

Special Council Minutes Index – 24 October 2023

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MINUTES

For a Special Meeting of Council held in Council Chambers on **Tuesday 24 October 2023**, immediately following the conclusion of the previous special meeting, called for the purpose of:

1. Granting the CEO delegated authority to vary Restricted Burning Periods
2. Additional and urgent specific gravel road works

Opening of Meeting

The Presiding Member opened the meeting at 6.14pm.

Acknowledgment of Country

We acknowledge the cultural custodians of the land on which we gather, the Pibulmun-Wadandi people. We acknowledge and support their continuing connection to the land, waterways and community. We pay our respects to members of the Aboriginal communities and their culture; and to Elders past and present, their descendants still with us today, and those who will follow in their footsteps.

Attendance & Apologies

President	- Cr J Mountford
Councillors	- S Mahoney (Deputy) - J Boyle - M Christensen - M Fletcher - T Lansdell - L Pearce - A Pratico - R Redman
Officers	- N Gibbs, Chief Executive Officer - P St John, Director Development, Community, and Infrastructure - N Thompson, Infrastructure Services Administration Officer
Apologies	- M Larkworthy, Director Corporate Services

Attendance of Gallery

L Roberts, D Roberts, N Maxfield, R Traph and A Pratt.

Public Question Time - Nil

Comments on Agenda Items by Parties with an Interest - Nil

Notification of Disclosures of Interest - Nil

Part 5, Division 6 of the *Local Government Act 1995* requires a member who has an interest in any matter to be discussed at the meeting to disclose the interest and the nature of the interest in writing before the meeting, or immediately before the matter is discussed.

Business Items

ITEM NO.	SpCa01/1023	FILE REF.	
SUBJECT	Amendment to Delegation ES.7 - Variations and Control Activities Restricted Burning Periods		
OFFICER	Executive Assistant		
DATE OF REPORT	20 October 2023		

Attachment 1 Amended Delegation ES.7 - Variations and Control Activities Restricted Burning Periods

OFFICER RECOMMENDATION

That Council amend delegation ES.7 - Variations and Control Activities Restricted Burning Periods as presented in Attachment 1.

Summary/Purpose

For Council to consider amending delegation ES.7 - Variations and Control Activities Restricted Burning Periods to:

1. provide for the power to be given to the Chief Executive Officer (and removing the President and Chief Bush Fire Control Officer)
2. remove the imposed Council conditions.

Delegations of power to the CEO may be made, amended or deleted at any time, by an absolute majority resolution of Council.

Officer Comment

Following an assessment of the current and projected weather conditions, the Shire's Chief Bush Fire Control Officer has recommended to the CEO that the Restricted Burning Period be brought forward from the 1 November 2023 to the 25 October 2023. In light of this the CEO's delegations from Council were reviewed to allow for the CEO to amend the burning period.

The review of the delegation register uncovered an administrative error in delegation ES.7 - Variations and Control Activities Restricted Burning Periods, the mechanism allowing the CEO to amend the burning period date. The delegates assigned were the President and Chief Fire Bush Control Officer, instead of the CEO. The intention of the delegation was to have the CEO as the sole delegate, in accordance with the *Bush Fires Act 1954*, which permits delegation to the CEO only. Another error was also discovered where Council conditions were incorrectly imposed. These conditions are proposed to be removed.

To resolve this issue, it is recommended that Council amend the delegation as per Attachment 1.

Statutory Environment

Local Government Act 1995

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43. * Absolute majority required.
- (2) A Delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of Delegation.

Integrated Planning

- Strategic Community Plan
Outcome 14 Effective governance and financial management

- Corporate Business Plan - Nil
- Long Term Financial Plan – Not applicable
- Asset Management Plans – Not applicable
- Workforce Plan – Not applicable
- Other Integrated Planning - Nil

Policy/Strategic Implications – Not applicable

Budget Implications - Nil

Whole of Life Accounting - Nil

Risk Management

The risk area identified according to Policy RM 1 – Risk Management is Service Interruption. If Council resolve not to amend the delegation to give the CEO the power to vary a Restricted Burning Period, Council run the risk of the Shire being unable to be reactive to climate conditions that require variations to burning periods that are urgent in nature. The overall risk has been measured as Moderate.

