



## Donnybrook-Balingup - Compliance Audit Return 2017

### Certified Copy of Return

Please submit a signed copy to the Director General of the Department of Local Government, Sport and Cultural Industries together with a copy of section of relevant minutes.

Commercial Enterprises by Local Governments					
No	Reference	Question	Response	Comments	Respondent
1	s3.59(2)(a)(b)(c) F&G Reg 7,9	Has the local government prepared a business plan for each major trading undertaking in 2017.	N/A		Trish McCourt
2	s3.59(2)(a)(b)(c) F&G Reg 7,10	Has the local government prepared a business plan for each major land transaction that was not exempt in 2017.	N/A		Trish McCourt
3	s3.59(2)(a)(b)(c) F&G Reg 7,10	Has the local government prepared a business plan before entering into each land transaction that was preparatory to entry into a major land transaction in 2017.	N/A		Trish McCourt
4	s3.59(4)	Has the local government given Statewide public notice of each proposal to commence a major trading undertaking or enter into a major land transaction for 2017.	N/A		Trish McCourt
5	s3.59(5)	Did the Council, during 2017, resolve to proceed with each major land transaction or trading undertaking by absolute majority.	N/A		Trish McCourt



Delegation of Power / Duty						
No	Reference	Question	Response	Comments	Respondent	
1	s5.16, 5.17, 5.18	Were all delegations to committees resolved by absolute majority.	N/A		Trish McCourt	
2	s5.16, 5.17, 5.18	Were all delegations to committees in writing.	N/A		Trish McCourt	
3	s5.16, 5.17, 5.18	Were all delegations to committees within the limits specified in section 5.17.	N/A		Trish McCourt	
4	s5.16, 5.17, 5.18	Were all delegations to committees recorded in a register of delegations.	N/A		Trish McCourt	
5	s5.18	Has Council reviewed delegations to its committees in the 2016/2017 financial year.	N/A		Trish McCourt	
6	s5.42(1),5.43 Admin Reg 18G	Did the powers and duties of the Council delegated to the CEO exclude those as listed in section 5.43 of the Act.	Yes		Trish McCourt	
7	s5.42(1)(2) Admin Reg 18G	Were all delegations to the CEO resolved by an absolute majority.	Yes		Trish McCourt	
8	s5.42(1)(2) Admin Reg 18G	Were all delegations to the CEO in writing.	Yes		Trish McCourt	
9	s5.44(2)	Were all delegations by the CEO to any employee in writing.	Yes		Trish McCourt	
10	s5.45(1)(b)	Were all decisions by the Council to amend or revoke a delegation made by absolute majority.	Yes		Trish McCourt	
11	s5.46(1)	Has the CEO kept a register of all delegations made under the Act to him and to other employees.	Yes		Trish McCourt	
12	s5.46(2)	Were all delegations made under Division 4 of Part 5 of the Act reviewed by the delegator at least once during the 2016/2017 financial year.	Yes		Trish McCourt	
13	s5.46(3) Admin Reg 19	Did all persons exercising a delegated power or duty under the Act keep, on all occasions, a written record as required.	Yes		Trish McCourt	

Disclosure of Interest						
No	Reference	Question	Response	Comments	Respondent	
1	s5.67	If a member disclosed an interest, did he/she ensure that they did not remain present to participate in any discussion or decision-making procedure relating to the matter in which the interest was disclosed (not including participation approvals granted under s5.68).	Yes		Trish McCourt	
2	s5.68(2)	Were all decisions made under section 5.68(1), and the extent of participation allowed, recorded in the minutes of Council and Committee meetings.	Yes		Trish McCourt	



No	Reference	Question	Response	Comments	Respondent
3	s5.73	Were disclosures under section 5.65 or 5.70 recorded in the minutes of the meeting at which the disclosure was made.	Yes		Trish McCourt
4	s5.75(1) Admin Reg 22 Form 2	Was a primary return lodged by all newly elected members within three months of their start day.	Yes		Trish McCourt
5	s5.75(1) Admin Reg 22 Form 2	Was a primary return lodged by all newly designated employees within three months of their start day.	Yes		Trish McCourt
6	s5.76(1) Admin Reg 23 Form 3	Was an annual return lodged by all continuing elected members by 31 August 2017.	Yes		Trish McCourt
7	s5.76(1) Admin Reg 23 Form 3	Was an annual return lodged by all designated employees by 31 August 2017.	Yes		Trish McCourt
8	s5.77	On receipt of a primary or annual return, did the CEO, (or the Mayor/President in the case of the CEO's return) on all occasions, give written acknowledgment of having received the return.	Yes		Trish McCourt
9	s5.88(1)(2) Admin Reg 28	Did the CEO keep a register of financial interests which contained the returns lodged under section 5.75 and 5.76	Yes		Trish McCourt
10	s5.88(1)(2) Admin Reg 28	Did the CEO keep a register of financial interests which contained a record of disclosures made under sections 5.65, 5.70 and 5.71, in the form prescribed in Administration Regulation 28.	Yes		Trish McCourt
11	s5.88 (3)	Has the CEO removed all returns from the register when a person ceased to be a person required to lodge a return under section 5.75 or 5.76.	Yes		Trish McCourt
12	s5.88(4)	Have all returns lodged under section 5.75 or 5.76 and removed from the register, been kept for a period of at least five years, after the person who lodged the return ceased to be a council member or designated employee.	Yes		Trish McCourt
13	s5.103 Admin Reg 34C & Rules of Conduct Reg 11	Where an elected member or an employee disclosed an interest in a matter discussed at a Council or committee meeting where there was a reasonable belief that the impartiality of the person having the interest would be adversely affected, was it recorded in the minutes.	Yes		Trish McCourt
14	s5.70(2)	Where an employee had an interest in any matter in respect of which the employee provided advice or a report directly to the Council or a Committee, did that person disclose the nature of that interest when giving the advice or report.	Yes		Trish McCourt



Department of  
Local Government, Sport  
and Cultural Industries

No	Reference	Question	Response	Comments	Respondent
15	s5.70(3)	Where an employee disclosed an interest under s5.70(2), did that person also disclose the extent of that interest when required to do so by the Council or a Committee.	Yes		Trish McCourt
16	s5.103(3) Admin Reg 34B	Has the CEO kept a register of all notifiable gifts received by Council members and employees.	Yes		Trish McCourt

### Disposal of Property

No	Reference	Question	Response	Comments	Respondent
1	s3.58(3)	Was local public notice given prior to disposal for any property not disposed of by public auction or tender (except where excluded by Section 3.58(5)).	Yes	Actual property disposal will occur in 2018	Trish McCourt
2	s3.58(4)	Where the local government disposed of property under section 3.58(3), did it provide details, as prescribed by section 3.58(4), in the required local public notice for each disposal of property.	Yes	Actual property disposal will occur in 2018.	Trish McCourt

### Elections

No	Reference	Question	Response	Comments	Respondent
1	Elect Reg 30G (1)	Did the CEO establish and maintain an electoral gift register and ensure that all 'disclosure of gifts' forms completed by candidates and received by the CEO were placed on the electoral gift register at the time of receipt by the CEO and in a manner that clearly identifies and distinguishes the candidates.	Yes		Trish McCourt

### Finance

No	Reference	Question	Response	Comments	Respondent
1	s7.1A	Has the local government established an audit committee and appointed members by absolute majority in accordance with section 7.1A of the Act.	Yes		Trish McCourt
2	s7.1B	Where a local government determined to delegate to its audit committee any powers or duties under Part 7 of the Act, did it do so by absolute majority.	N/A		Trish McCourt
3	s7.3	Was the person(s) appointed by the local government to be its auditor, a registered company auditor.	Yes		Trish McCourt
4	s7.3, 7.6(3)	Was the person or persons appointed by the local government to be its auditor, appointed by an absolute majority decision of Council.	Yes		Trish McCourt



No	Reference	Question	Response	Comments	Respondent
5	Audit Reg 10	Was the Auditor's report for the financial year ended 30 June 2017 received by the local government within 30 days of completion of the audit.	Yes		Trish McCourt
6	s7.9(1)	Was the Auditor's report for the financial year ended 30 June 2017 received by the local government by 31 December 2017.	Yes		Trish McCourt
7	S7.12A(3)	Where the local government determined that matters raised in the auditor's report prepared under s7.9 (1) of the Act required action to be taken by the local government, was that action undertaken.	N/A		Trish McCourt
8	S7.12A (4)	Where the local government determined that matters raised in the auditor's report (prepared under s7.9 (1) of the Act) required action to be taken by the local government, was a report prepared on any actions undertaken.	N/A		Trish McCourt
9	S7.12A (4)	Where the local government determined that matters raised in the auditor's report (prepared under s7.9 (1) of the Act) required action to be taken by the local government, was a copy of the report forwarded to the Minister by the end of the financial year or 6 months after the last report prepared under s7.9 was received by the local government whichever was the latest in time.	N/A		Trish McCourt
10	Audit Reg 7	Did the agreement between the local government and its auditor include the objectives of the audit.	Yes		Trish McCourt
11	Audit Reg 7	Did the agreement between the local government and its auditor include the scope of the audit.	Yes		Trish McCourt
12	Audit Reg 7	Did the agreement between the local government and its auditor include a plan for the audit.	Yes		Trish McCourt
13	Audit Reg 7	Did the agreement between the local government and its auditor include details of the remuneration and expenses to be paid to the auditor.	Yes		Trish McCourt
14	Audit Reg 7	Did the agreement between the local government and its auditor include the method to be used by the local government to communicate with, and supply information to, the auditor.	Yes		Trish McCourt



