



# SHIRE OF CARNARVON

# MINUTES

## SPECIAL COUNCIL MEETING

## TUESDAY 5 APRIL 2022

### CONFIRMATION OF MINUTES

These minutes were confirmed by the Council on

.....  
as a true and accurate record

.....Chairman

Council Chambers, Stuart Street  
CARNARVON, West Australia  
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## DISCLAIMER

No responsibility whatsoever is implied or accepted by the Shire of Carnarvon for any act, omission or statement or intimation occurring during Council/Committee Meetings or during formal/informal conversations with Staff or Councillors. The Shire of Carnarvon disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council/Committee Meetings or discussions. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of Carnarvon during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of Carnarvon. The Shire of Carnarvon warns that anyone who has an application lodged with the Shire of Carnarvon must obtain and only should rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attaching to the decision made by the Shire of Carnarvon in respect of the application.

To be noted that, in accordance with Regulation 11 of the Local Government (Administration) Regulations 1996, the minutes of the Council Meeting are a record of the decisions of the Council, any additional officers' advice, and explanatory notes as required. The minutes contain a summary of questions asked by members of the public and the answers given. The minutes are not a transcript of the proceedings of the meetings.

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## INFORMATION ON PUBLIC QUESTION TIME

The following information is provided should you wish to ask a question of Council at the Ordinary Meetings held on a monthly basis.

Please note that questions that have not been filled out on the Submission Form will not be accepted.

- The Local Government Act 1995 allows members of the public to ask questions in regard to any issue relating to the Shire.
- A maximum of 15 minutes will be allowed for public question time and the Presiding Member will allow a maximum of three (3) verbal/written questions per person.
- Prior to asking a question, the speaker must state his/her name and address.
- Members of the public are discouraged from asking questions which contain defamatory remarks, offensive language or questioning the competency of staff or Council members.
- The Presiding Member may nominate a member or officer to answer the question and may also determine that any complex questions requiring research be taken on notice and answered in writing.
- No debate or discussion is allowed to take place on any question or answer.
- A summary of each question asked and the response given will be included in the minutes of the meeting –

Local Government (Administration) Regulations 1996 – Pt 2, r.11 – (in part reads -)

11. Minutes, content of (Act s.5.25(1)(f))

*The content of minutes of a meeting of a council or a committee is to include –*

*(e) a summary of each question raised by members of the public at the meeting and a summary of the response to the question.*

Responses to questions that are taken on notice will be responded to as soon as possible.

- If you wish to ask a question, please complete the Public Question Time Submission Form at the back of this information sheet. Alternatively, questions can be submitted in writing to the Shire of Carnarvon 3 days prior to the meeting.

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### SPECIAL MEETINGS OF COUNCIL

Members of the public are welcome to attend a Special Meeting of Council if open, and ask questions of the Council within the allotted public question time ***subject to the questions being asked only relating to the purpose of the Special Meeting*** (s5.23 of the Act and regulation 12 (4) of the Local Government (Administration) Regulations 1996, the Department of Local Government and Communities Guide to Meetings and Governance Bulletin April 2014 and Guideline No. 3 Managing Public Question Time.)

# INDEX

## 1.0 ATTENDANCES , APOLOGIES & APPROVED LEAVE OF ABSENCE

(The Local Government Act 1995 Section 2.25 provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. The leave cannot be granted retrospectively and an apology for non-attendance at a meeting is not an application for leave of absence.)

## 2.0 PUBLIC QUESTION TIME

(In accordance with Section 5.24 of the Local Government Act 1995, a 15 minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them. All questions are to be provided on the Public Question Time Submission Form.)

## 3.0 DECLARATIONS OF INTEREST

(Councillors and Staff are reminded of the requirements of Section 5.65 of the Local Government Act 1995, to disclose any interest during the meeting or when the matter is to be discussed.)

## 4.0 ITEMS FOR DISCUSSION

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## 5.0 MATTERS FOR WHICH MEETING TO BE CLOSED TO MEMBERS OF THE PUBLIC

## 6.0 CLOSURE



**MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBERS, STUART STREET,  
CARNARVON ON TUESDAY 5 APRIL 2022**

The meeting was declared open by the Presiding Member at 8:30am

*The Shire of Carnarvon acknowledges the Yinggarda people as the Traditional Custodians of this land which we work and live on. We pay our respects to their Elders past, present and future and extend this respect to all Aboriginal people and their ongoing connection to this Country.*

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**1.0 ATTENDANCES, APOLOGIES AND APPROVED LEAVE OF ABSENCE**

Cr E Smith.....	Presiding Member/Shire President
Cr B Maslen.....	Councillor, Gascoyne/Minilya Ward
Cr L Skender.....	Councillor, Town Ward
Cr T Langley.....	Councillor, Town Ward
Cr A Fullarton.....	Councillor, Town Ward
Cr L Vandeleur.....	Councillor, Town Ward
Cr M Ferreirinha.....	Councillor, Plantation Ward
Mrs A Selvey.....	Chief Executive Officer
Mr D Nielsen.....	Executive Manager, Infrastructure Services
Mr D Perry.....	Executive Manager, Development & Community Services
Ms S Mizen.....	Manager, Finance
Mr M Mallon.....	Project Manager
Mrs R Williamson.....	Executive Administrator

**Apologies**

Cr A Cottrell..... Councillor, Coral Bay Ward

**Leave of Absence** ..... Nil

**Observers** .....2

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**2.0 PUBLIC QUESTION TIME**

*(In accordance with Section 5.24 of the Local Government Act 1995, a 15 minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them. All questions are to be provided on the Public Question Time Submission Form.)*

Public Question Time commenced at 8.36am

Mrs Brooke Maslen of 5 Brown Street, Carnarvon.  
Answers provided in consultation with Kennedy Vinciullo Legal.

**Question 1 - Where is the evidence of an emergency, pursuant to Section 157 of the Public Health Act 2009 (WA)?**

Answer - The Shire bears no onus to show that an emergency under this Act is genuine; it is appropriate for the Shire to accept the position set out by the State Government and the Minister. The declarations can be found here: <https://www.wa.gov.au/government/document-collections/covid-19-coronavirus-western-australia-declaration-of-state-of-emergency-and-public-health-emergency-declarations>

**Question 2 - Please identify the Authorised Biosecurity Officer nominated by the Carnarvon Shire to carry out the serving of these documents and the amount of money it is costing the Carnarvon Community.**

Answer - The Mandates are not created under the Biosecurity Act. Therefore, there is no requirement to provide a biosecurity control order nor have an authorised biosecurity officer. On this basis there is no authorised biosecurity officer and it is not costing the Carnarvon Community.

**Question 3 - Why is the Shire violating the Disability Discrimination Act 1992 (Cth)?**

Answer - The Shire is not violating the DDA. They are simply acting in accordance with the Mandates. The Mandates provide that persons must wear masks unless they have a valid medical certificate.

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Ms Anne Porter via email.  
Answers provided in consultation with Kennedy Vinciullo Legal.

**Question 1 - Please find attached a letter to all Councils from International Human Rights Legal Advocate and Legal Academic, Andrea Tokaji Dip. Th. Adv. Dip Couns. JD GDLP LLM. Please read this document carefully! In light of this information do COUNCILLORS believe there is a need to enshrine mask mandates in a Shire of Carnarvon policy document especially given that such mandates violate the Constitution as well as several Federal laws, including:**

- Section 94H of the Privacy Act 1998 (Cth);
- Article 1 and 6 of the Nuremberg Code (It'l);
- Section 95 of the Biosecurity Act 2015 (Cth);
- Sections 51 (xxiiiA), 5, and 109 of the Commonwealth of Australia Constitution Act 1900;
- Sections 4 and 6 of the Disability Discrimination Act 1992.?

Answer - Please refer to the annotated document attached to these minutes. As explained in our comments in that document, these sections are not violated by the various State mandates.

**Question 2 - Please provide the legislation that legally authorises a shire staff member to “contact a medical practice and/or doctor named on a medical certificate to comment on a patient” – information that is protected by Statutory law, Common law and Ethics! Indeed the requesting, recording or storing of a person’s private medical information is expressly prohibited by 16B of the Privacy Act 1988 (Cth).**

Answer - The various Mandates expressly permit the Shire to collect this information which are made in accordance Public Health Act 2016, which is consistent with s 16B(1)(b)(i) of the Privacy Act. Additionally, it is entirely reasonable for any employer or entity that is provided with a medical certificate (voluntarily) to simply contact the medical practitioner to confirm that the medical certificate is genuine; it would likely be unlawful if the person sought additional medical information about the person however this is not what is happening here.

**Question 3 - Re Workplace Safety- In preparation of this proposed Face Mask Policy, what scientific/medical evidence/studies have the (non-elected) authors relied upon regarding the safety and effectiveness of face masks? (I have again attached a document with studies demonstrating that Face Masks are unsafe and ineffective for your information).**

Answer - The Face Mask Policy is based on the COVID Transition Face Covering Directions as amended from time to time. These are enforceable directions that the Shire must comply with. The effectiveness of masks is ultimately irrelevant, the law provides that masks must be worn inside and the Shire has no power to go against this.

