify areas and actions for improvement and the priorities for training and ongoing development. Individual questionnaires will be treated in the strictest of confidence and will be destroyed once the information has been aggregated.

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Sources and References

This Governance Framework has been compiled with reference to documents previously produced regarding the concept and practice of good governance. The following documents have been used in the development of the Shire of Wongan-Ballidu Governance Framework.

Governance Framework – Shire of Toodyay 2021 Governance Framework – Shire of Mundaring 2019 City of Joondalup Governance Framework 2020 City of South Perth Governance Framework 2016 A Guide to Meetings – Department of Local Government and Communities WA 2013. Council Members' Self-Assessment Tool – Local Government Association of SA 2004. Excellence in Governance for Local Government – CPA Australia 2007. Good Governance Guide – Municipal Association of Victoria (MAV) 2012. Local Government Operational Guidelines – Department of Local Government WA. Public Sector Governance Better Practice Guide – Australian National Audit Office 2014. State Council performance assessment questionnaire – WA Local Government Association

5.27 - Complaints of alleged breach of the Code of Conduct for Members, Committee Members and Candidates

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

This policy is made in accordance with s.105 (*Division 9 Conduct*) of the *Local Government Act 1995* (the Act) and Division 3 of the *Local Government (Model Code of Conduct) Regulations 2021* (the Regulations).

OBJECTIVE

To outline the Shire of Wongan-Ballidus' approach regarding the management of complaints of alleged breaches of the Shire's Code of Conduct for Council Members, Committee Members and Candidates.

SCOPE

This policy applies to Members, Committee Members and Candidates.

Complaints that are inappropriate under this policy are:

- (a) Complaints made with the intent of addressing personal grievances or disagreements;
- (b) Complaints made to express dissatisfaction with a Member, or Committee Member's, lawfully made decisions or performance of their role;
- (c) Complaints made where behaviour occurred at a Council or Committee Meeting and the behaviour was dealt with at that meeting;
- (d) Minor breach matters of Members, Committee Members or Candidates;
- (e) Serious breach matters of Members or Committee Members; or
- (f) Allegations of Minor Misconduct.

Definitions

Term	Definition
Act	Local Government Act 1995.
breach	means a minor breach; or a serious breach (as defined below).
Candidate	an individual is considered a candidate once their nomination for election is accepted, by a Returning Officer, under s.4.49 of the Act. The Code of Conduct applies to the individual from that point. Any alleged breach of the Code of Conduct may only be addressed if and when the individual is elected as a council member.
CEO	Chief Executive Officer
Code	Code of Conduct for Council Members, Committee Members and Candidates under Division 9 of the Act that guides the decisions, actions and behaviours of Council Members, Committee Members and Candidates.
Committee member	under the Regulations, a 'committee member' includes any council member, local government employee or unelected member of the community who has been engaged by the council to participate in a council committee.
Complaint	means a complaint made under clause 11(1) of the Code of Conduct.
Complaint Form	The Shire's approved Complaint About Alleged Breach Form, as a form to be used when making a complaint through this policy.
Complaints Officer	means the person who is the complaints officer under section 5.120 for the local government concerned;
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the Local Government Act 1995 and under the Shire's Standing Orders Local Law 2008.

Term	Definition
Evidence	references to 'evidence' in the Regulations means the available facts or information indicating whether an allegation is true or valid. Local governments must use evidence provided by the complainant and by the person to whom the complaint relates, as well as other relevant information, to decide whether an alleged breach of the Code has occurred.
Investigator	is a suitably qualified person or organisation appointed by the Chief Executive Officer to review and consider complaints.
Member	means in relation to a council or committee, a Council Member in the Act; Elected Member; or Councillor; or a member of the committee.
Minor Breach	has the meaning given in section 5.105(1), and it includes a recurrent breach;
Minor misconduct	Allegations of Corruption, Crime or Misconduct (s.4(d) of the <i>Corruption, Crime and Misconduct Act 2003</i>)
Model Codemeans the model code of conduct prescribed for the purposes of s5.103(1);	
Other Terms Used	Other terms used in this policy that are also used in the Act have the same meaning as they have in the Act unless the contrary intention appears.
	when used in connection with a complaint, means —
Party	(a) the person who made the complaint; or
	(b) the person against whom the complaint was made.
Primary Standards Panel	means the standards panel established under section 5.122(1);
Recurrent Breach	has the meaning given in section 5.105(2);
Regulations	Local Government (Model Code of Conduct) Regulations 2021
Rule of Conduct	means a provision of the model code that is specified in the model code to be a rule of conduct;
Serious Breach	has the meaning given in section 5.105(3);

Term	Definition	
Shire	the Shire of Wongan-Ballidu.	
Shire President means a president elected by the Council from amongst the councillors		
Standards Panel means a standards panel established under section 5.122(1) or (2)		
Suitably Qualified:	an independent person or organisation with demonstrated previous experience and expertise in investigating and reviewing complaints and/or legislative breaches.	

Policy Statement

This policy is limited to complaints about breaches of Division 3 of the Shire's Code. A person may make a complaint, in accordance with the Code, alleging a breach of a requirement set out in Division 3 of the Code.

1. Cost of Complaints Process

No fee will be charged to lodge a complaint under this policy.

An Investigator will charge the Shire a fee to cover the costs of dealing with a complaint. This fee is charged for each complaint, whether or not a breach is found.

Council shall ensure adequate resources are allocated annually in the Shire's Annual Budget to provide for the Complaints Officer of the Shire to engage Investigators to deal with a complaint.

2. Complaint Process

2.1 Complaint Initiated

Any person may make a complaint alleging a breach of Division 3 of the Code as follows:

- (i) A complaint must be made in writing using the Shire's Complaint Form;
- (ii) The complainant lodges the Complaint Form together with supporting evidence for the complaint with the Shire's Complaints Officer;
- (iii) The complainant must provide details in their complaint with supporting information and evidence;
- (iv) The alleged complaint must be lodged within 1 month of the occurrence of the alleged breach;
- (v) Complaints must be submitted by the person making a complaint;
- (vi) Complaints cannot be submitted anonymously;
- (vii) The complainant must provide contact details (address or email).

2.2 Complaint Received

The Complaints Officer will, within fifteen working days:

- (viii) Contact the complainant acknowledging that the complaint has been received;
- (ix) as part of the acknowledgment process, provide the complainant with a copy of the Shire's Complaints of alleged breach of the Code;
- (x) provide the Member who is the subject of the complaint with a copy of the complaint form and the Shire's Complaints of alleged breach of the Code, including the name of the complainant; and
- (xi) send the Complaint with supporting evidence to the investigator.

2.3 Complaints Addressed

Complaints will be addressed and considered based on the order in which they are received. Complaints relating to Candidates will only be addressed if and when the individual is elected as a Member.

2.4 Appointment of Investigator

The Shire's Complaints Officer must appoint an independent investigator to review complaints.

2.5 Mediation

An Investigator will offer mediation to both parties as the first option before progressing with the complaint. If issues raised in the complaint are resolved to the satisfaction of both parties, the complainant must lodge a withdrawal of complaint in writing to the Complaints Officer.

3. Investigator Making a Finding

Before making a finding in relation to a complaint, the investigator must provide the Member who is the subject of the complaint with an opportunity to respond to the allegations in the complaint and an opportunity to provide their own comments and evidence for consideration within ten working days of the notification of the complaint.

After reviewing a complaint, the investigator, must make a finding as to whether the alleged breach of the Code has or has not occurred.

3.1 Report on Findings

The Investigator must provide details of their assessment to the Complaints Officer within twenty working days from the receipt of a complaint form from the Complaints Officer.

Should the Investigator make a finding on the alleged breach of the Code, they must inform the Complaints Officer by providing the reasons for the finding and outcome in their written report.

A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

Should the Investigator make a finding on the alleged breach of the Code, the Investigator must, within their report, include a recommendation if further action is required and if that is the case, prepare an action plan to address the behaviour of the person to whom the complaint relates.

The Investigator may also recommend to Council that the complaint be dismissed in accordance with clause 11 of the *Local Government (Model Code of Conduct) Regulations 2021.*

3.2 Action Plans

When preparing an action plan the Investigator must consult with the person about whom the complaint was made.

The Member must be provided with the opportunity to be involved in matters such as the timing of meetings or training.

The action plan may include a requirement for the person about whom the complaint was made to do one or more of the following:

- i. engage in mediation;
- ii. undertake counselling;
- iii. undertake training; or
- iv. take other action the local government considers appropriate.

An action plan should be designed to provide Members, Committee Members, or Candidates, with the opportunity and support to demonstrate the professional and ethical behaviour expected.

The plan should outline:

- i. the behaviour(s) of concern;
- ii. the actions to be taken to address the behaviour(s);
- iii. who is responsible for the actions; and
- iv. an agreed timeframe for the actions to be completed.

4. Withdrawing a Complaint

A complainant may withdraw their complaint at any time before Council considers it. The withdrawal of a complaint must be in writing and addressed to the Complaints Officer.

5. Informing Council

The Complaints Officer is responsible for informing Council.

If Council are required to make a decision in regard to the complaint, the Complaints Officer will submit to Council, a confidential report that includes information received from the Investigator.

The recommendation in the report would ask Council to:

- i. dismiss a complaint; or
- ii. decide that the alleged breach has not occurred; or
- iii. decide that the alleged breach has occurred and resolve to adopt an action plan.

6. Written Notice

The Complaints Officer must give the complainant, and the person about whom the complaint was made a written notice of the finding and the reasons for the finding and a copy of Council's decision including any reasons for the decision that were not part of the Council report.

7. Confidentiality

It is an offence for a person to disclose that a complaint has been made and/or any details of a complaint unless Council have made a formal finding of a breach in respect of the complaint.

8. Follow up and Further Action

The Complaints Officer is responsible for monitoring the actions and timeframes set out in the action plan adopted by Council.

Where a Member, Committee Member or Candidate does not undertake the actions required by the Council following a breach of the Code, they would be breaking the rule of conduct, which is considered a minor breach, as defined in the Act.

The Complaints Officer for the Shire of Wongan-Ballidu will comply with s.5.106 and s.5.107 of the Act in respect to an alleged minor breach.

Reference Information

- <u>5.28 Legal Representation and Costs Indemnification Policy</u>;
- Shire of Wongan-Ballidu Customer Service Charter;
- Shire of Wongan-Ballidu <u>Code of Conduct</u> for Council Members, Committee Members and Candidates;
- <u>5.31 Risk Management</u> Policy
- 5.32 Risk Management Procedure

Legislation

Local Government Act 1995 (Division 9 Conduct).

Local Government (Model Code of Conduct) Regulations 2021.

Local Government (Administration) Regulations 1996 [Part 4A — Codes of conduct for local government employees (Act s. 5.51A(4))].

Associated documents

Complaint About Alleged Breach Form (Appendix 1).

TBA - To be Approved

Complaint About Alleged Breach Form

Code of Conduct for Council Members, Committee Members and Candidates

Schedule 1, Division 3 of the Local Government (Model Code of Conduct) Regulations 2021

This form should be completed, dated and signed by the person making a complaint of an alleged breach of the Code of Conduct. The complaint is to be specific about the alleged breach and include the relevant section/subsection of the alleged breach.

The complaint must be made in accordance with Council's Policy Complaints of Alleged Breach of Code of Conduct for Members and Candidates.

Name of person who is making the complaint:	
Given Name(s)	Family Name

Contact details of person making the complaint:			
Address:			
Email:			
Contact Number:			

Name of council member, committee member, or candidate alleged to have committed the breach:

Given Name(s)

Family Name

Completed and signed complaint form is to be forwarded to:				
Post:	Complaints Officer, Shire of Wongan-Ballidu PO Box 84 Wongan Hills WA 6603			
Email:	Attention: Complaints Officer - <u>shire@wongan.wa.gov.au</u>			
By Hand:	Shire of Wongan-Ballidu, Admin Centre, Cnr Quinlan and Elphin Crescent, Wongan Hills WA 6566			

State the full details of the alleged breach. Attach any supporting evidence to your complaint form.		
Date of alleged breach:		
Date:/ 20		
Signed:		
Complainant's Signature:		
Date of signing:/ 20		
Received by Authorised Officer:		
Authorised Officer Name:		
Authorised Officers Signature:		
Date received:/ 20		

5.28 - Legal Representation Costs Indemnification

Policy Owner:	Administration	
Person Responsible:	Chief Executive Officer	
Date of Adoption:		
Adoption Resolution:		
Date of Last Amendment:		
Date of Last Review:		

INTRODUCTION

This policy is designed to protect the interests of Elected Member and Shire Officers (including past Members and former Shire Officers) where they become involved in legal proceedings due to their official functions.

s.9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything an Elected Member or Shire Officer has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law.

s.3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district.

s.6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions, a Council can expend funds to provide legal representation for Members and Shire Officers, as long as it believes that the expenditure falls within the scope of the local government's function.

OBJECTIVE

To provide transparency where Council makes a determination as to whether assistance will be given to Members or Shire Officers with legal costs and other liabilities.

The Shire's approval to pay legal representation costs incurred by an individual Councillor or Shire Officer will rely on the determination that it is reasonably concluded that the expenditure provides for the good governance of the district.

This policy does not apply to legal advice and representation that is obtained by the Shire in the normal course of fulfilling the functions and exercising the powers of a local government.

SCOPE

This policy applies to Council and the Shire; providing guidelines regarding any financial assistance that may be provided by Council or the Shire in making determinations as to whether assistance will be provided to Members and/or Shire Officers for legal representation, including costs and other liabilities.

This policy will:

- clarify what issues Council will offer financial assistance for; and
- ensure that all requests for financial assistance are treated equitably.

DEFINITIONS

Term	Definition	
Act	Local Government Act 1995.	
Approved lawyer	 a 'certified practitioner' under the Professions Act 2008; approved in writing by the Council or the CEO under delegated authority. 	
CEO	Chief Executive Officer	
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .	
Senior Manager	 Means the Managers as defined in the Corporate Management Structure: Manager - Finance and Administration Manager - Works and Services Manager - Regulatory Services Manager - Community Services 	
Legal proceedings	May be civil, criminal or investigative.	
Legal representation	 the provision of legal services, to or on behalf of a Member or Shire Officer, by an approved lawyer that are in respect of: 1. a matter or matters arising from the performance of the functions of the Member or Shire Officer; and 2. legal proceedings involving the Member or Shire Officer that have been, or may be, commenced. 	
Legal representation costs	the costs, including fees and disbursements, properly incurred in providing legal representation.	
Legal services	includes advice, representation or documentation that is provided by an approved lawyer.	

Term	Definition
Member	means a current or former Council Member in the Act; Elected Member; or Councillor. In respect to this policy it also means a non-elected member of a council committee.
Payment of Costs	Means payments by the Shire of legal representation costs either by a direct payment to the approved lawyer (or the relevant firm) or a reimbursement to the Member or Shire Officer.
Regulations	Local Government (Administration) Regulations 1996.
Shire	the Shire of Wongan-Ballidu
Shire Officer	means a current or former Employee of the Shire.
Shire President	means a Mayor or President elected by the Council from amongst the councillors.

Policy Statement

Council shall ensure adequate resources are allocated annually in the Shire's Annual Budget to provide legal representation and costs indemnification to assist a Member or Shire Officer in meeting reasonable expenses and any liabilities incurred in relation to legal proceedings subject to the following:

1. Payment Criteria

There are four major criteria for Council determining whether the Shire will pay the legal representation costs of a Member or Shire Officer as follows:

- (i) the legal representation costs must relate to a matter that arises from the performance, by the Member or Shire Officer, of his or her functions;
- (ii) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- (iii) in performing their functions, to which the legal representation relates, the Member or Shire Officer must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- (iv) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

If the criteria in Clause 1 of this Policy is satisfied the Shire may approve the payment of legal representation costs:

- (i) where proceedings are brought against a Member or Shire Officer in connection with his or her functions for example:
 - an action for defamation or negligence arising out of a decision made or action taken by the Member or Shire Officer; or
 - where a Member or Shire Officer seeks a restraining order against a person using threatening behaviour); or
 - where a decision of Council or a Shire Officer has aggrieved another person (e.g. refusing a development application); or
 - where the conduct of a Member or Shire Officer in carrying out his or her functions is considered detrimental to the person (e.g. defending defamation actions).
- (ii) to enable proceedings to be commenced and/or maintained by a Member or Shire Officer to permit them to carry out their functions. For example, where a Member

or Shire Officer seeks to take action to obtain a restraining order against a person using threatening behaviour to the Member or Shire Officer; or

(iii) where exceptional circumstances are involved - for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Members or Shire Officers.

Council, nor the Shire, will approve the payment of legal representation costs for a defamation action; or a negligence action; instituted by a Member or Shire Officer, unless under exceptional circumstances.

3. Application for Payment

A Member or Shire Officer who seeks assistance under this policy is to make an application, in writing, to Council or the CEO.

3.1 Written Application

The written application for payment of legal representation costs is to give details of:

- (i) the matter for which legal representation is sought;
- (ii) how that matter relates to the functions of the Member or Shire Officer making the application;
- (iii) the lawyer (or law firm) who is to be asked to provide the legal representation;
- (iv) the nature of legal representation to be sought, including (but not limited to): advice; representation in court; preparation of a document; et cetera;
- (v) an estimated cost of the legal representation; and
- (vi) why it is in the interests of the Shire for payment to be made.

A Member or Shire Officer requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the Act.

3.2 Declaration by Applicant

The application is to contain a declaration by the applicant that he or she has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.

As far as possible, the application is to be made before commencement of the legal representation to which the application relates.

3.3 Signed Written Statement

The application is to be accompanied by a signed written statement by the applicant that he or she:

- (vii) has read, and understands, the terms of this policy;
- (viii) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 of this policy and any other conditions to which the approval is subject; and
- (ix) undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 7 of this policy.

3.4 Agreement

In relation to clause 3.3(iii), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

3.5 **Preparation of Council Report**

An application is to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by an appropriate Executive Manager.

4. Legal Representation Costs – Limit

Council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.

A Member or Shire Officer may make a further application to Council in respect of the same matter.

5. Council's Powers

Council may:

- (i) refuse;
- (ii) grant; or
- (iii) grant subject to conditions,

an application for payment of legal representation costs.

The above conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

5.1 Assessment of Application

In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the Shire's Members or the Shire Officer's insurance policy or its equivalent.

5.2 **Revoking or Varying an Approval**

Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs, subject to Part 15 'Revoking or Changing Decisions' of the *Shire of Wongan-Ballidu Standing Orders Local Law 2010*.

5.3 Determination

Council may, subject to clause 5.4, determine that a Member or Shire Officer whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved:

- (i) not acted in good faith, or has acted unlawfully in a way that constitutes improper conduct;
- (ii) or given false or misleading information in respect of the application.

5.4 Conditions

A determination under clause 5.3 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

5.5 Legal Representation Costs

Where the Council makes a determination under clause 5.3, the legal representation costs paid by the Shire are to be repaid by the Member or Shire Officer in accordance with clause 7.

6. Delegation to Chief Executive Officer

Where there is a need for the provision of urgent legal services before an application can be considered by Council; e.g. in cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of Council, any of the powers of the Council under clause 5, 5.1 and 5.3, to a maximum of \$10,000 in respect of each application provided that the power to make such an authorisation has been delegated to the CEO in writing under section 5.42 of the Act.

An application approved by the CEO under clause 5 is to be submitted to the next Ordinary Council Meeting. Council may exercise any of its powers under this policy, including its powers under clause 5.2.

7. Repayment of Legal Representation Costs

A Member or Shire Officer whose legal representation costs have been paid by the Shire is to repay the Shire:

- (iv) all or part of those costs in accordance with a determination by the council under clause 5.5;
- (v) as much of those costs as are available to be paid by way of set-off where the Member or Shire Officer receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.

The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

Reference Information

- Local Government Operational Guideline;
- L5.18 Local Government Payments and Gifts to Members
- <u>5.33 Compliance and Enforcement Policy</u>;
- <u>5.34 Execution of Documents Policy</u>;
- <u>5.37 Council Delegates Roles and Responsibilities Policy</u>; and
- <u>5.31 Risk Management</u> containing the Risk Matrix tables.

Legislation

Local Government Act 1995

- s.2.7 Role of Council;
- s.5.99A. Allowances for council members in lieu of reimbursement of expenses;
- s.5.100A. Gifts to council members.

Local Government (Administration) Regulations 1996 (Part 8 local government payments and gifts to members)

- r.31. Expenses to be reimbursed (Act s. 5.98(2)(a) and (3));
- r.35. Training for council members (Act s. 5.126(1)).

Local Government (Financial Management) Regulations 1996

- r.5 CEO's duties as to financial management;
- r.12 Payments from municipal fund or trust fund, restrictions on making;
- r.13 Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.

ASSOCIATED DOCUMENTS

Expense Reimbursement Form.



5.29 Statement of Business Ethics

Overview

This Statement of Business Ethics provides guidance for all sectors of the community when conducting business with the Shire of Wongan-Ballidu (Shire). It outlines the Shire's ethical standards and our expectation that goods and service providers will comply with these standards in all their dealings with the Shire. This Statement also outlines what goods and service providers can expect of the Shire.

Our Key Business Principles



PROFESSIONALISM

- We get things done in a timely and thorough manner
- We maintain a positive attitude and demeanour
- We are flexible and cooperative
- We are organised and punctual
- We listen diligently
- We respect the privacy and boundaries of others
- We communicate and share information effectively,
- openly and thoroughly

RESOURCEFULNESS

- We contribute actively to new ideas and ways of doing things
- We constantly look for ways to do things more effectively
- We have a mindset that encourages us to find a way through our problems
- We plan carefully and avoid waste
- Asking for help is not a weakness but a sign of a resourceful individual
- We are not afraid to operate outside our comfort zone to discover the best for ourselves and our organisation
- We are fluid and flexible in our working arrangements, bringing the best teams together to get the job done

INTEGRITY

- We serve with honesty, pride and loyalty
- We engender trust in our colleagues and those we serve
- We are responsible for our own actions and accountable for our mistakes
- We practice and encourage open and honest communication
- We lead by example and live our values
- We respect other's opinions, even if we don't agree with them

DIVERSITY

- We value diversity in our community, our team, our ideas, experience and skills
- We are agile in the face of change
- We recognise that every team member contributes to our success
- We are forward thinkers

EMPOWERMENT

- We empower others by being respectful and nonjudgemental
- We value each other's skills and abilities
- We focus on individual strengths and abilities
- We support and encourage involvement in decision making
- We provide objective feedback in a supportive, non-critical way

What you can expect from the Shire

The Shire will ensure that all its policies, procedures and practices relating to tendering, contracting and the purchase of goods and services are consistent with industry leading practice and the highest standards of ethical conduct.

Our employees are bound by the Shire's Code of Conduct. When doing business with the private sector, Shire employees are accountable for their actions and are expected to:

- Use public resources effectively and efficiently.
- Deal with all individuals and organisations in a fair, honest and ethical manner.
- Avoid any conflicts of interests (actual perceived or potential).
- Never seek gifts or other personal benefits.

In addition, all Shire procurement activities are guided by the following core business principles:

- All suppliers (whether invited to make a submission through tender or through direct quotation process) will be treated with impartiality and fairness and given equal access to information to assist with quotations, tendering or supply.
- All procurement activities and decisions will be fully and clearly documented by the Shire to provide an efficient audit trail and to allow for an effective performance review of contracts.
- All contracts that involve services to the public will be undertaken in a manner consistent with the

Shire's Disability Access and Inclusions Plan (DAIP) 2020-2025.

- Energy-efficient equipment, products containing recycled materials and environmentally friendly products will be purchased wherever reasonably possible taking into account best value for money considerations.
- Tenders will not be called unless the Shire has a firm commitment to proceed to contract although the Council reserves the right not to proceed with any tender or quotation so advertised.
- The Shire will not disclose confidential or proprietary information.

What we ask of you

The Shire requires all private sector providers of goods and services to observe the following principles when doing business with the Shire:

- Comply with all laws applicable in Western Australia.
- Gain an understanding of the Shire's policies, guidelines and procedures relating to purchasing,
- including an understanding of this Statement (all available on the Shire's website).
- Provide accurate and reliable advice and information when invited or required.
- Declare actual, perceived or potential conflicts of interests as soon as you or your employees become aware of the conflict.
- Act ethically, fairly and honestly in all your dealings with the Shire.
- Take all reasonable measures to prevent the disclosure of confidential Shire information.
- Do not engage in any form of collusive practice, including offering Shire employees or Elected Members inducements or incentives designed to improperly influence the conduct of their duties.
- Do not discuss Shire business or information in the media.
- Assist the Shire to prevent unethical practices in business relationships by reporting such practices.

Why is compliance important?

By complying with the Shire's Statement of Business Ethics, you will be able to advance your business objectives and interests in a fair and ethical manner. As all Shire suppliers of goods and services are required to comply with this Statement, compliance will not disadvantage you in any way.

You should also be aware of the consequences of not complying with the Shire's ethical requirements when doing business with the Shire. Improper or unethical conduct could lead to termination of contracts or loss of future work with the Shire. Overall any business reputation can also be detrimentally affected if corrupt and criminal behaviour is made public.

Complying with the Shire's business principles will also prepare your business for dealing with the ethical requirements of other local governments and public-sector agencies should you choose to do business with them.

Guidance Notes

Incentives, gifts and benefits

The Shire's employees and Elected Members do not expect to receive, or be the recipients of gifts, benefits or incentives as a result of our business relationship with goods or service providers. Goods and service providers are requested to refrain from offering such incentives, gifts or benefits to employees or Elected Members. The Shire's Code of Conduct provides for the type of incentives, gifts and benefits that can be received by Elected Members and employees. If wanting to give a gift, please check with the proposed recipient as to whether a gift can be accepted, or alternatively view the Shire's Code of Conduct.

Conflicts of Interest

All Shire Employees and Elected Members are required to disclose any actual, or perceived potential conflicts of interest. The Shire extends this requirement to all Shire business partners, contractors and suppliers.

Confidentiality

All Shire information must be treated as confidential unless otherwise indicated. The Shire will maintain appropriate confidentiality and not disclose propriety information unless legally obligated to do so.

Safety

The Shire of Wongan-Ballidu strives for continuous improvement while creating a strong safety and health culture within all aspects of Shire activities. This commitment to safety is the Shire's highest priority and will not be compromised. All employees, including volunteers and contractors, are required to take all reasonable care to ensure their own safety and that of others in the workplace.

Communications Between Parties

All communications should be clear, direct and accountable to minimise the risk of perception of inappropriate influence being brought to bear on the business relationship. Canvassing of Elected Members during a tender process will disqualify bids from further consideration and contact with Elected Members during work for the Shire is prohibited unless expressly authorised by the Shire.

Use of Shire Equipment, Resources and Information.

All Shire equipment, resources and information should only be used for its proper official purpose.

Contracting Employees

All contracted and sub-contracted employees are expected to comply with this Statement. If you employ sub- contractors in your work for the Shire, you must make them aware of this Statement. All contractors and sub- contractors will be required to undertake an annual induction process prior to commencing business with the Shire.

Secondary Employment

Employees are not permitted to engage in private work with any person that has an interest in a proposed or current contract with the Shire.

Intellectual Property Rights

In business relationships with the Shire, parties respect each other's intellectual property rights and will formally negotiate any access, license or use of intellectual property.

Who to Contact?

If you have any questions regarding this Statement or to provide information about suspected corrupt conduct, please contact the Shire via the details below.

Chief Executive Officer

Shire of Wongan-Ballidu Cnr Quinlan Street & Elphin Crescent (PO Box 84) WONGAN HILLS WA 6603

Phone:	(08) 9671 2500
Fax:	(08) 9671 2509
Email:	shire@wongan.wa.gov.au
Website:	www.wongan.wa.gov.au

Persons reporting corrupt behaviour or misconduct are protected by the *Corruption and Crime Commission Act 2003* and other 'Whistle-blower' protection laws such as the *Public Interest Disclosure Act 2003*. These laws protect persons disclosing corruption related matters from reprisal or detrimental action and ensure disclosures are property investigated and dealt with.

5.30 - Community Complaints Policy

Policy Owner: Person Responsible: Date of Adoption: Adoption Resolution: Date of Last Amendment: Date of Last Review: Administration Chief Executive Officer

INTRODUCTION

The Shire recognises that from time to time, members of the community may not be satisfied with Shire services, processes or decisions and that there needs to be a clear and accountable process available for people to lodge and receive a response to their complaint.

It is also recognised that complaints can be an important tool to ensure accountability and promote continuous improvement.

APPLICATION

This policy applies to employees, volunteers and contractors of the Shire of Wongan-Ballidu.

POLICY INTENT

To establish an effective complaints handling system that will provide a framework and basis for all complaints relating to Shire services, processes or decisions to be resolved in a consistent, fair, and structured manner.

1. Definitions

(a) A **complaint is** an expression of dissatisfaction about the standard of service provided, or an action or inaction by the Shire of Wongan-Ballidu, its employees, volunteers and contractors.

(b) A complaint is not:

- A first request for action or service (eg reporting a nuisance dog, request for footpath or pothole repair).
- A request for information or explanation of Council decisions, practices or procedures.
- A request for action or service that is outside the Shire's jurisdiction or is provided by other agencies.

- (c) A complaint is considered **anonymous** when the complainant declines to provide their name and/or contact details.
- (d) A complaint is considered **malicious** when its intent is to negatively affect another person's career, reputation, or livelihood.
- (e) A **vexatious** or **frivolous** complaint is where there is no evidence to support the complaint and/or there is evidence that the complaint is intended to cause inconvenience, harassment or financial burden.
- (f) A **volunteer** is a person who contributes time, effort and talent for the benefit of the Shire of Wongan-Ballidu without financial gain.
- (g) A **contractor** is a person, business or organisation contracted to provide products and/or services to the Shire for financial consideration.

2. Principles for Handling Complaints

- (h) **Customer focus** complaints are managed in accordance with the *Shire of Wongan-Ballidu Customer Service Charter*.
- (i) **Accessible** the process for making complaint and investigating it is easy for complainants to understand.
- (j) **Responsive** complaints are acknowledged, addressed according to urgency and the complainant is kept informed.
- (k) **Objective and Fair** complaints are dealt with in an equitable, objective and unbiased manner. Unreasonable complainants do not become a burden
- (I) **Confidentiality** personal information related to complaints remains confidential.
- (m) **Continuous Improvement –** complaints are used as a source of improvement.

3. Lodgement of Complaints

- (n) Complaints can be made in writing or by telephone.
- (o) Complainants are encouraged to lodge their complaint in writing. If they insist on lodging the complaint verbally, the complainant must provide their name and contact details along with details of the complaint which are to be recorded by a Shire officer.