<b>Integrated Planning and Reporting</b>						
<b>No</b>	<b>Reference</b>	<b>Question</b>	<b>Response</b>	<b>Comments</b>	<b>Respondent</b>	
1	s5.56 Admin Reg 19DA (6)	Has the local government adopted a Corporate Business Plan. If Yes, please provide adoption date of the most recent Plan in Comments. This question is optional, answer N/A if you choose not to respond.	Yes		Trish McCourt	
2	s5.56 Admin Reg 19DA (6)	Has the local government adopted a modification to the most recent Corporate Business Plan. If Yes, please provide adoption date in Comments. This question is optional, answer N/A if you choose not to respond.	N/A		Trish McCourt	
3	s5.56 Admin Reg 19C (7)	Has the local government adopted a Strategic Community Plan. If Yes, please provide adoption date of the most recent Plan in Comments. This question is optional, answer N/A if you choose not to respond.	Yes		Trish McCourt	
4	s5.56 Admin Reg 19C (7)	Has the local government adopted a modification to the most recent Strategic Community Plan. If Yes, please provide adoption date in Comments. This question is optional, answer N/A if you choose not to respond.	N/A		Trish McCourt	
5	S5.56	Has the local government adopted an Asset Management Plan. If Yes, in Comments please provide date of the most recent Plan, plus if adopted or endorsed by Council the date of adoption or endorsement. This question is optional, answer N/A if you choose not to respond.	Yes		Trish McCourt	
6	S5.56	Has the local government adopted a Long Term Financial Plan. If Yes, in Comments please provide date of the most recent Plan, plus if adopted or endorsed by Council the date of adoption or endorsement. This question is optional, answer N/A if you choose not to respond.	Yes		Trish McCourt	
7	S5.56	Has the local government adopted a Workforce Plan. If Yes, in Comments please provide date of the most recent Plan plus if adopted or endorsed by Council the date of adoption or endorsement. This question is optional, answer N/A if you choose not to respond.	Yes		Trish McCourt	



<b>Local Government Employees</b>						
<b>No</b>	<b>Reference</b>	<b>Question</b>	<b>Response</b>	<b>Comments</b>	<b>Respondent</b>	
1	Admin Reg 18C	Did the local government approve the process to be used for the selection and appointment of the CEO before the position of CEO was advertised.	N/A		Trish McCourt	
2	s5.36(4) s5.37(3), Admin Reg 18A	Were all vacancies for the position of CEO and other designated senior employees advertised and did the advertising comply with s.5.36(4), 5.37(3) and Admin Reg 18A.	N/A		Trish McCourt	
3	Admin Reg 18F	Was the remuneration and other benefits paid to a CEO on appointment the same remuneration and benefits advertised for the position of CEO under section 5.36(4).	N/A		Trish McCourt	
4	Admin Regs 18E	Did the local government ensure checks were carried out to confirm that the information in an application for employment was true (applicable to CEO only).	N/A		Trish McCourt	
5	s5.37(2)	Did the CEO inform council of each proposal to employ or dismiss a designated senior employee.	N/A		Trish McCourt	



Official Conduct						
No	Reference	Question	Response	Comments	Respondent	
1	s5.120	Where the CEO is not the complaints officer, has the local government designated a senior employee, as defined under s5.37, to be its complaints officer.	N/A		Trish McCourt	
2	s5.121(1)	Has the complaints officer for the local government maintained a register of complaints which records all complaints that result in action under s5.110(6)(b) or (c).	Yes		Trish McCourt	
3	s5.121(2)(a)	Does the complaints register maintained by the complaints officer include provision for recording of the name of the council member about whom the complaint is made.	Yes		Trish McCourt	
4	s5.121(2)(b)	Does the complaints register maintained by the complaints officer include provision for recording the name of the person who makes the complaint.	Yes		Trish McCourt	
5	s5.121(2)(c)	Does the complaints register maintained by the complaints officer include provision for recording a description of the minor breach that the standards panel finds has occurred.	Yes		Trish McCourt	
6	s5.121(2)(d)	Does the complaints register maintained by the complaints officer include the provision to record details of the action taken under s5.110(6)(b) or (c).	Yes		Trish McCourt	

### Tenders for Providing Goods and Services

No	Reference	Question	Response	Comments	Respondent	
1	s3.57 F&G Reg 11	Did the local government invite tenders on all occasions (before entering into contracts for the supply of goods or services) where the consideration under the contract was, or was expected to be, worth more than the consideration stated in Regulation 11(1) of the Local Government (Functions & General) Regulations (Subject to Functions and General Regulation 11(2)).	Yes		Trish McCourt	
2	F&G Reg 12	Did the local government comply with F&G Reg 12 when deciding to enter into multiple contracts rather than inviting tenders for a single contract.	N/A		Trish McCourt	
3	F&G Reg 14(1) & (3)	Did the local government invite tenders via Statewide public notice.	Yes		Trish McCourt	
4	F&G Reg 14 & 15	Did the local government's advertising and tender documentation comply with F&G Regs 14, 15 & 16.	Yes		Trish McCourt	





No	Reference	Question	Response	Comments	Respondent
5	F&G Reg 14(5)	If the local government sought to vary the information supplied to tenderers, was every reasonable step taken to give each person who sought copies of the tender documents or each acceptable tenderer, notice of the variation.	Yes		Trish McCourt
6	F&G Reg 16	Did the local government's procedure for receiving and opening tenders comply with the requirements of F&G Reg 16.	Yes		Trish McCourt
7	F&G Reg 18(1)	Did the local government reject the tenders that were not submitted at the place, and within the time specified in the invitation to tender.	N/A		Trish McCourt
8	F&G Reg 18 (4)	In relation to the tenders that were not rejected, did the local government assess which tender to accept and which tender was most advantageous to the local government to accept, by means of written evaluation criteria.	Yes		Trish McCourt
9	F&G Reg 17	Did the information recorded in the local government's tender register comply with the requirements of F&G Reg 17.	Yes		Trish McCourt
10	F&G Reg 19	Was each tenderer sent written notice advising particulars of the successful tender or advising that no tender was accepted.	Yes		Trish McCourt
11	F&G Reg 21 & 22	Did the local governments's advertising and expression of interest documentation comply with the requirements of F&G Regs 21 and 22.	N/A		Trish McCourt
12	F&G Reg 23(1)	Did the local government reject the expressions of interest that were not submitted at the place and within the time specified in the notice.	N/A		Trish McCourt
13	F&G Reg 23(4)	After the local government considered expressions of interest, did the CEO list each person considered capable of satisfactorily supplying goods or services.	N/A		Trish McCourt
14	F&G Reg 24	Was each person who submitted an expression of interest, given a notice in writing in accordance with Functions & General Regulation 24.	N/A		Trish McCourt
15	F&G Reg 24AD(2)	Did the local government invite applicants for a panel of pre-qualified suppliers via Statewide public notice.	Yes		Trish McCourt
16	F&G Reg 24AD(4) & 24AE	Did the local government's advertising and panel documentation comply with F&G Regs 24AD(4) & 24AE.	Yes		Trish McCourt



No	Reference	Question	Response	Comments	Respondent
17	F&G Reg 24AF	Did the local government's procedure for receiving and opening applications to join a panel of pre-qualified suppliers comply with the requirements of F&G Reg 16 as if the reference in that regulation to a tender were a reference to a panel application.	Yes		Trish McCourt
18	F&G Reg 24AD(6)	If the local government sought to vary the information supplied to the panel, was every reasonable step taken to give each person who sought detailed information about the proposed panel or each person who submitted an application, notice of the variation.	N/A		Trish McCourt
19	F&G Reg 24AH(1)	Did the local government reject the applications to join a panel of pre-qualified suppliers that were not submitted at the place, and within the time specified in the invitation for applications.	N/A		Trish McCourt
20	F&G Reg 24AH(3)	In relation to the applications that were not rejected, did the local government assess which application (s) to accept and which application(s) were most advantageous to the local government to accept, by means of written evaluation criteria.	N/A		Trish McCourt
21	F&G Reg 24AG	Did the information recorded in the local government's tender register about panels of pre-qualified suppliers, comply with the requirements of F&G Reg 24AG.	Yes		Trish McCourt
22	F&G Reg 24AI	Did the local government send each person who submitted an application, written notice advising if the person's application was accepted and they are to be part of a panel of pre-qualified suppliers, or, that the application was not accepted.	Yes		Trish McCourt
23	F&G Reg 24E	Where the local government gave a regional price preference in relation to a tender process, did the local government comply with the requirements of F&G Reg 24E in relation to the preparation of a regional price preference policy (only if a policy had not been previously adopted by Council).	N/A	Policy already adopted	Trish McCourt
24	F&G Reg 24F	Did the local government comply with the requirements of F&G Reg 24F in relation to an adopted regional price preference policy.	Yes		Trish McCourt
25	F&G Reg 11A	Does the local government have a current purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$150,000 or less.	Yes		Trish McCourt



Department of  
Local Government, Sport  
and Cultural Industries

I certify this Compliance Audit return has been adopted by Council at its meeting on

29-3-2018

---

Signed Mayor / President, Donnybrook-Balingup

---

Signed CEO, Donnybrook-Balingup

Status Key
Completed
In Progress
Not Commenced

Risk Management Task Listing

Ref	Finding	Recommendation	Tasks	Source	Timeline	Responsibility	Details of Actions	Status
<b>1. RISK MANAGEMENT</b>								
1.1		The Risk Management Framework should be adopted by Council on an ongoing basis.	Present the Shire's Risk Management Framework to the Audit Committee & Council annually for review.	Regulation 17 Review 2014	December annually	Principal Environmental Health Officer	Last done Dec 2017	Completed
1.2		Develop, adopt and implement a Business Continuity Plan, incorporating a Disaster Recovery Plan.	Prepare a draft Business Continuity Plan which incorporates a Disaster Recovery Plan and procedures.	Regulation 17 Review 2014	Dec-16	Manager Development & Environmental Services	LGIS to be engaged to commence work on BCP in April/May 2016. Was deferred, timeline to be reviewed.	Not Commenced
1.2.1		Include the following as a minimum in the Plan:	Present the draft BCP to Council for adoption.	Regulation 17 Review 2014	Oct-17	Chief Executive Officer	LGIS have provided a cost estimate to work with Council staff to prepare a Business Continuity Plan. Staff are currently investigating options to fund this program. IT Business Continuity will be addressed as part of this process.	Not Commenced
1.2.2		An impact analysis establishing various scenarios and their efficient resolution including logistical as well as IT related issues		Regulation 17 Review 2014		Chief Executive Officer		Not Commenced
1.2.3		Consideration and evaluation of temporary alternative systems from which significant operating functions can be conducted in the event of unforeseen events		Regulation 17 Review 2014		Chief Executive Officer		Not Commenced
1.2.4		Ensuring critical business functions can be completed whilst IT systems are unavailable		Regulation 17 Review 2014		Chief Executive Officer		Not Commenced
1.2.5		The Plan should be developed in consultation with relevant staff and third party suppliers, communicated to all staff, implemented and monitored on a regular basis.	Communicate BCP to all staff once adopted	Regulation 17 Review 2014	Jul-16	Manager Development & Environmental Services	Timeline dependent upon receipt of LGIS report.	Not Commenced
1.2.6		Develop procedures to identify when changes are required to the plan as a result of IT infrastructure changes.	Test the BCP, record results, and update/review annually, including communicating to all staff.	Regulation 17 Review 2014	October annually (after adoption)	Manager Development & Environmental Services	As above	Not Commenced
1.2.7		Test the plan annually and the results from the test to be documented along with corrective action taken to eliminate weaknesses.		Regulation 17 Review 2014		Manager Development & Environmental Services		Not Commenced