Risk Matrix					
Consequence Likelihood	1 Insignificant	2 Minor	3 Moderate	4 Major	5 Catastrophic
Almost Certain	Moderate	High	High	Extreme	Extreme
Likely	Low	Moderate	High	High	Extreme
Possible	Low	Moderate	Moderate	High	High
Unlikely	Low	Low	Moderate	Moderate	High
Rare	Low	Low	Low	Low	Moderate

Voting Requirements – Absolute Majority

5.42. Delegation of some powers and duties to CEO

(1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under —

(a) this Act other than those referred to in section 5.43;

* *Absolute majority required.*

**Council Decision *Moved Cr Christensen, Seconded Cr Lansdell*
*SpCa.01/1023 That Council amend delegation ES.7 - Variations and Control Activities Restricted Burning Periods as presented in Attachment 1.***

Carried by Absolute Majority 8/1

For: Crs Boyle, Christensen, Fletcher, Lansdell, Mahoney, Mountford, Pearce and Pratico.

Against: Cr Redman

ITEM NO.	SpCa02/1023	FILE REF.	
SUBJECT	Budget Amendment – Contract Resheeting Works		
OFFICER	Manager Infrastructure & Works		
DATE OF REPORT	20 October 2023		

OFFICER RECOMMENDATION

1. That Council amend the 2023/4 budget by:
 - a) Decreasing the budgeted transfer of \$306,070 to the Strategic Projects Reserve by an amount of \$250,000
 - b) Increasing the Road Construction/Reconstruction Program account number 1386940 by \$250,000.
2. That funds not spent on this project (gravel resheeting of Crowd Wheatley Rd, Klause Rd, and Walter Willis Rd) to be considered for review and reallocation in the 2023/24 mid-year budget review.

Summary/Purpose

An unbudgeted materials and contracts amount of up to \$250,000 is required for urgent contractor performed gravel resheeting to be undertaken on sections of Crowd Wheatley Rd, Klause Rd, and Walter Willis Rd.

Unfortunately, it appears that a large part of the damage was caused by a now departed grader driver employed by the Shire. In addition, the damage was reported to the Shire over 12 months ago and no action was taken. This combination of action and non-action significantly increases both Councillor and Executive liability. Immediate action is required.

Background

The sections of Crowd Wheatley Rd, Klause Rd, and Walter Willis Rd shown in figure A have become badly degraded due to there being little to no gravel pavement remaining. There are extensive significant potholes, corrugations, and exposed subgrade rock, severely impacting vehicle ride and handling characteristics even at very moderate speed. The Shire has received numerous customer service requests for over 12 months relating to the condition of these roads. Maintenance grading of the affect roads is ineffective in the current state and to correct these faults, the road needs to be reformed using imported gravel conforming to the applicable standard. Shire Works personnel and equipment are fully allocated to the existing annual construction program and do not have capacity to perform the required works.

The lengths of the road sections in figure A are as follows:

Crowd Wheatley Rd	2.4 km
Klause Rd	2.0 km
Walter Willis Rd	1.2 km
TOTAL:	5.6 km

Figure A:



Officer Comment

The proposed work is considered urgent. Should a serious incident or accident occur due to the current road condition the Shire would potentially be liable. The Shire contributed to the damage and has taken no action to date with regard to rectifying the damage. As the “Person Conducting a Business or Undertaking” (PCBU), under the *Work Health & Safety Act 2020*, both Elected Members and the Executive would potentially be found negligent.

To progress the works as soon as practical, project planning and preparation is currently underway. Distance to suitable water and gravel have a significant impact on the cost of the proposed works. Nearby sources of both resources have been identified and discussions with landowners have commenced, however, agreements are yet to be finalised. The Shire has an established gravel pit on Glentulloch Rd that could be used if necessary and the estimated project cost is based on sourcing gravel from this location. Use of the local gravel source adjacent to the project could reduce the overall cost.