- (p) Written complaints are facilitated by completing Customer Service Charter Feedback Form which is available on the Shire's website <u>www.wongan.wa.gov.au</u> or Shire Administration Building, Cnr Quinlan Street & Elphin Crescent, Wongan Hills WA 6603.
- (q) Customer Service Charter Feedback Forms can be lodged via:
 - Facsimile: 08 9671 2509
 - Email: <u>shire@wongan.wa.gov.au</u>.
 - In person: by completing a Customer Service Charter Feedback
 Form
- (r) All complaints will be registered by the officer receiving the complaint at the first point of contact.
- (s) Where complaints are made directly to Councillors, the complainant should be encouraged to contact the Shire office. However, Councillors may lodge a complaint on behalf of the complainant.
- (t) Frontline staff are responsible for receiving, registering and resolving minor complaints in an efficient and effective manner. The majority of complaints can be resolved immediately by acknowledging the customer's dissatisfaction, apologising where appropriate, and taking corrective action.

4. Complaints that will not be considered

- (u) The complaint is anonymous unless the matter could be in breach of statutory provisions or the Shire of Wongan-Ballidu's Code of Conduct.
- (v) The complaint contains offensive language or is discriminatory in nature.
- (w) The complaint is malicious, vexatious or frivolous.
- (x) Notwithstanding parts (a) to (c) of this clause, all complaints received will be acknowledged.

5. Investigation and Referral

- (y) Where the complaint cannot be resolved at the initial contact, the complaint will be referred to the appropriate officer for investigation.
- (z) The complaint will be referred to the relevant Manager when:
 - The complaint is outside the authority or expertise of the receiving officer;
 - The officer is unable to reach a resolution;
 - The customer remains dissatisfied;
 - The nature of the complaint warrants authority at a higher level.
- (aa) The complaint will be escalated to the Shire of Wongan-Ballidu Complaints Officer where the Manager is unable to reach a resolution.

(bb) The complaint may be referred to an external agency when determined by the Shire's Complaints Officer.

6. Unresolved Complaints

- (cc) The Shire of Wongan-Ballidu recognises that not all complaints may be resolved within the above process and that complainants may not receive the outcome they seek.
- (dd) If a customer is dissatisfied with the complaint resolution provided, other avenues for resolution include:
 - Making a request to have the matter considered at a more senior level.
 - The Ombudsman of Western Australia is an independent officer of Parliament who investigates complaints about state government departments, most statutory authorities and local governments. The Ombudsman can be contacted at: Level 2, Albert Facey House
 469 Wellington Street
 Perth WA 6000
 Ph: (08) 9220 7555
 - Other legal advice or remedy.
- (ee) Complainants are encouraged to allow the Shire of Wongan-Ballidu to investigate complaints prior to referral to an external agency.

Reference Information

Related Documents	Shire of Wongan-Ballidu Code of Conduct Shire of Wongan-Ballidu Customer Service Charter Guidelines on Complaint Handling – Ombudsman Western Australia
Related Legislation Associated Forms and Attachments	Local Government Act 1995 (WA) Local Government (Rules of Conduct) Regulations 1996 Customer Service Charter – Feedback Form

5.31 - Risk Management Policy

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

The Shire of Wongan-Ballidu is exposed to a broad range of risks which could adversely impact the achievement of strategic community objectives.

This policy is intended to commit to organisation-wide risk management principles, systems and processes that ensure consistent, efficient and effective assessment of risk in all planning, decision making and operational processes.

APPLICATION

This Policy applies to all risk processes within the Shire and is subject to regular monitoring through the Finance and Audit Committee and Council. This policy applies to all activities undertaken by officers, volunteers, contractors and elected members.

POLICY INTENT

This policy intends to create an environment where Council, management and staff accept direct responsibility for risk management, through development, implementation of and maintaining effective risk management practices. Risk management is the responsibility of everyone and will be treated as an integral part of the Shire's culture, policies and procedures.

This policy aims to develop and maintain an organisational culture which shows confidence in the use of risk assessment and management tools in:

- the effective and efficient delivery of agreed levels of service
- maintaining financial sustainability
- developing and maintaining an effective and positive relationship between Council and the community
- enabling the Council in partnership with the community, to make decisions for the community's future with a high level of confidence that key risks have been taken into account and where relevant, are being, or have been, mitigated.

• to ensure that appropriate risk assessment and management provisions are in place in order to satisfy statutory requirements and identified risks mitigated.

DEFINITIONS

Explain what terms within this policy mean. (example below)

Term	Definition			
Act	Local Government Act 1995.			
Audit & Risk Committee	Committee established under section 7.1A of the Local Government Act 1995			
CEO	Chief Executive Officer			
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .			
Regulations	Local Government (Administration) Regulations 1996.			
Risk	Means "the effect of uncertainty on objectives." AS/NZS ISO 31000:2018. A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative, or a deviation from the expected. An objective may be financial, related to health and safety, or defined in other terms.			
Risk Assessment	Means the process of applying risk management methodologies to assess the level of risk in a particular or general circumstance, activity or operation, or decision.			
Risk Management	Means the application of coordinated activities to direct and control an organisation with regard to risk.			
Shire	the Shire of Wongan-Ballidu.			

PRINCIPLES

The Shire considers risk management to be an essential management function in its operations. The Shire is committed to the principles, framework and process of managing risk as outlined in AS/NZS ISO 31000:2018.

The Shire will manage risks continuously using a process involving the identification, analysis, evaluation, treatment, monitoring and review of risks. It will be applied to decision making through all levels of the organisation in relation to planning or executing any function, service or activity.

The Shire will consider the following key principles for effective risk management:

- (a) Integrated Risk management is an integral part of all organisational activities and will be considered in alignment with the Shire's strategic objectives.
- (b) Structured and comprehensive A structured and comprehensive approach to risk management contributes to consistent and comparable results.
- (c) Customised The risk management framework and process are customised and proportionate to the organisation's external and internal context related to its objectives.
- (d) Inclusive Appropriate and timely involvement of stakeholders enables their knowledge, views and perceptions to be considered. This results in improved awareness and informed risk management.
- (e) Dynamic Risks can emerge, change or disappear as an organisation's external and internal context changes. Risk management anticipates, detects, acknowledges and responds to those changes and events in an appropriate and timely manner.
- (f) Best available information The inputs to risk management are based on historical and current information, as well as on future expectations. Risk management explicitly takes into account any limitations and uncertainties associated with such information and expectations. Information should be timely, clear and available to relevant stakeholders.
- (g) Culture Human behaviour and culture significantly influence all aspects of risk management at all levels.
- (h) Continual improvement Risk management is continually improved through learning and experience.

Framework

The Shire will develop and maintain a **5.32 Risk Management Framework & Procedure** that underpins the principles of effective risk management and provides guidance to Council and staff. The framework will be subject to regular reviews every three years to coincide with the Reg 17 review to be undertaken in accordance the *Local Government (Audit) Regulations 1996*.

Reporting and Monitoring

The Shire will implement a robust reporting and recording system that will be regularly

monitored to ensure close out of risks and identification of ongoing issues and trends. Risks will be reported to the Audit & Risk Committee and reviewed at least twice-yearly. Risks rated significant or extreme will be reported to the Audit and Risk Committee or Council at the earliest opportunity.

Reference Information

5.32 Risk Management Framework & Procedure

Legislation

Local Government Act 1995 (WA) Associated documents AS/NZS ISO 31000:

5.32 – Risk Management Framework & Procedure

Policy Owner: Person Responsible: Date of Adoption: Adoption Resolution: Date of Last Amendment: Administration and Financial Services Chief Executive Officer



RISK MANAGEMENT FRAMEWORK AND PROCEDURE

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Introduction

The Policy and Procedures form the Risk Management Framework for the Shire of Wongan-Ballidu ("the Shire"). It sets out the Shire's approach to the identification, assessment, management, reporting and monitoring of risks. All components of this document are based on Australia/New Zealand Standard ISO 31000:2018 Risk Management.

It is essential that all areas of the Shire adopt these procedures to ensure:

- Strong corporate governance.
- Compliance with relevant legislation, regulations and internal policies.
- Integrated Planning and Reporting requirements are met.
- Uncertainty and its effects on objectives is understood.

This Framework aims to balance a documented, structured and systematic process with the current size and complexity of the Shire along with existing time, resource and workload pressures.

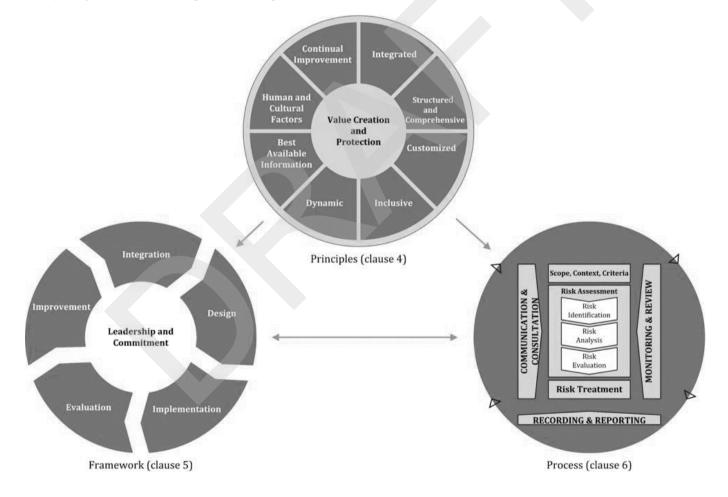
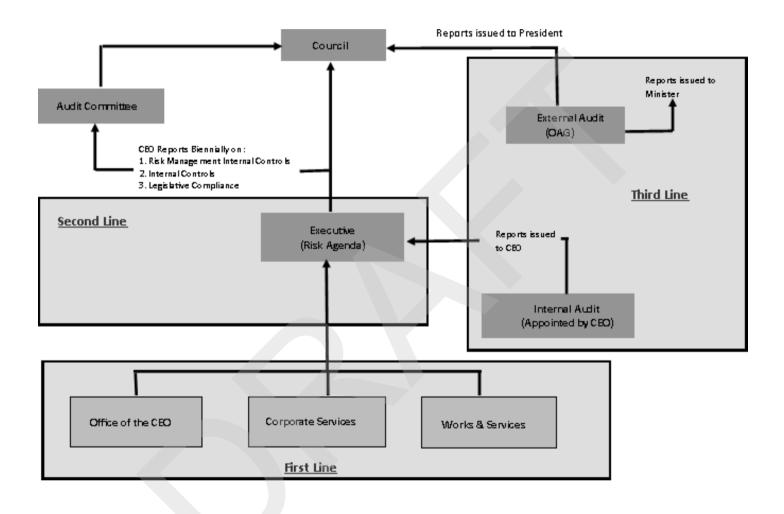


Figure 1: Risk Management Process (Source: AS/NZS 31000:2018)

Governance Structure

The following diagram depicts the current operating structure for risk management within the Shire.



Roles & Responsibilities

Council

Council's responsibilities are to:

- Adopt a Risk Management Policy compliant with the requirements of AS/NZS ISO 31000:2018 and to review and approve the Policy in a timely manner as required.
- Be satisfied risks are identified, managed and controlled appropriately, to achieve Shire's strategic objectives.
- Supports the allocation of funds / resources to treat risks as required.

Finance and Audit Committee

- Requests and reviews reports on risk management on a biannual basis (minimum) or as required depending on the nature of the risk(s).
- Monitors the overall risk exposure of the Shire and makes recommendations to Council as appropriate.
- Assesses for effectiveness the risk control measures / risk treatment plans in reducing the severity of the risk(s).

Executive

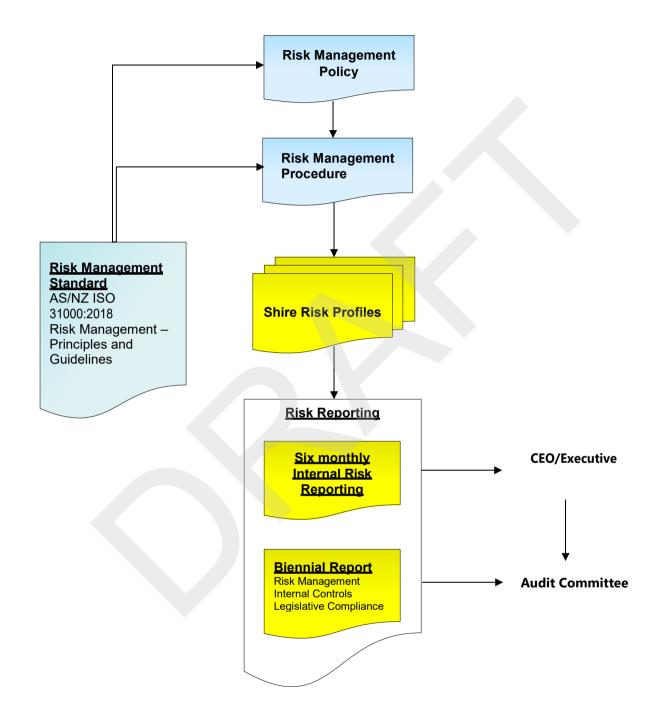
- Creates an environment where staff are responsible for and actively involved in managing risk.
- Oversight of the Shire's Risk Management Strategy.
- Maintain and implement the Risk Management Strategy.
- Ensures a consistent risk management approach is embedded in the operations and processes of the Shire.
- Actively participates and supports the Risk Management Strategy through identification and creation of suitable risk treatments to control strategic and operational risks facing the Shire.
- Monitors the strategic and operational risk management performance.
- Reviews the Shire's Risk Summary Report prior to submission to the Audit & Risk Committee.

Staff

- Adopt and understand the principles of risk management and comply with policies, processes and practices relating to risk management.
- Alert and bring to management's attention, the risks existing within their area.
- Conduct risk assessments which are appropriate with the scope of the task and the associated level of risk identified.

Document Structure (Framework)

The following diagram depicts the relationship between the Risk Management Policy, Procedures and supporting documentation and reports.



Risk & Control Management

All work areas of the Shire are required to assess and manage the Risk Profiles on an ongoing basis.

Each Manager, is accountable for ensuring that Risk Profiles are:

- Reflective of the material risk landscape of the Shire.
- Reviewed on at least a twelve-monthly basis, or sooner if there has been a material restructure or change in the risk and control environment.
- Maintained in the standard format.

This process is supported by the use of data inputs, workshops and ongoing business engagement.

Risk & Control Assessment

To ensure alignment with AS/NZ ISO 31000:2018 Risk Management, the following approach is to be adopted from a Risk & Control Assessment perspective

A: Establishing the Context

The first step in the risk management process is to understand the context within which the risks are to be assessed and what is being assessed, this forms two elements:

Organisational Context

The Shire's Risk Management Procedures provide the basic information and guidance regarding the organisational context to conduct a risk assessment; this includes Risk Assessment and Acceptance Criteria (Appendix A) and any other tolerance tables as developed. In addition, existing Risk Themes are to be utilised (Appendix C) where possible to assist in the categorisation of related risks.

Any changes or additions to the Risk Themes must be approved by the CEO.

All risk assessments are to utilise these documents to allow consistent and comparable risk information to be developed and considered within planning and decision-making processes.

Specific Risk Assessment Context

To direct the identification of risks, the specific risk assessment context is to be determined prior to and used within the risk assessment process.

For risk assessment purposes the Shire has been divided into three levels of risk assessment context:

- 1. <u>Strategic Context</u> This constitutes the Shire's external environment and high-level direction. Inputs to establishing the strategic risk assessment environment may include;
 - Organisations vision
 - Stakeholder Analysis
 - Environment Scan / SWOT Analysis
 - Existing Strategies / Objectives / Goals

- 2. <u>Operational Context</u> The Shire's day to day activities, functions, infrastructure and services. Prior to identifying operational risks, the operational area should identify its Key Activities i.e. what is trying to be achieved. Note: these may already be documented in business plans, budgets etc.
- 3. Project Context Project risk has two main components;
 - **Direct** refers to the risks that may arise as a result of project activity (i.e. impacting on current or future process, resources or IT systems) which may prevent the Shire from meeting its objectives

- **Indirect** refers to the risks which threaten the delivery of project outcomes. In addition to understanding what is to be assessed, it is also important to understand who are the key stakeholders or areas of expertise that may need to be included within the risk assessment.

B: Risk Identification

Using the specific risk assessment context as the foundation, and in conjunction with relevant stakeholders, answer the following questions, capture and review the information within each Risk Profile.

- What can go wrong? / What are areas of uncertainty? (Risk Description)
- How could this risk eventuate? (Potential Causes)
- What are the current measurable activities that mitigate this risk from eventuating? (Controls)
- What are the potential consequential outcomes of the risk

eventuating? (Consequences)

C: Risk Analysis

To analyse the risks, the Shire's Risk Assessment and Acceptance Criteria (Appendix A) is applied:

- Based on the documented controls, analyse the risk in terms of Existing Control Ratings
- Determine relevant consequence categories and rate how bad it could be if the risk eventuated with existing controls in place (Consequence)
- Determine how likely it is that the risk will eventuate to the determined level of consequence with existing controls in place (Likelihood)
- By combining the measures of consequence and likelihood, determine the risk rating (Level of Risk)

D: Risk Evaluation

The Shire is to verify the risk analysis and make a risk acceptance decision based on:

- Controls Assurance (i.e. are the existing controls in use, effective, documented, up to date and relevant)
- Existing Control Rating Level of Risk
- Risk Acceptance Criteria (Appendix A)
- Risk versus Reward / Opportunity

The risk acceptance decision needs to be documented and acceptable risks are then subject to the monitor and

review process. Note: Individual Risks or Issues may need to be escalated due to urgency, level of risk or systemic nature.

E: Risk Treatment

For unacceptable risks, determine treatment options that may improve existing controls and/or reduce consequence / likelihood to an acceptable level.

Risk treatments may involve actions such as avoid, share, transfer or reduce the risk with the treatment selection and implementation to be based on;

- Cost versus benefit
- Ease of implementation
- Alignment to organisational values / objectives

Once a treatment has been fully implemented, the Governance Officer is to review the risk information and acceptance decision with the treatment now noted as a control and those risks that are acceptable then become subject to the monitor and review process (Refer to Risk Acceptance section).

F: Monitoring & Review

The Shire is to review all Risk Profiles at least on a twelve-monthly basis or if triggered by one of the following;

- Changes to context,
- A treatment is implemented,
- An incident occurs or due to audit/regulator findings.

The CEO & Executive will monitor significant risks and treatment implementation as part of their normal agenda item on a quarterly basis with specific attention given to risks that meet any of the following criteria;

- Risks with a Level of Risk of High or Extreme
- Risks with inadequate existing control rating
- Risks with consequence rating of extreme
- Risks with likelihood rating of almost certain

The design and focus of the Risk Summary report will be determined from time to time on the direction of the CEO & Executive. They will also monitor the effectiveness of the Risk Management Framework ensuring it is practical and appropriate to the Shire.

G: Communication & Consultation

Throughout the risk management process, stakeholders will be identified, and where relevant, be involved in or informed of outputs from the risk management process. Council, through the Audit and Risk Committee will be provided with twelve monthly update reports.

Risk management awareness and training will be provided to staff as part of their OS&H Program.

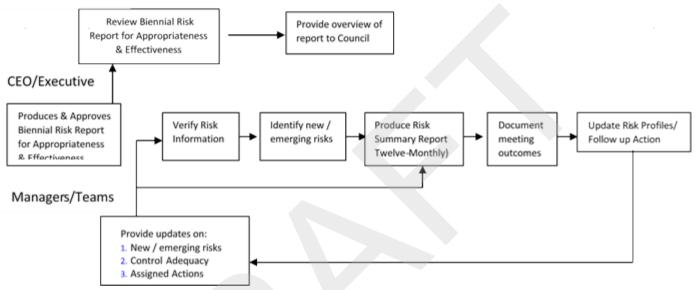
Risk management will be included within the employee induction process to ensure new employees are introduced to the Shire's risk management culture.

Reporting Requirements

Coverage & Frequency

The following diagram provides a high-level view of the ongoing reporting process for Risk Management.

Audit Committee



Each Work Area is responsible for ensuring:

- They continually provide updates in relation to new and emerging risks, control effectiveness and indicator performance to the Risk Framework Owner.
- Work through assigned actions and provide relevant updates to the Risk Framework Owner.
- Risks / Issues reported to the CEO & Executive are reflective of the current risk and control environment.

The CEO & Executive are responsible for:

- Ensuring Shire Risk Profiles are formally reviewed and updated, at least on a twelve-monthly basis or when there has been a material restructure, change in risk ownership or change in the external environment.
- Producing a twelve-monthly Risk Report for the Audit Committee which contains an overview Risk Summary for the Shire.
- Annual Compliance Audit Return completion and lodgement.

Indicators

Indicators are required to be used for monitoring and validating risks and controls. The following describes the process for the creation and reporting of Indicators:

Identification

The following represent the minimum standards when identifying appropriate Indicator risks and controls;

- The risk description and casual factors are fully understood
- The Indicator is fully relevant to the risk or control
- Predictive Indicators are adopted wherever possible
- Indicators provide adequate coverage over monitoring risks and controls

Validity of Source

In all cases an assessment of the data quality, integrity and frequency must be completed to ensure that the Indicator data is relevant to the risk or Control.

Where possible the source of the data (data owner) should be independent to the risk owner. Overlapping Indicators can be used to provide a level of assurance on data integrity.

If the data or source changes during the life of the Indicator, the data is required to be revalidated to ensure reporting of the Indicator against a consistent baseline.

Tolerances

Tolerances are set based on the Shire's Risk Appetite. They may be set and agreed over three levels:

- Green within appetite; no action required.
- Amber the Indicator must be closely monitored and relevant actions set and implemented to bring the measure back within the green tolerance.
- Red outside risk appetite; the Indicator must be escalated to the CEO & Senior Management Group where appropriate management actions are to be set and implemented to bring the measure back within appetite.

Monitor & Review

All active Indicators are updated as per their stated frequency of the data source.

When monitoring and reviewing Indicators, the overall trend should be considered over a longer timeframe than individual data movements. The trend of the Indicators is specifically used as an input to the risk and control assessment.

Risk Acceptance

Day-to-day operational management decisions are generally managed under the delegated authority framework of the Shire.

Risk Acceptance *outside* of the appetite framework is a management decision to accept, within authority levels, material risks which will remain outside appetite framework (refer Appendix A – Risk Assessment & Acceptance Criteria) for an extended period of time (generally 3 months or longer).

The following process is designed to provide a framework for those outside appetite framework identified risks.

The 'Risk Acceptance' must be in writing, signed by the relevant Manager and cover:

- A description of the risk.
- An assessment of the risk (e.g. Impact consequence, materiality, likelihood, working assumptions etc.)
- Details of any mitigating action plans or treatment options in place
- An estimate of the expected remediation date.

Reasonable action should be taken to mitigate the risk. A lack of budget to remediate a material risk outside of appetite is not sufficient justification in itself to accept a risk.

Accepted risks must be continually reviewed through standard operating reporting structure (i.e. Executive

Annual Controls Assurance Plan

The annual assurance plan is a monitoring schedule prepared by the CEO & Executive that sets out the control assurance activities to be conducted over the next 12 months. This plan needs to consider the following components.

- Coverage of all risk classes (Strategic, Operational, Project)
- Existing control adequacy ratings across the Shire's Risk Profiles
- Consider control coverage across a range of risk themes (where Commonality exists)
- Building profiles around material controls to assist in design and operating effectiveness reviews.
- Consideration to significant incidents.
- Nature of operations
- Additional or existing 2nd line assurance information / reviews (e.g. HR, Financial Services, IT)
- Frequency of monitoring / checks being performed
- Review and development of Indicators
- Timetable for assurance activities
- Reporting requirements.

Whilst this document and subsequent actions are owned by the CEO, input and consultation will be sought from individual Work Areas.

Appendix A – Risk Assessment and Acceptance Criteria

MEASURES OF CONSEQUENCE

RATING	PEOPLE	INTERRUPTION TO SERVICE	REPUTATION (Social/Community)	COMPLIANCE	PROPERTY (Plant, Equipment, Buildings)	NATURAL ENVIRONMENT	FINANCIAL IMPACT
Insignificant (1)	Near-Miss	No material service Interruption less than 1 hour	Unsubstantiated, localised low impact on community trust, low profile or no media item	No noticeable regulatory or statutory impact	Inconsequential damage	Contained, reversible impact managed by on site response	Less than \$10,000
Minor (2)	First Aid Treatment	Short term temporary interruption – backlog cleared < 1 day	Substantiated, localised impact on community trust or low media item	Some temporary non- compliances	Localised damage rectified by routine internal procedures	Contained, reversible impact managed by internal response	\$10,000 to \$50,000
Moderate (3)	Medical Treatment- Lost time injury <30 days	Medium term temporary interruption – backlog cleared by addition resources < 1 week	Substantiated, public embarrassment, moderate impact on community trust or moderate media profile	Short term non- compliance but with significant regulatory requirements imposed	Localised damage requiring external resources to rectify	Contained, reversible impact managed by external agencies	\$50,001 to \$200,000
Major (4)	Lost time injury >30 days / Temporary Disability	Prolonged interruption of services – addition resources; performance affected < 1 month	Substantiated, public embarrassment, widespread high impact on community trust, high media profile, third party actions	Non-compliance results in termination of services or imposed penalties to Shire / Officers	Significant damage requiring internal & external resources to rectify	Uncontained, reversible impact managed by a coordinated response from external agencies	\$200,001 to \$500,000
Extreme (5)	Fatality Permanent Disability	Inderminate prolonged interruption of services non-performance > 1 month	Substantiated, public embarrassment, widespread loss of community trust, high widespread multiple media profile, third party actions	Non-Compliance results in litigation, criminal charges or significant damages or penalties to Shire / Officers	Extensive damage requiring prolonged period of restitution Complete loss of plant, equipment or building	Uncontained, irreversible impact	>\$500,000

MEASURES OF CONSEQUENCE (PROJECT)

LEVEL	RATING	PROJECT TIME	PROJECT COST	PROJECT SCORE/QUALITY	
1	Insignificant	Exceeds deadline by >5% of project timeline	Exceeds project budget by 2%	Minor variations to project scope or quality.	
2	Minor	Exceeds deadline by >10% of project deadline	Exceeds project budget by 5%	Scope creep requiring additional work, time or resources. Reduced perception of quality by Stakeholders.	
3	Moderate	Exceeds deadline by >15% of project deadline	Exceeds project budget by 7.5%	Scope creep requiring additional work, time or resources or shortcuts being taken. Stakeholder concerns.	
4	Major	Exceeds deadline by >20% of project deadline	Exceeds project budget by 15%	Project goals, deliverables, costs and/or deadline failures. Project no longer aligned with the project scope. Stakeholder intervention in project.	
5	Extreme	Exceeds deadline by >25% of project deadline	Exceeds project budget by 20%	Failure to meet project objectives.	

MEASURES OF LIKELIHOOD

RATING	DESCRIPTION	FREQUENCY	
Almost Certain	The event is expected to occur in most circumstances	More than once per year	
Likely	The event will probably occur in most circumstances	At least once per year	
Possible	The event should occur at some time	At least once 3 years	
Unlikely	The event could occur at some time	At least once in 10 years	
Rare	The event may only occur in exceptional circumstances	Less than once in 5 years	
-	Almost Certain Likely Possible Unlikely	Almost Certain The event is expected to occur in most circumstances Likely The event will probably occur in most circumstances Possible The event should occur at some time Unlikely The event could occur at some time	

RISK MATRIX						
Conse	quence	Insignificant	Minor	Moderate	Major	Extreme
Likelihood		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

RISK ACCEPTANCE

RISK RANK	DESCRIPTION	CRITERIA	RESPONSIBILITY	
LOW (1-4)	Acceptable	Risk acceptable with adequate controls, managed by routine procedures and subject to annual monitoring.	Operational Manager	
MEDIUM (5-9)	Monitor	Risk acceptable with adequate controls, managed by specific procedures and subject to semi-annual monitoring.	Operational Manager	
HIGH (10-16)	Urgent Attention Required	Risk acceptable with excellent controls, managed by senior management / executive and subject to monthly monitoring.	Executive	
EXTREME (17-25)	Unacceptable	Risk only acceptable with excellent controls and all treatment plans to be explored and implemented where possible, managed by highest level of authority and subject to continuous monitoring.	CEO / Council	

SHIRE OF WONGAN-BALLIDU EXISTING CONTROLS RATINGS				
RATING FORESEEABLE		DESCRIPTION		
Effective	There is little scope for improvement	Process (controls) operating as intended and / or aligned to Policies & Procedures; are subject to ongoing maintenance and monitoring and are being continuously reviewed and tested.		
Adequate	There is some scope for improvement	Whilst some inadequacies have been identified; Processes (controls) are in place, are being addressed / complied with and are subject to periodic review and testing.		
Inadequate	A need for corrective and / or improvement actions exists	Processes (controls) not operating as intended, do not exist, or are not being addressed / complied with, or have not been reviewed or tested for some time.		

Appendix B – Risk Profile Template

Risk Theme			Date
(What could go right / wrong?) Definition of Theme			
Potential causes (What could cause it to go	<u>right / wrong?)</u>		
List of potential causes			
Controls (What we have in place to prevent it going wrong)	Туре	Date	Shire Rating
List of Controls			

Overall Control Ratings:			
Consequence Category	Risk Ratings	Shire Rating	
	Consequence:		
	Likelihood:		

Overall Risk Ratings:

Indicators (These would 'indicate' to us that something has gone right / wrong)	Tolerance	Date	Overall Shire Result
List of Indicators			
Comments			
Rationale for all above ratings			
Rationale for all above ratings Current Issues / Actions / Trea	tments	Due Date	Responsibility
	tments	Due Date	Responsibility
Current Issues / Actions / Trea	tments	Due Date	Responsibility

Appendix C - Risk Theme Definitions

1. Asset Sustainability Practices

Failure or reduction in service of infrastructure assets, plant, equipment or machinery. These include fleet, buildings, roads, playgrounds, boat ramps and all other assets and their associated lifecycle from procurement to maintenance and ultimate disposal. Areas included in the scope are;

- Inadequate design (not fit for purpose)
- Ineffective usage (down time)
- Outputs not meeting expectations
- Inadequate maintenance activities
- Inadequate financial management and planning

It does not include issues with the inappropriate use of the Plant, Equipment or Machinery. Refer Misconduct.

2. Business & Community Disruption

Failure to adequately prepare and respond to events that cause disruption to the local community and / or normal Shire business activities. The event may result in damage to buildings, property, plant & equipment (all assets). This could be a natural disaster, weather event, or an act carried out by an external party (incl vandalism). This includes;

- Lack of (or inadequate) emergency response / business continuity plans.
- Lack of training to specific individuals or availability of appropriate emergency response.
- Failure in command and control functions as a result of incorrect initial assessment or untimely awareness of incident.
- Inadequacies in environmental awareness and monitoring of fuel loads, curing rates etc.

This does not include disruptions due to IT Systems or infrastructure related failures - refer "Failure of IT & communication systems and infrastructure".

3. Failure to Fulfil Compliance Requirements

Failures to correctly identify, interpret, assess, respond and communicate laws and regulations as a result of an inadequate compliance framework. This could result in fines, penalties, litigation or increase scrutiny from regulators or agencies. This includes, new or proposed regulatory and legislative changes, in addition to the failure to maintain updated legal documentation (internal & public domain) to reflect changes.

This does not include Occupational Safety & Health Act (refer "Inadequate safety and security practices") or any Employment Practices based legislation (refer "Ineffective Employment practices)

It does include the Local Government Act, Health Act, Building Act, Privacy Act and all other legislative based obligations for Local Government.