Public question time closed 8:41am

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### **3.0 DECLARATIONS OF INTEREST**

*(Councillors and Staff are reminded of the requirements of Section 5.65 of the Local Government Act 1995, to disclose any interest during the meeting or when the matter is to be discussed.)*

Cr Skender (Impartiality Interest)- Item 4.1 - Roads to Recovery Budget Variation

Cr Skender (Impartiality Interest)- Item 4.2 – Revised Blowholes Tourism Precinct Redevelopment Project Completion Plan

Cr Langley (Financial, Proximity, Indirect Financial and Impartiality Interest)- Item 4.6 - Province Resources Limited Formal Offer

Cr Maslen (Financial Interest)- Item 4.6 – Province Resources Limited Formal Offer

Cr Vandeluer (Financial Interest)- Item 4.2 - Revised Blowholes Tourism Precinct Redevelopment Project Completion Plan

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### **4.0 ITEMS FOR DISCUSSION**

**SCM 1/4/22**

#### **COUNCIL RESOLUTION**

**Cr Fullarton/Cr Vandeluer**

*That Agenda Items 4.1, 4.2, 4.3 and 4.4 be deferred to the April 2022 Ordinary Meeting of Council to enable Council more time to review the agenda items.*

**SCM 2/4/22**

#### **COUNCIL RESOLUTION**

**Cr Maslen/C Vandeluer**

*That Meeting Procedures Local Law Pt 17.1 be suspended at 8.55am to allow Elected Members further time read the agenda items put before them.*

**CARRIED**

**F7/A0**

**SCM 3/4/22**

**Cr Maslen/Cr Vandeluer**

*That Meeting Procedures Local Law Pt 17.1 be resumed at 10.05am*

**CARRIED**

**F7/A0**

SCM 4/4/22

COUNCIL RESOLUTION & AMENDMENT TO MOTION SCM 1/4/22

Cr Fullarton/Cr Vandeluer

*That Agenda Items 4.1 and 4.2 only, be deferred to the April 2022 Ordinary Meeting of Council.*

LOST  
F5/A2

SCM 1/4/22 was then put due to amendment being lost.

LOST  
F2/A5

SCM 5/4/22

COUNCIL RESOLUTION

Cr Fullarton/Cr Smith

*That the meeting be adjourned at 10:05am for a tea break.*

CARRIED  
F7/A0

SCM 6/4/22

COUNCIL RESOLUTION

Cr Fullarton/Cr Smith

*That the meeting be reconvened at 10.15am.*

CARRIED  
F7/A0

SCM 7/4/22

COUNCIL RESOLUTION

Cr Maslen/Cr Vandeluer

*That Meeting Procedures Local Law Pt 17.1 be suspended at 8.55am to allow Elected Members to seek clarification in regard to the Roads to Recovery Funding.*

CARRIED  
F6/A1

*Cr Fullarton voted against the motion*

SCM 8/4/22

COUNCIL RESOLUTION

Cr Maslen/Cr Vandeluer

*That Meeting Procedures Local Law Pt 17.1 be resumed at 10.19am*

CARRIED  
F7/A0



Cr Skender declared an Impartiality Interest in this item as his partner is part author of the report. Cr Skender was not required to leave the meeting and could participate and vote on the matter.

<b>File No.</b>	<b>ADM0048</b>
<b>Date of Meeting:</b>	<b>5 April 2022</b>
<b>Location/Address:</b>	<b>N/A</b>
<b>Name of Applicant:</b>	<b>Shire of Carnarvon</b>
<b>Name of Owner:</b>	<b>Shire of Carnarvon</b>
<b>Author/s:</b>	<b>Carolien Claassens – Project Contracts Manager David Nielsen – Executive Manager Infrastructure Services</b>
<b>Declaration of Interest:</b>	<b>Nil</b>
<b>Voting Requirements:</b>	<b>Recommendation 1 - Absolute Majority Recommendation 2 - Simple Majority Recommendation 3 - Simple Majority</b>
<b>Previous Reports:</b>	<b>N/A</b>
<b>Schedules:</b>	<b>NIL</b>

#### Authority / Discretion

	<b>Advocacy</b>	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
X	<b>Executive</b>	The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
	<b>Legislative</b>	Includes adopting local laws, town planning schemes and policies.
	<b>Quasi-Judicial</b>	When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.
	<b>Information</b>	Includes items provided to Council for information purposes only that do not require a decision of Council (i.e. – for noting).

#### Summary of Item:

Approval is requested for an amendment of Roads to Recovery funding allocation in the 2021/22 budget. The amendment proposed is as follows:

- Defer Robinson Street reconstruction to 2022/23
- Bring forward proposed 22/23 resealing works to 21/22.

#### Background:

The Department of Infrastructure, Transport, Regional Development and Communications (Department) supports the maintenance and improvement of local road infrastructure assets via the Roads to Recovery (R2R) Program. Funding is provided in a five (5) year program. The current five-year program commenced in 2019/20. The annual Shire of Carnarvon R2R funding allocation is \$807,225.

The R2R 21/22 adopted budget allocation is for reconstruction of a section of Robinson Street in the Carnarvon CBD. Reconstruction from its intersection with Olivia Terrace to its intersection with Camel Lane on the eastern carriageway (traffic into the town) is proposed.

Under R2R funding conditions, the project is to be completed by 30 June 2022. It is possible for project expenditure to occur up to six months after receipt of funding. Final payment of the 2021/22 Road to Recovery allocation is scheduled for June 2022. All received funding must therefore be spent by December 2022.

Two attempts to engage consultant project management for the design, specification and supervision of the works have been unsuccessful. Insufficient time to complete the project has been cited as the principal reason for a lack of willingness to undertake the task.

Consultation with project managers indicated that a project timetable with construction works commencing in early 2023 is achievable. Commencing works in summer 2023 also avoids main street disruption during the Tourist season.

Advice from the Department was requested for deferring Robinson Street reconstruction works to 2022/23 and introduce a new project to ensure full expenditure of the 2021/22 R2R funding allocation. The Department advised that the proposal is acceptable if the proposal is provided as part of the April quarterly reporting process.

Bitumen re-sealing works of several town roads and sections of Carnarvon Mullewa Road are the only projects considered achievable within the short remaining 21/22 timeframe. Reasons for this include:

- No Public Tender process is required as the Shire has an existing contract for Bituminous Sealing Works with Fulton Hogan until 31 August 2023.
- Fulton Hogan has advised their availability to complete resealing works in May/ June 2022.

The following Shire roads are flagged on the RAMM asset management system as due (or becoming due) for resealing:

ROADS DUE OR BECOMING DUE FOR RESEAL	LENGTH OF RESEAL (M)	ESTIMATED RESEAL COST
Carnarvon - Mullewa Road Total	19,043	\$ 999,495
Fenner Street Total	100	\$ 5,600
Festival Road Total	400	\$ 27,125
Foss Crescent Total	508	\$ 66,570
Foss Crescent (B) Total	90	\$ 5,670
George Street Total	190	\$ 10,640
Giles Road Total	530	\$ 20,405
Granberry Drive Total	690	\$ 35,742
Hill Street Total	180	\$ 9,324
Hubble Street Total	740	\$ 70,007
North River Road Total	690	\$ 36,225
Olivia Tce Carpark (2) Total	96	\$ 7,329
Olivia Tce Carpark(1) Total	124	\$ 10,416
Shallcross Street Total	400	\$ 20,720
Smart Street Total	185	\$ 10,836
Snook Court Total	88	\$ 6,573
Speedway Road (A) Total	1,219	\$ 63,546
Tuckey Court Total	160	\$ 10,696
West Street Total	175	\$ 9,044
Wooramel Street Total	180	\$ 9,324
<b>Grand Total</b>	<b>25,788</b>	<b>\$ 1,435,287</b>

The final quantity and selection of roads for resealing will be determined once a unit rate is received from the resealing contractor and inspections are completed of each road section to “ground truth” the flagged need. That may result in additions and deletions to the above table. A final reseal list will match the available R2R budget and the observed reseal priority.

Under the recommended proposal, required reseal works are effectively being bought forward by one year.

**Stakeholder and Public Consultation:**

Greenfield Technical Services  
 Department of Infrastructure, Transport, Regional Development and Communications  
 Fulton Hogan Industries (Contract RFT 08/2017 Bituminous Sealing Works)

**Statutory Environment:**

Local Government Act 1995 - Section 6.8 Expenditure from municipal fund not included in annual budget.

Local Government Act 1995 - Section 3.18 Performing executive functions.

**Relevant Plans and Policy:**

N/A

**Financial Implications:**

There is no net budget implication associated with the recommendations.

All financial commitments can be met by existing R2R funding allocations and existing budget allocations for design works.

Cost of resealing works is typically based on a per square metre rate. The most recent resealing works completed by the Shire was in 2019. Rates at that time were as follows:

- 10mm Reseal - \$4.51/SQM (rural roads)
- 7mm Reseal - \$4.33/SQM (urban roads)

A 35-55% increase in these rates is possible based on cost increases already experienced across the construction sector generally. Fulton Hogan has been requested to provide an updated rate but at the time of writing this had not been received. For estimating purposes a rate of \$7/sqm has been adopted.

Effectively, the higher rates will mean less area resealed per dollar.