Undertaking this project using municipal funds also has the potential for a positive outcome in relation to Roads to Recovery funding. Under the Roads to Recovery funding conditions, to continue to receive funding, the Shire is required to achieve a minimum own funding source expenditure on road construction and/or maintenance. The additional expenditure of own source funding will help ensure this condition is met.

Statutory Environment

Work Health & Safety Act 2020

Land Administration Act 1997 (Part 5)

Integrated Planning

➤ Strategic Community Plan

Outcome 9 Safe, affordable and efficient movement of people and vehicles.

Objective 9.1 Improve road safety and connectivity.

➤ Corporate Business Plan - Nil

➤ Long Term Financial Plan - Nil

➤ Asset Management Plans

Resheeting Crowd Wheatley Rd is listed in the current 10-Year Strategic Works Plan in the 2025/26 financial year. This project would no longer need to be undertaken and therefore other projects could be brought forward in the plan.

➤ Workforce Plan - Nil

➤ Other Integrated Planning - Nil

Policy Implications - Not applicable

Budget Implications

This report seeks to amend the 2023/24 budget as per the resolution.

Whole of Life Accounting - Not applicable

Risk Management

Risk areas identified according to the Shires risk management policy, are Health, Financial Impact, and Reputational External.

Health:

Due to the risk of a serious traffic incident as a result of the road faults the health impact is considered Catastrophic (fatality, permanent disability) with a likelihood measure being likely, giving an overall risk rating of Extreme.

Financial Impact:

Due to the risk of a serious traffic incident as a result of the road faults and potential for litigation, the financial impact is considered Catastrophic (more than \$500,000) with a likelihood measure being likely, giving an overall risk rating of Extreme.

Reputational External:

Due to the current dissatisfaction amongst affected members of the public there is a risk the issue will be escalated and therefore Reputational External is currently considered Moderate (substantiated, public embarrassment, moderate impact,

moderate news profile, requires social media response and monitoring (e.g. State News story) with a likelihood measure being Likely, giving an overall risk rating of High. Obviously, if there is a serious accident or death on the road, this will shift to Extreme.

Risk Matrix					
Consequence Likelihood	1 Insignificant	2 Minor	3 Moderate	4 Major	5 Catastrophic
Almost Certain	Moderate	High	High	Extreme	Extreme
Likely	Low	Moderate	High	High	Extreme
Possible	Low	Moderate	Moderate	High	High
Unlikely	Low	Low	Moderate	Moderate	High
Rare	Low	Low	Low	Low	Moderate

Voting Requirements – Absolute Majority

6.8. Expenditure from municipal fund not included in annual budget

(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —

(b) is authorised in advance by resolution*

* Absolute majority required.

Council Decision Moved Cr Pratico, Seconded Cr Boyle SpCa.02/1023

1. That Council amend the 2023/4 budget by:

c) Decreasing the budgeted transfer of \$306,070 to the Strategic Projects Reserve by an amount of \$250,000; and

d) Increasing the Road Construction/Reconstruction Program account number 1386940 by \$250,000.

2. That funds not spent on this project (gravel resheeting of Crowd Wheatley Rd, Klause Rd, and Walter Willis Rd) to be considered for review and reallocation in the 2023/24 mid-year budget review.

Carried by Absolute Majority 9/0

For: Crs Boyle, Christensen, Fletcher, Lansdell, Mahoney, Mountford, Pearce, Pratico and Redman.
Against: Nil

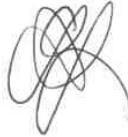
Closure

The Presiding Member closed the meeting at 6.29pm.

List of Attachments

Attachment	Item No.	Details
1	SpCa.01/1023	Amended Delegation ES.7 - Variations and Control Activities Restricted Burning Periods

Minutes Papers prepared and recommended by L Taramoeroa, Executive Assistant



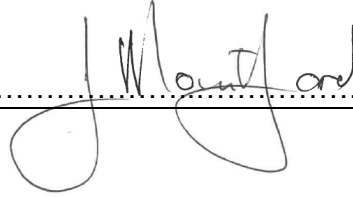
2 November 2023

Minutes Papers authorised by N Gibbs, Chief Executive Officer



2 November 2023

As Presiding Member, I certify that the Minutes of the Special Council Meeting held 24 October 2023 were confirmed as a true and correct record of the proceedings of that meeting at the Ordinary Meeting of Council held on Thursday 30 November 2023.