Status Key
Completed
In Progress
Not Commented

### Risk Management Task Listing

Ref	Finding	Recommendation	Task/s	Source	Timeline	Responsibility	Details of Actions	Status
1.3		We recommend the Local Emergency Recovery Plan be reviewed and adopted by Council. Once the plan and encompassing documents have been adopted, we recommend it is endorsed and communicated to all staff, implemented and monitored on a regular basis, including testing the appropriate sections of the plan to ensure that in the event of a disaster, appropriate actions can be taken.	The Local Emergency Recovery Plan documents are being reviewed with an exercise undertaken annually.	Regulation 17 Review 2017	Oct-17	Manager Development & Environmental Services	The Local Emergency Recovery Plan and the Local Emergency Management Arrangements were reviewed and adopted by Council in 2016 & 2017 retrospectively. They are both located on the Shire website. Both plans are exercised as determined through the Local Emergency Management Committee.	Completed
1.4		We recommend the Long Term Financial Plan and Asset Management Plan be finalised and adopted by Council. Once the plans have been adopted, we recommend they are endorsed and communicated to all staff, implemented and monitored on a regular basis.	Complete the finalisation of the Long Term Financial Plan and the Asset Management Plan	Regulation 17 Review 2017	In Progress	Manager Finance & Administration Manager Development & Environmental Services	An updated Long Term Financial Plan was adopted by Council on 8th August 2017.	In Progress
1.4.1			The completed plans shall be endorsed by council and monitored on a regular basis	Regulation 17 Review 2017		Manager Finance & Administration Manager Development & Environmental Services	Asset Management Plans have been developed as at 30/6/2016 and are currently being brought up-to-date prior to presentation to Council for adoption.	In Progress
1.4.2			The endorsed plans shall be communicated to all staff	Regulation 17 Review 2017		Manager Finance & Administration Manager Development & Environmental Services		In Progress
1.5		The Shire of Donnybrook-Rainup design and implement a conflict of interest register. This register should be monitored to ensure that all conflicts (whether perceived/actual) are disclosed. All conflicts of interest should be managed accordingly by the Shire.	A conflict of interest register shall be developed and monitored	Regulation 17 Review 2017	Jul-17	Governance officer	Register kept in the Executive area. Signed off by CEO.	Completed
1.6		We recommend a formal procedure is implemented to monitor lessee compliance with terms of Council leased properties which could include updating the lease register to include insurance details and any other lessee reporting requirements.	A letter shall be designed and sent annually to lessees	Regulation 17 Review 2017	Ongoing	Governance Officer		In Progress



Status Key
Completed
In Progress
Not Commenced

### Risk Management Task Listing

Ref	Finding	Recommendation	Tasks	Source	Timeline	Responsibility	Details of Actions	Status
1.7		As best practice, and as outlined within operational guideline 09 we suggest the Shire's Risk Management Framework include a:	To pursue the development of suggested Policies	Regulation 17 Review 2017		Governance Officer	Policy review has been postponed from April 2017 to later in the year.	Not Commenced
1.7.1		Litigation/Claims Policy.		Regulation 17 Review 2017	Jun-17	Governance Officer	Policy review has been postponed from April 2017 to later in the year.	Not Commenced
1.7.2		Fraud Control Policy		Regulation 17 Review 2017	Jun-17	Governance Officer	Policy review has been postponed from April 2017 to later in the year.	Not Commenced
1.7.3		Environment Management Policy.		Regulation 17 Review 2017	No time frame	Governance Officer	Policy review has been postponed from April 2017 to later in the year.	Not Commenced
1.8		Designs and implements a central contractor/sub-contractor insurance register which is maintained by one individual to ensure that all contractor insurances are up to date.	Shire will look at developing internal procedure/system.	Regulation 17 Review 2017	Dec-17	OHS Officer	Currently not included in the OSH Co-ordinator's KPI's for the next 12 months	Not Commenced
1.9		We recommend Council investigate obtaining cybercrime insurance.	The Shire shall obtain a quote to include Cybercrime insurance at the time of the next renewal.	Regulation 17 Review 2017	Nov-17	Manager Finance & Administration	Cybercrime Insurance Liability insurance was effected from 1/7/2017	Completed
1.10		The Public Interest Disclosure procedure should be reviewed and updated on a regular basis.	Update and review the PID procedure.	Regulation 17 Review 2017	Jun-16	Governance Officer	reviewed annually, last reviewed June 2017	Completed

Status Key
Completed
In Progress
Not Commenced

## Risk Management Task Listing

Ref	Finding	Recommendation	Task/s	Source	Timeline	Responsibility	Details of Actions	Status
<b>2. INTERNAL CONTROLS</b>								
2.1		Finalise and adopt the draft Project Management Plan template.	Finalise the Project Management Plan template for use with major projects and present to Council for adoption.	Regulation 17 Review 2014	Jun-16	Chief Executive Officer		Not Commenced
2.2		Undertake formal performance management assessments as per the WALGA guidelines at the completion of tender periods once goods/services have been tendered, and utilise compliance checklists in managing project contracts.	Update the Project Completion Report template in the Project Management Plan template (as per above task) to reflect WALGA guidelines.	Regulation 17 Review 2014	Jun-16	Executive Assistant		Not Commenced
2.3		Include KPI's/ performance criteria, monitoring and performance assessment procedures, and action as a result of underperformance, within formal legal contracts.	Consider setting KPI's/ performance criteria, monitoring and performance assessment procedures, and action within formal legal contracts for major Shire projects.	Regulation 17 Review 2014	Jun-16	Executive Management Team	EMT to review	Not Commenced
2.4		Develop and implement an ongoing security awareness program to ensure security needs of the Shire are updated as required (for example due to IT infrastructure or application changes) and to prevent any security breaches from occurring. This could be incorporated as part of the Shire's overall Risk Management Framework.	Develop a procedure detailing the process for communicating changes to staff when security measures are updated, including for IT hardware/software.	Regulation 17 Review 2014	Jun-16	Manager Finance & Administration	To be addressed during the development of an ICT Plan which is scheduled to be completed prior to 30/6/18. Budget item for 2017/18.	Not Commenced
2.5		Develop a formal information & Communication Technology framework to ensure procedures and practices are documented.	Include a budget allocation in the draft 2015/16 Budget to outsource the development on a formal ICT framework.	Regulation 17 Review 2014	Jun-15	Manager Finance & Administration	The 2017/18 budget provides an allocation to develop an ICT Strategic Framework. It is intended to address the issue of security within this document	Not Commenced
2.6		Review the current Email Policy on a regular basis and communicate any changes to all staff.	Communicate the Email Policy to all staff annually.	Regulation 17 Review 2014	Apr-17	HR Manager	Updated October 2017. LMS (Learning Management System) is being rolled out. Email policy is currently being digitised and is planned to be rolled out to all staff December 2017	Not Commenced
2.7		Develop and adopt policies and procedures in respect to remote access granted to staff and communicate to staff.	Develop and present to Council for adoption a remote access policy. Include a list of staff with granted access.	Regulation 17 Review 2014	Jun-16	Manager Finance & Administration	Items to be addressed as a part of the ICT Framework document. Budget item: 2017/18.	Not Commenced
2.7.1		Include a list of users who have been granted remote access and review/update periodically.	Develop a remote access procedure.	Regulation 17 Review 2014	Jun-16	Manager Finance & Administration	Items to be addressed as a part of the ICT Framework document. Budget item: 2017/18.	Not Commenced
2.7.2			Communicate the adopted policy and procedure to staff with granted access.	Regulation 17 Review 2014	Jun-16	Manager Finance & Administration	Items to be addressed as a part of the ICT Framework document. Budget item: 2017/18.	Not Commenced