**Risk Assessment:**

		STEP 3 – Risk Tolerance Chart Used to Determine Risk				
Consequence		Insignificant 1	Minor 2	Major 3	Critical 4	Extreme 5
Likelihood						
Almost certain	A	High	High	Extreme	Extreme	Extreme
Likely	B	Moderate	High	High	Extreme	Extreme
Possible	C	Low	Moderate	High	Extreme	Extreme
Unlikely	D	Low	Low	Moderate	High	Extreme
Rare	E	Low	Low	Moderate	High	High

Risk Category	Description	Rating (Consequence x likelihood)	Mitigating Action/s
Financial	Loss/repayment of funding if Robinson Street Reconstruction is not completed by December 2022.	A.3 Extreme	Accept the recommendation to defer the project.
Health & Safety	N/A		
Reputation	Main Street reconstruction work in 2011/2012 damaged Shire reputation. Failure of the road pavement, loss of parking and an extended time to complete the works were key reasons for the damaged reputation.  Proposed reconstruction works may again result in negative community feedback unless completed to an appropriate standard with minimum disruption.	B.3 High	Defer construction as recommended to ensure proper design, planning and public communication.
Service disruption	Works causing temporary disruption to the town centre.	A.2 High	Accept the recommendation to complete works in the summer. Careful design, planning and site management (including possibly night work) will assist in minimising disruption.
Compliance	N/A		
Property	N/A		
Environment	N/A		
Fraud	N/A		

#### Community & Strategic Objectives:

The proposal accords with the following Shire desired outcomes as expressed in the *Community Strategic Plan 2018-2028*:

#### Goal 2: Natural and built environment

*A sustainable natural and built environment that meets current and future community needs*

ITEM	OUTCOMES AND STRATEGIES
2.6	Shire assets and facilities that support services and meet community need
2.6.1	Roads are appropriately managed according to their need and use

#### Comment:

Surveys to progress reconstruction works designs for the Robinson Street project were completed in March. Requests for quotation will be reissued immediately for engagement of consultants for the design, specification, and works supervision for this project, based on a revised completion in early 2023. Design and specification work can be commenced under existing budget allocations. This will maximise the time for planning necessary to complete the works in a manner minimising community disruption. Subject to Council decision during the 2022/2023 budget process, a construction works tender for the Robinson Street reconstruction works will be issued in September/October 2022.

OFFICER'S RECOMMENDATION PART ONE

That Council, by Absolute Majority in accordance with Section 6.8 (1) (b) of the Local Government Act 1995, approves Roads to Recovery 21/2022 budget expenditure variations as follows:

<b>COA</b>	<b>Job</b>	<b>Description</b>	<b>Current budget</b>	<b>Budget variation</b>	<b>Revised budget</b>
137400	R2R241	Main Street Reconstruction	\$807,225	-\$807,225	\$0
137400	TBD	Reseal town streets and Carnarvon Mullewa Road sections.	\$0	\$807,225	\$807,225

OFFICER'S RECOMMENDATION PART TWO

That Council, by Simple Majority pursuant to Section 3.18 of the Local Government Act, 1995 resolves to proceed with the appointment of a project management consultant for the design, specification and works supervision services necessary to complete the Robinson Street (Carnarvon) reconstruction works, noting that the costs can be met within current budget allocations for design and planning works.

OFFICER'S RECOMMENDATION PART THREE

That Council, by Simple Majority pursuant to Section 3.18 of the Local Government Act, 1995 resolves to consider as part of its 2022/2023 budget process, an allocation of \$807,225 of its Roads to Recovery funding to the reconstruction of Robinson Street Carnarvon.

**SCM 9/4/22**

COUNCIL RESOLUTION

Cr Maslen/Cr Fullarton

That item 4.1 be deferred to the April Ordinary Council Meeting, to allow Officers time to review the project list for resealing, including seeking quotes for the most competitive resealing rate.

FORESHADOWED MOTION

Cr Smith

To adopt the officer's recommendation as put, stipulating that resealing works are reassessed for comparative resealing rates.

Motion SCM 9/4/22 was put

CARRIED

F4/A3

For motion: Cr Maslen, Cr Fullarton, Cr Vandeluer, Cr Langley.

Against motion: Cr Smith, Cr Skender, Cr Ferreirinha.

10.43 - Cr Skender declared an Impartiality Interest in this item as his partner is part author of the report. Cr Skender was not required to leave the meeting and could participate and vote on the matter.

10.43am - Cr Vandeluer declared a Financial Interest in this item as he is the Director of a company that will be supplying materials for this project. Cr Vandeleur left the meeting and did not participate or vote on the matter.

File No. ADM1762  
 Date of Meeting: 5 April 2022  
 Location/Address: N/A  
 Name of Applicant: Shire of Carnarvon  
 Name of Owner: Shire of Carnarvon  
 Author/s: Carolien Claassens – Project Contracts Manager  
 David Nielsen – Executive Manager Infrastructure Services  
 Declaration of Interest: Nil  
 Voting Requirements: Simple Majority  
 Previous Reports: FC 22/2/22  
 Schedules: 4.2 Extract of Ordinary Council Meeting Minute – FC 22/2/22

#### Authority / Discretion

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X	<b>Executive</b>	The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
	<b>Legislative</b>	Includes adopting local laws, town planning schemes and policies.
	<b>Quasi-Judicial</b>	When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.
	<b>Information</b>	Includes items provided to Council for information purposes only that do not require a decision of Council (i.e. – for noting).

#### Summary of Item:

By way of this report, approval is requested for a revision of the Project Completion Plan for Blowholes Tourism Precinct Redevelopment Project.

#### Background:

The Blowholes Tourism Precinct Redevelopment project is funded by the Department of Primary Industries and Regional Development (DPIRD). To progress completion of the project DPIRD requested a decision from Council for insurance monies received from destruction of the projects walkway to be allocated to alternative day use facilities at the Blowholes.

Following negotiations with the Gascoyne Development Commission, a Blowholes Tourism Precinct Redevelopment Project completion plan was presented to Council at its Ordinary Meeting in January 2022. At that meeting Council resolved in part as follows in relation to a Blowholes Tourism Precinct Redevelopment Project completion plan:

Shire of Carnarvon Funded Works Funded through insurance funds received from destruction of walkway.  
 Balance of Insurance Funds: \$198,475

<i>Site</i>	<i>Site Works</i>	<i>Estimated Cost/Allocation</i>	<i>Comment</i>
<i>Site 2</i>	<i>Upgrade/replace existing steel stairs with suitable high corrosion resistant equivalent</i>	<i>\$65,000</i>	<i>Cost is based on previous quotation received with 35% escalation.</i>
<i>Between Site 2 and 3</i>	<i>Erosion control works on beach area between the two sites.</i>	<i>\$50,000</i>	<i>Leverage funds toward funding application under CoastWA grants. Potential to leverage total project budget of \$110,000.</i>
<i>Site 3</i>	<i>Repair and refurbishment of three existing beach shelters</i>	<i>\$25,000</i>	<i>Existing beach shelters require timber beams to be re painted and have stainless roof sheeting installed.</i>
<i>Site 2</i>	<i>Contribution to GDC Indigenous recognition project as project partner.</i>	<i>\$33,475</i>	<i>Project likely to consist of a shelter with indigenous interpretive features.</i>
<i>All Sites</i>	<i>Project Contingency</i>	<i>\$25,000</i>	<i>May be utilized on any element.</i>
<i>Total</i>		<i>\$198,475</i>	

A copy of that February report is provided in **Schedule 4.2**. That report fully details the relevant background regarding the completion plan.

DPIRD was advised of Council's decision but was unfortunately unable to approve the adopted project completion plan for the following reasons:

1. Unable to approve the use of insurance funds for leverage of other state funding for the erosion control works between sites 2 and 3.
2. Unable to approve a project contingency item as that could not guarantee all insurance monies were expended on the project.

**Stakeholder and Public Consultation:**

Department of Primary Industries and Regional Development  
 Gascoyne Development Commission

**Statutory Environment:**

Local Government Act 1995 - Section 3.18 Performing executive functions.

**Relevant Plans and Policy:**

N/A

**Financial Implications:**

The total cost of the rock retaining wall is estimated at \$145,000. Under the recommended revised plan, approximately half of that wall could be constructed with the nominated insurance funds allocation.

An additional recommendation therefore requests Council to consider allocating additional funds in its 2022/23 budget to allow full completion of the retaining wall.

Savings from the beach stairs and existing shelter refurbishments could be directed toward the retaining wall works if available.

Council may also note that additional project funding from Rio Tinto for the GDC Indigenous recognition element is now confirmed with work proceeding to finalise the necessary administrative arrangements.

Risk Assessment:

STEP 3 – Risk Tolerance Chart Used to Determine Risk						
Consequence		Insignificant 1	Minor 2	Major 3	Critical 4	Extreme 5
Likelihood						
Almost certain	A	High	High	Extreme	Extreme	Extreme
Likely	B	Moderate	High	High	Extreme	Extreme
Possible	C	Low	Moderate	High	Extreme	Extreme
Unlikely	D	Low	Low	Moderate	High	Extreme
Rare	E	Low	Low	Moderate	High	High

Risk Category	Description	Rating (Consequence x likelihood)	Mitigating Action/s
Financial	Not accepting the revised Project Completion Plan would result in DPIRD not approving payment of the final project funding of approx. \$33,000.	B. 2 - High	Adopt the recommendation
Health & Safety	N/A		
Reputation			
Service disruption	N/A		
Compliance	N/A		
Property	N/A		
Environment	Completing only a portion of the required rock retaining wall does not fully mitigate erosion risk for the remainder.	B. 3 - High	Adopt the recommendation to consider allocation of Shire funds to complete the rock retaining wall.
Fraud	N/A		

Community and Strategic Objectives:

The proposal accords with the following Shire desired outcomes as expressed in the *Community Strategic Plan 2018-2028*:

**Goal 2: Natural and built environment**

*A sustainable natural and built environment that meets current and future community needs*

ITEM	OUTCOMES AND STRATEGIES
2.6	Shire assets and facilities that support services and meet community need
2.6.4	Parks, gardens and open space appropriately managed according to their need and use
2.6.5	Buildings and facilities are appropriately managed according to their need and use

**Goal 5: Civic**

*Strong and listening Council.*

ITEM	OUTCOMES AND STRATEGIES
5.6	The Shire advocates on behalf of its community
5.6.1	The Shire develops partnerships with government and non-government organisations to achieve positive outcomes for the region



**Comment:**

Officers were made aware by the Department that it was unwilling to support the adopted completion plan for the reasons described previously.

Officers of the Gascoyne Development Commission (GDC) subsequently assisted facilitating a revised plan as presented which removes the contingency quantity and places it fully within the construction of the rock retaining wall element.