..... 30 November 2023.

Delegation	<u>ES.7 – Variations and Control Activities Restricted</u> <u>Burning Periods</u>
Delegator	Council
Express power to delegate	<i>Bush Fires Act 1954</i> s.48 Delegation by local government
Express power or duty delegated	<p><i>Bush Fires Act 1954</i> s.18(5)(11) Restricted burning times may be declared by FES Commissioner s.22(6) and (7) Burning on exempt land and land adjoining exempt land s.27(2) and (3) Prohibition on use of tractors or engines except under certain conditions s.28(4) and (5) Occupier of land to extinguish bush fire occurring on own land</p> <p><i>Bush Fire Regulations 1954</i> r.15 Permit to burn (Act s.18), form of and apply for after refusal etc. r.15C Local Government may prohibit burning on certain days r.38C Harvesters, power to prohibit use of on certain days in restricted or prohibited burning times r.39B Crop dusters etc., use of in restricted or prohibited burning times</p>
Function	<ol style="list-style-type: none"> 1. Authority, where seasonal conditions warrant it and after consultation with an authorised CALM Act officer, to determine to vary the restricted burning times in respect of that year (s.18(5)). <ol style="list-style-type: none"> a. Authority to determine to prohibit burning on Sundays or specified days that are public holidays in the district (r.15C). 2. Authority, where a permitted burn fire escapes or is out of control in the opinion of the Bush Fire Control Officer or an officer of the Bush Fire Brigade, to determine to recoup bush fire brigade expenses arising from preventing extension of or extinguishing an out of control permitted burn (s.18(11)). 3. Authority to determine permits to burn during restricted times that have previously been refused by a Bush Fire Control Officer (r.15). 4. Authority to arrange with the occupier of exempt land, the occupier of land adjoining it and the Bush Fire Brigade to cooperate in burning firebreaks and require the occupier of adjoining land to provide by the date of the burning, ploughed or cleared fire-breaks parallel to the common boundary (s.22(6) and (7)). 5. Authority to declare that the use of any harvesting machinery on any land under crop during the whole or

	<p>any part of any Sunday or public holiday in the whole or a specified part of the District during Restricted Burning Times is prohibited, unless written consent of a Bush Fire Control Officer is obtained (r.38C).</p> <p>6. Authority to determine, during a Restricted Burning Time, if a firebreak around a landing ground for an airplane has been satisfactorily prepared (r.39B).</p> <p>7. Authority to issue directions, during a Restricted Burning Time, to a Bush Fire Control Officer, regarding matters necessary for the prevention of fire on land used as a landing ground for an airplane (r.39B(3)).</p> <p>8. Authority to prohibit the use of tractors, engines or self-propelled harvester, during a Restricted Burning Times, and to give permission for use of same during the Restricted Burning Time subject to compliance with requirements specified in a notice (s.27(2) and (3)).</p> <p>9. Authority to recover the cost of measures taken by the Shire of Bridgetown-Greenbushes or Bush Fire Control Officer, to extinguish a fire burning during Restricted Burning Times, where the occupier of the land has failed to comply with requirements under s.28(1) to take all possible measures to extinguish a fire the land they occupy (s.28(4)), including authority to recover expenses in any court of competent jurisdiction (s.28(5)).</p>
Delegate	<p>President and Chief Bush Fire Control Officer Chief Executive Officer</p>
Council conditions	<p>Decisions under s,17(7) must be undertaken jointly by both the President and the Chief Bush Fire Control Officer and must comply with the procedural requirements of s.17(7B) and (8).</p>
Adoption date	23 February 2023 (C.09/0223)
Variation date	
Record keeping	Delegated Authority Action Sheet