Status Key
Completed
In Progress
Not Commenced

### Risk Management Task Listing

Ref	Finding	Recommendation	Tasks	Source	Timeline	Responsibility	Details of Actions	Status
2.8		Develop an agreement detailing the terms and conditions of services to be provided by SESCO Security. The agreement should be signed by both parties and should as a minimum include the period of service, a confidentiality and early exit clause.	Consider the development of a formal agreement with Telstra (previous provider was SESCO).	Regulation 17 Review 2014	Dec-16	Executive Management Team		Not Commenced
2.9		Develop and maintain a register of physical assets which have been allocated to staff members with periodic review conducted to ensure it's up to date. The register may include such details as the asset number, details of the asset, the date the asset was provided to the staff member, the staff member's acknowledgement of receipt and the date the asset was returned to the Shire.	Develop a register of physical assets allocated to staff.	Regulation 17 Review 2014	Ongoing	Human Resources	<b>Complete</b> - The Physical Assets held by an employee are recorded on the employee's personal file to ensure they can be retrieved when the employee leaves the organisation.	Completed
2.10		Ensure employees take regular leave through ongoing management of leave scheduling and leave liabilities.	Review leave accruals at Executive Management Team Meetings.	Regulation 17 Review 2014	Quarterly	Executive Management Team	<b>Ongoing</b> - Last quarterly report delivered to CEO or leave liability on 3-10-17.	In Progress
2.11		Ensure purchase orders are completed for all purchases with exception of utilities and regular payments, whereby they are completed and authorised in accordance with policy prior to incurring expenses.	Communicate requirement for purchase orders to all staff.	Regulation 17 Review 2014	January annually	Creditors Officer + Project Officer	<b>Ongoing</b> - This item is the subject of the Local Government Financial Management Regulations 1996 and CEO's Accounting Directive #2.1. This is communicated regularly to staff and to new staff upon commencement.	In Progress
2.12		A Contract Management framework is recommended to be designed and documented to ensure project contracts are uniformly managed appropriately and in accordance with stated framework.	To investigate developing an internal framework consisting of procedures and policies.	Regulation 17 Review 2017	Jun-18	Manager Works and Services & Occupational Health Safety	<b>In Progress</b> - This has been included in the OSH Coordinator's KPI's and OSH Implementation Plan (Item 18) and is due for completion in Q3 2017/18	In Progress



Status Key
Completed
In Progress
Not Commenced

### Risk Management Task Listing

Ref	Finding	Recommendation	Tasks	Source	Timeline	Responsibility	Details of Actions	Status
2.12.1		To include the mandatory requirement of Contractors completing some level of induction (the level of induction completed should be determined based on the risks associated with the service or product provided). A compliance checklist to be utilised to ensure compliance is met on all project contracts.		Regulation 17 Review 2017		Manager Works and Services & Occupational Health Safety		In Progress
2.12.2				Regulation 17 Review 2017		Manager Works and Services & Occupational Health Safety		In Progress
2.13		Management shall re-communicate the requirements of the Purchasing and Tender Policy with those who have the ability to purchase goods on behalf of the Shire.	The relevant Purchasing and Tendering Policy and associated accounting decisions shall be revisited and communicated to the relevant staff.	Regulation 17 Review 2017	Ongoing	Governance Officer	Ongoing - This item is the subject of the Local Government Financial Management Regulations 1996 and CEO's Accounting Directive #2.1. This is communicated regularly to staff and to new staff upon commencement.	In Progress
2.14		Management shall re-communicate the requirements of the Petty Cash Policy with those with access to petty cash.	Re-communicate the requirements of the Petty Cash Policy including the need to stamp 'PAID' on receipt/invoices	Regulation 17 Review 2017	Ongoing	Manager Finance and Administration	Petty Cash claims reviewed regularly. Policy is now being adhered to.	In Progress
2.15		The Shire's current Credit Card Policy should be updated to reflect all considerations and requirements outlined within Local Government Operational Guideline Number 11 - Use of Corporate Credit Cards. That is to include:  What the card holder should do in the event their employment ceases, an extended period of leave is taken or they have moved to a position which does not require the use of a credit card. What action is to be taken in the event that a cardholder fails to comply with the policies, and How purchases by facsimile, telephone or over the internet are to be dealt with.	The Credit Card Policy shall be amended to include and address points 1.25.1, 1.25.2, 1.25.3	Regulation 17 Review 2017	Jun-17	Governance Officer	(No Action Required) These recommendations were implemented in Financial Operational Directive (FOD), and had been communicated to the relevant card holders. The directive, which can be sighted in the Shire's Accounting Manual, had been issued in June 2016, before the audit query arose.	Completed
2.15.1				Regulation 17 Review 2017		Governance Officer		Completed
5.15.2				Regulation 17 Review 2017		Governance Officer		Completed
2.15.3				Regulation 17 Review 2017		Governance Officer		Completed

Status Key
Completed
In Progress
Not Commenced

### Risk Management Task Listing

Ref	Finding	Recommendation	Task/s	Source	Timeline	Responsibility	Details of Actions	Status
<b>3. LEGISLATIVE COMPLIANCE</b>								
3.1		A standing agenda item should be included within the Audit Committee meeting agenda to assess the effectiveness of compliance.  Department of Local Government guidelines recommend an internal audit function be established incorporating an internal audit program which is reassessed annually. (Note: if the Shire of Donnybrook-Balingup consider an internal audit function not be required, we suggest the Audit Committee formally document they have considered the best practice guideline and the reasons they feel it is not necessary).	A standing item shall be incorporated into the Audit Committee Agenda.	Regulation 17 Review 2017		Executive Assistant	Standing agenda item included in Audit Committee Agenda - April 2017	Completed
3.2			The recommendation is to be put to the Risk Management Committee for their consideration at the next Committee Meeting. (Note: The Shire currently has 3 external audits each year and a further external as per the Local Government Audit Regulations).	Regulation 17 Review 2017	Nov-17	Risk Management Committee	To be considered by the Audit Committee. Was raised with the Audit Committee at its December 2017 meeting although by this time most attendees had left and so there was no quorum	Not Commenced
3.3		Local Government Operational Guideline Number 09 – Audit in Local Government outlines it is best practice for the Audit Committee to meet on at least a quarterly basis.	The recommendation is to be put to the Risk Management Committee for their consideration at the next Committee Meeting.	Regulation 17 Review 2017	Nov-17	Risk Management Committee	To be considered by the Audit Committee. Was raised with the Audit Committee at its December 2017 meeting although by this time most attendees had left and so there was no quorum	Not Commenced







## Policy 4.4



## Engineering Policy

#### 4.4 Bitumenising Roads on a Joint Basis with Adjoining Land Owners

##### Objective

To allow Council's consideration of un-budgeted road sealing to solve dust and public health problems due to unsealed roads, with the adjacent land owner contributing towards the solution.

##### Policy

1. That depending on the availability of finance in any particular year, Council will contribute 50% of the cost of constructing, priming and subsequent sealing of appropriate lengths of previous un-sealed roads adjacent to the residence or other buildings of a landowner, if that landowner is also prepared to contribute 50% of the cost of that work, and if the road involved is not part of any proposed subdivision or development application.

A similar 50/50 cost splitting will also apply to sealing of roads not related to a landowners residence or other buildings, where Council's asset is improved by such sealing.

If the landowner concerned is not prepared to contribute 50% of the cost, the request work will then only be considered along with other priorities in Council's Annual Works Programme.

Requests for sealing roads on a shared cost basis are to be referred to Council, and if approved, will be placed on record and funded in order of application, if and when this is economically efficient, or when finances are available.

2. The total payment of the Council computed contribution towards road upgrading shall be received before any work commences on site.
3. Council, at its discretion, may allow the landowner to pay the full amount up front and agree to refund 50% of the cost in the next budget, should the landowner wish to have the work carried out.

<b>Adopted:</b>	1 January 1993
<b>Last Amended:</b>	26 May 2010
<b>Last Reviewed:</b>	28 April 2016
<b>Next Review Date:</b>	2017
<b>Responsible Department:</b>	Works & Services

TO:

Shire President  
 shire of Donnybrook/Balingup  
 P.O Box 94  
 Donnybrook WA 6239.

Good morning,

We the residents of Yabberup, on Johnston street & Fowler rd request that the continuation of Fowler road into Johnston St be bitumised. The extreme dust problem is causing water contamination in our rain water tanks our only supply of drinking water. It is covering our houses, washing & vehicles. The rubbish & recycle trucks cause excessive dust on pickup days and with it also being a loop road we have a lot of vehicles including mainroads using this loop to turn around and we as ratepayers feel we should have a sealed road to our properties.

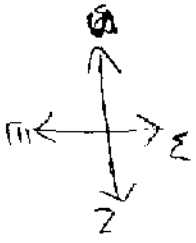
Thank you for your time  
 Kind regards

*J White*  
 Janda White  
 11 Johnston St  
 Yabberup  
 0438205845.

SHIRE OF DONNYBROOK Balingup RECEIVED - 5 FEB 2018
Record No: 160Rb 2804
File No: RD 0240 RD 0241
Officer: Cr Presse
X Ref: 000K 40 119
Corresps:
Signed Off:

Bayup Brook road.

1827 Bayup Brook rd



→ Johnston Street

gravel road.

←

to Johnston

11 JOHNSTON

27 JOHNSTON

Fowler road

Fidelis

← Bitumen ends here

63 Fowler.

55 Fowler.

## Petition

To:  
 Shire President  
 Shire of Donnybrook Balingup  
 PO Box 94  
 Donnybrook WA 6239

We the undersigned, being the <sup>1)</sup> residents of <sup>2)</sup> Yabberup respectfully request the Donnybrook Balingup Shire Council to:

<sup>3)</sup> Bituminising of Johnston street, Yabberup.

- 1) owners/residents/parents/members etc. whatever the case may be
- 2) insert your address, name of the street, suburb, club etc. whatever is applicable in this case
- 3) clearly state action that you would like to see taken by the Council and contain a summary of the reasons for the request

Name and address at which notice to the petitioners can be given:

Sandra White, 11 Johnston St, Yabberup, WA, 6239

Name	Address	Signature
Dion & Sandra White	11 Johnston St Yabberup	White 28/1/18
WENDY & JOHN TINSLEY	17 RUSSELL RD YABBERUP	W Tinsley 31-1-18
NEIL & JOHN BLENDOWE	16 JOHNSTON ST YABBERUP	Neil Blendowe 1-2-18
CHRIS AMET	55 FOWLER STREET YABBERUP WA 6239	Chris 1-2-18
JULIE QUAN	55 FOWLER ST YABBERUP	J. Quan 1-2-18
VIOLE CROWTHER	49 FOWLER ST YABBERUP	V Crowther 1-2-18
ROS CROWTHER	~ ~ ~	R Crowther 1-2-18
LUK & FRANK MICALI	43 FOWLER ST YABBERUP	L & F Micali 1-2-18
LEIGH SUNDLAND	1827 Balingup Brook Rd	L Sundland 1-2-18
Liesha Sunderland	1827 Balingup Brook Rd	Liesha Sunderland 1-2-18
ITC FERRARD	17th Russell Rd Yabberup	I Ferrard 4-2-18
BET M.A. BAKER	27 JOHNSTON ST YABBERUP	B Baker 4-2-18

### Petition

We the undersigned, being the <sup>1)</sup> residents of <sup>2)</sup> Mabberup respectfully request the Donnybrook Balingup Shire Council to:

<sup>3)</sup> Bitumising of Johnston St, Mabberup

- 1) owners/residents/parents/members etc. whatever the case may be
- 2) insert your address, name of the street, suburb, club etc. whatever is applicable in this case
- 3) clearly state action that you would like to see taken by the Council and contain a summary of the reasons for the request

Name	Address	Signature
Bob Roe	63 Fowler St	ABSENT 4.2.18.
		(signed previously)
Nat Fion	Fowler St owner	ABSENT 4.2.18
		(sign previously)



Petition Summary We the undersigned are concerned about the dust pollution being made by the constant traffic which includes the school bus and bin trucks on Johnston road in Yabberup, and we would like to see the road sealed/bituminised please.