OFFICER'S RECOMMENDATION PART ONE

*That Council, by Simple Majority, pursuant to Section 3.18 of the Local Government Act 1995 endorses a revision of the Project Completion Plan for the Blowholes Tourism Precinct Redevelopment Project as follows:*

*Shire of Carnarvon Funded Works Funded through insurance funds received from destruction of walkway.*

*Balance of Insurance Funds: \$198,475*

Site	Site Works	Estimated Cost /Allocation	Comment
Site 2	Upgrade/replace existing steel stairs with suitable high corrosion resistant equivalent	\$65,000	Cost is based on previous quotation received with 35% escalation.
Between Site 2 and 3	Building rock retaining wall on beach area between the two sites	\$75,000	Funds allocated can complete approximately half of the required retaining wall. A total cost of \$144K is estimated to complete the full retaining wall.
Site 3	Repair and refurbishment of three existing beach shelters	\$25,000	Existing beach shelters require timber beams to be re painted and have stainless roof sheeting installed.
Site 2	Contribution to GDC Indigenous recognition project as project partner.	\$33,475	Project likely to consist of a shelter with indigenous interpretive features.
Total		\$198,475	

OFFICER'S RECOMMENDATION PART TWO

*That Council, by Simple Majority, pursuant to Section 3.18 of the Local Government Act 1995 considers an allocation of \$69,000 in its 2022/2023 budget to complete the full extent of the rock retaining wall on beach area between the sites 1 and 2.*

**SCM 10/4/22**

COUNCIL RESOLUTION

*Cr Fullarton/Cr Maslen*

OFFICER'S RECOMMENDATION PART ONE

*That Council, by Simple Majority, pursuant to Section 3.18 of the Local Government Act 1995 endorses a revision of the Project Completion Plan for the Blowholes Tourism Precinct Redevelopment Project as follows:*

*Shire of Carnarvon Funded Works Funded through insurance funds received from destruction of walkway.*

*Balance of Insurance Funds: \$198,475*

Site	Site Works	Estimated Cost/Allocation	Comment
Site 2	Upgrade/replace existing steel stairs with suitable high corrosion resistant equivalent	\$65,000	Cost is based on previous quotation received with 35% escalation.

<i>Between Site 2 and 3</i>	<i>Building rock retaining wall on beach area between the two sites</i>	<i>\$75,000</i>	<i>Funds allocated can complete approximately half of the required retaining wall. A total cost of \$144K is estimated to complete the full retaining wall.</i>
<i>Site 3</i>	<i>Repair and refurbishment of three existing beach shelters</i>	<i>\$25,000</i>	<i>Existing beach shelters require timber beams to be re painted and have stainless roof sheeting installed.</i>
<i>Site 2</i>	<i>Contribution to GDC Indigenous recognition project as project partner.</i>	<i>\$33,475</i>	<i>Project likely to consist of a shelter with indigenous interpretive features.</i>
<i>Total</i>		<i>\$198,475</i>	

**OFFICER'S RECOMMENDATION PART TWO**

*That Council, by Simple Majority, pursuant to Section 3.18 of the Local Government Act 1995 considers an allocation of \$69,000 in its 2022/2023 budget to complete the full extent of the rock retaining wall on beach area between the sites 1 and 2.*

**CARRIED**  
**F6/A0**

10.36am - Cr Vandeleur returned to Chambers and was advised of Council's decision.

**4.3 CASHFLOW LOAN FOR FLOOD DAMAGED ROADS**

File No: ADM2152  
Date of Meeting: 22 March 2022  
Location/Address: Shire of Carnarvon  
Name of Applicant: Shire of Carnarvon  
Name of Owner: Shire of Carnarvon  
Author/s: Susan Mizen Manager Finance  
Declaration of Interest: Nil  
Voting Requirements: Absolute Majority  
Previous Report: Nil  
Schedules: Schedule 4.3(a)  
Schedule 4.3(b)

**Authority / Discretion**

	<b>Advocacy</b>	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
X	<b>Executive</b>	The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
	<b>Legislative</b>	Includes adopting local laws, town planning schemes and policies.
	<b>Quasi-Judicial</b>	When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.
	<b>Information</b>	Includes items provided to Council for information purposes only that do not require a decision of Council (i.e. – for noting).

**Summary of Item:**

This report presents an officer recommendation that Council applies for a loan to assist with cashflow for the Essential Public Asset Reconstruction Works Disaster Recovery Funding Arrangements Western Australia (DRFAWA) AGRN951 – Tropical Low and Associated Flooding (28 January – 8 February 2021). A Loan is required to enable contractors for the approved works to be paid in a timely manner whilst awaiting reimbursement from the Department of Fire and Emergency Services (DFES).

**Background:**

Essential Public Asset Reconstruction (EPAR) works under event AGRN951 has been submitted by the Shire of Carnarvon for assessment under DFES Disaster Recovery Funding. The scope of works, estimated costs and related procurement processes to reinstate the essential public assets to their pre-disaster function have been confirmed as meeting the requirements of the DRFAWA. The approved estimated cost of \$10,610,194 to complete the scope of works is inclusive of base construction costs, project management, contingency, and cost escalation. The Shire is to pay contractors undertaking these works and claim reimbursement of the payments that meet the DFES funding.

Greenfield Technical Services has been engaged by the Shire to provide project management, project administration and site technical assurance to the Shire's AGRN951 flood damage reinstatement works. Greenfields has calculated the rate at which the funding will be spent once the projects are underway, as being approximately \$650,000 per fortnight, this is the optimum rate if everything goes to schedule. This rate, together with the time delay in reimbursing the Shire by DFES for approved expenditure, has shown that there is between \$3,250,000 and \$4,550,000 maximum anticipated outstanding reimbursements which may be funded via a short term loan.

**Schedule 4.3(a)** shows two cashflow scenarios, the first where the reimbursement of expenditure is made by DFES within 60 days and the second, where the reimbursement of expenditure is made by DFES within 90 days. The highest outstanding balance for each scenario is \$3,250,000 and \$4,550,000 respectively. DFES has indicated it will reimburse approved expenditure in approximately 60 days, however recent experience has shown reimbursement to be approximately 90 days.

WA Treasury Corporation has two facilities from which the Shire is able to choose when making application for a loan to cover the disaster reconstruction. Attached as **Schedule 4.3(b)** is some information regarding a short term facility. The options are:

- Option 1 is a series of short term loans for a specified period with the maturing capital, interest and guarantee fee being paid in part or in full or rolled into a new short term loan with any additional required capital. The new maturity date can be when the next progress payment is due or for a regular period such as monthly or quarterly.
- Option 2 is a series of short term loans which are drawn down as required with each loan having the same maturity date. At the maturity date, capital, interest and guarantee fee are due. The maturity date would ideally be near the end of the construction phase and be when DFES has almost entirely reimbursed the approved expenditure. The maximum term is 12 months however the loan may be reapplied for and extended for a further short term.

Given the information in the cashflow scenarios, the rate of spending to complete the project from Greenfield Technical Services which is an optimum rate, and the loan options from WA Treasury Corporation, it is proposed to borrow the sum of \$3,000,000 over a period of 12 months via option 2, a series of short term loans, to fund the reconstruction works. The loans will however be drawn when required and may not reach \$3,000,000 due to variables in weather, reimbursements by DFES and contractor work schedules.

**Consultation:**

Greenfield Technical Services

**Statutory Environment:**

Local Government Act 1995.

**Relevant Plans and Policy:**

Nil

**Financial Implications:**

Interest payable at an estimated rate of 2.9%

WATC security fee at 0.7% of total borrowed

**Risk Assessment:**

		<b>STEP 3 – Risk Tolerance Chart Used to Determine Risk</b>				
<b>Consequence</b>		Insignificant 1	Minor 2	Major 3	Critical 4	Extreme 5
<b>Likelihood</b>						
Almost certain	A	High	High	Extreme	Extreme	Extreme
Likely	B	Moderate	High	High	Extreme	Extreme
Possible	C	Low	Moderate	High	Extreme	Extreme
Unlikely	D	Low	Low	Moderate	High	Extreme
Rare	E	Low	Low	Moderate	High	High

Risk Category	Description	Rating (Consequence x likelihood)	Mitigating Action/s
Financial	Without cashflow funding the Shire will be unable to pay contractors at a suitable speed to keep them engaged.	moderate	Cashflow Loan to bolster the Shire's cash on hand
Health & Safety	NA	NA	
Reputation	Tardy payment of contractors as cash on hand diminishes whilst awaiting reimbursement from DFES will damage the Shire's reputation.	moderate	Cashflow Loan to bolster the Shire's cash on hand
Service disruption	Contractors may not be paid in accordance with their terms and conditions and may withdraw their services	low	Cashflow Loan to bolster the Shire's cash on hand
Compliance	The Local Government Act requires that the proposal to borrow must be advertised for one month and the resolution to borrow	low	Resolution to be by absolute majority and one month local public notice is given

	must be by absolute majority		
Property	NA	NA	
Environment	NA	NA	

**Community & Strategic Objectives:**

ITEM	OUTCOMES AND STRATEGIES
5.2	The Shire has a high standard of governance and accountability
5.2.1	Robust decision-making by culturally aware, well-informed and supported Councillors
5.2.3	Risks are well managed
5.2.6	Compliance with the Local Government Act 1995 and all other relevant legislation and regulations
5.4	Sound financial and asset management
5.4.4	Financial transactions are accurate and timely

**Comment:**

Attached as **Schedule 4.3(c)** is the approval letter for EPAR works under event AGRN951 from DFES. Also attached as **Schedule 4.3(d)** is a letter from Greenfields Technical Services quoting their estimated expenditure rate once the project starts.