4. Document Management Processes

Failure to adequately capture, store, archive, retrieve, provision and / or disposal of documentation. This includes:

- Contact lists
- Procedural documents
- 'Application' proposals/documents.
- Contracts
- Forms, requests or other documents.

5. Employment Practices

Failure to effectively manage and lead human resources (full/part time, casuals, temporary and volunteers). This includes not having an effective Human Resources Framework in addition to not having appropriately qualified or experienced people in the right roles or not having sufficient staff numbers to achieve objectives. Other areas in this risk theme to consider are;

- Breaching employee regulations (excluding OH&S)
- Discrimination, Harassment & Bullying in the workplace
- Poor employee wellbeing (causing stress)
- Key person dependencies without effective succession planning in place
- Induction issues
- Terminations (including any tribunal issues)
- Industrial activity

Care should be taken when considering insufficient staff numbers as the underlying issue could be process inefficiencies.

6. Engagement Practices

Failure to maintain effective working relationships with the Community (including Local Media), Stakeholders, Key Private Sector Companies, Government Agencies and / or Elected Members. This invariably includes activities where communication, feedback and / or consultation is required and where it is in the best interests to do so. For example;

- Following up on any access & inclusion issues
- Infrastructure Projects
- Regional or District Committee attendance
- Local Planning initiatives
- Strategic Planning initiatives

This does not include instances whereby Community expectations have not been met for standard service provisions such as Community Events, Library Services and / or Bus/Transport services.

7. Environment Management.

Inadequate prevention, identification, enforcement and management of environmental issues.

The scope includes;

- Lack of adequate planning and management of coastal erosion issues
- Failure to identify and effectively manage contaminated sites (including groundwater usage)
- Waste facilities (landfill / transfer stations)
- Weed control
- Ineffective management of water sources (reclaimed, potable)
- Illegal dumping / Illegal clearing / Illegal land use.

8. Errors, Omissions, Delays

Errors, omissions or delays in operational activities as a result of unintentional errors or failure to follow due process. This includes instances of;

- Human errors, incorrect or incomplete processing
- Inaccurate recording, maintenance, testing and / or reconciliation of data
- Errors or inadequacies in model methodology, design, calculation or implementation of models.

This may result in incomplete or inaccurate information. Consequences include;

- Inaccurate data being used for management decision making and reporting
- Delays in service to customers
- Inaccurate data provided to customers

This excludes process failures caused by inadequate / incomplete procedural documentation - refer "Inadequate Document Management Processes".

9. External Theft & Fraud (incl Cyber Crime)

Loss of funds, assets, data or unauthorised access, (whether attempts or successful) by external parties, through any means (including electronic), for the purposes of;

- Fraud benefit or gain by deceit
- Malicious Damage hacking, deleting, breaking or reducing the integrity or performance of systems
- Theft stealing of data, assets or information (no deceit)

Examples include:

- Scam invoices
- Cash or other valuables from Outstations.

10. Management of Facilities / Venues / Events

Failure to effectively manage the day to day operations of facilities and / or venues. This includes;

- Inadequate procedures in place to manage the quality or availability
- Ineffective signage
- Booking issues
- Financial interactions with hirers / users
- Oversight / provision of peripheral services (e.g. cleaning / maintenance)

11. IT & Communications Systems and Infrastructure

Instability, degradation of performance, or other failure of IT Systems, Infrastructure, Communication or Utility causing the inability to continue business activities and provide services to the community. This may or may not result in IT Disaster Recovery Plans being invoked. Examples include failures or disruptions caused by:

- Hardware &/or Software
- IT Network
- Failures of IT Vendors

This also includes where poor governance results in the breakdown of IT maintenance such as;

- Configuration management
- Performance Monitoring
- IT Incident, Problem Management & Disaster Recovery Processes

This does not include new system implementations - refer "Inadequate Project / Change Management".

12. Misconduct

Intentional activities in excess of authority granted to an employee, which circumvent endorsed policies,

procedures or delegated authority. This would include instances of:

- Relevant authorisations not obtained.
- Distributing confidential information.
- Accessing systems and / or applications without correct authority to do so.
- Misrepresenting data in reports.
- Theft by an employee
- Collusion between Internal & External parties

This does not include instances where it was not an intentional breach - refer Errors, Omissions or Delays, or Inaccurate Advice / Information.

13. Project / Change Management

Inadequate analysis, design, delivery and / or status reporting of change initiatives, resulting in additional expenses, time requirements or scope changes. This includes:

- Inadequate Change Management Framework to manage and monitor change activities.
- Inadequate understanding of the impact of project change on the business.
- Failures in the transition of projects into standard operations.
- Failure to implement new systems
- Failures of IT Project Vendors/Contractors

14. Safety and Security Practices

Non-compliance with the Occupation Safety & Health Act, associated regulations and standards. It is also the inability to ensure the physical security requirements of staff, contractors and visitors. Other considerations are:

- Inadequate Policy, Frameworks, Systems and Structure to prevent the injury of visitors, staff, contractors and/or tenants.
- Inadequate Organisational Emergency Management requirements (evacuation diagrams, drills, wardens etc).
- Inadequate security protection measures in place for buildings, depots and other places of work (vehicle, community etc).
- Public Liability Claims, due to negligence or personal injury.
- Employee Liability Claims due to negligence or personal injury.
- Inadequate or unsafe modifications to plant & equipment.

15. Supplier / Contract Management

Inadequate management of external Suppliers, Contractors, IT Vendors or Consultants engaged for core operations. This includes issues that arise from the ongoing supply of services or failures in contract management & monitoring processes. This also includes:

- Concentration issues
- Vendor sustainability

5.33 - Compliance and Enforcement

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

This policy ensures that the Shire follows a consistent approach to any compliance and enforcement actions undertaken in accordance with the *Criminal Procedure Act 2004*.

OBJECTIVE

The Shire has a duty to investigate compliance issues and an obligation to enforce the requirements of legislation, including fulfilment of its responsibilities under Prescribed Acts, Regulations and the Shire's local laws.

The Shire will ensure that where any compliance or enforcement actions are undertaken the principles of transparency, procedural fairness and natural justice will apply.

SCOPE

This policy applies to any Shire Officers who have responsibilities under delegated authority for ensuring compliance on behalf of the Shire of Wongan-Ballidu.

DEFINITIONS

Term	Definition
Act	Local Government Act 1995.
CEO	Chief Executive Officer
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .

Term	Definition

Member	means in relation to a council or committee, a Council Member in the Act; Elected Member; or Councillor; or a member of the committee.						
Natural justice	The principles of natural justice should be free from bias and parties should be given fair opportunity to be heard and all the reasons and decision taken by the court should be informed by the court to the respective parties.						
Prescribed Act	Means an Act that is prescribed by the regulations made under the <i>Criminal Procedure Act 2004</i> .						
Prescribed Offences	Means an offence prescribed under section 5(1) of the <i>Criminal Procedure Act 2004</i> .						
Procedural justice	There are four key principles of procedural justice: voice, neutrality, respect and trust. Adherence to these principles is linked to improved compliance and positive outcomes.						
Regulations	made under a prescribed Act that may prescribe an offence under the prescribed Act, or under any regulations made under the prescribed Act, to be an offence for which an infringement notice may be issued.						
Shire	the Shire of Wongan-Ballidu.						
Transparency	Transparency, as used in the humanities and in other social contexts, is operating in such a way that it is easy for others to see what actions are performed. Transparency implies openness, communication, and accountability.						

Policy Statement

To investigate and resolve offences for breaches of legislation including failure to comply with terms or conditions of Notices, Approvals, and Orders; and appeals arising out of proceedings brought by the Shire.

1. Principles

The Shire will:

- (a) administer its statutory responsibilities in a fair, unbiased and equitable manner in the interest of public health, interest, safety and amenity.
- (b) prioritise, consider, investigate, and assess any allegation of a breach, or an offence, on the merits of each case.
- (c) not investigate or respond to anonymous allegations.

- (d) endeavour to protect the private details of complainants, within the parameters of the legislative framework.
- (e) make decisions regarding enforcement in a manner that is in proportion with the seriousness of the alleged breach, or offence.
- (f) only proceed with enforcement action where the CEO (or delegate) has considered the prospects of achieving a conviction; satisfied that prosecution is warranted.
- (g) Inform Members of any legal proceedings, anticipated costs, progress and outcomes brought against any party by the Shire.
- (h) discontinue investigations where the CEO (or delegate) reasonably considers that the allegation(s) are unsubstantiated; mischievous; vexatious; pertaining to a civil matter; has previously been investigated; and/or concluded; or is likely to result in disproportionate costs being incurred.

2. Limit of Authority

The CEO is authorised to seek legal advice and engage or procure legal representation to an amount not exceeding \$5,000 for any single matter. If legal costs are anticipated to exceed \$5,000, the CEO will submit a report to Council for approval, prior to proceeding with legal action.

Reference Information

- 5.28 Legal Representation Costs Indemnification
- Purchasing and Procurment Policy (4.8);
- <u>Compliance</u> (REG5); and
- <u>5.31 Risk Management Policy</u>
- 5.32 Risk Management Procedure
- Delegation Authority Chief Executive Officer

Legislation

Local Government Act 1995 and its subsidiary legislation.

Animal Welfare Act 2002 and its subsidiary legislation.

Biosecurity and Agriculture Management Act 2007 and its subsidiary legislation.

Building Act 2011 and its subsidiary legislation.

Building Services (Complaint Resolution and Administration) Act 2011 and its subsidiary legislation.

Caravan Parks and Camping Grounds Act 1995 and its subsidiary legislation.

Cat Act 2011 and its subsidiary legislation. Cemeteries Act 1986 and its subsidiary legislation. Control of Vehicles (Off Road Areas) Act 1978 and Regulations and its subsidiary legislation. Criminal Procedure Act 2004 and its subsidiary legislation. Dog Act 1976 and its subsidiary legislation. Fines, Penalties and Infringement Notices Enforcement Act 1994 and its subsidiary legislation. Food Act 2008 and its subsidiary legislation. Liquor Control Act 1988 and its subsidiary legislation. Litter Act 1979 and its subsidiary legislation. Local Government (Miscellaneous Provisions) Act 1960 and its subsidiary legislation. Planning and Development Act 2005 and its subsidiary legislation. Public Health Act 2016 and its subsidiary legislation.

Associated documents

Nil

5.34 - Execution of Documents

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

This policy ensures that documents are executed, and the Common Seal is used, in accordance with legislative provisions contained in Division 3 of the *Local Government Act 1995* (the Act).

OBJECTIVE

To provide guidance to all workers as to who can sign various types of documents representing the Shire of Wongan-Ballidu (the Shire), including when to apply the Common Seal.

SCOPE

This policy applies to the Chief Executive Officer (CEO), Shire Officers and Authorised Agents; preparing documents for execution and/or who have been authorised either by a specific resolution of Council, or through the provisions of delegation, to execute documents on behalf of the Shire of Wongan-Ballidu.

DEFINITIONS

Term	Definition
Act	Local Government Act 1995.
Authorised Agent	The Shire's legal advisor(s) or settlement agent(s), as appointed from time to time, who are authorised to the extent described within a written instruction approved by Council to execute documents on behalf of the Shire.
Common Seal	The official stamp of the Shire of Wongan-Ballidu, confirming the Shire's consent to the provisions contained in the document to which it is affixed.
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .

-						
Delegated Officer	means an Officer of the Shire who has the appropriate delegated authority to execute documents on behalf of the Council.					
Document	means, in accordance with the Freedom of Information Act 1992:					
	(a) any record; or					
	(b) any part of a record; or					
	(c) any copy, reproduction or duplicate of a record; or					
	(d) any part of a copy, reproduction or duplicate of a record.					
	The above includes any written paper or electronic document including Notices, flyers, letters, memorandums and emails that:					
	. Convey a decision; or i. Establish an obligation on the Shire; or ii. are ceremonial.					
Execute	Doing all that is ready to make the deed, agreement or document operative.					
Senior Employee	means an employee designated as a Senior Employee by Council under s.5.37 of the <i>Local Government Act 1995</i> including the CEO and Senior Management Group.					
Shire	Shire of Wongan-Ballidu					
Shire Officers	means an employee of the Shire who has the appropriate authorisation to sign a document on behalf of the Shire.					
Workers	Employees, contractors and volunteers are now all classed as workers as per the WHS legislation and regulations.					

Policy Statement

This Policy covers four categories of documents as outlined below and is supported by way of an Instrument of Delegation ES2 – Execution of Documents in the Shire's Register of Delegations.

1. Category One Documents - documents requiring both the CEO and the Shire President to execute

These types of documents will require a specific resolution of Council to enter into an agreement as well as an authority to affix the common seal to that type of document in accordance with s.9.49A (2) of the Act.

The Shire President and CEO will execute documents under the provisions of s.9.49A(3) of the Act.

Documents may be executed by another Shire Officer or an agent of the local government in accordance with s.9.49A(4) provided that there has been authority given by way of a Council Resolution or through an instrument of delegation.

2. Category Two Documents – documents requiring the CEO only to authorise

Under s.9.49A (4) of the Act Council authorises the CEO, listed in the Instrument of Delegation ES2 Execution of Documents, to sign documents and/or deeds on behalf of the Shire.

Documents may be executed by another Shire Officer or an agent of the local government in accordance with s.9.49A(4) provided that there has been authority given by way of a Council Resolution or through an instrument of delegation.

Category 2 documents can be described as documents arising out of a matter that:

- Requires Council approval;
- Arises out of delegated authority from Council; or
- Are operational in nature and due to its significance should only be signed by the CEO, as a delegated representative of the Shire.

The CEO is permitted, through this policy, to execute documents that:

- Have an unlimited \$ value subject to "Budget constraint;"
- Have a commitment period that is specifically resolved by Council or in any other case, no greater than a seven-year period; and/or
- Moderate or lesser level of financial risk, legal complexity or political sensitivity, unless specifically resolved by Council.

3. Category Three Documents - documents within Delegated Authority

Under s.9.49A(4) of the Act Council authorises Delegated Officers, listed in the Instrument of Delegation ES2 Execution of Documents, to sign documents and/or deeds on behalf of the Shire. These Delegated Officers only have authority where the documents are related to their area of responsibility.

Category 3 documents can be described as documents arising out of a matter that:

- Requires Council approval;
- Arises out of delegated authority from Council; or
- Are operational in nature and due to its significance should only be signed by a Senior Employee as defined in the Act.

The positions and document execution limits are to be in: Are to the value of \$250,000 or less;

- On delegation Authority Register
- Have a commitment no greater than a five-year period; and/or
- Moderate or lesser level of financial risk, legal complexity or political sensitivity.

4. Category Four Documents - documents operational in nature.

These types of documents will include correspondence relating to day-to-day routine communications or transactions related to the operations of the Shire. They will include documents that are created in the normal course of business to discharge the duties of an Officer's position in a manner consistent with Shire policies and procedures.

Category 4 documents do not require specific authorisation through Council as they are subject of s.5.41(d) of the Act which provides that it is the function of the CEO to manage the day-to-day operations of the Shire. Shire Officers undertake such duties "acting through" another person, in accordance with s.5.45 of the Act.

Category 4 documents are to be executed by the CEO, a Manager, or a Shire Officer where the authority and accountability has been extended through an authorisation, policy, procedure, or a position description.

It is therefore important to have a good knowledge of the documents that relate to the team that is responsible for the document.

Shire Officers, with the relevant authority are permitted, through this policy, to execute documents that:

- Are to the value of \$50,000 per annum or less;
- Have a commitment no greater than a two-year period; and/or
- Minor or lesser level of financial risk, legal complexity or political sensitivity.

5. Signing documents (other than by Common Seal) during temporary or unplanned absence of the CEO

A temporary, unplanned absence refers to the CEO being unable to carry out the duties as described in this policy due to but not limited to:

- Delayed travel arrangements;
- Incapacitation due to accident or illness; and
- Personal reasons.

If the temporary, unplanned absence is not expected to exceed 48 hours, the appointment of an Acting CEO via a line of succession shall be in accordance with Appointment of Acting or Temporary CEO Council Policy.

Where:

- The CEO is temporarily unavailable or incapacitated to execute documents requiring the CEO's signature; and
- An Acting CEO has not been appointed by Council

6. Consequences

This policy represents the formal policy and expected standards of the Shire. Appropriate approvals need to be obtained prior to any deviation from the policy. Elected Members and Shire officers are reminded of their obligations under Council's Code of Conduct to give full effect to the lawful policies, decisions and practices of the Shire.

7. Execution Clause

The correct execution clause for Shire of Wongan-Ballidu documents is below. Officers must ensure the document being executed contains the correct execution clause.

(a) Executed as an Agreement (Council Resolution)

THE	COMMON S	SEAL OF TH	HE) SH	RE
OF	WONGAN	BALLIDU	WAS)
HER	EUNTO AFFI)	KED BY)
AUT	HORITY OF	COUNCIL) AND	IN
THE	PRESENCE O)F:)		

Shire President

Date

Chief Executive Officer

Name of Chief Executive Officer

Name of Shire President (PLEASE PRINT)

Date

(PLEASE PRINT)

(b) Executed as an agreement (non-Council resolution)

THE COMMON SEAL OF THE) SHIRE OF WONGAN-BALLIDU WAS) HEREUNTO AFFIXED IN THE) PRESENCE OF:)

Chief Executive Officer

Shire President

8. Roles and Responsibilities & Documents Table

The roles and responsibilities of the Shire President, CEO, Senior Managers and Shire Officers with respect to the execution of documents are outlined in the table below.

It is the responsibility of the executing parties to ensure they fully understand what they are executing on behalf of the Shire and any queries are addressed before this process is completed.

On the occasions where a Common Seal is required of the Shire, it is the responsibility of all executing parties to ensure that the Common Seal Register is updated and the Shire is notified of its application as part of the Council Information Bulletin.

Relevant Council Policies ought to be referred to as consideration must be given to the potential risks exposed to the Shire of Wongan-Ballidu when executing a document. This includes the potential financial, service commitments, service interruption, environmental, reputation and compliance implications.

Other documentation not Appendix Liaise with your Man Compliance Officer fo		Signatur	es Required		
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Adoption, Amendment or Repeal of a local law	1	\checkmark	\checkmark	х	х
Any document where the Common Seal is requested by other party or legally required	1	\checkmark	\checkmark	х	х
Deeds in respect to sale, or purchase relating to property including equitable interests	1	V	\checkmark	х	х
Documents of a ceremonial nature (where affixing the common seal is for posterity rather than a legal requirement).	1	\checkmark	\checkmark	x	х

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice			Signatu	res Required	
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Documents that enable compliance with a local government statutory obligation which, if not signed, constitutes a possible risk to the Shire.	1	V	V	V	x
Easements and the surrender or modification of easements.	1	V	V	N	x
Offer and Acceptance forms and associated documents required to enact a decision of Council to purchase or to sell land. <i>This does not include</i> <i>mortgage and Transfer of</i> <i>Land documents.</i>	1	N	V	х	x
Other legally binding contracts outside of the normal course of business (e.g. confidentiality, indemnity, licensing, novation and sponsorship agreements)	1	\checkmark	V	N	\checkmark
Power of Attorney to act for the Shire	1	\checkmark	\checkmark	х	x

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice			Signatu	res Required	
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Communication on behalf of the Shire, relevant to the day-to-day operations of the Shire which are the subject of a level of political sensitivity or potential risk to the Shire.	2	x	V	x	X
Memorandum of Understanding	2	V	\checkmark	x	х
Authority to sign documents on behalf of the Shire:					
 That are within\the scope of an Officer's position description; or That has been extended through a Council decision; That has been extended through an authorised officer appointment; That has been extended through delegated authority or policy. 	3	x	\checkmark	\checkmark	\checkmark
Commercial Leases / Peppercorns (including assignment of, extensions, renewals, variations, sub-leases and surrender)	3	х		\checkmark	\checkmark

<i>Appendix</i> Liaise with your Manager or	<i>ther documentation not listed in the Appendix</i> e with your Manager or Compliance Officer for advice		Signatures Required				
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers		
 Communications on behalf of the Shire: To Commonwealth or government ministers; To Commonwealth or government department heads; To Industry representative bodies; Concerning day-to-day operations that are politically sensitive or a potential risk to the Shire. 	3	V	V	X	X		
Community & User Agreement Licenses or Lease / Peppercorns (including assignment of, extensions, renewals, variations, sub- leases, and surrender)	3	V	V	V	\checkmark		
Contract documents arising from tenders	3	х	\checkmark	\checkmark	\checkmark		
Deeds of Settlement – employee matters	3	х	\checkmark	\checkmark	\checkmark		
Documents arising out of instances that require Officers to enact a decision of Council or the Development Assessment Panel	3	V	\checkmark	x	\checkmark		

Other documentation not Appendix Liaise with your Manager or Officer for advice	r Compliance	Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Documents related to approvals for Subdivision, Survey Strata, Strata Title or Development Approvals or provisions of a Structure Plan, Activity Centre Plan or Local Development Plan	3	х	V	V	
Documents required to enact a decision made under delegated authority or as a condition or approval given under delegated authority	3	x	V	\checkmark	
Employment Contracts (Managers – casual contracts only)	3	х	\checkmark	x	\checkmark
Licences to occupy land or premises	3	x	\checkmark		
Local Planning Scheme and any Planning Scheme Amendments	3	x	\checkmark		\checkmark
Management statements and withdrawal or variation of management statements	3	x		\checkmark	\checkmark
Enterprise Bargaining Agreements	3	х	\checkmark	x	\checkmark

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Land Transaction documents where the Shire is required to sign as a landowner. This includes but is not limited to: • Landgate documents and/or					
 deeds including lodgement, removal, withdrawn, modification or surrender/cancel of documents such as: Notifications in accordance with section 70A of the Transfer of Land Act 1893; Covenants, easements and caveats under the Transfer of Land Act 1893; Reciprocal easements and/or parking agreements; Rights of carriageway agreements; Amalgamations Easements or deeds of easement under the Land Administration Act 1997 and/or Strata Titles Act 	3	V	V	x	\checkmark
 1985. Documents and/or deeds required in the management of land as a landowner or where the land is a reserve vested to the Shire; and Deeds of Agreement and Release in respect to sale or purchase relating to Shire land including equitable interests. 					

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Mortgages, loans and debenture documents for loans which Council has resolved to raise	3	х	V	V	\checkmark
Other statements of intent and terms and conditions such as:					
 Letters of employment for casual employees; Hire agreements for Shire Facilities; or Higher duties for positions. 	3	x	V	\checkmark	\checkmark
Prosecution notices and court documents	3	x	\checkmark	\checkmark	\checkmark
Regular hire arrangements	3	x	\checkmark	\checkmark	
Residential tenancy leases	3	x	\checkmark	\checkmark	\checkmark
Service agreements / Contract as a result of procurement process (above Manager delegation)	3	x	\checkmark	\checkmark	
State, Commonwealth or other funding agreements (within delegation)	3	\checkmark	\checkmark	\checkmark	\checkmark

Other documentation not Appendix Liaise with your Manager or Officer for advice	Compliance	Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
When a responsible officer has a specific role such as applying for and organising receipt of grants, and which required them to sign documents relevant to the grant.	3	x	V	V	N
When a responsible officer is authorised by relevant laws or is delegated authority by Council to issue notices and infringements.	3	x	V	V	N
Agreements in the normal course of business for the purchase of goods or services identified within the department's budget (other than for tenders) and conforming to the requirements for the Shire's Purchasing Policy and other relevant policies.	4	x	V	V	N
Any type of legally binding contract, instrument or service agreement binding the organisation to some form of commitment	4	x	\checkmark	\checkmark	
Goods and/or Service agreements / Contracts as a result of procurement process (where total consideration is within delegation).	4	x	\checkmark	\checkmark	\checkmark
Grants applications and Grant funding agreements	4	х	\checkmark	\checkmark	\checkmark

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Heritage agreements	4	x	\checkmark	\checkmark	
Licences	4	x	V	\checkmark	
Lodgement, modification and withdrawal of caveats	4	x	V	\checkmark	
Lodgement, registration, modification, transfer and/or withdrawal of memorials	4	x	V	V	\checkmark
Notifications on title and withdrawal or variation of same	4	x	V	\checkmark	\checkmark
Outgoing general correspondence for a departmental team	4	x	V		\checkmark
Reciprocal access agreements and withdrawal or variation of reciprocal access agreements	4	x	V	\checkmark	\checkmark
Restrictive Covenants – under s.129B of the Transfer of Land Act 1893 and any discharge or variation of covenants	4	x	\checkmark	\checkmark	\checkmark
Rights of carriageway agreements and withdrawal or variation of rights and carriageway agreements	4	x	\checkmark	\checkmark	\checkmark
Letters, correspondence and other documents that reflect an operational or procedural action required in the ordinary course of business.	4	x	\checkmark	\checkmark	\checkmark

Reference Information

The following Council Policies ought to be referred to as consideration must be given to the potential risks exposed to the Shire of Wongan-Ballidu when executing a document. This includes the potential financial, service commitments, service interruption, environmental, reputation and compliance implications.

All Purchasing and Procurement Policies;

- 5.31 Risk Management Policy
- 5.32 Risk Management Procedure
- 5.35 Internal Control
- 5.36 Legislative Compliance ;

5.26 Appointment of Acting or Temporary CEO

Legislation

Local Government Act 1995

- □ s.5.41 functions of CEO.
- □ s.5.45 Other matters relevant to delegations under Division 4 (local government employees).
- □ s.9.49A (1) document executed by person under an authority is permitted to do so by this authorisation.
- □ s.9.49 'documents, how authenticated'
- Local Government (Functions and General) Regulations 1996
 - □ r.34 Common seal, unauthorised use of

Interpretation Act 1984

Terms used in written laws - *sign* includes the affixing or making of a seal, mark or thumbprint;

Associated documents

Instrument of Delegation: Execution of Documents contained in the Shire of Wongan-Ballidu Register of Delegations.

Shire of Wongan-Ballidu Local Law (Standing Orders) 2010.

5.35 - Internal Control

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

OBJECTIVES

To ensure that appropriate internal controls are implemented in order to:

- 1. Fulfil the statutory obligations under the Local Government (Financial Management) Regulations 1996 and Local Government (Audit) Regulations 1996; and
- 2. Ensure that the Shire's assets are safe from loss due to fraud and/or mismanagement.

POLICY STATEMENT

The organisation will, through the Chief Executive Officer (CEO), ensure that appropriate and efficient internal controls are in place covering:

- 1. Staffing and segregation of duties;
- 2. Information technology;
- 3. Documented procedures and processes covering the recording, reporting and authorisation of transactions; and
- 4. Monitoring performance and adherence.

5.36 - Legislative Compliance

Policy Owner:
Person Responsible:
Date of Adoption:
Adoption Resolution:
Date of Last Amendment:
Date of Last Review:

Administration Chief Executive Officer

OBJECTIVES

To ensure that the Shire of Wongan-Ballidu (the Shire) complies with legislative requirements.

BACKGROUND

A fundamental principle of good public administration is that public officials comply with both the letter and the spirit of the law.

The Shire has an obligation to ensure that legislative requirements are complied with. The community and those working at the Shire have an expectation that the Shire will comply with applicable legislation and that the Shire will take all appropriate measures to ensure that expectation is met.

Regulation 14 of the *Local Government (Audit) Regulations1996* requires local governments to carry out a compliance audit for the period 1 January to 31 December in each year. The Compliance Audit is structured by the Department of Local Government and Communities (DLGC) and relates to key provisions of the *Local Government Act 1995*.

Regulation 17 of the *Local Government (Audit) Regulations 1996* also requires a review of the appropriateness and effectiveness of systems and procedures in relation to legislative compliance at least once every two calendar years and a report to the Audit Committee on the results of that review.

POLICY STATEMENT

The Shire will have appropriate processes and structures in place to ensure that legislative requirements are achievable and are integrated into the operations of the Shire. These processes and structures will aim to:

- 1. Develop and maintain a system for identifying the legislation that applies to the Shire's activities;
- 2. Assign responsibilities for ensuring that legislation and regulatory obligations are fully implemented;
- 3. Provide training for relevant staff, Councillors, volunteers and other relevant people within the legislative requirements that affect them;
- 4. Provide people with the resources to identify and remain up to date with new legislation;
- 5. Establish a mechanism for reporting non-compliance;
- 6. Review accidents, incidents and other situations where there may have been non-compliance; and
- 7. Review audit reports, incident reports, complaints and other information to assess how the systems of compliance can be improved.

ROLES & RESPONSIBILITIES

1. **Councillors & Committee Members**

Councillors and Committee Members have a responsibility to be aware of and abide by legislation applicable to their role.

2. Senior Management

Senior Management should ensure that directions relating to compliance are clear and unequivocal and that legal requirements which apply to each activity for which they are responsible are identified.

Senior Management should have systems in place to ensure that all staff are given the opportunity to be kept fully informed, briefed and/or trained about key legal requirements relative to their work within their financial capacity to do so.

3. Employees

Employees have a duty to seek information on legislative requirements applicable to their area of work and to comply with the legislation.

Employees shall report through their supervisors to Senior Management any areas of non-compliance that they become aware of.

4. Implementation of Legislation

The Shire will have procedures in place to ensure that when legislation changes, steps are taken to ensure that future actions comply with the amended legislation.

LEGISLATIVE COMPLIANCE PROCEDURES

1. Identifying Current legislation

The Shire accesses electronic up to date versions of legislation through the Western Australian State Law Publisher website at <u>www.slp.wa.gov.au</u>.

2. Identifying New or Amended Legislation

(a) Department of Local Government and Communities (DLGC)

The Shire receives regular circulars from the DLGC on any new or amended legislation. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

(b) Department of Planning

The Shire receives Planning Bulletins from the Department of Planning on any new or amended legislation. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

(c) Western Australian Local Government Association (WALGA)

The Shire receives regular circulars from WALGA and these Circulars highlight changes in legislation applicable to local government. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

3. Obtaining Advice on Legislative Provisions

The Shire will obtain advice on matters of legislation and compliance where necessary. Contact can be made with the DLGC, WALGA or the relevant initiating government department for advice.

4. Informing Council of Legislative Changes

If appropriate, the CEO will, on receipt of advice of legislative amendments, advise the Council on new or amended legislation.

The Shire's format for all its reports to Council meetings provides that all reports have a section headed 'Statutory Implications' which shall detail relevant Sections of any Act, Regulation or other relevant and/or applicable legislation.

5. Review of Incidents & Complaints of Non-Compliance

The Shire shall review all incidents and complaints of non-compliance. Such reviews will assess compliance with legislation, standards, policies and procedures that are applicable.

6. Reporting of Non-Compliance

All instances of non-compliance shall be reported immediately to the relevant Manager. The Manager shall then determine the appropriate response and then report the matter to the CEO.

The CEO may investigate any reports of significant non-compliance and if necessary, report the non-compliance to the Council and/or the relevant government department.

The CEO will then take all necessary steps to improve compliance systems.