FILED NAME	SIGNATURE	ADDRESS	COMMENTS	DATE
GABOLA ? DIEN WHITE	<i>[Signature]</i>	11 JOHNSTON ST, YABBERUP	Dust is covering houses and washing on clotheslines ect.	4/12/17
ISAND NEILL BLANCHARD	<i>[Signature]</i>	16 JOHNSTON ST YABBERUP	11 11	4/12/17
FIONA TINSLEY	<i>[Signature]</i>	11 RUSSELL RD YABBERUP	ROAD IS DETERIORATING AND HUGE DUST PROBLEM	6/12/17
ST. PETE FRAN	<i>[Signature]</i>	CORNER FOWLER'S YABBERUP	AS ABOVE	7.12.17
Michelle + Ben Barker	<i>[Signature]</i>	27 Johnston St Yabberup	The dust blows in to the houses, covers the cars and washing	11.12.17
BOB + NICOLE CROWTHER	<i>[Signature]</i>	45 FOWLER YABBERUP	DUST	11/12/17
F. S. MICALOZI	<i>[Signature]</i>	45 FOWLER YABBERUP	DUST AND ROAD IS PETERING.	11/12/17
Leigh + Lisa Sunder and	<i>[Signature]</i>	1827 DISE - CAMP BOST RD YABBERUP	Dust, tank contamination	12/12/17

(Previous Petition)

---

**11.1.2 MONTHLY FINANCIAL REPORT**


---

**Council Decision  
(Officer's Recommended Resolution)**
**Moved: Cr Mills**
**Seconded: Cr Tan**
**That the monthly report for the period ended 31 August 2016 be received.**
**Carried 9/0**
**\*\* 6.38pm – Manager Development and Environmental Services returned to the meeting.**


---

**11.2 Manager Works and Services**


---

<b>11.2.1</b>	<b>SUBJECT:</b>	<b>BRIDGE 5121 ROSEDENE LANE</b>
	<b>Location:</b>	<b>Location 4176</b>
	<b>Applicants:</b>	<b>Nil</b>
	<b>Zone:</b>	<b>N/A</b>
	<b>File Ref:</b>	<b>BR 5121</b>
	<b>Author:</b>	<b>Manager Works and Services</b>
	<b>Report Date:</b>	<b>10 October 2016</b>
	<b>Attachments:</b>	<b>11.2.1 - Correspondence and Reports on Bridge 5121</b>

**Background**

Bridge 5121 Rosedene Lane has an extensive history in relation to dispute of ownership. This bridge only directly services a single property being Lot 315, number 24 Rosedene Lane. The owner Mrs. Susan Walker is currently within the settlement process for the sale of this property, however this process has been placed on hold pending resolution of the advice received on 26 July 2016 from Main Roads Western Australia (MRWA) to the Shire that Bridge 5121 Rosedene Lane should be closed to traffic immediately unless emergency repairs are carried out to maintain the structure at its 13 tonne load rating.

**Comment**

Bridge structures built across the Preston River to properties on the northern side of the Donnybrook - Boyup Brook Road has been a contentious issue since the 1990's when the State Government made changes in the *Local Government Act 1995* in relation to reserve management and structures within reserves.

Bridge 5121 Rosedene Lane is one of 3 known structures of this type identified by MRWA as an asset under the ownership of the Shire of Donnybrook-Balingup unless otherwise determined.

The Shire and Council has regularly disputed MRWA advice that Bridge 5121 is our asset, however MRWA will not remove it from its bridge register until the ownership issue is resolved.

The Shire has previously been provided with a legal view that inherited river crossing structures outside the designated road reserve, particularly those that were never constructed to an acceptable standard like bridge 5121, could not become the responsibility of the Shire, at a large cost burden to ratepayers while servicing only one or two properties.

Council needs to be aware of a Shire letter back in 2003 by the Acting Chief Executive Officer, outlining that Bridge 5121 has been placed on our system for regular inspections and maintenance in line with our bridge maintenance program. The letter also goes on to clarify that bridge 5121 would be maintained at its current 13 tonne load limit by the Shire, and any upgrades or improvements would be the full responsibility of property owner of Wellington Location 315, (refer Attachment 11.2.1).

There was also mention around this time of creating an alternate access to a number of properties on the Northern side of the river that would bypass the need for this and similar bridge structures, however to the best of my knowledge and research this has never eventuated.

The Shire of Donnybrook-Balingup has utilised funds in the past to undertake works on Bridge 5121 to maintain its 13 tonne load rating, with the most recent being \$28,175.40 from our Bridge Maintenance Account in 2015.

These works were undertaken by the Shire on the understanding with the land owners and their lawyers that the works would be without prejudice to the Shire's position that it is not responsible for the ongoing maintenance of the bridge, and that the parties would enter into an arbitration process to resolve the ownership issue.

Since the works were completed, neither the Shire nor the land owners have progressed the *agreement further, until the recent advice had been received from MRWA regarding closing bridge 5121 Rosedene Lane*

Recent meetings and correspondence had between all parties including the perspective purchasers has not been able to achieve an agreed position.

All parties appear to agree that a fit for purpose replacement bridge is the preferred ultimate solution; however who owns and funds this still has divided opinions.

Subsequent advice from both the owner and purchasers representative's, request that the Council accept ongoing responsibility for the bridge in writing, consistent with the letter from the Acting Chief Executive Officer of the Shire of Donnybrook-Balingup dated 6 January 2003 to enable settlement to proceed.

Staff have advised the owners that based on the above there is high risk that Council may not support what is requested, resulting in the issue remaining un-resolved, and potentially needing to be resolved through courts.

To assist to have the matter resolved at the October Council meeting, the current owners are prepared to make a contribution towards a new bridge, up to 10% of the total cost (to a maximum of \$20,000), providing the Shire agrees in writing that they are responsible for maintaining the access to the property to a minimum 13 tonne standard until the new bridge is constructed.

This offer is more along the lines of discussions held with all parties, and is considered a more desired path to achieve a favourable outcome to all, subject to agreeing to terms that reduce the overall burden and financial risk to Council.

The above should also be based on the outcomes from the waterways assessment currently being undertaken by MRWA. This information should be available by the end of this month. If agreement cannot be achieved on the above it is recommended Council offer be based on the following:

That Council Agrees to undertake the Main Roads identified emergency repairs to Bridge 5121 Rosedene Lane for it to remain open with a 13 tonne load-rating subject to:

- The landowner of Lot 315 Rosedene Lane, establishing a lease agreement over Bridge 5121 with the Department of Lands to the satisfaction of the Chief Executive Officer, legally binding full responsibility for Bridge 5121 to the owners of Lot 315 Rosedene Lane.
- Bridge 5121 being eligible to receiving the MRWA emergency funding.
- The landowner of Lot 315 Rosedene Lane being advised that the current structure has exceeded its useful life and no further expenditure from the Shire will be spent on the existing structures maintenance.

It should be noted if the issue remains un-resolved, Council will need to consider MRWA advice in regard to closing the bridge, due to liability risk, however the risk of restricting the existing properties access for an indefinite timeframe will also need to be considered.

### **Consultation**

Extensive consultation has occurred over a number of years with previous officers and owners regarding Bridge 5121.

MWS, Chief Executive Officer and the Shire President have been involved in recent discussions and correspondence with the owners, purchasers and their representatives.

Shire Staff have also been liaising with MRWA and bridge contractors regarding this issue.

## **Policy/Statutory/Voting Implications**

### Policy

The Shire of Donnybrook-Balingup's authority and policies only apply to the road reserve over which it has responsibility.

### Statutory

The relevant section of the Local Government Act 1995 is s. 3.53.

#### *S. 3.53 Control of certain unvested facilities*

##### *(1) In this section —*

*former section 300 means section 300 of the Local Government Act 1960 as in force before the commencement of this Act;*

*otherwise unvested facility means a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section.*

*(2) A local government is responsible for controlling and managing every otherwise unvested facility within its district unless subsection (5) states that this section does not apply.*

*(3) If the facility is partially within each of 2 or more districts, it is to be controlled and managed as the local governments for the districts concerned agree or, if they do not agree, as the Minister directs.*

*(4) An agreement or direction under subsection (3) has effect according to its terms.*

*(5) This section does not apply if any person was, immediately before the commencement of this Act, responsible for controlling or managing then facility unless:*

*(a) the responsibility arose under the former section 300; or*

*(b) the Governor, by order, declares that the facility is to be controlled and managed under this section.*

### Voting

This endorsement requires a simple majority.

### **Financial Implications**

Bridge 5121 is in a condition beyond its useful life. Significant maintenance works were undertaken by the Shire in mid-2015 to maintain the bridges 13 tonne load rating, however rapid further deterioration of the structure has resulted in in the latest MRWA advice to close the bridge.

If the Shire accepts full responsibility for the asset, it will be responsible for its ongoing maintenance and replacement which will be of significant cost.