It is clear that there will be a cashflow deficiency for the term of the works and that the Shire's finances will be unable to accommodate payment of contractors invoices without some form of short term cash injection. Application and approval for a Loan of \$3,000,000 will allow for swift payments to be made enabling claims to be submitted to DFES in a timely manner.

OFFICER'S RECOMMENDATION PART ONE

*That Council, by Absolute Majority, and in accordance S6.20 Local Government Act 1995, resolves to:*

- a. make application to Western Australian Treasury Corporation to borrow up to \$3,000,000 as a series of short-term loans with a common facility termination date being 12 months from establishment and drawdown of the facility; and*
- b. give one month's local public notice of the proposal to make an application to Western Australian Treasury Corporation to borrow up to \$3,000,000 as a series of short-term loans.*

OFFICER'S RECOMMENDATION PART TWO

*That Council by Absolute Majority, and in accordance S6.2 Local Government (Financial Management) Regulations 1996 approve the budget to be amended to incorporate a new loan of \$3,000,000.*

**SCM 11/4/22**

COUNCIL RESOLUTION

*Cr Fullarton/Cr Vandaeluer*

OFFICER'S RECOMMENDATION PART ONE

*That Council, by Absolute Majority, and in accordance S6.20 Local Government Act 1995, resolves to:*

- a. make application to Western Australian Treasury Corporation to borrow up to \$3,000,000 as a series of short-term loans with a common facility termination date being 12 months from establishment and drawdown of the facility; and*
- b. give one month's local public notice of the proposal to make an application to Western Australian Treasury Corporation to borrow up to \$4,000,000 as a series of short-term loans.*

**OFFICER'S RECOMMENDATION PART TWO**

*That Council by Absolute Majority, and in accordance S6.2 Local Government (Financial Management) Regulations 1996 approve the budget to be amended to incorporate a new loan of \$4,000,000.*

**CARRIED**  
**F7/AO**

(Note to Minute – Council believed a higher loan amount was required to meet cash flow requirements and therefore the loan amount was increased by \$1,000,000.)

President Smith advised that Item 4.4 – Province Resources Limited Formal Offer, will be considered after Item 4.6.

**4.5 BLOWHOLES SHACK DEMOLITION WASTE - TIP FEE WAIVER REQUEST**

File No: ADM0122  
Date of Meeting: 5 April 2022  
Location/Address: Blowholes Reserve  
Name of Applicant: Various  
Name of Owner: Not Applicable  
Author/s: David Nielsen – Executive Manager Infrastructure Services  
Declaration of Interest: NIL  
Voting Requirements: Simple Majority

**Authority / Discretion**

	<b>Advocacy</b>	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
X	<b>Executive</b>	The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
	<b>Legislative</b>	Includes adopting local laws, town planning schemes and policies.
	<b>Quasi-Judicial</b>	When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.
	<b>Information</b>	Includes items provided to Council for information purposes only that do not require a decision of Council (i.e. – for noting).

**Summary of Item:**

A fee waiver for disposal of Blowholes shack demolition waste at the Browns Range waste facility is recommended. The recommendation is intended to support timely, cooperative shack removal and appropriate disposal by shack owners.

**Background:**

Letters were issued to Blowholes shack owners in March notifying of the Shire's intent to issue formal orders for demolition of Blowholes shacks.

At the time of writing, three requests to waive tip disposal fees for shack demolition material have been received from shack owners who have advised they are taking action to remove their shacks at the Blowholes.

Additional similar requests are considered likely.

**Consultation:**

Nil Applicable.

**Statutory Environment:**

Local Government Act 1995 Section 6.16. - Imposition of fees and charges and Section 6.12 - Power to defer, grant discounts, waive or write off debts.

**Relevant Plans and Policy:**

Nil applicable.

**Financial Implications:**

If adopted, the recommendation will result in a lost opportunity for receipt of waste disposal fees.

Calculation of the fees and charges payable for shack demolition material is not possible to determine with any degree of accuracy as quantities for each waste type that attracts a fee is not able to be determined. Total fees forfeited by approving the waiver is not however expected to exceed \$5,000.

The table below shows applicable fees associated with anticipated shack demolition material:

Waste Material	Applicable Fee
Metal	Free
Mixed Construction and Demolition Waste	\$21/T
Asbestos	\$90/T + \$65 burial fee.

Most waste generated is anticipated to be in the form of metal sheeting, other metal and mixed construction and demolition (C and D) waste. Some asbestos waste is also likely.

Scrap metal can attract sale values between \$0 - \$130/T depending on market rates. Current scrap metal sale values are high. The recommendation includes a requirement for owners to complete waste separation to maximise recovery of scrap metal as a fee loss offset.

**Risk Assessment:**

		STEP 3 – Risk Tolerance Chart Used to Determine Risk				
		Insignificant 1	Minor 2	Major 3	Critical 4	Extreme 5
Likelihood	Consequence					
Almost certain	A	High	High	Extreme	Extreme	Extreme
Likely	B	Moderate	High	High	Extreme	Extreme
Possible	C	Low	Moderate	High	Extreme	Extreme
Unlikely	D	Low	Low	Moderate	High	Extreme
Rare	E	Low	Low	Moderate	High	High

Risk Category	Description	Rating (Consequence x likelihood)	Mitigating Action/s
Financial	Loss of operating revenue for waste service delivery.	B2 - High	Cost savings associated with minimising boundaries to shack removal of Blowholes shacks considered likely to outweigh fee losses.
Health & Safety	Asbestos waste not delivered to waste facility in correct manner.	C2 - Moderate	Education of shack owners regarding safe asbestos handling is included in recommendation.
Reputation	Not supporting shack	C2 - Moderate	Adopting the recommendation is an act

	owners willing to take action to comply with building orders may entrench a lack of cooperation to remove shacks.		of good will on the part of Council adding weight to the intent to encourage and support shack owners to comply with removal orders.
Service disruption	N/A		
Compliance	N/A		
Property	N/A		
Environment	N/A		
Fraud	N/A		

**Community & Strategic Objectives:**

The proposal accords with the following Shire desired outcomes as expressed in the Community Strategic Plan 2018-2028:

**Goal 2: Natural and built environment**

*A sustainable natural and built environment that meets current and future community needs*

ITEM	OUTCOMES AND STRATEGIES
2.4	Waste management practices that are efficient and sustainable
2.4.3	Provide education on waste reduction and reuse, and opportunities for reuse

**Comment:**

A range of simple conditions are proposed to manage any risks associated with uncontrolled shack demolition waste disposal.

OFFICER'S RECOMMENDATION

*That Council, by Simple Majority pursuant to Section 6.16 of the Local Government Act 1995, authorises the CEO to advise all Blowholes shack owners that fees and charges for disposal of waste generated from the demolition of Blowholes Reserve shacks shall be waived subject to the following:*

- 1. Disposal of shack demolition waste material shall be completed prior to the date nominated in any formal shack demolition building order.*
- 2. Shack demolition waste shall be delivered to the Browns Range Waste Facility during its normal hours of operation.*
- 3. Shack waste shall separate as much as practicable all recyclable metal waste from the demolition waste material.*
- 4. Any asbestos demolition waste shall be non-friable and not greater than 10 square meters in quantity for non-licensed removal and disposal.*
- 5. Any asbestos waste shall be handled and delivered to the waste facility in accordance with the National Code of Practice for the Safe Removal of Asbestos.*
- 6. The waiver, subject to all conditions listed above, shall also apply to commercial service providers undertaking shack demolition and waste disposal works on behalf of shack owners.*



**COUNCIL RESOLUTION**

Cr Langley/Cr Skender

**OFFICER'S RECOMMENDATION**

*That Council, by Simple Majority pursuant to Section 6.16 of the Local Government Act 1995, authorises the CEO to advise all Blowholes shack owners that fees and charges for disposal of waste generated from the demolition of Blowholes Reserve shacks shall be waived subject to the following:*

- 1. Disposal of shack demolition waste material shall be completed prior to the date nominated in any formal shack demolition building order.*
- 2. Shack demolition waste shall be delivered to the Browns Range Waste Facility during its normal hours of operation.*
- 3. Shack waste shall separate as much as practicable all recyclable metal waste from the demolition waste material.*
- 4. Any asbestos demolition waste shall be non-friable and not greater than 10 square meters in quantity for non-licensed removal and disposal.*
- 5. Any asbestos waste shall be handled and delivered to the waste facility in accordance with the National Code of Practice for the Safe Removal of Asbestos.*
- 6. The waiver, subject to all conditions listed above, shall also apply to commercial service providers undertaking shack demolition and waste disposal works on behalf of shack owners.*

**CARRIED**  
**F7/AO**

**4.6****SHIRE OF CARNARVON MASK POLICY**

File No:	ADM0124
Date of Meeting:	12 April 2022
Location/Address:	N/A
Name of Applicant:	Shire of Carnarvon
Name of Owner:	Shire of Carnarvon
Author/s:	Amanda Leighton, Manager People, Culture & Systems
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Schedules:	4.6(a) E068 SoC Mask Policy 4.6.(b) COVID Transition Face Covering Directions

## Authority / Discretion

	<b>Advocacy</b>	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
	<b>Executive</b>	The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
<b>X</b>	<b>Legislative</b>	Includes adopting local laws, town planning schemes and policies.
	<b>Quasi-Judicial</b>	When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.
	<b>Information</b>	Includes items provided to Council for information purposes only

		that do not require a decision of Council (i.e. – for noting).
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**Summary of Item:**

This item presents a draft Policy to provide a clear protocol for members of the public, employees and elected members on how the Shire is implementing the State Government requirement for mask wearing under the Western Australian Public Health Directions (Directions).

**Background:**

Since the implementation of the Directions, members of the public, employees and elected members have had to interpret various documents relating the Directions and apply them to their individual circumstances.