5.28 - Legal Representation Costs Indemnification

Policy Owner:	Administration	
Person Responsible:	Chief Executive Officer	
Date of Adoption:		
Adoption Resolution:		
Date of Last Amendment:		
Date of Last Review:		

INTRODUCTION

This policy is designed to protect the interests of Elected Member and Shire Officers (including past Members and former Shire Officers) where they become involved in legal proceedings due to their official functions.

s.9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything an Elected Member or Shire Officer has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law.

s.3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district.

s.6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions, a Council can expend funds to provide legal representation for Members and Shire Officers, as long as it believes that the expenditure falls within the scope of the local government's function.

OBJECTIVE

To provide transparency where Council makes a determination as to whether assistance will be given to Members or Shire Officers with legal costs and other liabilities.

The Shire's approval to pay legal representation costs incurred by an individual Councillor or Shire Officer will rely on the determination that it is reasonably concluded that the expenditure provides for the good governance of the district.

This policy does not apply to legal advice and representation that is obtained by the Shire in the normal course of fulfilling the functions and exercising the powers of a local government.

SCOPE

This policy applies to Council and the Shire; providing guidelines regarding any financial assistance that may be provided by Council or the Shire in making determinations as to whether assistance will be provided to Members and/or Shire Officers for legal representation, including costs and other liabilities.

This policy will:

- clarify what issues Council will offer financial assistance for; and
- ensure that all requests for financial assistance are treated equitably.

DEFINITIONS

Term	Definition
Act	Local Government Act 1995.
Approved lawyer	 a 'certified practitioner' under the Professions Act 2008; approved in writing by the Council or the CEO under delegated authority.
CEO	Chief Executive Officer
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .
Senior Manager	 Means the Managers as defined in the Corporate Management Structure: Manager - Finance and Administration Manager - Works and Services Manager - Regulatory Services Manager - Community Services
Legal proceedings	May be civil, criminal or investigative.
Legal representation	 the provision of legal services, to or on behalf of a Member or Shire Officer, by an approved lawyer that are in respect of: 1. a matter or matters arising from the performance of the functions of the Member or Shire Officer; and 2. legal proceedings involving the Member or Shire Officer that have been, or may be, commenced.
Legal representation costs	the costs, including fees and disbursements, properly incurred in providing legal representation.
Legal services	includes advice, representation or documentation that is provided by an approved lawyer.

Term	Definition
Member	means a current or former Council Member in the Act; Elected Member; or Councillor. In respect to this policy it also means a non-elected member of a council committee.
Payment of Costs	Means payments by the Shire of legal representation costs either by a direct payment to the approved lawyer (or the relevant firm) or a reimbursement to the Member or Shire Officer.
Regulations	Local Government (Administration) Regulations 1996.
Shire	the Shire of Wongan-Ballidu
Shire Officer	means a current or former Employee of the Shire.
Shire President	means a Mayor or President elected by the Council from amongst the councillors.

Policy Statement

Council shall ensure adequate resources are allocated annually in the Shire's Annual Budget to provide legal representation and costs indemnification to assist a Member or Shire Officer in meeting reasonable expenses and any liabilities incurred in relation to legal proceedings subject to the following:

1. Payment Criteria

There are four major criteria for Council determining whether the Shire will pay the legal representation costs of a Member or Shire Officer as follows:

- (i) the legal representation costs must relate to a matter that arises from the performance, by the Member or Shire Officer, of his or her functions;
- (ii) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- (iii) in performing their functions, to which the legal representation relates, the Member or Shire Officer must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- (iv) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

If the criteria in Clause 1 of this Policy is satisfied the Shire may approve the payment of legal representation costs:

- (i) where proceedings are brought against a Member or Shire Officer in connection with his or her functions for example:
 - an action for defamation or negligence arising out of a decision made or action taken by the Member or Shire Officer; or
 - where a Member or Shire Officer seeks a restraining order against a person using threatening behaviour); or
 - where a decision of Council or a Shire Officer has aggrieved another person (e.g. refusing a development application); or
 - where the conduct of a Member or Shire Officer in carrying out his or her functions is considered detrimental to the person (e.g. defending defamation actions).
- (ii) to enable proceedings to be commenced and/or maintained by a Member or Shire Officer to permit them to carry out their functions. For example, where a Member

or Shire Officer seeks to take action to obtain a restraining order against a person using threatening behaviour to the Member or Shire Officer; or

(iii) where exceptional circumstances are involved - for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Members or Shire Officers.

Council, nor the Shire, will approve the payment of legal representation costs for a defamation action; or a negligence action; instituted by a Member or Shire Officer, unless under exceptional circumstances.

3. Application for Payment

A Member or Shire Officer who seeks assistance under this policy is to make an application, in writing, to Council or the CEO.

3.1 Written Application

The written application for payment of legal representation costs is to give details of:

- (i) the matter for which legal representation is sought;
- (ii) how that matter relates to the functions of the Member or Shire Officer making the application;
- (iii) the lawyer (or law firm) who is to be asked to provide the legal representation;
- (iv) the nature of legal representation to be sought, including (but not limited to): advice; representation in court; preparation of a document; et cetera;
- (v) an estimated cost of the legal representation; and
- (vi) why it is in the interests of the Shire for payment to be made.

A Member or Shire Officer requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the Act.

3.2 Declaration by Applicant

The application is to contain a declaration by the applicant that he or she has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.

As far as possible, the application is to be made before commencement of the legal representation to which the application relates.

3.3 Signed Written Statement

The application is to be accompanied by a signed written statement by the applicant that he or she:

- (vii) has read, and understands, the terms of this policy;
- (viii) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 of this policy and any other conditions to which the approval is subject; and
- (ix) undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 7 of this policy.

3.4 Agreement

In relation to clause 3.3(iii), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

3.5 **Preparation of Council Report**

An application is to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by an appropriate Executive Manager.

4. Legal Representation Costs – Limit

Council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.

A Member or Shire Officer may make a further application to Council in respect of the same matter.

5. Council's Powers

Council may:

- (i) refuse;
- (ii) grant; or
- (iii) grant subject to conditions,

an application for payment of legal representation costs.

The above conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

5.1 Assessment of Application

In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the Shire's Members or the Shire Officer's insurance policy or its equivalent.

5.2 **Revoking or Varying an Approval**

Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs, subject to Part 15 'Revoking or Changing Decisions' of the *Shire of Wongan-Ballidu Standing Orders Local Law 2010*.

5.3 Determination

Council may, subject to clause 5.4, determine that a Member or Shire Officer whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved:

- (i) not acted in good faith, or has acted unlawfully in a way that constitutes improper conduct;
- (ii) or given false or misleading information in respect of the application.

5.4 Conditions

A determination under clause 5.3 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

5.5 Legal Representation Costs

Where the Council makes a determination under clause 5.3, the legal representation costs paid by the Shire are to be repaid by the Member or Shire Officer in accordance with clause 7.

6. Delegation to Chief Executive Officer

Where there is a need for the provision of urgent legal services before an application can be considered by Council; e.g. in cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of Council, any of the powers of the Council under clause 5, 5.1 and 5.3, to a maximum of \$10,000 in respect of each application provided that the power to make such an authorisation has been delegated to the CEO in writing under section 5.42 of the Act.

An application approved by the CEO under clause 5 is to be submitted to the next Ordinary Council Meeting. Council may exercise any of its powers under this policy, including its powers under clause 5.2.

7. Repayment of Legal Representation Costs

A Member or Shire Officer whose legal representation costs have been paid by the Shire is to repay the Shire:

- (iv) all or part of those costs in accordance with a determination by the council under clause 5.5;
- (v) as much of those costs as are available to be paid by way of set-off where the Member or Shire Officer receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.

The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

Reference Information

- Local Government Operational Guideline;
- L5.18 Local Government Payments and Gifts to Members
- <u>5.33 Compliance and Enforcement Policy</u>;
- <u>5.34 Execution of Documents Policy</u>;
- <u>5.37 Council Delegates Roles and Responsibilities Policy</u>; and
- <u>5.31 Risk Management</u> containing the Risk Matrix tables.

Legislation

Local Government Act 1995

- s.2.7 Role of Council;
- s.5.99A. Allowances for council members in lieu of reimbursement of expenses;
- s.5.100A. Gifts to council members.

Local Government (Administration) Regulations 1996 (Part 8 local government payments and gifts to members)

- r.31. Expenses to be reimbursed (Act s. 5.98(2)(a) and (3));
- r.35. Training for council members (Act s. 5.126(1)).

Local Government (Financial Management) Regulations 1996

- r.5 CEO's duties as to financial management;
- r.12 Payments from municipal fund or trust fund, restrictions on making;
- r.13 Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.

ASSOCIATED DOCUMENTS

Expense Reimbursement Form.



5.29 Statement of Business Ethics

Overview

This Statement of Business Ethics provides guidance for all sectors of the community when conducting business with the Shire of Wongan-Ballidu (Shire). It outlines the Shire's ethical standards and our expectation that goods and service providers will comply with these standards in all their dealings with the Shire. This Statement also outlines what goods and service providers can expect of the Shire.

Our Key Business Principles



PROFESSIONALISM

- We get things done in a timely and thorough manner
- We maintain a positive attitude and demeanour
- We are flexible and cooperative
- We are organised and punctual
- We listen diligently
- We respect the privacy and boundaries of others
- We communicate and share information effectively,
- openly and thoroughly

RESOURCEFULNESS

- We contribute actively to new ideas and ways of doing things
- We constantly look for ways to do things more effectively
- We have a mindset that encourages us to find a way through our problems
- We plan carefully and avoid waste
- Asking for help is not a weakness but a sign of a resourceful individual
- We are not afraid to operate outside our comfort zone to discover the best for ourselves and our organisation
- We are fluid and flexible in our working arrangements, bringing the best teams together to get the job done

INTEGRITY

- We serve with honesty, pride and loyalty
- We engender trust in our colleagues and those we serve
- We are responsible for our own actions and accountable for our mistakes
- We practice and encourage open and honest communication
- We lead by example and live our values
- We respect other's opinions, even if we don't agree with them

DIVERSITY

- We value diversity in our community, our team, our ideas, experience and skills
- We are agile in the face of change
- We recognise that every team member contributes to our success
- We are forward thinkers

EMPOWERMENT

- We empower others by being respectful and nonjudgemental
- We value each other's skills and abilities
- We focus on individual strengths and abilities
- We support and encourage involvement in decision making
- We provide objective feedback in a supportive, non-critical way

What you can expect from the Shire

The Shire will ensure that all its policies, procedures and practices relating to tendering, contracting and the purchase of goods and services are consistent with industry leading practice and the highest standards of ethical conduct.

Our employees are bound by the Shire's Code of Conduct. When doing business with the private sector, Shire employees are accountable for their actions and are expected to:

- Use public resources effectively and efficiently.
- Deal with all individuals and organisations in a fair, honest and ethical manner.
- Avoid any conflicts of interests (actual perceived or potential).
- Never seek gifts or other personal benefits.

In addition, all Shire procurement activities are guided by the following core business principles:

- All suppliers (whether invited to make a submission through tender or through direct quotation process) will be treated with impartiality and fairness and given equal access to information to assist with quotations, tendering or supply.
- All procurement activities and decisions will be fully and clearly documented by the Shire to provide an efficient audit trail and to allow for an effective performance review of contracts.
- All contracts that involve services to the public will be undertaken in a manner consistent with the

Shire's Disability Access and Inclusions Plan (DAIP) 2020-2025.

- Energy-efficient equipment, products containing recycled materials and environmentally friendly products will be purchased wherever reasonably possible taking into account best value for money considerations.
- Tenders will not be called unless the Shire has a firm commitment to proceed to contract although the Council reserves the right not to proceed with any tender or quotation so advertised.
- The Shire will not disclose confidential or proprietary information.

What we ask of you

The Shire requires all private sector providers of goods and services to observe the following principles when doing business with the Shire:

- Comply with all laws applicable in Western Australia.
- Gain an understanding of the Shire's policies, guidelines and procedures relating to purchasing,
- including an understanding of this Statement (all available on the Shire's website).
- Provide accurate and reliable advice and information when invited or required.
- Declare actual, perceived or potential conflicts of interests as soon as you or your employees become aware of the conflict.
- Act ethically, fairly and honestly in all your dealings with the Shire.
- Take all reasonable measures to prevent the disclosure of confidential Shire information.
- Do not engage in any form of collusive practice, including offering Shire employees or Elected Members inducements or incentives designed to improperly influence the conduct of their duties.
- Do not discuss Shire business or information in the media.
- Assist the Shire to prevent unethical practices in business relationships by reporting such practices.

Why is compliance important?

By complying with the Shire's Statement of Business Ethics, you will be able to advance your business objectives and interests in a fair and ethical manner. As all Shire suppliers of goods and services are required to comply with this Statement, compliance will not disadvantage you in any way.

You should also be aware of the consequences of not complying with the Shire's ethical requirements when doing business with the Shire. Improper or unethical conduct could lead to termination of contracts or loss of future work with the Shire. Overall any business reputation can also be detrimentally affected if corrupt and criminal behaviour is made public.

Complying with the Shire's business principles will also prepare your business for dealing with the ethical requirements of other local governments and public-sector agencies should you choose to do business with them.

Guidance Notes

Incentives, gifts and benefits

The Shire's employees and Elected Members do not expect to receive, or be the recipients of gifts, benefits or incentives as a result of our business relationship with goods or service providers. Goods and service providers are requested to refrain from offering such incentives, gifts or benefits to employees or Elected Members. The Shire's Code of Conduct provides for the type of incentives, gifts and benefits that can be received by Elected Members and employees. If wanting to give a gift, please check with the proposed recipient as to whether a gift can be accepted, or alternatively view the Shire's Code of Conduct.

Conflicts of Interest

All Shire Employees and Elected Members are required to disclose any actual, or perceived potential conflicts of interest. The Shire extends this requirement to all Shire business partners, contractors and suppliers.

Confidentiality

All Shire information must be treated as confidential unless otherwise indicated. The Shire will maintain appropriate confidentiality and not disclose propriety information unless legally obligated to do so.

Safety

The Shire of Wongan-Ballidu strives for continuous improvement while creating a strong safety and health culture within all aspects of Shire activities. This commitment to safety is the Shire's highest priority and will not be compromised. All employees, including volunteers and contractors, are required to take all reasonable care to ensure their own safety and that of others in the workplace.

Communications Between Parties

All communications should be clear, direct and accountable to minimise the risk of perception of inappropriate influence being brought to bear on the business relationship. Canvassing of Elected Members during a tender process will disqualify bids from further consideration and contact with Elected Members during work for the Shire is prohibited unless expressly authorised by the Shire.

Use of Shire Equipment, Resources and Information.

All Shire equipment, resources and information should only be used for its proper official purpose.

Contracting Employees

All contracted and sub-contracted employees are expected to comply with this Statement. If you employ sub- contractors in your work for the Shire, you must make them aware of this Statement. All contractors and sub- contractors will be required to undertake an annual induction process prior to commencing business with the Shire.

Secondary Employment

Employees are not permitted to engage in private work with any person that has an interest in a proposed or current contract with the Shire.

Intellectual Property Rights

In business relationships with the Shire, parties respect each other's intellectual property rights and will formally negotiate any access, license or use of intellectual property.

Who to Contact?

If you have any questions regarding this Statement or to provide information about suspected corrupt conduct, please contact the Shire via the details below.

Chief Executive Officer

Shire of Wongan-Ballidu Cnr Quinlan Street & Elphin Crescent (PO Box 84) WONGAN HILLS WA 6603

Phone:	(08) 9671 2500
Fax:	(08) 9671 2509
Email:	shire@wongan.wa.gov.au
Website:	www.wongan.wa.gov.au

Persons reporting corrupt behaviour or misconduct are protected by the *Corruption and Crime Commission Act 2003* and other 'Whistle-blower' protection laws such as the *Public Interest Disclosure Act 2003*. These laws protect persons disclosing corruption related matters from reprisal or detrimental action and ensure disclosures are property investigated and dealt with.

5.30 - Community Complaints Policy

Policy Owner: Person Responsible: Date of Adoption: Adoption Resolution: Date of Last Amendment: Date of Last Review: Administration Chief Executive Officer

INTRODUCTION

The Shire recognises that from time to time, members of the community may not be satisfied with Shire services, processes or decisions and that there needs to be a clear and accountable process available for people to lodge and receive a response to their complaint.

It is also recognised that complaints can be an important tool to ensure accountability and promote continuous improvement.

APPLICATION

This policy applies to employees, volunteers and contractors of the Shire of Wongan-Ballidu.

POLICY INTENT

To establish an effective complaints handling system that will provide a framework and basis for all complaints relating to Shire services, processes or decisions to be resolved in a consistent, fair, and structured manner.

1. Definitions

(a) A **complaint is** an expression of dissatisfaction about the standard of service provided, or an action or inaction by the Shire of Wongan-Ballidu, its employees, volunteers and contractors.

(b) A complaint is not:

- A first request for action or service (eg reporting a nuisance dog, request for footpath or pothole repair).
- A request for information or explanation of Council decisions, practices or procedures.
- A request for action or service that is outside the Shire's jurisdiction or is provided by other agencies.

- (c) A complaint is considered **anonymous** when the complainant declines to provide their name and/or contact details.
- (d) A complaint is considered **malicious** when its intent is to negatively affect another person's career, reputation, or livelihood.
- (e) A **vexatious** or **frivolous** complaint is where there is no evidence to support the complaint and/or there is evidence that the complaint is intended to cause inconvenience, harassment or financial burden.
- (f) A **volunteer** is a person who contributes time, effort and talent for the benefit of the Shire of Wongan-Ballidu without financial gain.
- (g) A **contractor** is a person, business or organisation contracted to provide products and/or services to the Shire for financial consideration.

2. Principles for Handling Complaints

- (h) **Customer focus** complaints are managed in accordance with the *Shire of Wongan-Ballidu Customer Service Charter*.
- (i) **Accessible** the process for making complaint and investigating it is easy for complainants to understand.
- (j) **Responsive** complaints are acknowledged, addressed according to urgency and the complainant is kept informed.
- (k) **Objective and Fair** complaints are dealt with in an equitable, objective and unbiased manner. Unreasonable complainants do not become a burden
- (I) **Confidentiality** personal information related to complaints remains confidential.
- (m) **Continuous Improvement –** complaints are used as a source of improvement.

3. Lodgement of Complaints

- (n) Complaints can be made in writing or by telephone.
- (o) Complainants are encouraged to lodge their complaint in writing. If they insist on lodging the complaint verbally, the complainant must provide their name and contact details along with details of the complaint which are to be recorded by a Shire officer.

- (p) Written complaints are facilitated by completing Customer Service Charter Feedback Form which is available on the Shire's website <u>www.wongan.wa.gov.au</u> or Shire Administration Building, Cnr Quinlan Street & Elphin Crescent, Wongan Hills WA 6603.
- (q) Customer Service Charter Feedback Forms can be lodged via:
 - Facsimile: 08 9671 2509
 - Email: <u>shire@wongan.wa.gov.au</u>.
 - In person: by completing a Customer Service Charter Feedback
 Form
- (r) All complaints will be registered by the officer receiving the complaint at the first point of contact.
- (s) Where complaints are made directly to Councillors, the complainant should be encouraged to contact the Shire office. However, Councillors may lodge a complaint on behalf of the complainant.
- (t) Frontline staff are responsible for receiving, registering and resolving minor complaints in an efficient and effective manner. The majority of complaints can be resolved immediately by acknowledging the customer's dissatisfaction, apologising where appropriate, and taking corrective action.

4. Complaints that will not be considered

- (u) The complaint is anonymous unless the matter could be in breach of statutory provisions or the Shire of Wongan-Ballidu's Code of Conduct.
- (v) The complaint contains offensive language or is discriminatory in nature.
- (w) The complaint is malicious, vexatious or frivolous.
- (x) Notwithstanding parts (a) to (c) of this clause, all complaints received will be acknowledged.

5. Investigation and Referral

- (y) Where the complaint cannot be resolved at the initial contact, the complaint will be referred to the appropriate officer for investigation.
- (z) The complaint will be referred to the relevant Manager when:
 - The complaint is outside the authority or expertise of the receiving officer;
 - The officer is unable to reach a resolution;
 - The customer remains dissatisfied;
 - The nature of the complaint warrants authority at a higher level.
- (aa) The complaint will be escalated to the Shire of Wongan-Ballidu Complaints Officer where the Manager is unable to reach a resolution.

(bb) The complaint may be referred to an external agency when determined by the Shire's Complaints Officer.

6. Unresolved Complaints

- (cc) The Shire of Wongan-Ballidu recognises that not all complaints may be resolved within the above process and that complainants may not receive the outcome they seek.
- (dd) If a customer is dissatisfied with the complaint resolution provided, other avenues for resolution include:
 - Making a request to have the matter considered at a more senior level.
 - The Ombudsman of Western Australia is an independent officer of Parliament who investigates complaints about state government departments, most statutory authorities and local governments. The Ombudsman can be contacted at: Level 2, Albert Facey House
 469 Wellington Street
 Perth WA 6000
 Ph: (08) 9220 7555
 - Other legal advice or remedy.
- (ee) Complainants are encouraged to allow the Shire of Wongan-Ballidu to investigate complaints prior to referral to an external agency.

Reference Information

Related Documents	Shire of Wongan-Ballidu Code of Conduct Shire of Wongan-Ballidu Customer Service Charter Guidelines on Complaint Handling – Ombudsman Western Australia
Related Legislation Associated Forms and Attachments	Local Government Act 1995 (WA) Local Government (Rules of Conduct) Regulations 1996 Customer Service Charter – Feedback Form

5.31 - Risk Management Policy

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

The Shire of Wongan-Ballidu is exposed to a broad range of risks which could adversely impact the achievement of strategic community objectives.

This policy is intended to commit to organisation-wide risk management principles, systems and processes that ensure consistent, efficient and effective assessment of risk in all planning, decision making and operational processes.

APPLICATION

This Policy applies to all risk processes within the Shire and is subject to regular monitoring through the Finance and Audit Committee and Council. This policy applies to all activities undertaken by officers, volunteers, contractors and elected members.

POLICY INTENT

This policy intends to create an environment where Council, management and staff accept direct responsibility for risk management, through development, implementation of and maintaining effective risk management practices. Risk management is the responsibility of everyone and will be treated as an integral part of the Shire's culture, policies and procedures.

This policy aims to develop and maintain an organisational culture which shows confidence in the use of risk assessment and management tools in:

- the effective and efficient delivery of agreed levels of service
- maintaining financial sustainability
- developing and maintaining an effective and positive relationship between Council and the community
- enabling the Council in partnership with the community, to make decisions for the community's future with a high level of confidence that key risks have been taken into account and where relevant, are being, or have been, mitigated.

• to ensure that appropriate risk assessment and management provisions are in place in order to satisfy statutory requirements and identified risks mitigated.

DEFINITIONS

Explain what terms within this policy mean. (example below)

Term	Definition			
Act	Local Government Act 1995.			
Audit & Risk Committee	Committee established under section 7.1A of the Local Government Act 1995			
CEO	Chief Executive Officer			
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .			
Regulations	Local Government (Administration) Regulations 1996.			
Risk	Means "the effect of uncertainty on objectives." AS/NZS ISO 31000:2018. A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative, or a deviation from the expected. An objective may be financial, related to health and safety, or defined in other terms.			
Risk Assessment	Means the process of applying risk management methodologies to assess the level of risk in a particular or general circumstance, activity or operation, or decision.			
Risk Management	Means the application of coordinated activities to direct and control an organisation with regard to risk.			
Shire	the Shire of Wongan-Ballidu.			

PRINCIPLES

The Shire considers risk management to be an essential management function in its operations. The Shire is committed to the principles, framework and process of managing risk as outlined in AS/NZS ISO 31000:2018.

The Shire will manage risks continuously using a process involving the identification, analysis, evaluation, treatment, monitoring and review of risks. It will be applied to decision making through all levels of the organisation in relation to planning or executing any function, service or activity.

The Shire will consider the following key principles for effective risk management:

- (a) Integrated Risk management is an integral part of all organisational activities and will be considered in alignment with the Shire's strategic objectives.
- (b) Structured and comprehensive A structured and comprehensive approach to risk management contributes to consistent and comparable results.
- (c) Customised The risk management framework and process are customised and proportionate to the organisation's external and internal context related to its objectives.
- (d) Inclusive Appropriate and timely involvement of stakeholders enables their knowledge, views and perceptions to be considered. This results in improved awareness and informed risk management.
- (e) Dynamic Risks can emerge, change or disappear as an organisation's external and internal context changes. Risk management anticipates, detects, acknowledges and responds to those changes and events in an appropriate and timely manner.
- (f) Best available information The inputs to risk management are based on historical and current information, as well as on future expectations. Risk management explicitly takes into account any limitations and uncertainties associated with such information and expectations. Information should be timely, clear and available to relevant stakeholders.
- (g) Culture Human behaviour and culture significantly influence all aspects of risk management at all levels.
- (h) Continual improvement Risk management is continually improved through learning and experience.

Framework

The Shire will develop and maintain a **5.32 Risk Management Framework & Procedure** that underpins the principles of effective risk management and provides guidance to Council and staff. The framework will be subject to regular reviews every three years to coincide with the Reg 17 review to be undertaken in accordance the *Local Government (Audit) Regulations 1996*.

Reporting and Monitoring

The Shire will implement a robust reporting and recording system that will be regularly

monitored to ensure close out of risks and identification of ongoing issues and trends. Risks will be reported to the Audit & Risk Committee and reviewed at least twice-yearly. Risks rated significant or extreme will be reported to the Audit and Risk Committee or Council at the earliest opportunity.

Reference Information

5.32 Risk Management Framework & Procedure

Legislation

Local Government Act 1995 (WA) Associated documents AS/NZS ISO 31000:

5.32 – Risk Management Framework & Procedure

Policy Owner: Person Responsible: Date of Adoption: Adoption Resolution: Date of Last Amendment: Administration and Financial Services Chief Executive Officer



RISK MANAGEMENT FRAMEWORK AND PROCEDURE

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Policy Adopted	Error! Bookmark not defined.

Introduction

The Policy and Procedures form the Risk Management Framework for the Shire of Wongan-Ballidu ("the Shire"). It sets out the Shire's approach to the identification, assessment, management, reporting and monitoring of risks. All components of this document are based on Australia/New Zealand Standard ISO 31000:2018 Risk Management.

It is essential that all areas of the Shire adopt these procedures to ensure:

- Strong corporate governance.
- Compliance with relevant legislation, regulations and internal policies.
- Integrated Planning and Reporting requirements are met.
- Uncertainty and its effects on objectives is understood.

This Framework aims to balance a documented, structured and systematic process with the current size and complexity of the Shire along with existing time, resource and workload pressures.

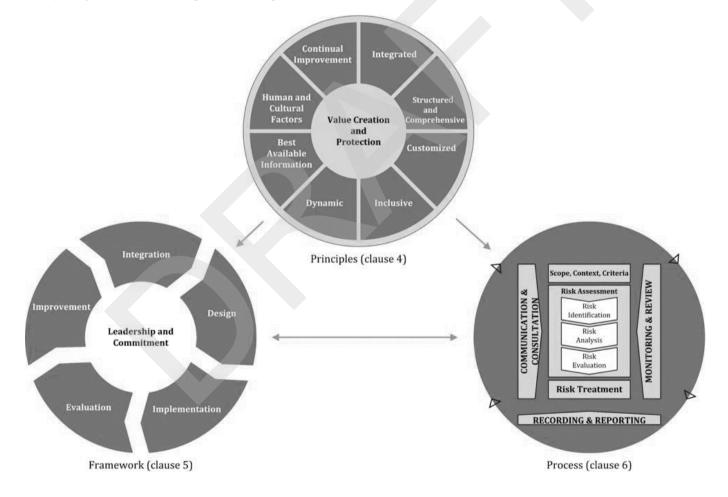
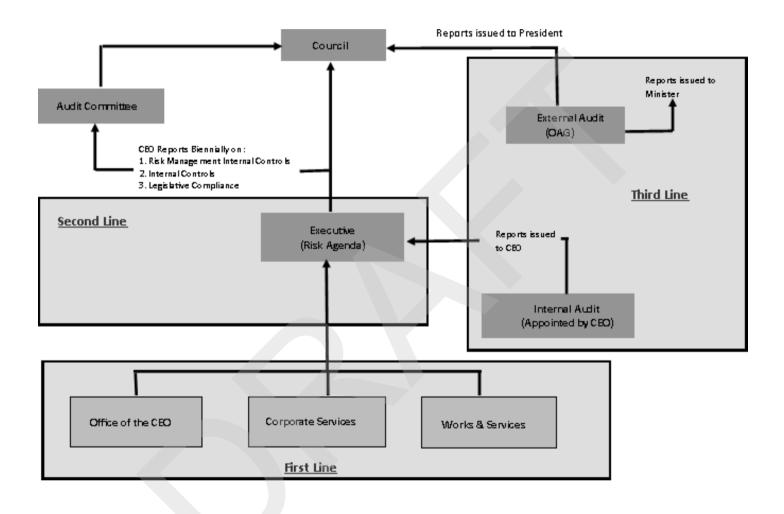


Figure 1: Risk Management Process (Source: AS/NZS 31000:2018)

Governance Structure

The following diagram depicts the current operating structure for risk management within the Shire.



Roles & Responsibilities

Council

Council's responsibilities are to:

- Adopt a Risk Management Policy compliant with the requirements of AS/NZS ISO 31000:2018 and to review and approve the Policy in a timely manner as required.
- Be satisfied risks are identified, managed and controlled appropriately, to achieve Shire's strategic objectives.
- Supports the allocation of funds / resources to treat risks as required.

Finance and Audit Committee

- Requests and reviews reports on risk management on a biannual basis (minimum) or as required depending on the nature of the risk(s).
- Monitors the overall risk exposure of the Shire and makes recommendations to Council as appropriate.
- Assesses for effectiveness the risk control measures / risk treatment plans in reducing the severity of the risk(s).

Executive

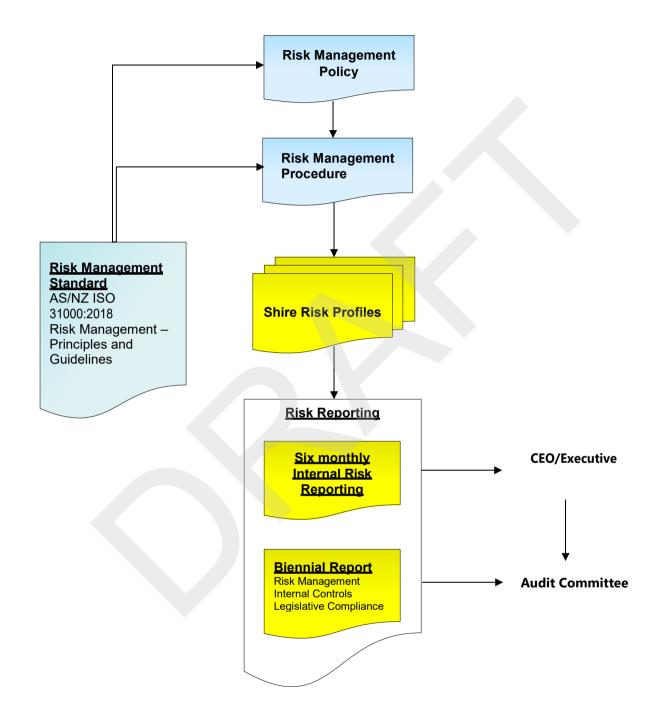
- Creates an environment where staff are responsible for and actively involved in managing risk.
- Oversight of the Shire's Risk Management Strategy.
- Maintain and implement the Risk Management Strategy.
- Ensures a consistent risk management approach is embedded in the operations and processes of the Shire.
- Actively participates and supports the Risk Management Strategy through identification and creation of suitable risk treatments to control strategic and operational risks facing the Shire.
- Monitors the strategic and operational risk management performance.
- Reviews the Shire's Risk Summary Report prior to submission to the Audit & Risk Committee.