### **Strategic Implications**

The Shire of Donnybrook-Balingup has accepted in the past advice that it is not responsible for unvested facilities that provide access and where the structures were inherited from the state in dilapidated or sub-standard condition, and by state enacted legislation which did not consider the cost implications to the local authority.

### **Officer's Recommended Resolution**

**Moved: Cr**

**Seconded: Cr**

#### **That Council:**

- 1. Agrees to undertake the Main Roads identified emergency repairs to Bridge 5121 Rosedene Lane for it to remain open with a 13 tonne load-rating subject to:**
  - **The landowner of Lot 315 Rosedene Lane, establishing a lease agreement over Bridge 5121 with the Department of Lands to the satisfaction of the Chief Executive Officer, legally binding full responsibility for Bridge 5121 to the owners of Lot 315 Rosedene Lane.**
  - **Bridge 5121 being eligible to receiving the Main RoadsWA emergency funding.**
  - **The landowner of Lot 315 Rosedene Lane being advised that the current structure has exceeded its useful life and no further expenditure from the Shire will be spent on the existing structures maintenance.**
- 2. Instructs the Chief Executive Officer to close Bridge 5121 Rosedene Lane to public access if point 1 is not resolved to his satisfaction.**

Since the Agenda was prepared, further information from WA Local Government Association, Department of Local Government and Communities and the State Solicitors Office was found in relation to the location of structures on unallocated land, and from this an alternative motion was raised by the officer.

**\*\* 6.44pm – Principal Planner left the meeting and returned at 6.46pm.**

### Officer's Alternative Recommended Resolution

Moved: Cr King

Seconded: Cr Dilley

That Council:

1. Agrees to undertake the Main Roads Western Australia identified emergency repairs to Bridge 5121 Rosedene Lane, on a without prejudice basis, subject to:
  - Bridge 5121 being eligible to receiving the 2/3 funding for the identified emergency repairs from Main Roads Western Australia.
  - The remaining 1/3 costs to fund the emergency repairs being funded on a 50/50 basis between the Shire of Donnybrook-Balingup and the land owner of Lot 315.
  - The landowner of Lot 315 Rosedene Lane being advised that, based on the advice received from the Department of Local Government and Regional Development (dated 8 February 2007) and the Western Australian Local Government Association (dated 21 September 2007), that the Shire of Donnybrook-Balingup accepts no responsibility for the control or management of the bridge located outside of the Rosedene Lane Road Reserve, and referenced as Bridge 5121 by Main Roads Western Australia.
2. Instructs the Chief Executive Officer to write to Main Roads Western Australia detailing the advice received in the letter from the Department of Local Government and Regional Development (dated 8 February 2007) and the Western Australian Local Government Association (dated 21 September 2007), and request they remove from their records/register any reference to Bridge 5121 and other similar structures within the Shire of Donnybrook-Balingup as being the responsibility of the Shire of Donnybrook-Balingup.

### Procedural Motion

Moved: Cr Bailey

Seconded : Cr Dilley

That the item lay on the table.

Carried 6/3

The item lay on the table in order for the Chief Executive Officer and Manager Works and Services to clarify the owner's position and to follow up with Main Roads Western Australia on Bridge 5121 being eligible to receive the Main Roads WA emergency funding.

---

### **11.3 Manager Development and Environmental Services**

---

Nil



**Shire of Donnybrook-Balingup**  
**Organisational Risk Management**

**ACTION PLAN**

**July 2015 – December 2016**



## Background

The Shire of Donnybrook-Balingup recognises the importance of managing risk. As such the Shire is committed to managing risks that may impact the achievement of its strategies, goals and objectives. The Shire's objectives in regards to Organisational Risk Management are:

- To ensure Risk Management is adopted and integrated throughout the Shire as a management practice.
- To ensure all employees are aware of the need to manage risk and encourage a culture of participation in the Risk Management Process;
- To protect the Shire from adverse incidents, to reduce its exposure to loss and to mitigate and control loss should it occur;
- To ensure the ongoing capacity of the Shire to fulfill its vision, perform its key functions, meet its objectives and serve its customers;
- To aid effective governance and adherence to relevant legislation and Australian or International Standards;
- To reduce the costs of risk to the Shire

The Shire strives to achieve best practice in the management of all risks that threaten to affect the Shire, its customers, people, assets, functions, objectives, operations or the community. The Risk Management Process detailed in *AS/NZS ISO 31000:2009 Risk Management* has been adopted to realise this

## Action Plan

In November 2014 AMD Chartered Accountants were engaged by the Shire of Donnybrook-Balingup to undertake an external assessment on the appropriateness and effectiveness of the Shire's implemented Risk Management systems and procedures, in accordance with Regulation 17 of the *Local Government (Audit) Regulations 1996*. These areas included:

- Risk Management.
- Internal Controls, and
- Legislative Compliance.

Following the review AMD presented a Report to Management and Council which contained findings and recommendations. The purpose of this Action Plan is to detail the specific tasks and timelines for the recommendations to be addressed, whether in part or in full as considered appropriate by the Shire based on level of risk and available resources. The Action Plan will form part of the Shire's Risk Management Framework and as a result will enable the Shire to continue its progression in this key area and provide a point of reference for the next required review.

## **Guide to implementing the Action Plan**

The Action Plan is presented using a table to outline the following steps:

- The 23 total recommendations identified in the Regulation 17 Audit Report by AMD are included;
- A total of 41 specific tasks to achieve each of the requirements are listed;
- A timeline is set for each task to be completed by ;
- A Shire staff member is given the responsibility of implementing each task;
- Details of actions undertaken are recorded by the responsible person for each task and provided to the Shire's Chief Executive Officer when requested, including completion dates or updated timeline where required. The information will be used for monitoring and reporting purposes.

## AREA 1: RISK MANAGEMENT

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
1 Implement an overall Shire Risk Management Framework encompassing current risk policies and procedures linked to the current risk register in place	1 Review and amend the Shire's current Risk Management Framework to ensure it is clear that it encompasses all activities and functions of the Shire, including all adopted policies and procedures.	March 2016	Principal Environmental Health Officer	<b>Completed</b> - Amended Document - JS Mar 2016
Include a Council media release/spokesperson policy, litigation/claims policy, fraud/misconduct policy, and environmental risk policy.	2 Update all Shire Policies to include a statement that refers to the Shire's Risk Management Framework in terms of their application.	May 2016	Governance Officer	<b>Completed</b> – paragraph added to Risk Policy.
The Risk Management Framework should be adopted by Council on an ongoing basis.	3 Develop and present to Council for adoption four new Shire policies: a. Media Release/ Spokesperson b. Litigation/Claims c. Fraud/Misconduct d. Environmental Risk	May 2016	Governance Officer	This will be done as part of the annual review of Council policies in April/May 2016. a. Media Release/spokesperson policy adopted April 2016. b. Unsure what required; c. F & M covered in Code of Conduct; d. Unsure what required
	4 Present the Shire's Risk Management Framework to the Audit Committee & Council annually for review.	December annually	Principal Environmental Health Officer	

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
<p>2. Develop, adopt and implement a Business Continuity Plan. incorporating a Disaster Recovery Plan.</p>	<p>5 Prepare a draft Business Continuity Plan which incorporates a Disaster Recovery Plan and procedures</p>	<p>December 2016</p>	<p>Manager Development &amp; Environmental Services</p>	<p>LGIS to be engaged to commence work on BCP in April/May 2016</p>
<p>Include the following as a minimum in the Plan.</p> <ul style="list-style-type: none"> <li>• an impact analysis establishing various scenarios and their efficient resolution including logistical as well as IT related issues</li> <li>• Consideration and evaluation of temporary alternative sites from which significant operating functions can be conducted in the event of unforeseen events</li> <li>• ensuring critical business functions can be completed whilst IT systems are unavailable</li> </ul>	<p>6 Present the draft BCP to Council for adoption</p> <p>7. Communicate BCP to all staff once adopted</p>	<p>July 2016</p> <p>July 2016</p>	<p>Chief Executive Officer</p> <p>Manager Development &amp; Environmental Services</p>	<p>LGIS have provided a cost estimate to work with Council staff to prepare a Business Continuity Plan. Staff are currently investigating options to fund this program</p> <p>IT Business Continuity will be addressed as part of this process</p>
<p>The Plan should be developed in consultation with relevant staff and third party suppliers, communicated to all staff, implemented and monitored on a regular basis.</p>	<p>8 Test the BCP, record results, and update/review annually, including communicating to all staff</p>	<p>October annually (after adoption)</p>	<p>Manager Development &amp; Environmental Services</p>	
<p>Develop procedures to identify when changes are required to the plan as a result of IT infrastructure changes.</p>				
<p><u>Test the plan annually and the</u></p>				

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
<p>results from the test to be documented along with corrective action taken to eliminate weaknesses.</p>				
<p>3. Provide regular risk reports to the Audit Committee and Council which identify key risks, the status and effectiveness of the risk management systems in place at the Shire, risk monitoring, new risks identified and how risks have been mitigated/treated</p> <p>Tabling the documented risk register at an Audit Committee and/or Council meeting on a periodic basis may be considered adequate to address this issue</p>	<p>9 Present the Shire's Strategic Risk Register to the Audit Committee twice yearly (combine with Task 4).</p>	<p>February &amp; December annually</p>	<p>Chief Executive Officer</p>	<p>Council is now being provided with an update of the Risk Management Action Plan at each Audit Committee meeting. An optional heading has been created within Council's standard agenda template for use when appropriate. The risk register was provided to the last Audit Committee meeting held in November 2015.</p>
<p>Include a standing agenda item to the Audit Committee meeting agenda for risk reports to be tabled</p>	<p>10. Include a Risk Report section in all Audit Committee agendas</p>	<p>As required</p>	<p>Executive Assistant</p>	
<p>4. Consider forming a Risk Management sub-committee which is in charge of managing the Risk Management Framework and all it encompasses. This committee would include key management and provide regular risk reports to the Audit Committee.</p>	<p>11. Ensure risk management is standard agenda item at Executive Management Team meetings.</p>	<p>Weekly</p>	<p>Chief Executive Officer</p>	<p>Agenda for all EMT meetings contain a standard agenda item Sub-committee not supported due to size of organisation and staffing levels.</p>
<p>5 Update Occupational Health and Safety Policy and Procedure</p>	<p>12 Review and update OHS Policy and Manual.</p>	<p>June 2016</p>	<p>Manager Development &amp;</p>	<p>The OHS policy reviewed annually The OHS manual</p>