This has resulted in some people not adhering to the Directions and has previously caused confrontations in Shire owned premises. The confrontation has been caused due to people having different interpretations of the directions, how they have applied them to their individual circumstances and has resulted in employees being challenged and verbally abused when trying to enforce the Directions.

As an employer, the Shire of Carnarvon has a responsibility to provide and maintain, as far as practicable, a safe working environment for our employees under Section 19(1) of the Occupational Safety and Health Act 1984 (OSH Act). The Shire as an organisation have a duty of care to provide and maintain safe workplaces, and where practicable, put policies in place to reduce the risk OSH risk for employees, members of the public and elected members entering Shire premises.

The purpose of this policy is to guide our employees, so our treatment of members of the public, employees and elected members is consistent compliant with the law and Directions. This will ensure that the actions taken to ensure compliance with this policy are consistent, transparent and legally defensible. This will ensure staff are not required to interpret the directions themselves, which could potentially be open to criticism or a perception of personal or professional bias.

**Consultation:**

Carla Vinciullo, Kennedy & Vinciullo  
Australia Human Rights Commission  
Department of Health  
Government of Western Australia

**Statutory Environment:**

Public Health Act 2016  
Emergency Management Act 2005 (WA)  
COVID-19 Coronavirus: State Emergency Declarations

**Relevant Plans and Policy:**

Should Council endorse Policy E068 – Face Mask Policy, this policy will be included in the Shire of Carnarvon Policy Manual and guide decisions on this matter.

**Financial Implications:**

There are no direct financial implications with adopting this policy, however, should a member of the public, employee or elected member refuse to wear a mask upon entering an indoor area as outlined by the WA Public Health Directions (without proof of a valid medical exemption) they may be issued an infringement notice of \$1,000 or face 12m imprisonment and a fine up to \$50,000. The financial implications to businesses may be an infringement notice of \$5,000 and a fine up to \$250,000.

Risk Assessment:

STEP 3 – Risk Tolerance Chart Used to Determine Risk						
Consequence		Insignificant 1	Minor 2	Major 3	Critical 4	Extreme 5
Likelihood						
Almost certain	A	High	High	Extreme	Extreme	Extreme
Likely	B	Moderate	High	High	Extreme	Extreme
Possible	C	Low	Moderate	High	Extreme	Extreme
Unlikely	D	Low	Low	Moderate	High	Extreme
Rare	E	Low	Low	Moderate	High	High

Risk Category	Description	Rating (Consequence x likelihood)	Mitigating Action/s
<b>Financial</b>	If individuals, or the Shire are found in breach of the Public Health Directions, they may face significant financial costs and imprisonment.	High	The proposed policy will provide clear guidance on the expected behaviour of members of the public, employees and elected members.
<b>Health &amp; Safety</b>	The Shire has an obligation under the OSH Act to provide a safe workplace for employees, members of the public and elected members.	High	The proposed policy will provide clear guidance on the expected behaviour of members of the public, employees and elected members.
<b>Reputation</b>	N/A	Low	
<b>Service disruption</b>	Delivery of services to our community may be impacted if employees are required to spend time seeking clarification and interpretation of the Mask Directions.	Moderate	The proposed policy will provide clear guidance on the expected behaviour of members of the public, employees and elected members.
<b>Compliance</b>	Individual interpretations of the Mask Directions may result in non-compliance and legal action.	High	The proposed policy will provide clear guidance on the expected behaviour of members of the public, employees and elected members.
<b>Property</b>	N/A		
<b>Environment</b>	N/A		
<b>Fraud</b>	N/A		

Community & Strategic Objectives:

The proposal accords with the following Shire desired outcomes as expressed in the *Community Strategic Plan 2018-2028*:

Objective 5: Civic – *Strong and Listening Council.*

ITEM	OUTCOMES AND STRATEGIES
5.2	The Shire has a high standard of governance and accountability.
5.2.6	Compliance with the Local Government Act 1995 and all other legislation and regulations.

**Comment:**

This intention of this policy is to provide clear guidelines to employees who were previously interpreting various documents. This policy will ensure staff are not required to interpret the directions themselves, and reduce the risk of criticism or a perception of personal or professional bias.

It will ensure that actions taken in accordance with this policy are consistent, transparent and legally defensible should any action be taken by persons not complying with this policy.

OFFICER'S RECOMMENDATION

*That Council, by Simple Majority, pursuant to s.2.17 of the Local Government Act 1995, resolves to adopt Policy E068–Face Mask Policy as presented in Schedule 4.6(a).*

**SCM 13/4/22**

COUNCIL RESOLUTION

*Cr Vandeleur/Cr Fullarton*

OFFICER'S RECOMMENDATION

*That Council, by Simple Majority, pursuant to s.2.17 of the Local Government Act 1995, resolves to adopt Policy E068–Face Mask Policy as presented in Schedule 4.6(a).*

LOST  
F2/A5

*Cr Fullarton & Cr Vandeleur voted against the motion*

**4.4 PROVINCE RESOURCES LIMITED FORMAL OFFER**

10.45am - Cr Maslen declared a Financial Interest in this item as he is the Gascoyne Manager of Province Resources Limited. Cr Maslen therefore left the meeting and did not return.

10.45am - Cr Langley declared a Financial, Proximity, Indirect Financial and Impartiality Interest in this item as he is an employee of Province Resources Limited. Cr Langley therefore left the meeting and did not return.

**File No:**

**Date of Meeting:** 04 April 2022

**Location/Address:** N/A

**Name of Applicant:** Province Resources Limited

**Name of Owner:** N/A

**Author/s:** Andrea Selvey, Chief Executive Officer

**Declaration of Interest:** Nil

**Voting Requirements:** Simple Majority

**Previous Report:** Nil

**Schedules:** Schedule 4.4(a) - Letter of offer from Province Resources Ltd, received 21 March 2022;  
Schedule 4.4(b) - Map of proposed PRL lease area in the North Common; and  
Schedule 4.4(c) - CONFIDENTIAL Options Paper by K&L Gates

## Authority / Discretion

	<b>Advocacy</b>	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
X	<b>Executive</b>	The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting, and amending budgets.
	<b>Legislative</b>	Includes adopting local laws, town planning schemes and policies.
	<b>Quasi-Judicial</b>	When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.
	<b>Information</b>	Includes items provided to Council for information purposes only that do not require a decision of Council (i.e. – for noting).

### Summary of Item:

Province Resources Limited (PRL) has written to the Shire of Carnarvon to formally make an offer of a voluntary payment based on 50% of the State lease fee in recognition of the community's interest in the land being considered for PRL's HyEnergy™ Project.

The officer's recommendation is that Council accepts the offer in principle and delegates authority to the CEO to negotiate finer details of the agreement with PRL.

### Background:

PRL, in a joint venture with Total Eren Australia Pty Ltd (TE), wishes to develop the HyEnergy™ Zero Carbon Hydrogen Project (the Project) in the Shire of Carnarvon.

In April 2021, Council resolved to enter into a Memorandum of Understanding with PRL which articulates a commitment to working together and the Shire's support for PRL to develop the project on a portion of the North Common, subject to all necessary and proper legislative processes. See attached map of the proposed project area in the North Common – **Schedule 4.4(b)**.

Significant portions of the area are allocated as 'managed reserves' under the three separate Management Orders for the purposes respectively of 'Town Common', 'Resting place for travellers and stock' and 'Artesian Bore'. Only the 'Artesian Bore' Management Order that includes a power for the Shire to lease - of up to 21 years with the Minister's prior consent, however, the intent is that the Bore is excluded from the project area.

The State has granted PRL a non-exclusive Section 91 Licence over an area of Crown land located generally to the north of the Carnarvon town site area.

The Licence is intended to assist PRL to assess the Project's feasibility and to help identify a suitable portion of the Licence Land that PRL would wish to lease for the Project. The Licence Land includes three Crown reserves each under a separate management order with the Shire.

The Shire's 3 Management Orders represent a statutory right granted to the Shire to manage and control those relevant lands. Under current legislation, the Minister cannot exercise a power or perform any of the Minister's duties in respect of the care, control or management of Crown land in a reserve under Management Order (such as to lease the managed land) without the consent of the relevant management body unless the power being exercised is the Minister's express power to cause the revocation of a Management Order arising in some circumstances, these circumstances are itemised and explained in confidential attachment – **Schedule**

**4.4(c)** which is legal advice obtained by the Shire on options for the Shire to secure a benefit for the Carnarvon community.

PRL presently holds some preference that the Project's proposed Lease Area would be or would include a portion of the land in one or more of these three Crown reserves under the Management Orders.

Shire officers are supportive of the Project but understand that Council is also keen to ensure that the Shire and its residents benefit fairly from the Project.

The Department of Planning, Lands and Heritage (DPLH) has asserted that the Shire should consent to the revocation of the Shire's Management Orders where and to the extent that would be required to enable DPLH (the Minister) to enter into a lease with PRL in relation to the project area, and for the Shire and PRL to enter into a separate agreement on terms acceptable to the Shire, to encourage and enable local community engagement.

While the Shire was assessing the options and legal advice, PRL has approached the Shire with an offer of voluntary annual payments equal to 50% of the lease fee that would be paid to the State, for the life of the project, where a formal lease is entered into with the State. See attached letter of offer at **Schedule 4.4(a)**. This offer is presented as one part of a package of benefits that the PRL is suggesting will be made available as the project progresses and develops.