Staff

- Adopt and understand the principles of risk management and comply with policies, processes and practices relating to risk management.
- Alert and bring to management's attention, the risks existing within their area.
- Conduct risk assessments which are appropriate with the scope of the task and the associated level of risk identified.

Document Structure (Framework)

The following diagram depicts the relationship between the Risk Management Policy, Procedures and supporting documentation and reports.



Risk & Control Management

All work areas of the Shire are required to assess and manage the Risk Profiles on an ongoing basis.

Each Manager, is accountable for ensuring that Risk Profiles are:

- Reflective of the material risk landscape of the Shire.
- Reviewed on at least a twelve-monthly basis, or sooner if there has been a material restructure or change in the risk and control environment.
- Maintained in the standard format.

This process is supported by the use of data inputs, workshops and ongoing business engagement.

Risk & Control Assessment

To ensure alignment with AS/NZ ISO 31000:2018 Risk Management, the following approach is to be adopted from a Risk & Control Assessment perspective

A: Establishing the Context

The first step in the risk management process is to understand the context within which the risks are to be assessed and what is being assessed, this forms two elements:

Organisational Context

The Shire's Risk Management Procedures provide the basic information and guidance regarding the organisational context to conduct a risk assessment; this includes Risk Assessment and Acceptance Criteria (Appendix A) and any other tolerance tables as developed. In addition, existing Risk Themes are to be utilised (Appendix C) where possible to assist in the categorisation of related risks.

Any changes or additions to the Risk Themes must be approved by the CEO.

All risk assessments are to utilise these documents to allow consistent and comparable risk information to be developed and considered within planning and decision-making processes.

Specific Risk Assessment Context

To direct the identification of risks, the specific risk assessment context is to be determined prior to and used within the risk assessment process.

For risk assessment purposes the Shire has been divided into three levels of risk assessment context:

- 1. <u>Strategic Context</u> This constitutes the Shire's external environment and high-level direction. Inputs to establishing the strategic risk assessment environment may include;
 - Organisations vision
 - Stakeholder Analysis
 - Environment Scan / SWOT Analysis
 - Existing Strategies / Objectives / Goals

- 2. <u>Operational Context</u> The Shire's day to day activities, functions, infrastructure and services. Prior to identifying operational risks, the operational area should identify its Key Activities i.e. what is trying to be achieved. Note: these may already be documented in business plans, budgets etc.
- 3. Project Context Project risk has two main components;
 - **Direct** refers to the risks that may arise as a result of project activity (i.e. impacting on current or future process, resources or IT systems) which may prevent the Shire from meeting its objectives

- **Indirect** refers to the risks which threaten the delivery of project outcomes. In addition to understanding what is to be assessed, it is also important to understand who are the key stakeholders or areas of expertise that may need to be included within the risk assessment.

B: Risk Identification

Using the specific risk assessment context as the foundation, and in conjunction with relevant stakeholders, answer the following questions, capture and review the information within each Risk Profile.

- What can go wrong? / What are areas of uncertainty? (Risk Description)
- How could this risk eventuate? (Potential Causes)
- What are the current measurable activities that mitigate this risk from eventuating? (Controls)
- What are the potential consequential outcomes of the risk

eventuating? (Consequences)

C: Risk Analysis

To analyse the risks, the Shire's Risk Assessment and Acceptance Criteria (Appendix A) is applied:

- Based on the documented controls, analyse the risk in terms of Existing Control Ratings
- Determine relevant consequence categories and rate how bad it could be if the risk eventuated with existing controls in place (Consequence)
- Determine how likely it is that the risk will eventuate to the determined level of consequence with existing controls in place (Likelihood)
- By combining the measures of consequence and likelihood, determine the risk rating (Level of Risk)

D: Risk Evaluation

The Shire is to verify the risk analysis and make a risk acceptance decision based on:

- Controls Assurance (i.e. are the existing controls in use, effective, documented, up to date and relevant)
- Existing Control Rating Level of Risk
- Risk Acceptance Criteria (Appendix A)
- Risk versus Reward / Opportunity

The risk acceptance decision needs to be documented and acceptable risks are then subject to the monitor and

review process. Note: Individual Risks or Issues may need to be escalated due to urgency, level of risk or systemic nature.

E: Risk Treatment

For unacceptable risks, determine treatment options that may improve existing controls and/or reduce consequence / likelihood to an acceptable level.

Risk treatments may involve actions such as avoid, share, transfer or reduce the risk with the treatment selection and implementation to be based on;

- Cost versus benefit
- Ease of implementation
- Alignment to organisational values / objectives

Once a treatment has been fully implemented, the Governance Officer is to review the risk information and acceptance decision with the treatment now noted as a control and those risks that are acceptable then become subject to the monitor and review process (Refer to Risk Acceptance section).

F: Monitoring & Review

The Shire is to review all Risk Profiles at least on a twelve-monthly basis or if triggered by one of the following;

- Changes to context,
- A treatment is implemented,
- An incident occurs or due to audit/regulator findings.

The CEO & Executive will monitor significant risks and treatment implementation as part of their normal agenda item on a quarterly basis with specific attention given to risks that meet any of the following criteria;

- Risks with a Level of Risk of High or Extreme
- Risks with inadequate existing control rating
- Risks with consequence rating of extreme
- Risks with likelihood rating of almost certain

The design and focus of the Risk Summary report will be determined from time to time on the direction of the CEO & Executive. They will also monitor the effectiveness of the Risk Management Framework ensuring it is practical and appropriate to the Shire.

G: Communication & Consultation

Throughout the risk management process, stakeholders will be identified, and where relevant, be involved in or informed of outputs from the risk management process. Council, through the Audit and Risk Committee will be provided with twelve monthly update reports.

Risk management awareness and training will be provided to staff as part of their OS&H Program.

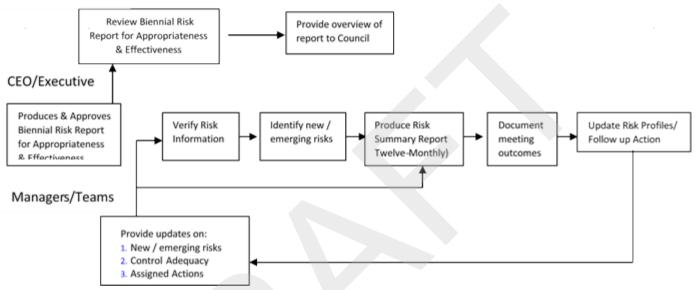
Risk management will be included within the employee induction process to ensure new employees are introduced to the Shire's risk management culture.

Reporting Requirements

Coverage & Frequency

The following diagram provides a high-level view of the ongoing reporting process for Risk Management.

Audit Committee



Each Work Area is responsible for ensuring:

- They continually provide updates in relation to new and emerging risks, control effectiveness and indicator performance to the Risk Framework Owner.
- Work through assigned actions and provide relevant updates to the Risk Framework Owner.
- Risks / Issues reported to the CEO & Executive are reflective of the current risk and control environment.

The CEO & Executive are responsible for:

- Ensuring Shire Risk Profiles are formally reviewed and updated, at least on a twelve-monthly basis or when there has been a material restructure, change in risk ownership or change in the external environment.
- Producing a twelve-monthly Risk Report for the Audit Committee which contains an overview Risk Summary for the Shire.
- Annual Compliance Audit Return completion and lodgement.

Indicators

Indicators are required to be used for monitoring and validating risks and controls. The following describes the process for the creation and reporting of Indicators:

Identification

The following represent the minimum standards when identifying appropriate Indicator risks and controls;

- The risk description and casual factors are fully understood
- The Indicator is fully relevant to the risk or control
- Predictive Indicators are adopted wherever possible
- Indicators provide adequate coverage over monitoring risks and controls

Validity of Source

In all cases an assessment of the data quality, integrity and frequency must be completed to ensure that the Indicator data is relevant to the risk or Control.

Where possible the source of the data (data owner) should be independent to the risk owner. Overlapping Indicators can be used to provide a level of assurance on data integrity.

If the data or source changes during the life of the Indicator, the data is required to be revalidated to ensure reporting of the Indicator against a consistent baseline.

Tolerances

Tolerances are set based on the Shire's Risk Appetite. They may be set and agreed over three levels:

- Green within appetite; no action required.
- Amber the Indicator must be closely monitored and relevant actions set and implemented to bring the measure back within the green tolerance.
- Red outside risk appetite; the Indicator must be escalated to the CEO & Senior Management Group where appropriate management actions are to be set and implemented to bring the measure back within appetite.

Monitor & Review

All active Indicators are updated as per their stated frequency of the data source.

When monitoring and reviewing Indicators, the overall trend should be considered over a longer timeframe than individual data movements. The trend of the Indicators is specifically used as an input to the risk and control assessment.

Risk Acceptance

Day-to-day operational management decisions are generally managed under the delegated authority framework of the Shire.

Risk Acceptance *outside* of the appetite framework is a management decision to accept, within authority levels, material risks which will remain outside appetite framework (refer Appendix A – Risk Assessment & Acceptance Criteria) for an extended period of time (generally 3 months or longer).

The following process is designed to provide a framework for those outside appetite framework identified risks.

The 'Risk Acceptance' must be in writing, signed by the relevant Manager and cover:

- A description of the risk.
- An assessment of the risk (e.g. Impact consequence, materiality, likelihood, working assumptions etc.)
- Details of any mitigating action plans or treatment options in place
- An estimate of the expected remediation date.

Reasonable action should be taken to mitigate the risk. A lack of budget to remediate a material risk outside of appetite is not sufficient justification in itself to accept a risk.

Accepted risks must be continually reviewed through standard operating reporting structure (i.e. Executive

Annual Controls Assurance Plan

The annual assurance plan is a monitoring schedule prepared by the CEO & Executive that sets out the control assurance activities to be conducted over the next 12 months. This plan needs to consider the following components.

- Coverage of all risk classes (Strategic, Operational, Project)
- Existing control adequacy ratings across the Shire's Risk Profiles
- Consider control coverage across a range of risk themes (where Commonality exists)
- Building profiles around material controls to assist in design and operating effectiveness reviews.
- Consideration to significant incidents.
- Nature of operations
- Additional or existing 2nd line assurance information / reviews (e.g. HR, Financial Services, IT)
- Frequency of monitoring / checks being performed
- Review and development of Indicators
- Timetable for assurance activities
- Reporting requirements.

Whilst this document and subsequent actions are owned by the CEO, input and consultation will be sought from individual Work Areas.

Appendix A – Risk Assessment and Acceptance Criteria

MEASURES OF CONSEQUENCE

RATING	PEOPLE	INTERRUPTION TO SERVICE	REPUTATION (Social/Community)	COMPLIANCE	PROPERTY (Plant, Equipment, Buildings)	NATURAL ENVIRONMENT	FINANCIAL IMPACT
Insignificant (1)	Near-Miss	No material service Interruption less than 1 hour	Unsubstantiated, localised low impact on community trust, low profile or no media item	No noticeable regulatory or statutory impact	Inconsequential damage	Contained, reversible impact managed by on site response	Less than \$10,000
Minor (2)	First Aid Treatment	Short term temporary interruption – backlog cleared < 1 day	Substantiated, localised impact on community trust or low media item	Some temporary non- compliances	Localised damage rectified by routine internal procedures	Contained, reversible impact managed by internal response	\$10,000 to \$50,000
Moderate (3)	Medical Treatment- Lost time injury <30 days	Medium term temporary interruption – backlog cleared by addition resources < 1 week	Substantiated, public embarrassment, moderate impact on community trust or moderate media profile	Short term non- compliance but with significant regulatory requirements imposed	Localised damage requiring external resources to rectify	Contained, reversible impact managed by external agencies	\$50,001 to \$200,000
Major (4)	Lost time injury >30 days / Temporary Disability	Prolonged interruption of services – addition resources; performance affected < 1 month	Substantiated, public embarrassment, widespread high impact on community trust, high media profile, third party actions	Non-compliance results in termination of services or imposed penalties to Shire / Officers	Significant damage requiring internal & external resources to rectify	Uncontained, reversible impact managed by a coordinated response from external agencies	\$200,001 to \$500,000
Extreme (5)	Fatality Permanent Disability	Inderminate prolonged interruption of services non-performance > 1 month	Substantiated, public embarrassment, widespread loss of community trust, high widespread multiple media profile, third party actions	Non-Compliance results in litigation, criminal charges or significant damages or penalties to Shire / Officers	Extensive damage requiring prolonged period of restitution Complete loss of plant, equipment or building	Uncontained, irreversible impact	>\$500,000

MEASURES OF CONSEQUENCE (PROJECT)

LEVEL	RATING	PROJECT TIME	PROJECT COST	PROJECT SCORE/QUALITY	
1	Insignificant	Exceeds deadline by >5% of project timeline	Exceeds project budget by 2%	Minor variations to project scope or quality.	
2	Minor	Exceeds deadline by >10% of project deadline	Exceeds project budget by 5%	Scope creep requiring additional work, time or resources. Reduced perception of quality by Stakeholders.	
3	Moderate	Exceeds deadline by >15% of project deadline	Exceeds project budget by 7.5%	Scope creep requiring additional work, time or resources or shortcuts being taken. Stakeholder concerns.	
4	Major	Exceeds deadline by >20% of project deadline	Exceeds project budget by 15%	Project goals, deliverables, costs and/or deadline failures. Project no longer aligned with the project scope. Stakeholder intervention in project.	
5	Extreme	Exceeds deadline by >25% of project deadline	Exceeds project budget by 20%	Failure to meet project objectives.	

MEASURES OF LIKELIHOOD

RATING	DESCRIPTION	FREQUENCY	
Almost Certain	The event is expected to occur in most circumstances	More than once per year	
Likely	The event will probably occur in most circumstances	At least once per year	
Possible	The event should occur at some time	At least once 3 years	
Unlikely	The event could occur at some time	At least once in 10 years	
Rare	The event may only occur in exceptional circumstances	Less than once in 5 years	
-	Almost Certain Likely Possible Unlikely	Almost Certain The event is expected to occur in most circumstances Likely The event will probably occur in most circumstances Possible The event should occur at some time Unlikely The event could occur at some time	

RISK MATRIX						
Conse	quence	Insignificant	Minor	Moderate	Major	Extreme
Likelihood		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

RISK ACCEPTANCE

RISK RANK	DESCRIPTION	CRITERIA	RESPONSIBILITY	
LOW (1-4)	Acceptable	Risk acceptable with adequate controls, managed by routine procedures and subject to annual monitoring.	Operational Manager	
MEDIUM (5-9)	Monitor	Risk acceptable with adequate controls, managed by specific procedures and subject to semi-annual monitoring.	Operational Manager	
HIGH (10-16)	Urgent Attention Required	Risk acceptable with excellent controls, managed by senior management / executive and subject to monthly monitoring.	Executive	
EXTREME (17-25)	Unacceptable	Risk only acceptable with excellent controls and all treatment plans to be explored and implemented where possible, managed by highest level of authority and subject to continuous monitoring.	CEO / Council	

SHIRE OF WONGAN-BALLIDU EXISTING CONTROLS RATINGS				
RATING FORESEEABLE		DESCRIPTION		
Effective	There is little scope for improvement	Process (controls) operating as intended and / or aligned to Policies & Procedures; are subject to ongoing maintenance and monitoring and are being continuously reviewed and tested.		
Adequate	There is some scope for improvement	Whilst some inadequacies have been identified; Processes (controls) are in place, are being addressed / complied with and are subject to periodic review and testing.		
Inadequate	A need for corrective and / or improvement actions exists	Processes (controls) not operating as intended, do not exist, or are not being addressed / complied with, or have not been reviewed or tested for some time.		

Appendix B – Risk Profile Template

Risk Theme			Date
(What could go right / wrong?) Definition of Theme			
Potential causes (What could cause it to go	<u>right / wrong?)</u>		
List of potential causes			
Controls (What we have in place to prevent it going wrong)	Туре	Date	Shire Rating
List of Controls			

Overall Control Ratings:			
Consequence Category	Risk Ratings	Shire Rating	
	Consequence:		
	Likelihood:		

Overall Risk Ratings:

Indicators (These would 'indicate' to us that something has gone right / wrong)	Tolerance	Date	Overall Shire Result
List of Indicators			
Comments			
Rationale for all above ratings			
Rationale for all above ratings Current Issues / Actions / Trea	tments	Due Date	Responsibility
	tments	Due Date	Responsibility
Current Issues / Actions / Trea	tments	Due Date	Responsibility

Appendix C - Risk Theme Definitions

1. Asset Sustainability Practices

Failure or reduction in service of infrastructure assets, plant, equipment or machinery. These include fleet, buildings, roads, playgrounds, boat ramps and all other assets and their associated lifecycle from procurement to maintenance and ultimate disposal. Areas included in the scope are;

- Inadequate design (not fit for purpose)
- Ineffective usage (down time)
- Outputs not meeting expectations
- Inadequate maintenance activities
- Inadequate financial management and planning

It does not include issues with the inappropriate use of the Plant, Equipment or Machinery. Refer Misconduct.

2. Business & Community Disruption

Failure to adequately prepare and respond to events that cause disruption to the local community and / or normal Shire business activities. The event may result in damage to buildings, property, plant & equipment (all assets). This could be a natural disaster, weather event, or an act carried out by an external party (incl vandalism). This includes;

- Lack of (or inadequate) emergency response / business continuity plans.
- Lack of training to specific individuals or availability of appropriate emergency response.
- Failure in command and control functions as a result of incorrect initial assessment or untimely awareness of incident.
- Inadequacies in environmental awareness and monitoring of fuel loads, curing rates etc.

This does not include disruptions due to IT Systems or infrastructure related failures - refer "Failure of IT & communication systems and infrastructure".

3. Failure to Fulfil Compliance Requirements

Failures to correctly identify, interpret, assess, respond and communicate laws and regulations as a result of an inadequate compliance framework. This could result in fines, penalties, litigation or increase scrutiny from regulators or agencies. This includes, new or proposed regulatory and legislative changes, in addition to the failure to maintain updated legal documentation (internal & public domain) to reflect changes.

This does not include Occupational Safety & Health Act (refer "Inadequate safety and security practices") or any Employment Practices based legislation (refer "Ineffective Employment practices)

It does include the Local Government Act, Health Act, Building Act, Privacy Act and all other legislative based obligations for Local Government.

4. Document Management Processes

Failure to adequately capture, store, archive, retrieve, provision and / or disposal of documentation. This includes:

- Contact lists
- Procedural documents
- 'Application' proposals/documents.
- Contracts
- Forms, requests or other documents.

5. Employment Practices

Failure to effectively manage and lead human resources (full/part time, casuals, temporary and volunteers). This includes not having an effective Human Resources Framework in addition to not having appropriately qualified or experienced people in the right roles or not having sufficient staff numbers to achieve objectives. Other areas in this risk theme to consider are;

- Breaching employee regulations (excluding OH&S)
- Discrimination, Harassment & Bullying in the workplace
- Poor employee wellbeing (causing stress)
- Key person dependencies without effective succession planning in place
- Induction issues
- Terminations (including any tribunal issues)
- Industrial activity

Care should be taken when considering insufficient staff numbers as the underlying issue could be process inefficiencies.

6. Engagement Practices

Failure to maintain effective working relationships with the Community (including Local Media), Stakeholders, Key Private Sector Companies, Government Agencies and / or Elected Members. This invariably includes activities where communication, feedback and / or consultation is required and where it is in the best interests to do so. For example;

- Following up on any access & inclusion issues
- Infrastructure Projects
- Regional or District Committee attendance
- Local Planning initiatives
- Strategic Planning initiatives

This does not include instances whereby Community expectations have not been met for standard service provisions such as Community Events, Library Services and / or Bus/Transport services.

7. Environment Management.

Inadequate prevention, identification, enforcement and management of environmental issues.

The scope includes;

- Lack of adequate planning and management of coastal erosion issues
- Failure to identify and effectively manage contaminated sites (including groundwater usage)
- Waste facilities (landfill / transfer stations)
- Weed control
- Ineffective management of water sources (reclaimed, potable)
- Illegal dumping / Illegal clearing / Illegal land use.

8. Errors, Omissions, Delays

Errors, omissions or delays in operational activities as a result of unintentional errors or failure to follow due process. This includes instances of;

- Human errors, incorrect or incomplete processing
- Inaccurate recording, maintenance, testing and / or reconciliation of data
- Errors or inadequacies in model methodology, design, calculation or implementation of models.

This may result in incomplete or inaccurate information. Consequences include;

- Inaccurate data being used for management decision making and reporting
- Delays in service to customers
- Inaccurate data provided to customers

This excludes process failures caused by inadequate / incomplete procedural documentation - refer "Inadequate Document Management Processes".

9. External Theft & Fraud (incl Cyber Crime)

Loss of funds, assets, data or unauthorised access, (whether attempts or successful) by external parties, through any means (including electronic), for the purposes of;

- Fraud benefit or gain by deceit
- Malicious Damage hacking, deleting, breaking or reducing the integrity or performance of systems
- Theft stealing of data, assets or information (no deceit)

Examples include:

- Scam invoices
- Cash or other valuables from Outstations.

10. Management of Facilities / Venues / Events

Failure to effectively manage the day to day operations of facilities and / or venues. This includes;

- Inadequate procedures in place to manage the quality or availability
- Ineffective signage
- Booking issues
- Financial interactions with hirers / users
- Oversight / provision of peripheral services (e.g. cleaning / maintenance)

11. IT & Communications Systems and Infrastructure

Instability, degradation of performance, or other failure of IT Systems, Infrastructure, Communication or Utility causing the inability to continue business activities and provide services to the community. This may or may not result in IT Disaster Recovery Plans being invoked. Examples include failures or disruptions caused by:

- Hardware &/or Software
- IT Network
- Failures of IT Vendors

This also includes where poor governance results in the breakdown of IT maintenance such as;

- Configuration management
- Performance Monitoring
- IT Incident, Problem Management & Disaster Recovery Processes

This does not include new system implementations - refer "Inadequate Project / Change Management".

12. Misconduct

Intentional activities in excess of authority granted to an employee, which circumvent endorsed policies,

procedures or delegated authority. This would include instances of:

- Relevant authorisations not obtained.
- Distributing confidential information.
- Accessing systems and / or applications without correct authority to do so.
- Misrepresenting data in reports.
- Theft by an employee
- Collusion between Internal & External parties

This does not include instances where it was not an intentional breach - refer Errors, Omissions or Delays, or Inaccurate Advice / Information.

13. Project / Change Management

Inadequate analysis, design, delivery and / or status reporting of change initiatives, resulting in additional expenses, time requirements or scope changes. This includes:

- Inadequate Change Management Framework to manage and monitor change activities.
- Inadequate understanding of the impact of project change on the business.
- Failures in the transition of projects into standard operations.
- Failure to implement new systems
- Failures of IT Project Vendors/Contractors

14. Safety and Security Practices

Non-compliance with the Occupation Safety & Health Act, associated regulations and standards. It is also the inability to ensure the physical security requirements of staff, contractors and visitors. Other considerations are:

- Inadequate Policy, Frameworks, Systems and Structure to prevent the injury of visitors, staff, contractors and/or tenants.
- Inadequate Organisational Emergency Management requirements (evacuation diagrams, drills, wardens etc).
- Inadequate security protection measures in place for buildings, depots and other places of work (vehicle, community etc).
- Public Liability Claims, due to negligence or personal injury.
- Employee Liability Claims due to negligence or personal injury.
- Inadequate or unsafe modifications to plant & equipment.

15. Supplier / Contract Management

Inadequate management of external Suppliers, Contractors, IT Vendors or Consultants engaged for core operations. This includes issues that arise from the ongoing supply of services or failures in contract management & monitoring processes. This also includes:

- Concentration issues
- Vendor sustainability

5.33 - Compliance and Enforcement

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

This policy ensures that the Shire follows a consistent approach to any compliance and enforcement actions undertaken in accordance with the *Criminal Procedure Act 2004*.

OBJECTIVE

The Shire has a duty to investigate compliance issues and an obligation to enforce the requirements of legislation, including fulfilment of its responsibilities under Prescribed Acts, Regulations and the Shire's local laws.

The Shire will ensure that where any compliance or enforcement actions are undertaken the principles of transparency, procedural fairness and natural justice will apply.

SCOPE

This policy applies to any Shire Officers who have responsibilities under delegated authority for ensuring compliance on behalf of the Shire of Wongan-Ballidu.

DEFINITIONS

Term	Definition
Act	Local Government Act 1995.
CEO	Chief Executive Officer
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .

Term	Definition

Member	means in relation to a council or committee, a Council Member in the Act; Elected Member; or Councillor; or a member of the committee.						
Natural justice	The principles of natural justice should be free from bias and parties should be given fair opportunity to be heard and all the reasons and decision taken by the court should be informed by the court to the respective parties.						
Prescribed Act	Means an Act that is prescribed by the regulations made under the <i>Criminal Procedure Act 2004</i> .						
Prescribed Offences	Means an offence prescribed under section 5(1) of the <i>Criminal Procedure Act 2004</i> .						
Procedural justice	There are four key principles of procedural justice: voice, neutrality, respect and trust. Adherence to these principles is linked to improved compliance and positive outcomes.						
Regulations	made under a prescribed Act that may prescribe an offence under the prescribed Act, or under any regulations made under the prescribed Act, to be an offence for which an infringement notice may be issued.						
Shire	the Shire of Wongan-Ballidu.						
Transparency	Transparency, as used in the humanities and in other social contexts, is operating in such a way that it is easy for others to see what actions are performed. Transparency implies openness, communication, and accountability.						

Policy Statement

To investigate and resolve offences for breaches of legislation including failure to comply with terms or conditions of Notices, Approvals, and Orders; and appeals arising out of proceedings brought by the Shire.

1. Principles

The Shire will:

- (a) administer its statutory responsibilities in a fair, unbiased and equitable manner in the interest of public health, interest, safety and amenity.
- (b) prioritise, consider, investigate, and assess any allegation of a breach, or an offence, on the merits of each case.
- (c) not investigate or respond to anonymous allegations.

- (d) endeavour to protect the private details of complainants, within the parameters of the legislative framework.
- (e) make decisions regarding enforcement in a manner that is in proportion with the seriousness of the alleged breach, or offence.
- (f) only proceed with enforcement action where the CEO (or delegate) has considered the prospects of achieving a conviction; satisfied that prosecution is warranted.
- (g) Inform Members of any legal proceedings, anticipated costs, progress and outcomes brought against any party by the Shire.
- (h) discontinue investigations where the CEO (or delegate) reasonably considers that the allegation(s) are unsubstantiated; mischievous; vexatious; pertaining to a civil matter; has previously been investigated; and/or concluded; or is likely to result in disproportionate costs being incurred.

2. Limit of Authority

The CEO is authorised to seek legal advice and engage or procure legal representation to an amount not exceeding \$5,000 for any single matter. If legal costs are anticipated to exceed \$5,000, the CEO will submit a report to Council for approval, prior to proceeding with legal action.

Reference Information

- 5.28 Legal Representation Costs Indemnification
- Purchasing and Procurment Policy (4.8);
- <u>Compliance</u> (REG5); and
- <u>5.31 Risk Management Policy</u>
- 5.32 Risk Management Procedure
- Delegation Authority Chief Executive Officer

Legislation

Local Government Act 1995 and its subsidiary legislation.

Animal Welfare Act 2002 and its subsidiary legislation.

Biosecurity and Agriculture Management Act 2007 and its subsidiary legislation.

Building Act 2011 and its subsidiary legislation.

Building Services (Complaint Resolution and Administration) Act 2011 and its subsidiary legislation.

Caravan Parks and Camping Grounds Act 1995 and its subsidiary legislation.

Cat Act 2011 and its subsidiary legislation. Cemeteries Act 1986 and its subsidiary legislation. Control of Vehicles (Off Road Areas) Act 1978 and Regulations and its subsidiary legislation. Criminal Procedure Act 2004 and its subsidiary legislation. Dog Act 1976 and its subsidiary legislation. Fines, Penalties and Infringement Notices Enforcement Act 1994 and its subsidiary legislation. Food Act 2008 and its subsidiary legislation. Liquor Control Act 1988 and its subsidiary legislation. Litter Act 1979 and its subsidiary legislation. Local Government (Miscellaneous Provisions) Act 1960 and its subsidiary legislation. Planning and Development Act 2005 and its subsidiary legislation. Public Health Act 2016 and its subsidiary legislation.

Associated documents

Nil

5.34 - Execution of Documents

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

INTRODUCTION

This policy ensures that documents are executed, and the Common Seal is used, in accordance with legislative provisions contained in Division 3 of the *Local Government Act 1995* (the Act).

OBJECTIVE

To provide guidance to all workers as to who can sign various types of documents representing the Shire of Wongan-Ballidu (the Shire), including when to apply the Common Seal.

SCOPE

This policy applies to the Chief Executive Officer (CEO), Shire Officers and Authorised Agents; preparing documents for execution and/or who have been authorised either by a specific resolution of Council, or through the provisions of delegation, to execute documents on behalf of the Shire of Wongan-Ballidu.

DEFINITIONS

Term	Definition
Act	Local Government Act 1995.
Authorised Agent	The Shire's legal advisor(s) or settlement agent(s), as appointed from time to time, who are authorised to the extent described within a written instruction approved by Council to execute documents on behalf of the Shire.
Common Seal	The official stamp of the Shire of Wongan-Ballidu, confirming the Shire's consent to the provisions contained in the document to which it is affixed.
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .

-						
Delegated Officer	means an Officer of the Shire who has the appropriate delegated authority to execute documents on behalf of the Council.					
Document	means, in accordance with the Freedom of Information Act 1992:					
	(a) any record; or					
	(b) any part of a record; or					
	(c) any copy, reproduction or duplicate of a record; or					
	(d) any part of a copy, reproduction or duplicate of a record.					
	The above includes any written paper or electronic document including Notices, flyers, letters, memorandums and emails that:					
	. Convey a decision; or i. Establish an obligation on the Shire; or ii. are ceremonial.					
Execute	Doing all that is ready to make the deed, agreement or document operative.					
Senior Employee	means an employee designated as a Senior Employee by Council under s.5.37 of the <i>Local Government Act 1995</i> including the CEO and Senior Management Group.					
Shire	Shire of Wongan-Ballidu					
Shire Officers	means an employee of the Shire who has the appropriate authorisation to sign a document on behalf of the Shire.					
Workers	Employees, contractors and volunteers are now all classed as workers as per the WHS legislation and regulations.					