<b>Recommendation</b>	<b>Task/s</b>	<b>Timeline</b>	<b>Responsibility</b>	<b>Details of Actions</b>
Manual to reflect the last review date and the date the next review will be conducted			Environmental Services	that includes procedures will be progressively reviewed at each OHS safety representative committee meeting.
All policies and procedures should document the last and next review dates.	13. Include the last review date and the next review date on all Shire policies and procedures.	May 2016	Governance Officer	<b>Completed</b> -This process is in place
When policies and procedures are updated, references to legislation and standards should be checked to ensure the current version is being referred to	14. Ensure current legislation and standards are checked when policies and procedures are reviewed/updated.	May annually	Governance Officer	<b>Completed</b> - Council's Governance Officer ensures current legislation and standards have been checked when policies and procedures are updated in April/May each year
6 Develop a signature sample register for all persons authorised for payments/orders	15. Arrange a register of all authorised persons listing a sample of signatures and purchase order/payment amount limits.	June 2016	MFAV Project Officer	<b>Completed</b> - A table of priorities and relevant purchasing thresholds exists in the Shires Accounting Manual. Samples of staff signatures are recorded in the Manager Finance and Administration's copy of the Accounting Manual.

**AREA 2: INTERNAL CONTROLS**

<b>Recommendation</b>	<b>Task/s</b>	<b>Timeline</b>	<b>Responsibility</b>	<b>Details of Actions</b>
7 Finalise and adopt the draft Project Management Plan	16 Finalise the Project Management Plan template for use with major	June 2016	Chief Executive Officer	

Recommendation template	Task/s	Timeline	Responsibility	Details of Actions
<p>Undertake formal performance management assessments as per the WALGA guidelines at the completion of tender periods once goods/services have been tendered, and utilise compliance checklists in managing project contracts.</p>	<p>17. Update the Project Completion Report template in the Project Management Plan template (as per above task) to reflect WALGA guidelines.</p>	<p>June 2016</p>	<p>Executive Assistant</p>	
<p>Include KPI's/ performance criteria, monitoring and performance assessment procedures, and action as a result of underperformance, within formal legal contracts</p>	<p>18. Consider setting KPI's/ performance criteria, monitoring and performance assessment procedures, and action as a result of underperformance within formal legal contracts for major Shire projects</p>	<p>February 2016</p>	<p>Executive Management Team</p>	
<p>8. Develop a Grant Fund Summary Plan specifying grant funding contracts relevant for the current financial year, project description, amount, key milestone dates and reporting dates.</p>	<p>19. Develop and implement a Grant Summary Plan and communicate to all staff.</p>	<p>March 2016</p>	<p>Manager Finance &amp; Administration</p>	<p>Completed - Grant Register has been established and is reviewed monthly by the EMT. All relevant staff have been made aware of the register and requirement to keep it updated.</p>
<p>9. Develop and implement an ongoing security awareness program to ensure security needs of the Shire are updated as required (for example due to IT infrastructure or application changes) and to prevent any security breaches from occurring</p>	<p>20. Develop a procedure detailing the process for communicating changes to staff when security measures are updated, including for IT hardware/software</p>	<p>June 2016</p>	<p>Manager Finance &amp; Administration</p>	

This could be incorporated as part

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
of the Shire's overall Risk Management Framework.				
10 Develop a formal Information & Communication Technology framework to ensure procedures and practices are documented	21 Include a budget allocation in the draft 2015/16 Budget to outsource the development on a formal ICT framework.	June 2015	Manager Finance & Administration	<b>Outstanding</b> - The 2016/17 budget provides an allocation to develop an ICT strategic Framework. It is intended to address the issue of security within this document. (see ne
Review the current Email Policy on a regular basis and communicate any changes to all staff.	22. Change the Email Policy name to reflect all applicable information technology (eg IT Policy).	May 2016	HR Manager	<b>Completed</b> – amended to the internet, email and social media use procedure and the Social Media policy.
	23 Review the Email/IT Policy annually	May annually	HR Manager	<b>Completed</b> – Reviewed June 2015
11 Develop and adopt policies and procedures in respect to remote access granted to staff and communicate to staff	24 Communicate the Email Policy to all staff annually	June annually	HR Manager	<b>Ongoing</b>
Include a list of users who have been granted remote access and review/update periodically.	25 Develop and present to Council for adoption a remote access policy. Include a list of staff with granted access.	June 2016	Manager Finance & Administration	To be addressed as a part of the ICT Framework document.
	26. Develop a remote access procedure	June 2016	Manager Finance & Administration	To be addressed as a part of the ICT Framework document
12. Develop and maintain a register of all insurance claims Include details such as the date of	27 Communicate the adopted policy and procedure to staff with granted access.	June 2016	Manager Finance & Administration	To be addressed as a part of the ICT Framework document
	28 Develop an insurance claim register.	December 2016	Governance Officer	<b>Completed.</b> The register is presented to the Manager's Meeting at the start of every



Recommendation	Task/s	Timeline	Responsibility	Details of Actions
<p>accident, description of accident, date the claim was lodged with the insurer and the outcome of the claim.</p> <p>Submit insurance claims in a timely manner.</p>				month
<p>13. Develop a register of current Shire credit cardholders. Include details such as card numbers, expiry dates, limits, details of goods &amp; services authorised to purchase, as required by the Local Government Operational Guideline 11.</p>	<p>29. Develop a Shire credit cardholder register</p>	<p>February 2016</p>	<p>Accountant</p>	<p><b>Completed</b> - Both of the staff members holding credit cards have completed and signed a User Agreement. This document has been drafted in accordance with Operational Guideline 11. Council policy 3.7 also provides guidelines on the use of Shire credit cards.</p> <p>Cardholders are the CEO and Tuia Lodge Facility Manager. Given that both officers have a copy of their Agreement held on their personnel file, and because the Credit Card statements make it apparent who holds each of the cards, a formal register is not deemed necessary at this stage.</p>
<p>14. Develop an agreement detailing the terms and conditions of services to be provided by SESCO Security. The agreement</p>	<p>30. Consider the development of a formal agreement with Telstra (previous provider was SESCO)</p>	<p>December 2016</p>	<p>Executive Management Team</p>	

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
<p>should be signed by both parties and should as a minimum include the period of service, a confidentiality and early exit clause</p>				
<p>15 Develop and maintain a register of physical assets which have been allocated to staff members with periodic review conducted to ensure it's up to date</p> <p>The register may include such details as the asset number, details of the asset, the date the asset was provided to the staff member, the staff member's acknowledgement of receipt and the date the asset was returned to the Shire.</p>	<p>31 Develop a register of physical assets allocated to staff</p>	<p>December 2016</p>	<p>Asset Management Coordinator</p>	
<p>16. Review the policy register to ensure all key policies in place are included on the register.</p> <p>Review and cross check policy and procedure numbers in the policy register to ensure no duplicate policy numbers are in place</p>	<p>32 Review the policy register including checking numbers of all policies and procedures.</p>	<p>May 2016</p>	<p>Governance Officer</p>	<p>Completed – performed annually as part of Policy Review (last done May 2016)</p>
<p>17. Ensure employees take regular leave through ongoing management of leave scheduling and leave liabilities.</p>	<p>33 Review leave accruals at Executive Management Team Meetings.</p>	<p>Quarterly</p>	<p>Executive Management Team</p>	

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
18. Ensure purchase orders are completed for all purchases with exception of utilities and regular payments whereby they are completed and authorised in accordance with policy prior to incurring expenses	34. Communicate requirement for purchase orders to all staff	January annually	Creditors Officer Projects Officer	Ongoing - Staff receive ongoing coaching from the Creditors Officer and senior accounting staff. A memo is forwarded to staff at least annually setting out the requirements for the issue of purchase orders. The last memo was circulated in April 2015. Team meeting to be scheduled for late April, early May.

**AREA 3: LEGISLATIVE COMPLIANCE**

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
19. Develop and implement a compliance manual linked to each business unit risk management assessment. Divide the manual into each business unit section as identified within the organisation structure and include... (refer to AMD report for full details due to amount of detail).	35. Complete development of a legislative compliance calendar.	July 2015	Governance Officer	Completed - A compliance calendar has been created and is reviewed monthly by the EMT. All relevant staff have been made aware of the compliance calendar and the need to keep it updated.
Finalise implement and communicate to staff the compliance calendar.	36. Communicate the compliance calendar to all staff.	August 2015	Executive Assistant	

Recommendation	Task/s	Timeline	Responsibility	Details of Actions
	37. Write to WALGA and the Department of Local Government requesting that a compliance manual listing all applicable legislation and details recommended by AMD Report to Local Governments in WA be developed as an industry initiative.	December 2016	Chief Executive Officer	
20 Local Government Operational Guideline 9 outlines it is best practice for the Audit Committee to meet at least on a quarterly basis	38 Aim for the Audit Committee to meet on a quarterly basis	Quarterly	Chief Executive Officer	<b>Assessed</b> - Due to limited staff resources only two Audit Committee meetings are held each year. Next Audit Committee meeting to be held in April 2016
21 Include a standing agenda item to be added to the Audit Committee meeting agenda to assess the effectiveness of compliance	39 Consider the inclusion of a standing agenda item to assess the effectiveness of the Shire's compliance with legislation in the Audit Committee meeting agendas	December 2016	Executive Management Team	
22 Department of Local Government Guidelines recommend an internal audit function be established incorporating an internal audit program which is reassessed annually	40 No action planned during Action Plan timeframe	N/A	N/A	<b>Assessed</b> - The Executive Management Team have determined that the cost versus benefit would be difficult to justify given the internal controls in place
23 Update the Shire's investment policy to reflect the minimum and maximum terms of investments as required by Regulation 19C of the <i>Local Government (Financial Management) Regulations 1996</i> .	41. Review and update the investment policy to reflect statutory requirements.	MAY 2016	Manager of Finance & Administration / Projects Officer	<b>Completed</b> – Policy updated 25 May 2016



## **SHIRE OF DONNYBROOK-BALINGUP**

### **BUSH FIRE ADVISORY COMMITTEE**

#### **TERMS OF REFERENCE**

##### **ESTABLISHMENT**

The Shire of Donnybrook-Balingup Bushfire Advisory Committee (BAC) is established in accordance with the *Bushfires Act 1954* (the Act).