**Consultation:**

DPLH

**Statutory Environment:**

*Local Government Act 1995*

**Relevant Plans and Policy:**

N/A

**Financial Implications:**

**Risk Assessment:**

		<b>STEP 3 – Risk Tolerance Chart Used to Determine Risk</b>				
		Insignificant 1	Minor 2	Major 3	Critical 4	Extreme 5
Likelihood	Almost certain	High	High	Extreme	Extreme	Extreme
	Likely	Moderate	High	High	Extreme	Extreme
Possible	C	Low	Moderate	High	Extreme	Extreme
Unlikely	D	Low	Low	Moderate	High	Extreme
Rare	E	Low	Low	Moderate	High	High

Risk Category	Description	Rating (Consequence x likelihood)	Mitigating Action/s
Financial	Potential for the shire to negotiate a higher return by assuming the role of head lessor.	High	This option also presents a risk to Council. PRL may choose to withdraw the offer of a voluntary payment and negotiate directly and solely with the State Government.

	The value of the lease is unknown; therefore, the figure that would be arrived at via 50% of the lease value is also unknown.		The value is over and above the lease fee, resulting in PLR paying what is in effect 150% of the value of the lease. It is unlikely the Shire could attract a large % given the Shire's bargaining position.
<b>Health &amp; Safety</b>	N/A		
<b>Reputation</b>	The Shire's reputation could be damaged if the Shire rejects this offer as it may appear obstructive or be seen to be putting barriers in front of projects that have the potential to create jobs and economic prosperity.	High	Accepting this offer would demonstrate Council's commitment to a project that is likely to result in significant economic development for Carnarvon.
<b>Service disruption</b>	N/A		
<b>Compliance</b>	N/A		
<b>Property</b>	Loss of a property (the North Common) for use by the community.	Moderate	The payment offered, plus the potential economic growth that could be realised from this project, compensates for the loss of this property.
<b>Environment</b>	Environmental impacts from the project are unknown.	Moderate	The State Government, as the head lessor and authority with legislative responsibility for environmental approvals, would assume responsibility for environmental studies and managing any potential environmental impacts.
<b>Fraud</b>	N/A		

### Community & Strategic Objectives:

#### Goal 1: Economic

*A strong and growing economy, with a thriving regional centre, abundant business opportunities and jobs.*

ITEM	OUTCOMES AND STRATEGIES
1.1	Local business growth
1.1.1	Work with the Gascoyne Development Commission, Chamber of Commerce, Aboriginal Corporations and local businesses to identify opportunities for business growth

#### Comment:

The Shire does not seek to hinder projects that have the potential to create a lasting benefit in terms of jobs and growth for the region; however, it is also the Shire's responsibility to ensure that the community interest is recognised, valued, and protected.

The Shire has been advised that foreshadowed legislative changes to the State's existing laws would allow the Minister to excise a portion of the reserve without the consent of the Shire. This change, if passed, would diminish the Shire's bargaining capacity.

The lack of a strong bargaining position, combined with an appreciation for the potential of this project to bring about transformational and sustainable economic benefit to this community, and noting that the project is also contributing to a clean energy agenda, makes the offer by PRL for a 50% voluntary payment, one that the officer is willing to recommend that Council accepts.

It is timely that this matter is being presented to Council as the Memorandum of Understanding (MoU) between the Shire and PRL, which was originally executed in May 2021 until 30 October 2021, with an option to extend until 30 April 2022 is due to expire. The non-exclusive MoU promotes cooperation between the parties for the development of a HyEnergy™ Zero Carbon Hydrogen Project through investigation of the viability of utilising an area of land located within the Shire boundaries. The MoU allows for a further extension by mutual agreement of both Parties. PRL has expressed an interest in an extension to the MoU and the officer's recommendation is that Council accepts that request and extends the MoU for 12 months from 1 May 2022 until 30 April 2023 with an option for a further 12-month extension.

#### OFFICER'S RECOMMENDATION PART ONE

*That Council, by Simple Majority, pursuant to s3.18 of the Local Government Act 1995, resolves to:*

- a. Accept the offer by Province Resources Limited of annual payments equal to 50% of the lease fee that would be paid to the State, for the life of the project, where a formal lease is entered into with the State, noting that this annual payment will constitute only one part of a package of benefits that will be offered as the project is progressed; and*
- b. Delegate authority to the Chief Executive Officer to negotiate the terms of the agreement.*
- c. Extend the current Memorandum of Understanding between the Shire of Carnarvon and Province Resources Limited for 12 months from 1 May 2022 until 30 April 2023 with an option for a further 12-month extension.*

#### **SCM 14/4/22**

##### COUNCIL RESOLUTION

*Cr Fullarton/Cr Vandeleur*

*That Council, by Simple Majority, pursuant to s3.18 of the Local Government Act 1995, resolves to:*

- a) Accept the offer by Province Resources Limited of annual payments equal to 50% of the lease fee that would be paid to the State, for the life of the project, where a formal lease is entered into with the State, noting that this annual payment will constitute only one part of a package of benefits that will be offered as the project is progressed; and*
- b) Delegate authority to the Chief Executive Officer to negotiate the terms of the agreement.*
- c) Extend the current Memorandum of Understanding between the Shire of Carnarvon and Province Resources Limited for 12 months from 1 May 2022 until 30 April 2023 with an option for a further 12-month extension*
- d) Authorise the Shire President and Chief Executive Officer to execute the MOU and the agreement in relation to Province Resources Ltd annual payment.*

#### **SCM 15/4/22**

##### COUNCIL RESOLUTION - AMENDMENT TO MOTION SCM 14/4/22

*Cr Fullarton*

*That part (a), to accept annual payments be amended to equal to 25%.*

#### MOTION LAPSED FOR WANT OF SECONDER

*Motion SCM 14/4/22 was put.*

CARRIED

F5/AO



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**5.0 MATTERS FOR WHICH MEETING TO BE CLOSED TO MEMBERS OF THE PUBLIC**

Nil

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**6.0 CLOSURE:**

The Presiding Member declared the meeting closed at 11:00am.



**TO: Mayor and Councillors of the City,**

**RE: PRO-CHOICE SUPPORT FOR LOCAL BUSINESSES AND RESIDENTS**

**1. The first matter I wish to raise is jurisdiction.**

It is absolutely the jurisdiction of the Mayor and the Councillors to consider matters pertaining to the mandates.

Under the *Local Government Act 1995 (WA)*, local governments have the general power to provide for the good governance of people in their district. This means that local governments can make decisions if the Act or any other written law does not prevent them from doing so. A local government can make local laws (legislative function) and provide services and facilities (executive function).

The Act gives local governments freedom to make decisions for their communities, promotes public participation, and demands accountability, efficiency, and effectiveness in local government.

This requires strategic thinking by local government, including how to:

- best respond to community needs;
- ensure public participation and accountability in local government processes; and
- respond to the growing demand for more efficient and effective local government.

**The role of the Council**, as prescribed by section 2.7 of the Local Government Act 1995, is that it:

- governs the local government's affairs;
- is responsible for the performance of the local government's functions;
- oversees the allocation of the local government's finances and resources; and
- determines the local government's policies.

Elected members are responsible for planning the future of their communities and developing the strategies and policies to achieve those plans. Councillors need to demonstrate strategic vision and leadership by putting in place guiding principles, policies and local laws.

Elected members are required by section 2.29 of the Act and Local Government (Constitution) Regulation 13 (1)(c) to make a declaration of Office to:

*'take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgment and ability, and will observe the Local Government (Rules of Conduct) Regulations 2007.'*

Standing Orders or policy should reflect the high expectations of performance and accountability, as set out in the Local Government Act (s2.10 (a) to (e)) whereby an elected member:

- represents the interests of electors, ratepayers and residents of the district;
- provides leadership and guidance to the community in the district;
- facilitates communication between the community and the council;
- participates in the local government's decision making processes at council and committee meetings; and
- performs such other functions as are given to a councillor by the Act or any other written law.

The effects of mandatory vaccinations on electors, ratepayers, residents and business owners in our City, the effect of mandatory vaccinations on the local government's affairs and the performance of the local government's functions is of utmost importance to discuss, especially pertaining to matters of:

1. **HARM** - harm in relation to the deaths and adverse effects of the vaccines which are still in their trial phase is well documented by the Therapeutic Goods Administration, and other institutions such as the COVID Medical Network, recording over 110,000 adverse effects and over 1,000 deaths in Australia. Harm matters - each of these people are lives and families.

2. **RISK** - The risk of being harmed from taking the vaccine is actually higher than the risk to your health if you get COVID. Statistics show that a common person has a 0.18% chance of getting COVID, and the Australian Bureau of Statistics has recorded 87n deaths from COVID in the last two years, with the median age of 83. We know that the trial vaccine does not stop you from getting COVID, it does not stop the symptoms or contractability - and is not developed for the new strain. It is pointless, but carries with it a high risk of adverse reaction.
3. **LIABILITY** - We know that the liability of the harm and risk from these trial vaccines is solely placed on employers and business owners, as pharmaceutical companies, the government and even insurance companies have stated they will not be taking liability responsibility for a trial vaccine as trials can only be entered into voluntarily, at the own risk of individuals. And yet, WA has seen the tightening of penalties for employers under industrial manslaughter laws in the Work Health Safety Act 2020 WA to 20 years in prison and \$10m fine for bodies corporate. Sections 30A and 31 are of concern for the full liability of employers and businesses financially should there be ongoing adverse reactions to the vaccine.

Please now accept our **Harm, Risk and Liability Report** on the economic, social and welfare cost to your City due to mandates under your care.

Please also accept the accompanying petition from local business and individuals who wish to see this City not discriminate, but, rather, remain discrimination free from medical coercion.

I remind you of your obligations under the *Local Government Act*.

We call upon this Council and you, Mayor, to not only read our Report and respond to it by the next Council meeting, but to pass it to your colleagues in the State Parliament, asking for evidence of an emergency, pursuant to section 157 of the Public Health Act 2009 (WA) and section 56 of the Emergency Management Act 2005 (WA), which clearly states that the Minister **CANNOT** make a Declaration unless and until - the emergency is proven to be an exceptional circumstance, that it poses an ongoing risk to health, life and safety, and that there is an agreement to this fact amongst the relevant professionals.