Policy Statement

This Policy covers four categories of documents as outlined below and is supported by way of an Instrument of Delegation ES2 – Execution of Documents in the Shire's Register of Delegations.

1. Category One Documents - documents requiring both the CEO and the Shire President to execute

These types of documents will require a specific resolution of Council to enter into an agreement as well as an authority to affix the common seal to that type of document in accordance with s.9.49A (2) of the Act.

The Shire President and CEO will execute documents under the provisions of s.9.49A(3) of the Act.

Documents may be executed by another Shire Officer or an agent of the local government in accordance with s.9.49A(4) provided that there has been authority given by way of a Council Resolution or through an instrument of delegation.

2. Category Two Documents – documents requiring the CEO only to authorise

Under s.9.49A (4) of the Act Council authorises the CEO, listed in the Instrument of Delegation ES2 Execution of Documents, to sign documents and/or deeds on behalf of the Shire.

Documents may be executed by another Shire Officer or an agent of the local government in accordance with s.9.49A(4) provided that there has been authority given by way of a Council Resolution or through an instrument of delegation.

Category 2 documents can be described as documents arising out of a matter that:

- Requires Council approval;
- Arises out of delegated authority from Council; or
- Are operational in nature and due to its significance should only be signed by the CEO, as a delegated representative of the Shire.

The CEO is permitted, through this policy, to execute documents that:

- Have an unlimited \$ value subject to "Budget constraint;"
- Have a commitment period that is specifically resolved by Council or in any other case, no greater than a seven-year period; and/or
- Moderate or lesser level of financial risk, legal complexity or political sensitivity, unless specifically resolved by Council.

3. Category Three Documents - documents within Delegated Authority

Under s.9.49A(4) of the Act Council authorises Delegated Officers, listed in the Instrument of Delegation ES2 Execution of Documents, to sign documents and/or deeds on behalf of the Shire. These Delegated Officers only have authority where the documents are related to their area of responsibility.

Category 3 documents can be described as documents arising out of a matter that:

- Requires Council approval;
- Arises out of delegated authority from Council; or
- Are operational in nature and due to its significance should only be signed by a Senior Employee as defined in the Act.

The positions and document execution limits are to be in: Are to the value of \$250,000 or less;

- On delegation Authority Register
- Have a commitment no greater than a five-year period; and/or
- Moderate or lesser level of financial risk, legal complexity or political sensitivity.

4. Category Four Documents - documents operational in nature.

These types of documents will include correspondence relating to day-to-day routine communications or transactions related to the operations of the Shire. They will include documents that are created in the normal course of business to discharge the duties of an Officer's position in a manner consistent with Shire policies and procedures.

Category 4 documents do not require specific authorisation through Council as they are subject of s.5.41(d) of the Act which provides that it is the function of the CEO to manage the day-to-day operations of the Shire. Shire Officers undertake such duties "acting through" another person, in accordance with s.5.45 of the Act.

Category 4 documents are to be executed by the CEO, a Manager, or a Shire Officer where the authority and accountability has been extended through an authorisation, policy, procedure, or a position description.

It is therefore important to have a good knowledge of the documents that relate to the team that is responsible for the document.

Shire Officers, with the relevant authority are permitted, through this policy, to execute documents that:

- Are to the value of \$50,000 per annum or less;
- Have a commitment no greater than a two-year period; and/or
- Minor or lesser level of financial risk, legal complexity or political sensitivity.

5. Signing documents (other than by Common Seal) during temporary or unplanned absence of the CEO

A temporary, unplanned absence refers to the CEO being unable to carry out the duties as described in this policy due to but not limited to:

- Delayed travel arrangements;
- Incapacitation due to accident or illness; and
- Personal reasons.

If the temporary, unplanned absence is not expected to exceed 48 hours, the appointment of an Acting CEO via a line of succession shall be in accordance with Appointment of Acting or Temporary CEO Council Policy.

Where:

- The CEO is temporarily unavailable or incapacitated to execute documents requiring the CEO's signature; and
- An Acting CEO has not been appointed by Council

6. Consequences

This policy represents the formal policy and expected standards of the Shire. Appropriate approvals need to be obtained prior to any deviation from the policy. Elected Members and Shire officers are reminded of their obligations under Council's Code of Conduct to give full effect to the lawful policies, decisions and practices of the Shire.

7. Execution Clause

The correct execution clause for Shire of Wongan-Ballidu documents is below. Officers must ensure the document being executed contains the correct execution clause.

(a) Executed as an Agreement (Council Resolution)

THE	COMMON S	SEAL OF TH	HE) SH	RE
OF	WONGAN	BALLIDU	WAS)
HER	EUNTO AFFI)	KED BY)
AUT	HORITY OF	COUNCIL) AND	IN
THE	PRESENCE O)F:)		

Shire President

Date

Chief Executive Officer

Name of Chief Executive Officer

Name of Shire President (PLEASE PRINT)

Date

(PLEASE PRINT)

(b) Executed as an agreement (non-Council resolution)

THE COMMON SEAL OF THE) SHIRE OF WONGAN-BALLIDU WAS) HEREUNTO AFFIXED IN THE) PRESENCE OF:)

Chief Executive Officer

Shire President

8. Roles and Responsibilities & Documents Table

The roles and responsibilities of the Shire President, CEO, Senior Managers and Shire Officers with respect to the execution of documents are outlined in the table below.

It is the responsibility of the executing parties to ensure they fully understand what they are executing on behalf of the Shire and any queries are addressed before this process is completed.

On the occasions where a Common Seal is required of the Shire, it is the responsibility of all executing parties to ensure that the Common Seal Register is updated and the Shire is notified of its application as part of the Council Information Bulletin.

Relevant Council Policies ought to be referred to as consideration must be given to the potential risks exposed to the Shire of Wongan-Ballidu when executing a document. This includes the potential financial, service commitments, service interruption, environmental, reputation and compliance implications.

Other documentation not Appendix Liaise with your Man Compliance Officer fo		Signatur	es Required		
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Adoption, Amendment or Repeal of a local law	1	\checkmark	\checkmark	х	х
Any document where the Common Seal is requested by other party or legally required	1	\checkmark	\checkmark	х	х
Deeds in respect to sale, or purchase relating to property including equitable interests	1	V	\checkmark	х	х
Documents of a ceremonial nature (where affixing the common seal is for posterity rather than a legal requirement).	1	\checkmark	\checkmark	x	х

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice			Signatu	res Required	
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Documents that enable compliance with a local government statutory obligation which, if not signed, constitutes a possible risk to the Shire.	1	V	V	V	x
Easements and the surrender or modification of easements.	1	V	V	N	x
Offer and Acceptance forms and associated documents required to enact a decision of Council to purchase or to sell land. <i>This does not include</i> <i>mortgage and Transfer of</i> <i>Land documents.</i>	1	N	V	х	x
Other legally binding contracts outside of the normal course of business (e.g. confidentiality, indemnity, licensing, novation and sponsorship agreements)	1	\checkmark	V	N	\checkmark
Power of Attorney to act for the Shire	1	\checkmark	\checkmark	х	x

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice			Signatu	res Required	
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Communication on behalf of the Shire, relevant to the day-to-day operations of the Shire which are the subject of a level of political sensitivity or potential risk to the Shire.	2	x	V	x	X
Memorandum of Understanding	2	V	\checkmark	x	х
Authority to sign documents on behalf of the Shire:					
 That are within\the scope of an Officer's position description; or That has been extended through a Council decision; That has been extended through an authorised officer appointment; That has been extended through delegated authority or policy. 	3	x	\checkmark	\checkmark	\checkmark
Commercial Leases / Peppercorns (including assignment of, extensions, renewals, variations, sub-leases and surrender)	3	х		\checkmark	\checkmark

<i>Appendix</i> Liaise with your Manager or	<i>ther documentation not listed in the Appendix</i> e with your Manager or Compliance Officer for advice		Signatures Required				
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers		
 Communications on behalf of the Shire: To Commonwealth or government ministers; To Commonwealth or government department heads; To Industry representative bodies; Concerning day-to-day operations that are politically sensitive or a potential risk to the Shire. 	3	V	V	X	X		
Community & User Agreement Licenses or Lease / Peppercorns (including assignment of, extensions, renewals, variations, sub- leases, and surrender)	3	V	V	V	\checkmark		
Contract documents arising from tenders	3	х	\checkmark	\checkmark	\checkmark		
Deeds of Settlement – employee matters	3	х	\checkmark	\checkmark	\checkmark		
Documents arising out of instances that require Officers to enact a decision of Council or the Development Assessment Panel	3	V	\checkmark	x	\checkmark		

Other documentation not Appendix Liaise with your Manager or Officer for advice	Signatures Required				
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Documents related to approvals for Subdivision, Survey Strata, Strata Title or Development Approvals or provisions of a Structure Plan, Activity Centre Plan or Local Development Plan	3	х	V	V	
Documents required to enact a decision made under delegated authority or as a condition or approval given under delegated authority	3	x	V	\checkmark	
Employment Contracts (Managers – casual contracts only)	3	х	\checkmark	x	\checkmark
Licences to occupy land or premises	3	x	\checkmark		
Local Planning Scheme and any Planning Scheme Amendments	3	x	\checkmark		\checkmark
Management statements and withdrawal or variation of management statements	3	x		\checkmark	\checkmark
Enterprise Bargaining Agreements	3	х	\checkmark	х	\checkmark

Other documentation not lis Appendix Liaise with your Manager or Com for advice	Signatures Required				
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Land Transaction documents where the Shire is required to sign as a landowner. This includes but is not limited to: • Landgate documents and/or					
 deeds including lodgement, removal, withdrawn, modification or surrender/cancel of documents such as: Notifications in accordance with section 70A of the Transfer of Land Act 1893; Covenants, easements and caveats under the Transfer of Land Act 1893; Reciprocal easements and/or parking agreements; Rights of carriageway agreements; Amalgamations Easements or deeds of easement under the Land Administration Act 1997 and/or Strata Titles Act 	3	V	V	x	\checkmark
 1985. Documents and/or deeds required in the management of land as a landowner or where the land is a reserve vested to the Shire; and Deeds of Agreement and Release in respect to sale or purchase relating to Shire land including equitable interests. 					

Other documentation not Appendix Liaise with your Manager of Officer for advice	Signatures Required				
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Mortgages, loans and debenture documents for loans which Council has resolved to raise	3	х	V	V	\checkmark
Other statements of intent and terms and conditions such as:					
 Letters of employment for casual employees; Hire agreements for Shire Facilities; or Higher duties for positions. 	3	x	V	\checkmark	\checkmark
Prosecution notices and court documents	3	x	\checkmark	\checkmark	\checkmark
Regular hire arrangements	3	x	\checkmark	\checkmark	
Residential tenancy leases	3	x	\checkmark	\checkmark	\checkmark
Service agreements / Contract as a result of procurement process (above Manager delegation)	3	x	\checkmark	\checkmark	\checkmark
State, Commonwealth or other funding agreements (within delegation)	3	\checkmark	\checkmark	\checkmark	\checkmark

Other documentation not Appendix Liaise with your Manager or Officer for advice	Signatures Required				
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
When a responsible officer has a specific role such as applying for and organising receipt of grants, and which required them to sign documents relevant to the grant.	3	x	V	V	N
When a responsible officer is authorised by relevant laws or is delegated authority by Council to issue notices and infringements.	3	x	V	V	N
Agreements in the normal course of business for the purchase of goods or services identified within the department's budget (other than for tenders) and conforming to the requirements for the Shire's Purchasing Policy and other relevant policies.	4	x	V	V	N
Any type of legally binding contract, instrument or service agreement binding the organisation to some form of commitment	4	x	\checkmark	\checkmark	N
Goods and/or Service agreements / Contracts as a result of procurement process (where total consideration is within delegation).	4	x	\checkmark	\checkmark	\checkmark
Grants applications and Grant funding agreements	4	х	\checkmark	\checkmark	\checkmark

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Heritage agreements	4	x	\checkmark	\checkmark	
Licences	4	x	V	\checkmark	
Lodgement, modification and withdrawal of caveats	4	x	V	\checkmark	\checkmark
Lodgement, registration, modification, transfer and/or withdrawal of memorials	4	x	V	V	\checkmark
Notifications on title and withdrawal or variation of same	4	x	V	\checkmark	\checkmark
Outgoing general correspondence for a departmental team	4	x	V		\checkmark
Reciprocal access agreements and withdrawal or variation of reciprocal access agreements	4	x	V	\checkmark	\checkmark
Restrictive Covenants – under s.129B of the Transfer of Land Act 1893 and any discharge or variation of covenants	4	x	\checkmark	\checkmark	\checkmark
Rights of carriageway agreements and withdrawal or variation of rights and carriageway agreements	4	x	\checkmark	\checkmark	\checkmark
Letters, correspondence and other documents that reflect an operational or procedural action required in the ordinary course of business.	4	x	\checkmark	\checkmark	\checkmark

Reference Information

The following Council Policies ought to be referred to as consideration must be given to the potential risks exposed to the Shire of Wongan-Ballidu when executing a document. This includes the potential financial, service commitments, service interruption, environmental, reputation and compliance implications.

All Purchasing and Procurement Policies;

- 5.31 Risk Management Policy
- 5.32 Risk Management Procedure
- 5.35 Internal Control
- 5.36 Legislative Compliance ;

5.26 Appointment of Acting or Temporary CEO

Legislation

Local Government Act 1995

- □ s.5.41 functions of CEO.
- □ s.5.45 Other matters relevant to delegations under Division 4 (local government employees).
- □ s.9.49A (1) document executed by person under an authority is permitted to do so by this authorisation.
- □ s.9.49 'documents, how authenticated'
- Local Government (Functions and General) Regulations 1996
 - □ r.34 Common seal, unauthorised use of

Interpretation Act 1984

Terms used in written laws - *sign* includes the affixing or making of a seal, mark or thumbprint;

Associated documents

Instrument of Delegation: Execution of Documents contained in the Shire of Wongan-Ballidu Register of Delegations.

Shire of Wongan-Ballidu Local Law (Standing Orders) 2010.

5.35 - Internal Control

Policy Owner:	Administration
Person Responsible:	Chief Executive Officer
Date of Adoption:	
Adoption Resolution:	
Date of Last Amendment:	
Date of Last Review:	

OBJECTIVES

To ensure that appropriate internal controls are implemented in order to:

- 1. Fulfil the statutory obligations under the Local Government (Financial Management) Regulations 1996 and Local Government (Audit) Regulations 1996; and
- 2. Ensure that the Shire's assets are safe from loss due to fraud and/or mismanagement.

POLICY STATEMENT

The organisation will, through the Chief Executive Officer (CEO), ensure that appropriate and efficient internal controls are in place covering:

- 1. Staffing and segregation of duties;
- 2. Information technology;
- 3. Documented procedures and processes covering the recording, reporting and authorisation of transactions; and
- 4. Monitoring performance and adherence.

5.36 - Legislative Compliance

Policy Owner:
Person Responsible:
Date of Adoption:
Adoption Resolution:
Date of Last Amendment:
Date of Last Review:

Administration Chief Executive Officer

OBJECTIVES

To ensure that the Shire of Wongan-Ballidu (the Shire) complies with legislative requirements.

BACKGROUND

A fundamental principle of good public administration is that public officials comply with both the letter and the spirit of the law.

The Shire has an obligation to ensure that legislative requirements are complied with. The community and those working at the Shire have an expectation that the Shire will comply with applicable legislation and that the Shire will take all appropriate measures to ensure that expectation is met.

Regulation 14 of the *Local Government (Audit) Regulations1996* requires local governments to carry out a compliance audit for the period 1 January to 31 December in each year. The Compliance Audit is structured by the Department of Local Government and Communities (DLGC) and relates to key provisions of the *Local Government Act 1995*.

Regulation 17 of the *Local Government (Audit) Regulations 1996* also requires a review of the appropriateness and effectiveness of systems and procedures in relation to legislative compliance at least once every two calendar years and a report to the Audit Committee on the results of that review.

POLICY STATEMENT

The Shire will have appropriate processes and structures in place to ensure that legislative requirements are achievable and are integrated into the operations of the Shire. These processes and structures will aim to:

- 1. Develop and maintain a system for identifying the legislation that applies to the Shire's activities;
- 2. Assign responsibilities for ensuring that legislation and regulatory obligations are fully implemented;
- 3. Provide training for relevant staff, Councillors, volunteers and other relevant people within the legislative requirements that affect them;
- 4. Provide people with the resources to identify and remain up to date with new legislation;
- 5. Establish a mechanism for reporting non-compliance;
- 6. Review accidents, incidents and other situations where there may have been non-compliance; and
- 7. Review audit reports, incident reports, complaints and other information to assess how the systems of compliance can be improved.

ROLES & RESPONSIBILITIES

1. **Councillors & Committee Members**

Councillors and Committee Members have a responsibility to be aware of and abide by legislation applicable to their role.

2. Senior Management

Senior Management should ensure that directions relating to compliance are clear and unequivocal and that legal requirements which apply to each activity for which they are responsible are identified.

Senior Management should have systems in place to ensure that all staff are given the opportunity to be kept fully informed, briefed and/or trained about key legal requirements relative to their work within their financial capacity to do so.

3. Employees

Employees have a duty to seek information on legislative requirements applicable to their area of work and to comply with the legislation.

Employees shall report through their supervisors to Senior Management any areas of non-compliance that they become aware of.

4. Implementation of Legislation

The Shire will have procedures in place to ensure that when legislation changes, steps are taken to ensure that future actions comply with the amended legislation.

LEGISLATIVE COMPLIANCE PROCEDURES

1. Identifying Current legislation

The Shire accesses electronic up to date versions of legislation through the Western Australian State Law Publisher website at <u>www.slp.wa.gov.au</u>.

2. Identifying New or Amended Legislation

(a) Department of Local Government and Communities (DLGC)

The Shire receives regular circulars from the DLGC on any new or amended legislation. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

(b) Department of Planning

The Shire receives Planning Bulletins from the Department of Planning on any new or amended legislation. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

(c) Western Australian Local Government Association (WALGA)

The Shire receives regular circulars from WALGA and these Circulars highlight changes in legislation applicable to local government. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

3. Obtaining Advice on Legislative Provisions

The Shire will obtain advice on matters of legislation and compliance where necessary. Contact can be made with the DLGC, WALGA or the relevant initiating government department for advice.

4. Informing Council of Legislative Changes

If appropriate, the CEO will, on receipt of advice of legislative amendments, advise the Council on new or amended legislation.

The Shire's format for all its reports to Council meetings provides that all reports have a section headed 'Statutory Implications' which shall detail relevant Sections of any Act, Regulation or other relevant and/or applicable legislation.

5. Review of Incidents & Complaints of Non-Compliance

The Shire shall review all incidents and complaints of non-compliance. Such reviews will assess compliance with legislation, standards, policies and procedures that are applicable.

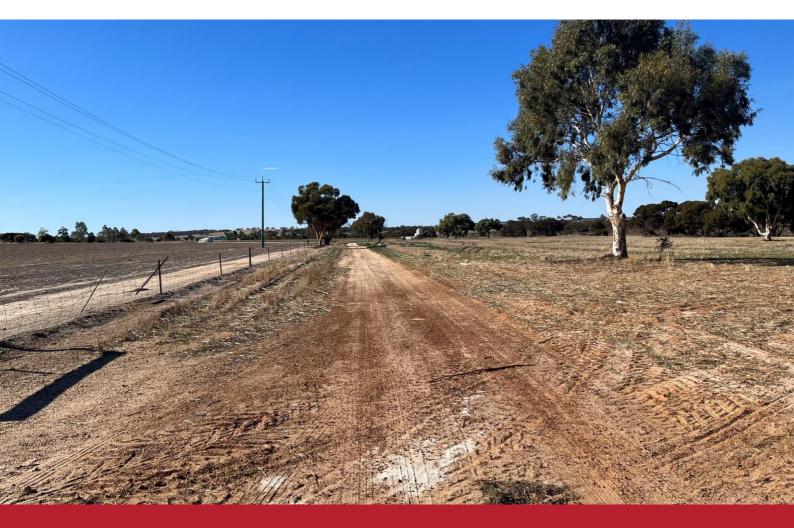
6. Reporting of Non-Compliance

All instances of non-compliance shall be reported immediately to the relevant Manager. The Manager shall then determine the appropriate response and then report the matter to the CEO.

The CEO may investigate any reports of significant non-compliance and if necessary, report the non-compliance to the Council and/or the relevant government department.

The CEO will then take all necessary steps to improve compliance systems.





Reconsideration Report

DR 56/2023 Coad v Shire of Wongan-Ballidu

Lot 167 (No 7) Danubin Street, Wongan Hills

July 2023

Disclaimer:

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Prepared for:

Dwight Coad

Prepared by:

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2	05/07/2023	Lodgement Version	JA	JA

TOWN PLANNING | MEDIATION | ADVOCACY

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1.0 Executive Summary

Further to the mediation session in relation to matter *Coad v Shire of Wongan-Ballidu* DR 56/2023, this reconsideration report is prepared on behalf of the Applicant in response to the orders made by the State Administrative Tribunal (**SAT**).

The Applicant seeks to obtain approval for the construction of shed for storage of farming equipment on Lot 167 (No. 7) Danubin Street, Wongan Hills. The application is subject to review due to contention over non-conforming use rights.

This report provides an overview of the historical background of the subject site, timeline of previous and current planning schemes, reasons it is submitted that non-conforming use rights apply to the land and other consideration relevant to the applicable planning framework. In short, there is a basis for the subject application to be approved.

A further Q&A sheet is provided as an attachment for general questions and simplified background for this application.

2.0 Background

2.1 Purpose

This reconsideration report has been prepared by Altus Planning on behalf of the Applicant, Dwight Coad, further to the State Administrative Tribunal (**SAT**) mediation session held on 18 May 2023. This reconsideration report documents and justifies the non-confirming use rights pertaining to subject site for the consideration of Shire of Wongan Ballidu (**Shire**).

Foremost, a simplified explanation of the relevant circumstances is provided in the Q&A sheet at **Attachment 1**. This is perhaps the most relevant document for the community and the elected members to consider.

The Applicant seeks approval for the construction of shed for farming machinery (**proposal**) at Lot 167 (No 7) Danubin Street, Wongan Hills (**subject site** or **site**). This report has been prepared to consolidate all existing and additional information to support the reconsideration. This includes:

- Original Development Application lodged by the Applicant dated 19 October 2022 (including Certificate of Title and Development Plans) (refer to Attachment 2);
- Various Email Correspondence with the Shire (Attachment 3);
- Correspondence regarding previous Local Planning Schemes and Scheme Map (Attachment 4);
- Historical aerials of the subject site between Year 2000 2022 (Attachment 5).

2.2 Site Description

The subject site measures approximately 18.6ha. Pursuant to Shire of Wongan-Ballidu Local Planning Scheme No. 5 (**LPS5**), the site is zoned 'Rural Residential'. The subject site has no existing developments (buildings) and has been used continuously for farming activities (cropping and/or grazing), consistent with most surrounding land in the locality and is predominantly cleared to support such rural use.

Land within the locality and surrounding the subject site are similar broad acre rural land. However, bordering the north and north-west corner of subject site are subdivided smaller sized rural residential lots, measuring approximately 1ha.

An aerial image of the subject site and immediate surrounds with cadastral overlay is provided in Figure 1.



Figure 1: Aerial/cadastre of subject site and surrounds (Source: Landgate)

2.3 Site History

Historically, Wongan Hills townsite and surrounding areas were originally settled in the early 1900's in support of expanding farming operations in the district. Prior to any enactment of planning schemes, the land has been used for agricultural and farming purposes and continued to be used as such when acquired by the Applicant in 2020. If this was not the case, the land would have evidence of substantial native bush and shrub re-growth.

On 19 October 2022, the Applicant lodged a development application for the construction of shed to store farming equipment. A copy of this application can be found at **Attachment 2**.

Between December 2022 and March 2023, there were various communications with the Shire in response to a concern that there was no pathway for approval given the Rural Residential zoning of the land. The Applicant is of view that the subject site enjoys existing non-conforming use rights, given the existing land use (agricultural) pre-dates any planning schemes and furthermore, has been undertaken consistently since that time on most of the land. Refer to **Attachment 3** for email correspondence in relation to the above.

In light of no decision being made by the Shire, an application for review was lodged with the SAT on 31 March 2023. On 18 May 2022, as part of the mediated outcome, SAT orders were made for reconsideration of decision and a reconsideration report to be submitted to the Shire.

2.4 Timeline of Previous Local Planning Schemes

Due to the dated nature of the previous schemes, digital copy of the schemes cannot be easily obtained. The Shire has sought external assistance in this matter in searching for the archived town planning schemes and scheme map. With the limited information, the following facts in relation to the history of planning schemes is available:

Prior to enactment of Town Planning Scheme

As noted, the Wongan Hills townsite and surrounding areas were originally settled in the early 1900's and land are predominantly used for farming activities. The subject site

was originally created and signed off by the Surveyor General on 14 June 1926. During this period, it was extensively cleared of native vegetation so that it could be farmed.

Town Planning Scheme No. 1 (TPS1)

The first town planning scheme, Town Planning Scheme No. 1 (**TPS1**) was gazetted on 13 April 1956. LPS1 does not forbid the continued usage of land for farming purpose and nor did it require planning approval for such in any event.

An abattoir was constructed on a small portion of the subject site in 1963 and it continued operations until 2010 (approximately). During this period, the remainder of land continued to be used for farming activities.

Town Planning Scheme No. 2 (TPS2)

On 27 March 1981, Town Planning Scheme No.2 (**TPS2**) was gazetted and revoked the previous scheme. Subject site was zoned as 'Rural', and farming was classified as a 'Rural' land use within the Zoning Table which was a permitted use.

Town Planning Scheme No. 3 (TPS3)

Town Planning Scheme No.3 (**TPS3**) was gazetted on 26 June 1992 and the subject site was zoned as 'Special Industrial' within this Scheme. Two smaller portions on the subject site were identified as 'Industrial' land uses.

It is submitted that farming of land outside of the abattoir building did not cease and existing use rights continued irrespective of any industrial designation or zoning on part of the land.

Town Planning Scheme No. 4 (TPS4)

Town Planning Scheme No. 4 (**TPS4**) was gazetted on 5 October 2001 and the subject site was zoned 'Industrial' as shown on the scheme map. It is noted that 'Intensive Agriculture' was a non-permitted use under this Scheme. However, it is once again submitted that farming activities continued on the bulk of the land surrounding the abattoir complex.

3.0 Planning Framework

4.1 Shire of Wongan-Ballidu Local Planning Scheme No. 5 (LPS5)

Shire of Wongan-Ballidu Local Planning Scheme No. 5 (**LPS5**) was gazetted on 24 October 2017. One of the aims of the Scheme is:

• To promote the sustainable use of rural land for agricultural purposes whilst accommodating other rural activities;

The proposal for the shed is a continuation of rural activities on subject site and is incidental to the primary purpose of agricultural use.

Pursuant to LPS5, the subject site is zoned as 'Rural Residential'. Clause 3.1.2 Table 2 – Zoning Objectives of 'Rural Residential' zone include:

- To provide for lot sizes in the range of 1ha to 4ha.
- To provide opportunities for a range of limited rural and related ancillary pursuits on rural-residential lots where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.
- To discourage or prohibit development not compatible with the predominantly rural nature and residential amenity of the zone.

It is understood that the proposed shed does not raise any concern in terms of built form, height, bulk, etc., notwithstanding the objectives of 'Rural Residential' zone.

It is submitted the Applicant has no intention of subdividing the 18ha land for future residential use, consistent with the current zone and nor can he forced to do so in a statutory or legal sense. Rather, the Applicant intends to continue farming on the land as it has been for almost a century.

However, it is accepted that this land use is categorised as 'Agriculture- Extensive' which is an 'X', or non-permitted use under clause 3.2 Table 3 – Zoning Table of LPS5. The proposal for a shed is considered to be an outbuilding that is associated with the primary purpose of the land.

Non-Conforming Use Rights

The Applicant intends to continue the use of land under the pre-existing nonconforming use rights. It follows that the erection of a shed is consistent with this primary land use and therefore as part of its non-conforming use rights, it can be approved.

Clause 3.7.1 of the LPS5 highlights the following:

Unless specifically provided, this Scheme does not prevent -

(a)	The continued use of any land, or any structure or building
	on land, for the purpose for which it was being lawfully used
	immediately before the commencement of this Scheme; or
(b)	The carrying out of development on land if –

- (i) Before the commencement of this Scheme, the development was lawfully approved; and
- *(ii)* The approval has not expired or been cancelled

In conjunction with the above, non-conforming use rights does not apply if-

- (a) The non-conforming use of the land is discontinued; and
- (b) A period of 6 months, or a longer period approved by the local government, has elapsed since the discontinuance of the non-conforming use.

The Applicant is of view that the land has been continually used for agricultural (cropping and/or grazing) since the land was first cleared, predating any applicable planning scheme. All available historical aerials can confirm such continuation of land use between year 2000 – 2022 which can be viewed from Landgate and extracted in **Attachment 4**. Whilst the historical aerials only dates back to 2000, it would demonstrate that the land has been and continued to be farmed and used for such purpose, including during a period where the abattoir still existed.

In addition, the Shire has not kept any register of non-conforming uses pursuant to clause 3.9 of LPS5 within the Scheme area to determine whether a non-conforming use right exists.

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4.2 Fact Sheet: Outbuildings

The fact sheet is used to interpret and assist the definition and treatment of outbuilding in the State Planning Policy 7.3: Residential Design Codes (**R-Codes**) and Planning and Development (Local Planning Schemes) Regulations 2015 (**Regulations**).

As defined by the R-Codes, an outbuilding is "*an enclosed non-habitable structure that is detached from any dwelling*". However, the fact sheet clarifies that there will be other circumstances where dwelling is not required and can be associated with other land uses.

"Outbuildings / sheds are not always associated with residential development, and may be considered works associated with other land uses e.g. a light industry with a shed for storage and repairs."

On the other hand, a shed without dwelling and associated land use is best described as 'Warehouse/ Storage' Accordingly, in this instance, given the primary use of the land is for agricultural purposes, the proposal for shed can be considered as an 'outbuilding' even though there is no dwelling on the land.

Planning approval is still required where the R-Codes do not apply when there is no specific exemption from the local planning scheme or local planning policies. Somewhat ironically, if there was an existing dwelling on land, the proposal would not even require planning permission. This is discussed further below.

4.0 Justification for Proposal

Consistent with discussion during mediation, the Applicant considers that the land has existing 'non-conforming use' rights, particularly due to the ongoing nature of the primary usage of land for agricultural purposes. Whilst the Scheme has changed over time, a substantial portion of the site has continuingly been farmed even during times it was zoned 'Industrial' and/or when there was an operational abattoir on the land.

If the Shire is of view that non-conforming use rights cannot be accepted, the following scenarios must be considered:

TOWN PLANNING | MEDIATION | ADVOCACY

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Applicant to be Potentially Prosecuted for Continuing to Farm on Land

Should the Shire take the approach that it does not agree the Applicant has nonconforming use rights, not only can the Applicant not build his shed, but in principle, this would also mean that the land cannot continue to be farmed.

It would be illogical for the Shire to accept that the land can continue to be farmed without prosecution but then on the other hand, to suggest that a shed cannot be built because there are no rights for the land to be farmed.

Rezoning Back to 'Rural'

Rezoning the land back to Rural is problematic on several fronts. In addition to it being a lengthy process, adaptation of such zone would potentially allow for several discretionary and permitted uses which, if they were to be pursued, would have a much greater amenity impact on the surrounding community.

For example, these uses would include Waste Disposal Facility, Waste Storage Facility, Extractive Industry, and a number of industrial uses. Whilst none of these are intended by the Applicant, they illustrate some potential unintended consequences if that were to occur. Whereas, in this instance the continuation of the existing farming use does not have a significant amenity impact to the surrounding lots when non-conforming use rights are only limited to that use.

Construction of a Dwelling

Under the current 'Rural Residential' zone, planning approval would not even be required for the construction of outbuilding (shed) if the Applicant first constructed a dwelling.

Under the current scheme, pursuant to clause 3.3.5, a 'Single House' under Rural Residential zone is of 'P' use which is a permitted use.

3.3.5 If a use of land is identified in a zone as being a class P use, the local government may not refuse an application for development approval for that use in that zone but may require works that are to be undertaken in connection with that use to have development approval.

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Pursuant to LPS 5 Schedule A – Supplemental Provisions to the Deemed Provisions Clause 61 (1) (m) which is read in conjunction with Deemed Provisions, development approval will not be required for the erection of outbuilding on the same lot of single house, if it is a 'P' use in the zone whereby development standards are satisfied.

From an impact perspective, this seems to be counterintuitive as the construction of both 'single house' and an 'outbuilding' would collectively result in more of a change on the subject site.

Therefore, the issue of getting a shed approved would automatically disappear if the Applicant built a house on the land. However, he cannot be forced to do so in a statutory or legal sense.

5.0 Conclusion

The Applicant is seeking a reconsideration for the proposal of a shed for farming equipment from the Shire of Wongan Ballidu.

For the reasons outlined in this Report, our view is that the proposal is suitable, having regard to the non-conforming use rights and the continuation of farming activities on the land. In other words, no current scheme or zone can take away the rights for the land to be farmed and by extension, for a shed to be built for farming purposes.

In addition, the proposal of the shed does have any amenity or any other negative impacts on the surrounding locality.

Accordingly, it is submitted that on this basis, the proposal warrants approval.

Altus Planning

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TOWN PLANNING | MEDIATION | ADVOCACY

Attachment 1 – Q & A Sheet

TOWN PLANNING | MEDIATION | ADVOCACY

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Q&A – Proposed shed - Lot 167 (No 7) Danubin Street, Wongan Hills

What is the Application for?

It is a farm machinery shed on a property of 18.6ha. There is nothing particularly unusual about its size or form, being approximately 12m x 21m with a height of 5m plus a 5m lean to.

Why is it contentious?

There is nothing contentious about the shed, but rather, the zoning of the land. Whilst the land looks rural, and it is being used for rural purposes (farming), it is actually zoned Rural Residential under the Shire's planning scheme. A Rural Residential zoning would allow the land to be subdivided into smaller lots. Such subdivision which could create a new estate but this has not occurred to date, nor is there any indication that demand and market conditions are ripe for that to be likely anytime soon.

With a Rural Residential zoning, an 'outbuilding' is allowable but only when there is a dwelling already on the land.

The history of the zoning is that at one time, the land was zoned Industrial because of an abattoir that existed on the land between 1963 to the early 2000s.

How can it be approved?

The Applicant is arguing that he has 'non-conforming use rights'. This means, notwithstanding that an abattoir existed on a small part of the land for a period of time and that the zoning has changed, most of the land has been continuously farmed (cropped or grazed) since the land was first cleared. Therefore, farming on the land preceded any town planning schemes and the need for planning approval. In other words, no current scheme or zone can take away the rights for the land to be farmed and by extension, for a shed to be built for farming purposes.



What are the alternatives?

Should the Shire take the approach that it does not agree the Applicant has nonconforming use rights, this creates a far bigger problem for everyone. Not only can the Applicant not build his shed, but this would also mean that the land cannot be farmed. No planning law can force the Applicant to subdivide the land as intended under the Rural Residential zone.

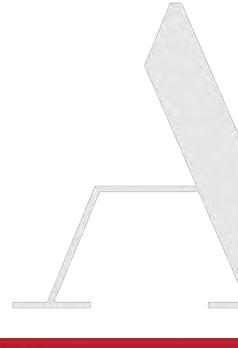
Another possibility is for the land to be rezoned back to Rural but this is also problematic on several fronts. In addition to it being a lengthy process, a Rural zone would potentially allow for a number of uses which, if they were to be pursued, would have a much greater impact on the surrounding community. For example, these uses would include Waste Disposal Facility, Waste Storage Facility, Extractive Industry, and a number of industrial uses. Whilst none of these are intended by the Applicant, they illustrate some potential unintended consequences if a rezoning back to Rural were to occur.

Finally, and somewhat ironically, the problem of getting a shed approved would automatically disappear if the Applicant built a house on the land, consistent with the Rural Residential zoning. In this scenario, the shed would classified an outbuilding and would not even require planning approval.

Conclusion

The Council has the discretion to consider non-conforming use rights pursuant to the provisions of the Scheme. The Applicant submits that it should exercise this discretion, not only because such rights exist but it would be practical and logical to do so. To deal with this any other way, is problematic for the reasons above. Perhaps equally important, approval of the shed has no negative consequences on other person or party in the locality.

Attachment2-OriginalDevelopment Application



TOWN PLANNING | MEDIATION | ADVOCACY

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* *

APPLICATION FOR DEVELOPMENT APPROVAL

Owner Details			
Name: COAD, DWIG	HT EDWARD	+ LEE - ANN	IA
ABN (if applicable):			
Address: Po Box 254			
Town WONGAN HI	LLS		
Phone:	Fax:	Email:	
Work:			DADCOMMS. COM. AU
Home:			
Mobile: 0427478481			
Contact Person for Correspondence:	DWIGHT CO	AD.	
Signature:		Date:	
Signature:		Date:	
ourposes of signing this application an o Planning Schemes) Regulations 2015 So		ons referred to in the Plann	ing and Development (Local
Applicant Details (if different fron	n owner)		
Name: NUSTEEL PATTO			
Do Doil Qui			
22			Postcode: 6510
Phone: Work: 96531888	Fax:	Email:	NUSTEEL BUILDING
Home:		· COMO A	U
Mobile:			
Contact person for Correspondence:		1.4	
			u the legal accomment for subli-
	with this application i	hav be made available b	y the local government for public
The information and plans provided viewing in conjection with the appli		No	
The information and plans provided viewing in conjection with the appli			
The information and plans provided viewing in connection with the appli Signature:		No	
The information and plans provided viewing in connection with the appli Signature: All College Property Details	ication. 🛛 Yes 🛛	Date: 19/10/20	
The information and plans provided viewing in connection with the appli Signature: All left Property Details Lot No:	ication. Yes	Date: 19/10/2.	
The information and plans provided viewing in connection with the appli Signature: Acceller Property Details Lot No: Diagram or Plan No:	ication. 🛛 Yes 🛛	Date: 19/10/20	4
The information and plans provided viewing in connection with the appli Signature: Alleffer Property Details Lot No:	House/Street No: Certificate of Title Vol. No: 1900	Date: 19/10/2. Location No: Folio: 386	4
The information and plans provided viewing in connection with the appli Signature: Alleff Property Details Lot No: Diagram or Plan No: DP 202085	House/Street No: Certificate of Title Vol. No: 1900 , restrictive covenants)	Date: 19/10/20 Location No: Folio: 386	2

Page | 1

Proposed Development			
Nature of Development:	 Works Use Works and use 	2	
Is an exemption from developm If yes, is the exemption for:	ent claimed for part of th Works Use	ne development? 🗖 Yes	X No
Description of proposed works a			
COVER FOR FARM	MACHINERY		
Description of exemption claim	ed (if relevant):		
Nature of any existing buildings	and/or land use:		
VACANT LAND.			
Approximate cost of proposed d	evelopment: #91,0	222.00	
Estimated time of completion:	MAY 2023		
Acceptance Officer's initials:		<i>USE ONLY</i> eccived:	
Local government reference No			
Page 2			

SHIRE OF WONGAN BALLIDU USE ONLY

Notice of Determination on Application for Development Approval

Location:		
		gram:
		5
		1 on:
Description of pr	oposed development:	
	or development approval is:	
□ Approved	subject to the following conditions	□ Refused for the following reason(s)
Conditions/reaso	ns for refusal:	
Date of Determin		
Note 1:		al is not substantially commenced within a period of 2 years, or another to f the determination, the approval will lapse and be of no further effect.
Note 2:		ment must be carried out without the further approval of the local
Note 3:		determination there is a right of review by the State Administrative <i>d Development Act 2005</i> Part 14. An application must be made within
Signed:	Dated:	
	and on behalf of the Shire of Wongan-H	Ballidu
	Notice of public advertise	ement of planning proposal
The local govern comments are inv		and/or develop land for the following purpose and public
Lot No:	Street:	Suburb:
Proposal:		
submitted		local government office. Comments on the proposal may be day of
Signed:	Dated:	
	and on behalf of the Shire of Wongan-E	Ballidu

	. *		DP202085
WESTERN	AUSTRALIA	DUPLICATE EDITION 1	DATE DUPLICATE ISSUED
RECORD OF CERT UNDER THE TRANSFE		TLE	VOLUME FOLIO 1900 386

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.

REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 167 ON DEPOSITED PLAN 202085

REGISTERED PROPRIETOR: (FIRST SCHEDULE)

DWIGHT EDWARD COAD LEE-ANNE COAD BOTH OF PO BOX 254 WONGAN HILLS WA 6603 AS JOINT TENANTS

(T O507196) REGISTERED 25/9/2020

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS: (SECOND SCHEDULE)

THE LAND THE SUBJECT OF THIS CERTIFICATE OF TITLE EXCLUDES ALL PORTIONS OF THE LOT 1. DESCRIBED ABOVE EXCEPT THAT PORTION SHOWN IN THE SKETCH OF THE SUPERSEDED PAPER VERSION OF THIS TITLE.

MORTGAGE TO AFSH NOMINEES PTY LTD REGISTERED 25/9/2020. 2. *0507197

A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required. Warning: * Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title, Lot as described in the land description may be a lot or location.

------END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

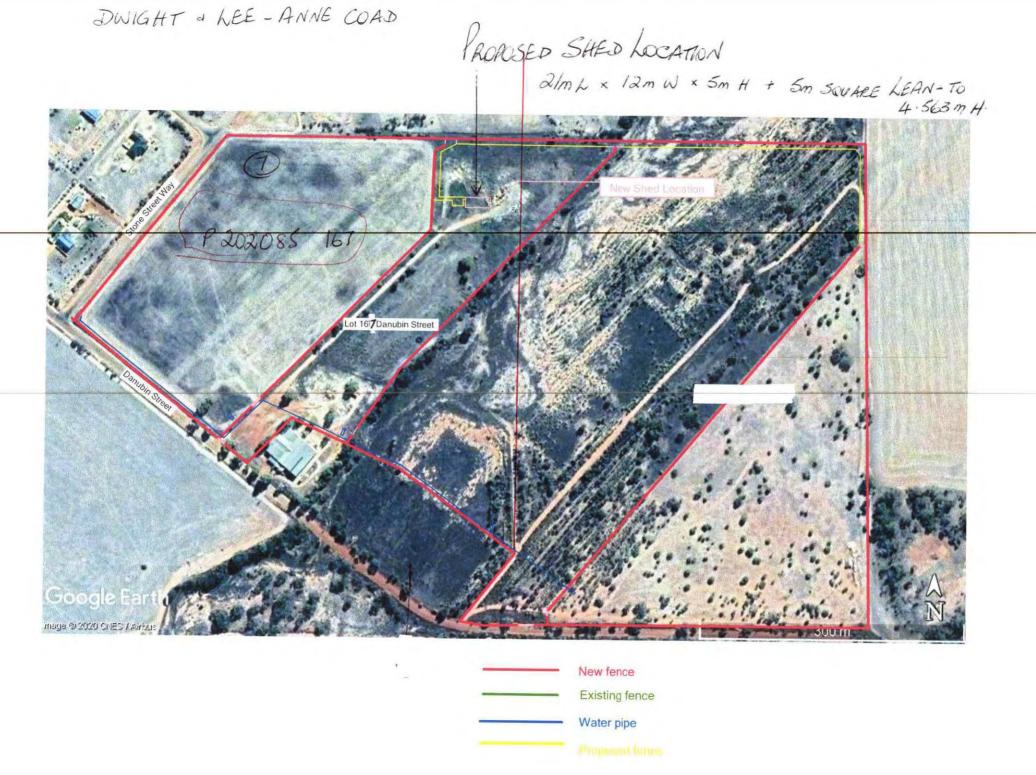
SKETCH OF LAND: PREVIOUS TITLE: PROPERTY STREET ADDRESS: LOCAL GOVERNMENT AUTHORITY: 1900-386 (167/DP202085) 1029-897 7 DANUBIN ST, WONGAN HILLS. SHIRE OF WONGAN-BALLIDU

NOTE 1:

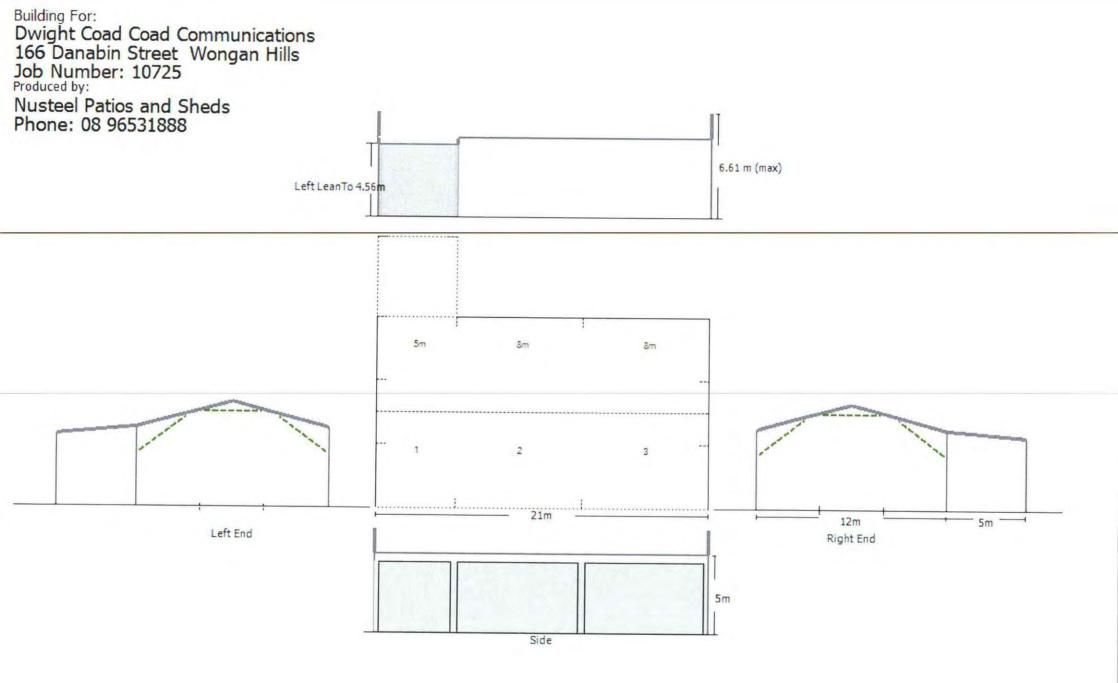
DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING O507197

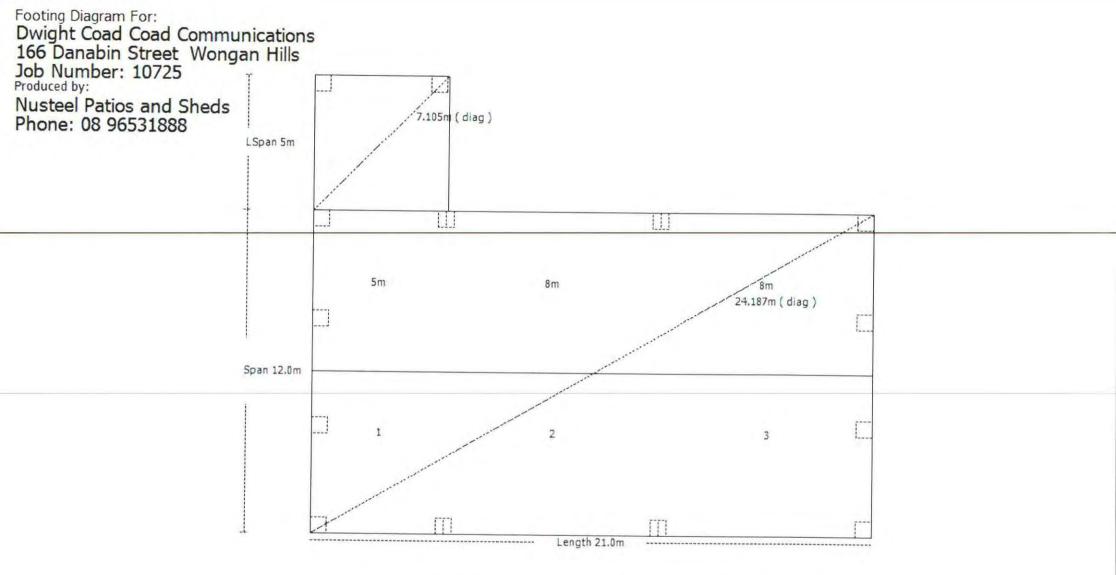
LANDGATE COPY OF ORIGINAL NOT TO SCALE 19/10/2022 04:37 PM Request number: 64262076





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NB: All footing blocks shown inside building dimensions. If Block footings only are used blocks may be located centrally under columns.

Job Number: 10725. For Dwight Coad Coad Communications. Page 1 on 19/10/2022 Dimensions: 12m Wide, 21m Long and 5m High.

Line	Code	Qty	Measure	Description	Usage
1	BF8MZ160301E	268	lea	G8.8 FLANGE PLIN B/N ZNC M16 X 30	STRUCTURAL FRAME BOLTS
2	BFPMZ120301E	16	lea	FLANGED PURLIN B/N ZNC M12 X 30	MULLION STRUCTURAL FRAME BOLTS
3	BF8MZ160301E	68	lea	G8.8 FLANGE PLIN B/N ZNC M16 X 30	PURLIN BOLTS
4	BF8MZ160301E	50	lea	G8.8 FLANGE PLIN B/N ZNC M16 X 30	SIDE GIRT BOLTS
5	BF8MZ160301E	20	lea	G8.8 FLANGE PLIN B/N ZNC M16 X 30	END GIRT BOLTS
6	SMHT8SM2451E	2352	lea	TG SDM 12-14x51 HEX B8+SL -COL SURFMIST	ROOF SCREWS
7	SMHT8BZ2451E	67	lea	TG SDM 12-14x51 HEX B8+SL -COL BASALT	BARGE FLASHING SCREWS
8	SMHC8BZ0162E	46	lea	SDM 10-16x16 HEX B8 -COL BASALT	BARGE WALL SCREWS
9	SMHT8SM2451E	361	lea	TG SDM 12-14x51 HEX B8+SL -COL SURFMIST	EAVE SCREWS
10	SMHC8BZ0162E	136	lea	SDM 10-16x16 HEX B8 -COL BASALT	CNR FLASHING TEKS
11	SMHC8SM0162E	1859	lea	SDM 10-16x16 HEX B8 COL SURFMIST	WALL SCREWS
12	SVSHXC8620221	600	lea	SDM 6.2-13x22 HEX B8 - 100	FRAME SCREWS
13	RCT2SBZ4032E	57	lea	5052 AL&STEEL RIVET 4-3 -COL BASALT	GUTTER POP RIVETS
14	SMBC3080122E	88	lea	SDM 8-8 x 12 Button CL3	GUTTER BRACKET SCREWS
15	ASBMG161002	8	lea	Screw Anchor 16mm x 100 Galv	MULLION HOLD DOWN BOLTS
16	DELIVERYE	1	lea	Lot 196 Tootra Road MOORA on 25/11/2022 4:03:18 PM	DELIVERY REQUEST
17	DELIVERYEZ	1	1kg	End of BREMICK	Paul information
			-		
18	MC42XSUR	56	6.266m	SURFMIST Monoclad 0.42 CB	ROOF SHEETS
19	MC42XSUR	7	5.178m	SURFMIST Monoclad 0.42 CB	LEFT LT ROOF SHEETS
20	MC42XSUR	22	5.025m	SURFMIST Monoclad 0.42 CB	WALL EXPOSED
21	MC42XSUR	36	0.5m	SURFMIST Monoclad 0.42 CB	OPEN BAY HEAD SHEETS
22	CUTBACKLTH	36	lea	Cutting Charge per cut	SHORT SHEET CUTTING CHARGES
23	MC42XSUR	4	6.812m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
24	MC42XSUR	4	6.633m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
25	MC42XSUR	4	6.429m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
26	MC42XSUR	4	6.225m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
27	MC42XSUR	4	6.021m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
28	MC42XSUR	4	5.817m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
29	MC42XSUR	4	5.612m	SURFMIST Monoclad 0.42 CB	
30	MC42XSUR	4	5.408m	SURFMIST Monoclad 0.42 CB	END WALL SHEETS
31	BST381650	5	lea	Bracing Strap (Per 50m Roll) 38 x 1.6	END WALL SHEETS DIAG/FLY BRACING STRAP
32	EDGUXBAS	6	7.069m	BASALT Easiline Domestic Gutter CB	GUTTER
33	GCSGABAS	44	lea	Easiline Domestic Gutter Concealed Gutter Brkt ZA	GUITER BRACKETS
34	ELGUSEXBAS	3	lea	BASALT Stop End L\H Easiline Domestic Gutter CB	LH END STOPS
35	ELGUSEXBAS	3	lea	BASALT Stop End R\H Easiline Domestic Gutter CB	RH END STOPS
36	Y055FD067AXBAS	4	6.575m	BASALT Barge Capping C200 CB	BARGE CAP
37	Y055FD067AXBAS	2	5.316m	BASALT Barge Capping C200 CB	LEFT LEANTO BARGE CAP
38	Y055FD019AXSUR	3	7.067m	SURFMIST Ridge Cap Monoclad 15deg CB	RIDGE CAP
39	Y055FD009AXBAS	1	0.5m	BASALT Corner Flashing 75 x 75 CB	SHORT CORNER FLASHING LTL, FRM 1
40	Y055FD009AXBAS	1	0.5m	BASALT Corner Flashing 75 x 75 CB	SHORT CORNER FLASHING LIL, FRM 1 SHORT CORNER FLASHING LIL, FRM 2
41	Y055FD009AXBAS	1	5.025m	BASALT Corner Flashing 75 x 75 CB	CORNER FLASHING MAIN BACK, FRM 1
42	Y055FD009AXBAS	1	5.025m	BASALT Corner Flashing 75 x 75 CB	
43	Y055FD009AXBAS	1	5.025m	BASALT Corner Flashing 75 x 75 CB	CORNER FLASHING MAIN BACK, FRM 4
44	Y055FD009AXBAS	1	5.025m	BASALT Corner Flashing 75 x 75 CB	CORNER FLASHING MAIN FRONT, FRM 1
45	XGB1502-U	27	lea	End Wall Girt Brkt 150x50x50x1.9mm Z150	CORNER FLASHING MAIN FRONT, FRM 4
46	XHDB300756-400	1	lea	HOLD DOWN BRKTS 300 X 75 X 6-400 DEEP GAL FLAT	END WALL GIRT BRKTS
47	XHDB300756	1	lea	Hold Down Brackets 300 X 75 X 6 Gal Flat	LL END HOLD DOWN U BRACKETS
48	XHDB300756-400	4	lea	HOLD DOWN BRKTS 300 X 75 X 6-400 DEEP GAL FLAT	LL SNG HOLD DOWN U BRACKETS
49	XHDB300756	2	lea	Hold Down Brackets 300 X 75 X 6 Gal Flat	END HOLD DOWN U BRACKETS
50	XHDB3002008-D	2	lea	HDB Double 300 X 200 X 8 Gal Flat	MAIN SNG HOLD DOWN U BRACKETS
51	XMFA200-U	4	lea	Mullion Fixing Angle C200 x 1.9mm	MAIN DBL HOLD DOWN U BRACKETS MULLION TOP ANGLES
52	DP10050XSUR24	11	2.4ea	SURFMIST Downpipe CB 100 x 50	DOWNPIPE
			100 100 10	and the second second second at the	DOUNT TEL

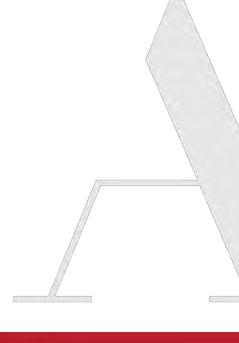
Job Number: 10725. For Dwight Coad Coad Communications. Page 2 on 19/10/2022 Dimensions: 12m Wide, 21m Long and 5m High.

53	NOZ10050ZA	5	1.0.7		
54	AST10050XSUR		lea	Nozzle Z/A 100 x 50	DOWNPIPE NOZZLE
55		22	lea	SURFMIST Downpipe Astragal 100 x 50mm CB	DOWNPIPE JOINERS
56	XDB2004H318	4	lea	175 x 50 x 75 x 3.0mm Base Cleat C200 (4 Hole)-FLA	MULLION ANCHOR BASES
57	XHB15300L-PF	3	lea	C300 LH 15Deg 6.0mm HaunchBrkt Pun-FLAT	LEFT SIDE LH HAUNCH BRKT
1000	XHB15300R-PF	1	lea	C300 RH 15Deg 6.0mm HaunchBrkt Pun-FLAT	LEFT SIDE RH HAUNCH BRKT
58	XHB15300R-PF	3	lea	C300 RH 15Deg 6.0mm HaunchBrkt Pun-FLAT	RIGHT SIDE RH HAUNCH BRKT
59	XHB15300L-PF	1	lea	C300 LH 15Deg 6.0mm HaunchBrkt Pun-FLAT	RIGHT SIDE LH HAUNCH BRKT
60	XAPB15300-PF	4	lea	C300 15Deg 6.0mm Apex Brkt Pun-FLAT	APEX BRACKETS
61	XHB5300L-PF	1	lea	C300 5Deg 6mm LH HaunchBrkt Pun FLAT	LEFT LEANTO LH HAUNCH BRKT
62	XHB5300R-PF	1	lea	C300 5Deg 6mm RH HaunchBrkt Pun FLAT	LEFT LEANTO RH HAUNCH BRKT
63	XFPB300470-P	1	lea	300 x 470 x 3.0mm Flat Plate Brkt Pup	LEFT LEANTO LH CONNECTION BRKT
64	XFPB300470-P	1	lea	300 x 470 x 3.0mm Flat Plate Brkt Pun	LEFT LEANIG LE CONNECTION BRAT
65	C20019P	2	3.67m	C20019 35c/70w/3600w/3635c	LEFT LEANTO RH CONNECTION BRKT APEX BRACES FULL LENGTH
66	C20019P	4	3.792m	C20019 35c/70w/3722w/3757c	
67	XEPB150S96-PH	2	lea	Single Eave Purlin Brkt C300/Z150x1.9mm UnP	KNEE BRACES FULL LENGTH
68	XEPB150D192-PH	2	lea	Double Eave Purlin Brkt C300/Z150x1.9mm UnP	FASCIA BRACKETS INT
69	XEPB150S96-PH	4	1ea	Single Eave Purlin Brkt C300/Z150x1.9mm UnP	FASCIA BRACKETS INT
70	XEPB150S96-PH	2	lea	Single Eave Purlin Brkt C300/2150x1.9mm UnP	FASCIA BRACKETS END
71	TH6475ZA	6	6.127m	Tophat 64 x 0.75mm (Cut to Length)	LEFT LEANTO FASCIA BRACKETS END
72	TH6475ZA	2	4.06m		ROOF BRIDGING
73	TH6475ZA	1	5.019m	Tophat 64 x 0.75mm (Cut to Length) Tophat 64 x 0.75mm (Cut to Length)	WALL BRIDGING
74	C20024U	2	5m		LL ROOF BRIDGING
75	C20024U	1	5m	C20024	EAVE PURLINS (BAY 1)
76	C20024U	2	8m	C20024	LEFT LEANTO EAVE PURLINS (BAY 1)
77	C20024U	2	8m	C20024	EAVE PURLINS (BAY 2)
78	Z15015P	20		C20024 C20024 C20024 C20024 Z15015 48f/800f/5000f/5752f Z15015 325f/8325f	EAVE PURLINS (BAY 3)
79	Z15015P	14	5.8m	215015 481/8001/50001/5/52f	PURLINS (BAY 1)
80	Z15015P	14	8.65m	Z15015 325f/8325f	PURLINS (BAY 2)
81	Z15015P	2	8.8m	Z15015 48f/800f/8000f/8752f	PURLINS (BAY 3)
82	Z15015P	6	5.8m	Z15015 48f/800f/5000f/5752f	SIDE GIRTS (BAY 1)
83			8.65m	Z15015 325f/8325f	SIDE GIRTS (BAY 2)
84	Z15015P	6	8.8m	Z15015 48£/800£/8000£/8752£	SIDE GIRTS (BAY 3)
85	Z15015P Z15015P	20	3.999m	Z15015 300f/3699f	CORNER END GIRTS
86		10	3.999m	Z15015 150f/3849f	END GIRTS
00	C30024P	4	5.663m	C30024 35w/185w/400f/1263f/2126f/2989f/3852f/4715f/	END RAFTERS
07	6300245			5453W/55781/5628W	
87	C30024P	4	5.663m	C30024 35w/185w/400f/1263f/2126f/2910c/2989f/3840c/	RAFTERS
20	0000045			3852f/4715f/5453w/5578f/5628w	
88	C30024P	2	4.692m	C30024 35w/185w/342f/1164f/1986f/2808f/3630f/4452f/	LEFT LEANTO END RAFTERS
DC				4507w/4657w	and a second of the best of the second
89	C30024P	I	4.544m	C30024 35w/220w/385f/465w/4459f/4509f	LEFT LT COL, FRM 1 (C1)
90	C30024P	1	4.544m	C30024 35w/220w/385f/465w/4459f/4509f	LEFT LT COL, FRM 2 (C1)
91	C30030P	1	5.008m	C30030 35w/220w/412f/465w/1052f/1991f/2930f/3869f/	MAIN COL, FRM 1 BACK (C2)
				4808f/4923f/4973f/4973w	THILD GOD, THE I DAGE (CZ)
92	C30030P	1	5.008m	C30030 35w/220w/412f/465w/1052f/1639c/1991f/2930f/	MAIN COL FOM 2 DACK (02)
				3869f/4808f/4923f/4973f/4973w	MAIN COL, FRM 2 BACK (C2)
93	C30030P	1	5.008m	C30030 35w/220w/465w/1052f/1639c/1991f/2930f/3869f/	MATN COT FOM 2 PROVI (20)
				4808f/4923f/4973f/4973w	MAIN COL, FRM 3 BACK (C2)
94	C30024P	1	5.008m	C30024 35w/220w/465w/1052f/1991f/2930f/3869f/4808f/	MAIN COL DDW & DAOR (DI)
				4923£/4973£/4973w	MAIN COL, FRM 4 BACK (C1)
95	C20019P	1	5.955m	C20019 35w/200f/1390f/2580f/3770f/4960f	MARTIN ATTITUT DATA AND AND AND AND AND AND AND AND AND AN
96	C20019P	1	5.955m	C20019 35w/200f/1390f/2580f/3770f/4960f	MAIN LEFT END MULLION (C3)
97	C20019P	ī	5.955m	C20019 35w/2001/13901/25801/37/01/49601 C20019 35w/2001/13901/25801/37701/49601	MAIN RIGHT END MULLION (C3)
98	C20019P	ĩ	5.955m	C20019 35w/2001/13901/20001/3//UT/49601	MAIN LEFT END MULLION (C3)
99	C30030P	ĩ	5.008m	C20019 35w/200f/1390f/2580f/3770f/4960f	MAIN RIGHT END MULLION (C3)
2.6	and the second sec	-	~ • 0 0 0 m	C30030 35w/220w/412f/465w/1052f/1991f/2930f/3869f/	MAIN COL, FRM 1 FRONT (C2)
				4808£/4923£/4973£/4973w	

Job Number: 10725. For Dwight Coad Coad Communications. Page 3 on 19/10/2022 Dimensions: 12m Wide, 21m Long and 5m High.