## **2. The second matter I wish to raise is unlawfulness.**

Mandates are a policy suggestion of the government, and are subject to interpretation and application on a case by case basis.

This is confirmed by the Federal Government's COVID Plan on Page 6, where it states:

*"[W]hile the Australian Government strongly supports immunisation and will run a strong campaign to encourage vaccination, it is not mandatory and individuals may choose not to vaccinate."*

Prime Minister Scott Morrison and Premier Mark McGowan have been clear in stating that employers cannot, and should not mandate the COVID vaccines.

The Australian Human Rights Commission, the Fair Work Commission, Safe Work Australia and the Business Council have all declared that employers should not mandate COVID vaccines.

Internationally, several countries, including the UK, America, Germany, France, Israel, Japan and others have turned away from mandating a trial vaccine, and their courts have ruled it unlawful.

In fact, it is at an employer's discretion on a case by case basis which health and safety measures are rolled out and how, according to the Federal COVID Plan, consistent with workplace safety laws.

Safe Work Australia's Statement of Regulatory Intent clearly states that: "Under WHS laws, all employers must take action to protect workers and others at their workplace from the risks of COVID-19 so far as is reasonably practicable.

All employers should, in consultation with workers and workers' representatives:

- develop a plan to respond to the issues created by the pandemic, such as a COVID-19 safety plan that meets the requirements of relevant health orders.
- implement appropriate control measures to minimise, so far as is reasonably practicable, the risks of COVID-19 including the development of infection prevention and control policies and procedures.
- develop and implement updated safe systems of work that take into account directions and advice provided by health authorities and other government Agencies involved in the COVID-19 response strategies.
- continue monitoring the COVID-19 situation as it develops."

As per the Federal Government policy requirements stated above, measures are to be implemented as far as it is practicable and appropriate; applying the proportionality and reasonability legal tests as employers, ensuring that federal laws are adhered to, even in a time of emergency.

In fact, mandating vaccines violates section 51(xxiiiA) of the Constitution, it violates Privacy Principle 3.1 of the *Privacy Act 1988* (Cth), it breaches Employment laws and violates anti discrimination laws, as it constitutes as medical discrimination.

Under the *Disability Discrimination Act 1992* (Cth), it is unlawful to discriminate against someone because of their actual, presumed, present or past disability, including direct discriminations where a person is treated unfavourably because of their disability; and indirectly, where a person imposes a requirement or condition that is likely to have the effect of disadvantaging a person with a disability that is not reasonable.

Under law, the employer must make reasonable work place adjustments for a person offered employment in order to perform genuine and reasonable requirements of the employment.

The *Equal Opportunity Act 1984* (WA) ensures that I cannot be discriminated against on the basis of my political opinion or activities, including being treated unfavourably because of this protected attribute, particularly if the requirements are not genuine or reasonable.

Mandates violate the Constitution section 51(xxiiiA) as well as several Federal laws, including:

- Section 94H of the *Privacy Act 1998* (Cth);
- Article 1 and 6 of the *Nuremberg Code* (It'l);
- Section 95 of the *Biosecurity Act 2015* (Cth);
- Sections 51 (xxiiiA), 5, and 109 of the Commonwealth of Australia Constitution Act 1900;
- Sections 4 and 6 of the *Disability Discrimination Act 1992*.

Mandates are also inconsistent with Federal standards, such as section 92 of the *Biosecurity Act 2015* (Cth) which requires individuals to be found to be an 'infectious person' by a court before any restriction can be placed on the individual. Restrictions, therefore, are not designed to be applied to the population as a whole, but to those who are found by a court order to be an 'infectious person'.

Section 94H of the *Privacy Act 1988* (Cth) which deals with requiring the use of COVID Safe clearly states: "(1) A person commits an offence if the person requires another person to:

- (a) download COVIDSafe to a communication device; or
- (b) have COVIDSafe in operation on a communication device; or
- (c) consent to uploading COVID app data from a communication device to the National COVIDSafe Data Store. Penalty: Imprisonment for 5 years or 300 penalty units, or both."

Australian Privacy Principle 3.1 states: "If an APP entity is an agency, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities."

The mandates, which are an invitation to contract are not binding or enforceable, as they are subject to section 2(3) of the Constitution Act 1889 (WA) and section 117 to 119 of the Commonwealth Constitution, which covers my rights and protections under the Constitution.

### **Compliance with Western Australia's Public Health Act 2016 (WA)**

The declared state of Emergency, under the Emergency Management Act 2005 (WA) section 58 is subject to a temporary 14 day periodical review. Every 14 days, the Minister is to give further evidence that there is a continual, ongoing, imminent threat to life and safety in the community to justify the emergency powers renewal.

Further to that, please also note that the legislation which is used in this Direction does not address vaccines in any way. The WA Directions are reliant upon Sections 157(1)(e), 157(1)(k), 180 and 190(l) (p) of the Public Health Act 2016 (WA). These do not address the requirement to take a vaccine.

Section 180 deals with powers relating to movement and evacuation.

Section 190(1)(p) states: "without limiting any other emergency power, exercise any serious public health incident power". Sections 157(1)(e) and 157(1)(k) deal with the requirement for a person to provide information, and taking directions from Authorised Officers respectively.

Nowhere in the law that is referred to mandates my taking of any forms of vaccine.

In fact, medical mandates are unconstitutional, illegal and violate human rights.

### **The Required Legal Test: Proof from the Minister that there is an Emergency**

In the Preamble of the Directions, it states that: "[t]he purpose of these directions is to put in place some measures to address the unique risks posed by COVID-19 .... in order to limit the spread of COVID-19 to vulnerable populations in Western Australia."

This gives rise to the legal test of whether there is a current threat to public life or health as per section 56 of the Emergency Management Act 2010 and section 167 of the Public Health Act 2016 (WA), and whether there exists a state of emergency. This test is to be satisfied every 14 days.

Section 56 of the Act states that the Minister may make state of emergency declaration, only if certain provisions are satisfied. It states: "The Minister must not make a declaration under this section unless the Minister —

- (a) has considered the advice of the State Emergency Coordinator; and
- (b) is satisfied that an emergency has occurred, is occurring or is imminent; and
- (c) is satisfied that extraordinary measures are required to prevent or minimise —
  - (i) loss of life, prejudice to the safety, or harm to the health, of persons ..."

This legal test requires the Minister to first give evidence to the fact that there is an emergency, and provide evidence to that fact, to the extent that extraordinary measures are required to be taken on the grounds that public safety, harm to health and life are at risk.

The Minister for Emergency Services has not provided such evidence to date, since the first declaration of an emergency in March 2020.

There is a question as to the legal test for an emergency to be satisfied in the first instance.

The Western Australian Government Direction would therefore be found legally invalid if it was proven that the legal test of emergency laws cannot be satisfied.

In addition to this, emergency powers under the Act only last 14 days. The Direction is only valid for fourteen days, as per section 58 of the same Act, which deals with the *'extension of state of emergency declaration'*.

The risk of Covid-19 has not been established medically, scientifically or politically in WA. The Directions therefore do not pass their own legal threshold test.

These Government Directions are therefore reliant legally upon there being not only 'cases' of COVID in our community and in my place of work, but also deaths and a risk to public health, as laid out in s 56 of the Emergency Management Act WA 2010 and s 167 of the Public Health Act 2015 (WA).

According to the Act, the Ministers must be satisfied that: *"an emergency has occurred, is occurring, or is imminent; and is satisfied that extraordinary measures are required to prevent or minimise; loss of life, prejudice to the safety, or harm to the health, of persons or animals..."*

This wording is consistent for both the Health Minister and for the Emergency Services Minister, as laid out in their respective Acts, and therefore, both need to satisfy this basic legal test.

A harm or threat to the safety of the community must exist for these provisions to be able to be used. This is the legal test which is required to be satisfied.

The *Public Health Act 2016 (WA)* section 202 deals with a person's reasonable excuse not to comply.

Further to this, section 167(2) of the *Public Health Act 2016* is clear: *"The Minister cannot make a public health state of emergency declaration unless the Minister: (b) is satisfied that a public health emergency has occurred, is occurring or is imminent; and (c) is satisfied that extraordinary measures are required to prevent or minimise loss of life or prejudice to the safety, or harm to the health, of persons."*

Section 3 of the *Public Health Act 2016 (WA)* in dealing with proportionality states:

*"3.(1) Decisions made and actions taken in the administration of this Act to prevent, control or abate a public health risk should be proportionate to the public health risk sought to be prevented, controlled or abated.*

*(2) In the application of the principle of proportionality, decision-making and action should be guided by the aim that, where measures that adversely impact on an individual's or business's activities or a community's functioning are necessary, measures that have the least adverse impact are taken before measures with a greater adverse impact."*

Section 202 is clear: the direction does not need to be followed if there is a reasonable excuse. This reasonability test is an important one in human rights law, and goes to proportionality.

As the Mayor and Councillors of our City, it is your responsibility to provide leadership on these important financial, social and welfare matters, including reading our Report, considering our petition, responding to our Report and placing our Report in the hands of your State Parliamentary colleagues, particularly the Premier, the Minister for Health, the Minister for Emergency Services, and the Chief Health Officer, requesting evidence of an emergency and the legal basis upon which the Directions have been drafted, and continue to be renewed, evidence for efficacy of the trial vaccine and assurances that employers and business owners will not bear the brunt of liability claims due to the adverse effects of this trial drug.

The City awaits your response.

**With thanks and respect,  
Andrea Tokaji Dip. Th. Adv. Dip Couns. JD GDLP LLM  
International Human Rights Legal Advocate and Legal Academic**