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104	FRAGSSITEZ	450	lkg	End of STRAM	DELLI	VERI P	(EQUE:	× 1		
103	FRAGSSITE	1	Iea	De Freite de	DELTS	VERY F	TEALER	-m		
102	C30030P	1	5.008m	020020 25 /220 /110 27 /2	MAIN	COL,	FRM 4	FRONT	(C2)	
101	C30024P	2	5.008m	C30024 35w/220w/412f/465w/1052f/1265w/1639c/1991f/ 2065w/2865w/2930f/3665w/3869f/4465w/4808f/4923f/4973f/ 4973w	MAIN	COL,	FRM 3	FRONT	(C4)	
	C30024P	2	5.008m	2065W/2865W/2930f/3665W/3869f/4465W/4808f/4923f/4973f/ 4973w	MAIN	COL,	FRM 2	2 FRONT	(C4)	
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Attachment 3 – Various Email Correspondence with the Shire



TOWN PLANNING | MEDIATION | ADVOCACY

9.4.3 Reconsideraton Report - DR 56 of 2023 - Page 27

From: Stuart Taylor <<u>stuart.taylor@wongan.wa.gov.au</u>>
Sent: Friday, March 17, 2023 3:40:08 PM
To: Cr Dwight Coad <<u>crdcoad@wongan.wa.gov.au</u>>
Subject: Planning Application

Good afternoon Dwight,

My sincere apologies for not responding to you earlier.

As you are aware, the current view of the Shire is that we are not in a position to give approval because of the Zoning of the land and the requirements in terms of the requested use. The current scheme does not give Council any discretion to approve the use and the shed which our understanding is an ancillary use to the primary use being Rural Residential, thus a dwelling must be approved and constructed fulfilling the Zoning requirements as per the Scheme before we can deal with the planning application for the Shed.

In response to providing you this information previously, you have sent correspondence supporting your view that Council could in fact deal with the application, that Council has a discretion in giving approval based on a non-conforming use basis.

As the land was Zoned industrial with the possible "use" of Abattoir, and no other planning applications having been received since the closure of the Abattoir, and the provisions of the Scheme indicating that any non-conforming use lapses after a period of 6 months of any non-conforming use ceasing, we are not sure that we can go back years after a number of scheme changes and the use of the land not changing since 1963 when the Abattoir was operating.

This is beyond the knowledge of the Shire. As previously advised, the Department of Planning Lands and Heritage has provided advice that the Shire of Wongan Ballidu is unable to exercise a discretion in relation to the application, and therefore cannot approve the application.

To move your application forward, and to assist with our knowledge gap and to assist in future applications that may arise in other Rural residential land lots within the Wongan Hills Townsite, we have sort outside professional advise on how the Shire may progress your application based on the information that you have provided.

As you may appreciate it is not an easy task as what is being requested from the Shire as the information is not readily available including previous Planning Schemes 1 and 2 which we are trying to source from the State Planning Commission and the State Government Printer and the Government Gazette which may have copies when they were adopted.

As soon as we have the advice we will contact you to discuss what we have found out and what we can do in relation to your application.

Kind regards Stuart **Kind Regards,**

Stuart Taylor Chief Executive Officer Mon - Fri, 08:00 - 17:00 08 9671 2500 stuart.taylor@wongan.wa.gov.au





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From: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Sent: Wednesday, January 25, 2023 11:33 am
To: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Cc: Deryce Du Plessis <<u>deryce.duplessis@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Hi Dwight

I have had a response back from Aleisha at DPLH regarding the building of a house on the property.

A single house is a 'P' use in the Rural Residential Zone, which means the land use is permitted if it complies with any relevant development standards and requirements of the Shires Local Planning Scheme No. 5 (LPS5). These development requirements include but are not limited to setbacks, landscaping and provision of potable water.

Additionally, Schedule A of LPS 5 states that erection of a single house (the works component) is exempt from development approval subject to:

- a. A Single House being a permitted use in the zone (where the R-Codes don't apply)
- b. Meeting the development standards as set out in LPS 5;
- c. The lot is not in a heritage-protected place; and
- d. The lot has frontage to a constructed road.

Similarly, Schedule A states that erection of an outbuilding is also exempt from development approval subject to:

- a. It being on the same lot as a single house (if a single house is permitted in the zone);
- b. Meeting the development standards as set out in LPS 5; and
- c. The lot is not a heritage-protected place.

In light of the above, a proposed single house and associated outbuilding are technically exempt from development approval and can apply straight for building approval.

Once building approval is obtained, the single house will need to be constructed before or during the same time as the outbuilding. This is because an outbuilding is associated with a dwelling by definition, and it would otherwise be considered unauthorised development (in this circumstance).

DPLH prepared this fact sheet that might assist: <u>https://www.wa.gov.au/system/files/2021-</u>06/FS-outbuildings.pdf

Hope this information answers your query.

Kind Regards,

Melissa Marcon Manager Regulatory Services



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From: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Sent: Friday, 20 January 2023 3:54 PM
To: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Melissa, Sorry to hear, hope all is well. Thanks for the info. Will be in touch.

Cheers Dwight

From: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Sent: Friday, 20 January 2023 3:45 PM
To: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Cc: Deryce Du Plessis <<u>deryce.duplessis@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Good Morning Dwight

Sorry for the late reply I have been on leave dealing with a family matter.

The earliest documentation we have for the abattoir is 1963 which is a request to build.

The only documents held at the Shire for this property are building approvals.

Kind Regards,

Melissa Marcon

Manager Regulatory Services Mon - Fri, 0830 - 17:00

08 9671 2500

melissa.marcon@wongan.wa.gov.au

www.wongan.wa.gov.au



Street Address Cnr Quinlan St & Elphin Crescent **Community Resource Centre** Wongan Hills, WA, 6603 **Postal Address** PO Box 84, Wongan Hills WA, 6603



+61 8 9671 2550 crc@wongan.wa.gov.au



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From: Dwight Coad <dwight@coadcomms.com.au> Sent: Friday, 20 January 2023 6:36 AM To: Melissa Marcon < melissa.marcon@wongan.wa.gov.au > Subject: FW: Lot 1 Danubin st application

Melissa,

Just seeing how you are going with the info I requested. Would appreciate it if you could send the info through today.

Cheers Dwight

From: Dwight Coad Sent: Monday, 16 January 2023 12:07 PM To: Melissa Marcon <melissa.marcon@wongan.wa.gov.au> Subject: FW: Lot 1 Danubin st application

Melissa

Can you please let me know when the abattoir was established on the land and was there a requirement at that time to seek and obtain the Shire's development / planning approval?

Cheers Dwight



From: Dwight Coad
Sent: Thursday, 12 January 2023 6:21 AM
To: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Melissa, Do we assume that a DA wasn't done for the abattoir?



From: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Sent: Wednesday, 11 January 2023 10:22 AM
To: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Cc: Deryce Du Plessis <<u>deryce.duplessis@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Good Morning Dwight

With regard to your enquiry of development/planning approval granted for the abattoir, I have conducted an extensive search in our records and the only approvals we have received for this property are building applications/approvals.

I still have not had a response from DPLH regarding the timeframe for building a dwelling.

Kind Regards,

Melissa Marcon Manager Regulatory Services Mon - Fri, 0830 - 17:00 08 9671 2500







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From: Dwight Coad <<u>dwight@coadcomms.com.au</u>> Sent: Monday, 9 January 2023 9:23 AM To: Melissa Marcon < melissa.marcon@wongan.wa.gov.au > Subject: RE: Lot 1 Danubin st application

Melissa,

Thank you for the update.

At this stage I am just chasing the development/planning approval granted for the abattoir that was on the block previously. If you could please forward that to me that would be appreciated.

Cheers Dwight

Dwight Coad



From: Melissa Marcon <melissa.marcon@wongan.wa.gov.au> Sent: Monday, 9 January 2023 9:12 AM To: Dwight Coad <<u>dwight@coadcomms.com.au</u>> Cc: Deryce Du Plessis < deryce.duplessis@wongan.wa.gov.au > Subject: RE: Lot 1 Danubin st application

Hi Dwight

Sorry I did not reply on Friday. I am waiting for an email back from DPLH regarding your questions.

Once I have received the information I will provide you the information.

I will follow up with a phone call today, it maybe that they were on leave until 9th January.

Kind Regards,

Melissa Marcon **Manager Regulatory Services** Mon - Fri, 0830 - 17:00 08 9671 2500 melissa.marcon@wongan.wa.gov.au www.wongan.wa.gov.au O **Street Address** Cnr Quinlan St & Elphin Crescent **Community Resource Centre** Wongan Hills, WA, 6603 **Postal Address** +61 8 9671 2550 PO Box 84, Wongan Hills crc@wongan.wa.gov.au WA, 6603 Wongan Hills ommunity -Bal

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From: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Sent: Wednesday, 4 January 2023 12:56 PM
To: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Subject: Re: Lot 1 Danubin st application

Cheers 👍

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From: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Sent: Wednesday, January 4, 2023 12:49:37 PM
To: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Cc: Deryce Du Plessis <<u>deryce.duplessis@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Hi Dwight

I have returned from annual leave today and will have an answer for you by the end of this week.

Kind Regards,





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From: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Sent: Wednesday, 4 January 2023 12:42 PM
To: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Cc: Deryce Du Plessis <<u>cso-a@wongan.wa.gov.au</u>>
Subject: Re: Lot 1 Danubin st application

Melissa Can you please let me know how you are going with the planning approvals that I requested Cheers Dwight

Get Outlook for iOS

From: Dwight Coad
Sent: Friday, December 23, 2022 7:58:33 AM
To: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>

Cc: Deryce Du Plessis <<u>cso-a@wongan.wa.gov.au</u>> **Subject:** FW: Lot 1 Danubin st application

Melissa,

Further to the previous e-mail can you please send me the development/planning approval granted for the abattoir and also any other development approvals that may have been granted for the land.

Cheers Dwight

Dwight Coad Director Arryanme Pty Ltd T/A



From: Dwight Coad
Sent: Thursday, 22 December 2022 7:52 AM
To: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Subject: Fwd: Lot 1 Danubin st application

Mellissa,

Thank you very much for the update.

If we do go down the owner occupier path, can you please clarify the following points for me,

- 1. The minimum requirement for a dwelling.
- 2. Can we just add to the existing DA or do will we need to submit a new one.
- 3. If we add a dwelling to the DA then how long do we have before the dwelling has to be erected (our budget wont stretch that far at the moment so would we be able to erect the shed and then a dwelling the following year)

Cheers

Dwight

PS. As this is a none council matter can you please send all e-mails to my private address that this e-mail is sent from.

Get Outlook for iOS

From: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Sent: Wednesday, December 21, 2022 4:39:50 PM
To: Cr Dwight Coad <<u>crdcoad@wongan.wa.gov.au</u>>
Cc: Deryce Du Plessis <<u>deryce.duplessis@wongan.wa.gov.au</u>>
Subject: FW: Lot 1 Danubin st application

Good Afternoon Dwight

We have spoken at length with Aleisha from the Department of Planning Lands and Heritage regarding your proposed development of an outbuilding, 'shed' at Lot 1 Danubin Street.

Through the discussions with DPLH we investigated many avenues to find an outcome that could potentially allow the requested development to occur.

During discussions with yourself you asked if the development could be classed under 'rural pursuit/hobby farm' – this is defined in the Planning and Development (*Local Planning Schemes*) Regulations 2015 as follows –

means any premises, other than premises used for agriculture — extensive or agriculture — intensive, that are used by an occupier of the premises to carry out any of the following activities if carrying out of the activity does not involve permanently employing a person who is not a member of the occupier's household — (a) the rearing, agistment, stabling or training of animals; (b) the keeping of bees; (c) the sale of produce grown solely on the premises;

The rural pursuit/hobby farm land use definition states that the use is to be carried out by an **occupier** of the premises. You may note it does not refer to a landowner. This means that someone will need on live on the property, which would be demonstrated by a dwelling.

At this point we advised you that under the Local Planning Scheme No. 5 (LPS5) an outbuilding on this property is an 'X' use unless there is a dwelling. A dwelling cannot be incorporated into the shed design, it is required to be stand alone.

You then asked if we could look at Clause 3.7 and 3.8 of LPS5 which refer to 'non-conforming use'.

With this in mind I investigated the past approved uses of the property.

- The property was originally zoned as industrial and the use was an abattoir.
- The Shire received a request to change the zoning from Industrial to Rural Residential once the property was purchased from the owners of the abattoir. The application to rezone never eventuated with the owners happy to wait for LPS5 to come into effect.
- In 2017 LPS5 was adopted and the zoning changed from industrial to rural residential.
- In 2020 when you purchased the property it was zoned 'rural residential'.

Although you stated in your email that the property has been used as 'extensive farming' for the past 20 years, there is no planning approval from the Shire for this to occur under either LPS4 or LPS5.

Again through discussion with DPLH a "non-conforming use" is defined in the *Planning and Development Act 2005* as "a use of land which, though lawful immediately before the coming into operation of a planning scheme or amendment to a planning scheme, is not in

conformity with a provision of that scheme which deals with a matter specified in Schedule 7 clause 6 or 7".

In other words, the land use must have been lawful at the time. I have looked through TPS4 and there is nothing in that scheme that supports 'agriculture-extensive', which means the land use would have been unlawful at the time meaning the non-conforming land use rights won't apply.

There are two ways to get approval for the development moving forward -

- 1. A scheme amendment to rezone the land which would need council support to change from 'rural residential' to 'rural'; or
- 2. A detached dwelling is included in the development application

Kind Regards,

Melissa Marcon

Manager Regulatory Services Mon - Fri, 0830 - 17:00

08 9671 2500





Street Address Cnr Quinlan St & Elphin Crescent Wongan Hills, WA, 6603 **Postal Address** PO Box 84, Wongan Hills WA, 6603



Community Resource Centre +61 8 9671 2550 crc@wongan.wa.gov.au



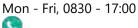


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Kind Regards,

Melissa Marcon

Manager Regulatory Services



G

08 9671 2500

melissa.marcon@wongan.wa.gov.au

www.wongan.wa.gov.au

Street Address Cnr Quinlan St & Elphin Crescent Wongan Hills, WA, 6603 Postal Address PO Box 84, Wongan Hills WA, 6603





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From: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Sent: Monday, 19 December 2022 12:55 PM
To: Deryce Du Plessis <<u>cso-a@wongan.wa.gov.au</u>>; Melissa Marcon
<<u>melissa.marcon@wongan.wa.gov.au</u>>
Subject: Re: Lot 1 Danubin st application

Deryce

Thank you for the update

Can you please let me know if the stance that was taken last week still stands(that the application will not be supported)

Cheers Dwight

Get Outlook for iOS

From: Deryce Du Plessis <<u>cso-a@wongan.wa.gov.au</u>>
Sent: Monday, December 19, 2022 11:45:45 AM
To: Dwight Coad <<u>dwight@coadcomms.com.au</u>>; Melissa Marcon
<<u>melissa.marcon@wongan.wa.gov.au</u>>
Subject: RE: Lot 1 Danubin st application

Good Afternoon Dwight

Melissa is in the process of getting information together for the Department of Planning as soon as we have any information we will let you know.

Kind Regards,

Deryce Du Plessis

Customer Service Officer - Administration



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From: Dwight Coad <<u>dwight@coadcomms.com.au</u>
Sent: Monday, 19 December 2022 4:21 AM
To: Deryce Du Plessis <<u>cso-a@wongan.wa.gov.au</u>
; Melissa Marcon <<u>mrs@wongan.wa.gov.au</u>
; Subject: Fwd: Lot 1 Danubin st application

Deryce Can I please have an update on the development application for Danubin Street Cheers Dwight Get Outlook for iOS

From: Dwight Coad <<u>dwight@coadcomms.com.au</u>>
Sent: Friday, December 9, 2022 2:24 pm
To: Deryce Du Plessis <<u>cso-a@wongan.wa.gov.au</u>>
Subject: Lot 1 Danubin st application

Deryce

Have had a look at LPS5 and also had a chat with a couple of people and if we use Extensive Farming (as the block has been used for the past 20 years or so)then clauses 3.7 and 3.8 would come into use.

Obviously there will be a process to go through but this may solve the problem.

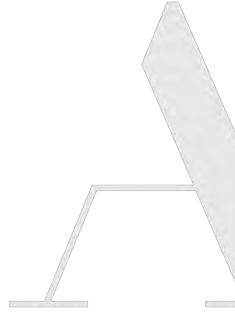
Can you please get some advise on this to see if it is correct and if so if this can be used to support the application

Cheers

Dwight

Get Outlook for iOS

Attachment 4 – Correspondence Regarding Previous Local Planning Schemes and Scheme Map



TOWN PLANNING | MEDIATION | ADVOCACY

9.4.3 Reconsideraton Report - DR 56 of 2023 - Page 44

From: Melissa Marcon <<u>melissa.marcon@wongan.wa.gov.au</u>>
Sent: Wednesday, March 29, 2023 2:34 PM
To: Joe Algeri | Altus Planning <<u>joe@altusplan.com.au</u>>
Cc: Stuart Taylor <<u>stuart.taylor@wongan.wa.gov.au</u>>
Subject: RE: Lot 167 (No 7) Danubin Street, Wongan Hills

Good Afternoon Joe

Thank you for your email below.

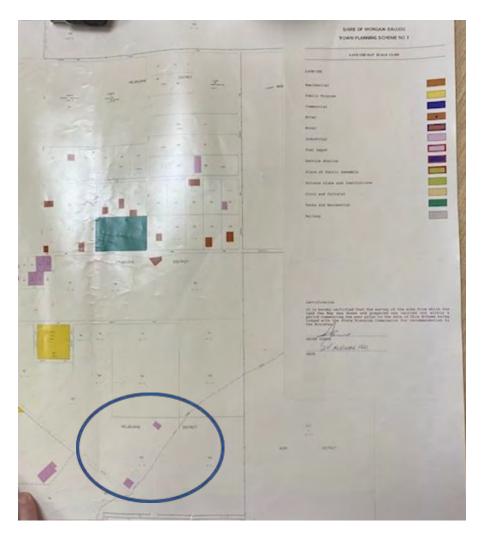
As previously communicated the Mr Coad we have sought further outside professional advise on how to progress this application.

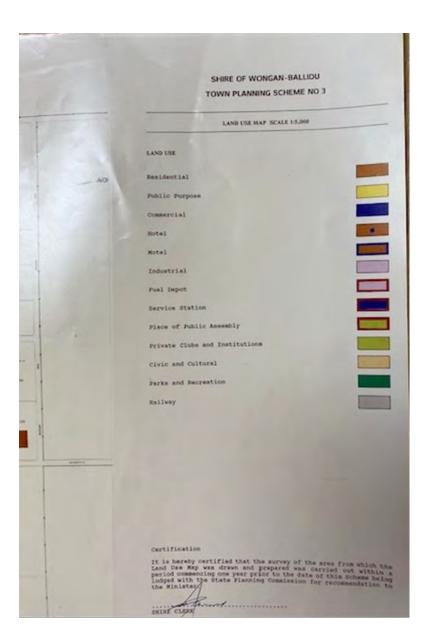
We received further information from DPLH in relation to past planning schemes last week.

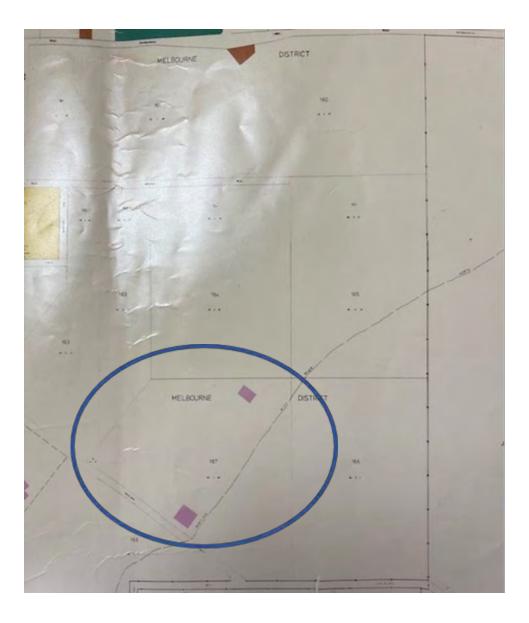
We have not been able to locate scheme maps for TPS 1 or TPS 2.

Below is a copy of maps for TPS 3, TPS 4 and LPS5.

TPS3









TPS4



LPS5



We hope to provide Mr Coad with a more definitive answer within the next week.

If you require further information please let me know.

Kind Regards,

Melissa Marcon

Manager Regulatory Services Mon - Fri, 08:30 - 17:00 08 9671 2500 melissa.marcon@wongan.wa.gov.au \ge ۲ www.wongan.wa.gov.au **(**) () **Street Address** Cnr Quinlan St & Elphin Crescent Wongan Hills, WA, 6603 **Community Resource Centre Postal Address** S +61 8 9671 2550 PO Box 84, Wongan Hills × WA, 6603

Shire of Wongan-Ballidu



entre

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Dear Melissa,

1018

Thank you again for all your previous advice below.

I've done some research and sought some independent town planning advice regarding my development proposal for Lot 167 (No.7) Danubin Street, Wongan Hills.

I would like and kindly ask that you and Stuart carefully consider the following key points regarding my development application:

- **1.** The Wongan Hills townsite and surrounding areas were originally settled in the early 1900's with farming being the predominant land use activity.
- Lot 167 (No.7) Danubin Street was originally created and signed off by the Surveyor General on 14 June 1926 (see the Survey Diagrams attached being Deposited Plan 202085).
- **3.** Lot 167 had already been extensively cleared of native vegetation at the time it was created and was being used for general farming purposes.
- 4. On 13 April 1956 the Shire's first ever town planning scheme (i.e. Town Planning Scheme No.1) was gazetted and came into legal effect as per the following gazettal notice:

GOVERNMENT GAZETTE, W.

[13 April, 1956.

TOWN PLANNING AND DEVELOPMENT ACT, 1928-1955.

Wongan-Ballidu Road Board Town Planning Scheme No. 1.

T.P.B. 106/30

IT is hereby notified for public information in accordance with section 7 of the Town Planning and Development Act, 1928-1955, that the resolution of the Wongan-Ballidu Road Board dated the 25th day of August, 1955, to adopt a Town Planning Scheme as advertised in the Government Gazettes of the 30th September, 7th and 14th October, 1955, was approved by the Hon. Minister for Town Planning on the 23rd March, 1956, subject to the undermentioned alterations:—

(a) Lot 127 to be deleted from the open space provision and included in the Business Zone.

(b) Lots 99 and 118 to be deleted from the Business Zone and included in the residential zone.

J. A. HEPBURN, Chairman, Town Planning Board.

5. When Town Planning Scheme No.1 came into legal effect in **1956** the use of Lot 167 had already been established lawfully as there was no requirement prior to its gazettal to seek and obtain planning approval to develop and use it for farming purposes (i.e. the use right remained and was not extinguished by Town Planning Scheme No.1). I also note the old abattoir was

constructed in the southern portion of the property in the 1960's. Notwithstanding this fact, it is significant to note over 50% of the total area of Lot 167 continued to be used for general farming purposes. Given the Shire has no evidence of any previous planning approvals for the old abattoir as you advised previously below, the right to continue using Lot 167 for general farming purposes was not lawfully extinguished in any way through the introduction of Town Planning Scheme No.1 or development of the abattoir.

- 6. On 27 March 1981 Town Planning Scheme No.1 was formally revoked and replaced by Town Planning Scheme No.2 through the gazettal notice published on this date. Lot 167 was classified 'Rural' zone in Town Planning Scheme No.2 with the use class 'Rural' listed in the Zoning Table of that Scheme as being a permitted use (see the relevant extracts from TPS No.2 attached as published in the gazettal notice). As such, Lot 167 was again lawfully being used for farming purposes prior to and following the introduction of Town Planning Scheme No.2.
- 7. On 26 June 1992 Town Planning Scheme No.2 was formally revoked and replaced by Town Planning Scheme No.3 through the gazettal notice published on this date. Lot 167 was also classified 'Rural' zone in Town Planning Scheme No.3 however the Zoning Table in that Scheme made no reference to the use class 'Rural' or any other use class that covers broadacre / extensive agriculture. Notwithstanding this fact, the right to continue using Lot 167 for farming purposes was again not extinguished in any way by Town Planning Scheme No.3.
- 8. On 5 October 2001 Town Planning Scheme No.3 was formally revoked and replaced by Town Planning Scheme No.4 through the gazettal notice published on this date. Lot 167 was again classified 'Rural' zone in Town Planning Scheme No.4. The Zoning Table in that Scheme made no reference to the use class 'Rural' or any other use class that covers broadacre / extensive agriculture. Notwithstanding this fact, the right to continue using Lot 167 for farming purposes was again not extinguished in any way by Town Planning Scheme No.4. Furthermore, clause 4.11.1(a) of Town Planning Scheme No.4 contained the following objective for all land classified 'Rural' zone:
 - To ensure the continuation of broad-hectare farming as the principal land use in the district and encouraging where appropriate the retention and expansion of agricultural activities.
- **9.** On **24 October 2017** Town Planning Scheme No.4 was formally revoked and replaced by Local Planning Scheme No.5 through a gazettal notice published on this date. The zoning classification of Lot 167 was changed from 'Rural' to 'Rural Residential' in this Scheme. The use class 'Agriculture-Extensive' was/is listed in the Zoning Table of Local Planning Scheme No.5 as a prohibited use on any land classified 'Rural Residential' zone. Notwithstanding this fact, clause 3.7.1 in Local Planning Scheme No.5 expressly states as follows as it applies to non-conforming uses which is essentially what the current use of Lot 167 now is given it is expressly prohibited on any land classified 'Rural Residential' zone:

3.7 Non-Conforming Uses

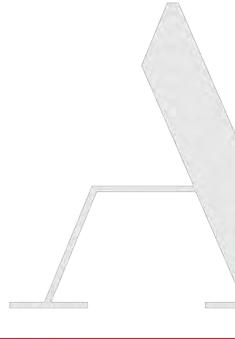
- 3.7.1 Unless specifically provided, this Scheme does not prevent -
 - (a) The continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or
 - (b) The carrying out of development on land if -
 - Before the commencement of this Scheme, the development was lawfully approved; and
 - (ii) The approval has not expired or been cancelled.
- **10.** It's my understanding the Shire has not established a register of non-conforming uses and has not therefore kept a record of these uses to determine and confirm if any non-conforming use rights have been extinguished through discontinuation of any such usage.
- **11.** In light of all the above it's my view, and that of the people I've spoken to, that Lot 167 <u>does</u> enjoy the benefit of a non-conforming use right for 'Agriculture-Extensive' purposes and there is therefore scope for Council to consider and determine my development application for a new storage shed on the property to support its continued lawful use for this purpose. As such, I kindly ask that the Shire process my application in accordance with the procedural requirements of clause 3.8.2 of Local Planning Scheme No.5.

I look forward to your favourable consideration of the above advice and request and welcome any queries you or Stuart may have.

Cheers,



Attachment 5 – Historical Aerial of Subject Site between Year 2000 -2022



TOWN PLANNING | MEDIATION | ADVOCACY

9.4.3 Reconsideraton Report - DR 56 of 2023 - Page 54

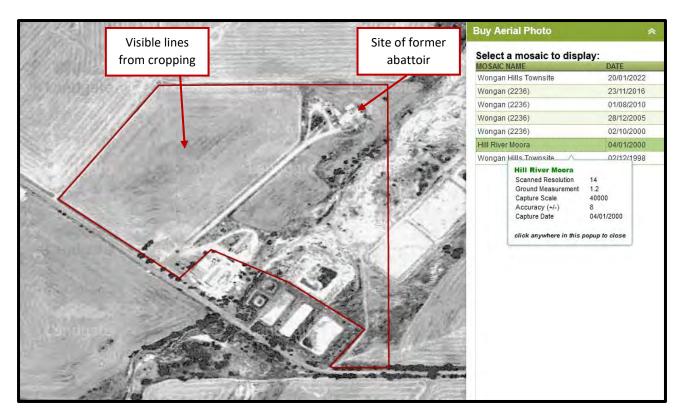


Photo 1: Subject site aerial from 4 January 2000.



Photo 2: Subject site aerial from 2 October 2000.



Photo 3: Subject site aerial from 28 December 2005.



Photo 4: Subject site aerial from 1 August 2010.



Photo 5: Subject site aerial from 23 November 2016.

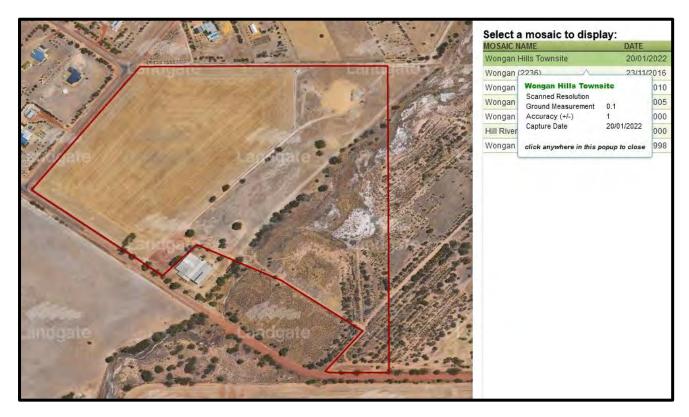


Photo 6: Subject site aerial from 20 January 2022.