##### **VOTING MEMBERSHIP**

Members of the BAS are appointed in accordance with Section 67 of the Act. The following table represents the BAC voting structure.

<b>Representative Brigade</b>	<b>Position</b>	<b>Voting Rights</b>
Argyle / Irishtown	Fire Control Officer	1
Balingup	Fire Control Officer	1
Beelerup	Fire Control Officer	1
Donnybrook	Fire Control Officer	1
Ferndale	Fire Control Officer	1
Kirup / Brazier	Fire Control Officer	1
Lowden	Fire Control Officer	1
Mullalyup	Fire Control Officer	1
Mumballup	Fire Control Officer	1
Munro	Fire Control Officer	1
Stirling Park	Fire Control Officer	1
Thamson Brook	Fire Control Officer	2
Shire of Donnybrook-Balingup	Elected Member	1

##### **NON VOTING MEMBERSHIP**

- Plantation Industry
- Department of Parks and Wildlife
- Department of Fire and Emergency Services
- Fire and Rescue
- Staff - Shire of Donnybrook - Balingup

## **ROLES AND RESPONSIBILITIES**

The BAC shall advise and recommend to Council matters relating to:

- Reviews of the Shire's Bushfire Response Plan;
- Reviews of the Shire's Bushfire Risk Management Plan;
- Government reports making recommendations for changes in local government practices relating to fire risk management, planning, response and improvements
- Annual bushfire budget and relevant financial matters;
- Bushfire planning, setting standards and works program for fire prevention and mitigation within the Shire;
- The Shire's annual Firebreak Order;
- Appointments of Chief Fire Control Officer and Fire Control Officers;
- Reviews of bushfire related procedures, policies and local laws;
- Formation, rationalisation or dissolving any Bushfire Brigades within the Shire;
- Standards of equipment that should be provided and maintained under Brigade control;
- Distribution of firefighting equipment and funding between Brigades;
- Training standards for Brigade members; and
- Any other function assigned to the Committee under Section 67 of the Bush Fires Act and subsidiary legislation.

## **GOVERNANCE**

The Chairperson for the BAC, Communications Officer, Weather Officer and Training Officer shall be appointed by the voting members of the BAC at the Annual General Meeting of the BAC held in March annually.

An elected member of the Shire of Donnybrook – Balingup shall be appointed by Council to represent the BAC.

Shire staff including the Manager Development and Environmental Services and Senior Ranger are responsible for the functional activities of the BAC and, as such, will attend these meetings in an advisory capacity and provide guidance to the committee. Shire staff do not have voting rights

### **Membership Term**

The Shire of Donnybrook-Balingup elected member will be for a period of two (2) years in line with local government elections.

All Fire Control Officers will be voting members on the BAC whilst they remain Fire Control Officers for their respective brigades

### **Proxies**

If a voting member cannot be present at a BAC meeting, the member can assign a proxy as follows:

### Bush Fire Brigade

1 representative to each Bush Fire Brigade FCO

### Elected member

1 alternative elected member

### Quorum and Voting

Quorum for a meeting is conditional on a representative or proxy from a minimum of seven (7) member organisations participating in the vote.

A decision of the BAC does not have effect unless quorum is met. If the votes of members present at a meeting are equally divided, the Chair has the casting vote.

### **POWERS OF THE BUSH FIRE ADVISORY COMMITTEE**

The BAC has no delegated powers under the *Local Government Act 1995* and is to advise and make *recommendations to Council only*.

### **MEETING FREQUENCY AND STRUCTURE**

The BAC will meet as a minimum biannually.

### **AGENDA AND MINUTES**

The agenda for the BAC meetings will be distributed to all members a minimum of 3 days working prior to the meeting.

Minutes of the meeting will be taken and will be distributed to all members prior to the next BAC meeting date.

### **DOCUMENT CONTROL**

AMENDMENT		DETAILS OF AMENDMENT		AMENDED BY (INITIALS)
NO.	Scope	Council	BAC	
1	Document Prepared	Adopted 27 October 2016	Endorsed 20 October 2016	LG
2				

A2431  
Noel Welsh

3 January 1996

Mr MF Bunny  
"Rosdeane"  
RMB 475  
DONNYBROOK WA 6239

Dear Sir

***Bridge Load Rating***

In reply to your recent letter in which you request Council to advise a Safe Load Rating for the bridge spanning the Preston River at Rosdeane Road, I regret to advise that Council is not in a position to provide this information.

The bridge in question is not a Council bridge, and was constructed by a former owner of your property, and is classed a private bridge.

Main Roads Western Australia provide the engineering expertise in assessing Council bridges and may be in a position to advise you accordingly.

Failing this you may find it necessary to consult a private engineer for assistance.

Yours faithfully



**NOEL WELSH  
ACTING SHIRE CLERK**

*Forwarded to Mr. Bunny  
at his residence  
11/11/96  
Donnybrook WA*





All Communications to be  
addressed to the Shire Clerk  
P.O. Box 94  
Donnybrook, W.A. 6239

Telephone (097) 31 1106  
Facsimile (097) 31 1577

Your Ref  
Our Ref A2431  
Enquiries JOHN ATTWOOD

15 February 1996

MF Bunny & CB Free  
RMB 475  
DONNYBROOK WA 6239

Dear Sir/Madam

*Bridge Load Rating*

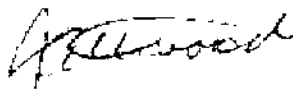

I refer to previous correspondence relating to your request for Council to advise a Safe Load Rating for the bridge spanning the Preston River at Rosedeane Road, and advise that the matter was referred to Main Roads Western Australia for investigation.

An officer of MRWA has advised that his Department is unable to assist with your request due to the fact that the bridge is considered a "Private" structure.

As previously advised, Council is not in a position to provide the requested information.

It is therefore suggested that you should direct your enquiries to a Consulting Engineer for assessment.

Yours faithfully

  
JOHN ATTWOOD  
SHIRE CLERK  


Department of  
**LAND ADMINISTRATION**  
BUNBURY REGIONAL OFFICE

Your Ref: **RAT A2431**

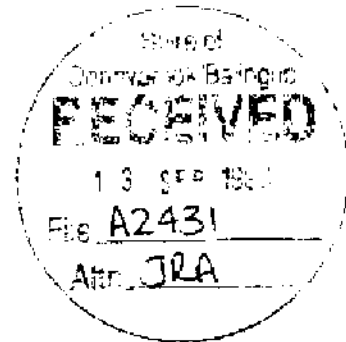
Our Ref: **00496/1991**

Telephone: **(097) 910 837**

Facsimile: **(097) 910 835**

Enclosure: **R Hamilton**

Mr John Attwood  
Chief Executive Officer  
Shire of Donnybrook-Balingup  
Post Office Box 94  
DONNYBROOK WA 6239



Dear Mr Attwood

I refer to your letter of 22 July 1996 regarding the bridge providing access to Wellington Location 315.

From the plan it appears that road number 5216 was provided for access to Wellington Location 315 the southern boundary of which is the northern bank of the Preston River

My understanding of Section 3.53 of the Local Government Act 1995 is that the Local Authority is responsible for the management of this bridge. This understanding is on the basis that the river is flanked by vacant Crown land on the southern side. The actual position of the bridge and southern boundary of Location 315 could only be identified by survey.

You may wish to seek clarification of Section 3.53 of the Local Government Act from the Department of Local Government.

Yours sincerely

  
DAVID C SMITH  
REGIONAL MANAGER - BUNBURY

11 September 1996

rhckf



SHIRE OF DONNYBROOK-BALINGUP

SHIRE OF DONNYBROOK-BALINGUP	
<b>RECEIVED</b>	
16 OCT 1996	
Record No:	1961016-001
File No:	A2431
Officer:	JA
Meeting:	
Debate No:	
Answered:	

Mr J Attwood  
 Chief Executive officer  
 Shire of Donnybrook-Balingup  
 P O Box 94  
 DONNYBROOK WA 6239

DATE: 16 OCT 1996  
 TIME: 10:52 AM  
 FROM: ANDREW STEVENSON  
 TO: J. ATTWOOD  
 SUBJECT: 222 0250

Dear Mr Attwood

I refer to your letter of 16 September 1996 regarding the responsibility of a bridge constructed over the Preston River and I apologise for not replying earlier.

Section 353(2) of the Local Government Act 1995 provides that a local government is responsible for controlling and managing every otherwise unvested facility within its district. This provision does not apply unless the responsibility for the facility arose under the former section 300 or the Governor, by order, declares that the facility is to be controlled and managed under section 3.53.

It would appear from the information provided in your letter and a discussion held with your Mr David Hunter that the bridge was constructed without authorisation for private purposes and has not been available for public use.

Section 300 of the former Act provides, *inter alia*, that a council has care, control and management of public places, streets and bridges. A street is defined under that Act as including a thoroughfare which the public are allowed to use, including other things like bridges. This seems to infer that the bridge in question must have been available for use by the public for section 300 to apply.

As this was not the case I am of the view that Council did not have care, control and management of the bridge under section 300. Consequently, no responsibility lies with the Shire for controlling and managing the bridge under section 3.53.

Please be advised that this is the Department's interpretation and not a legal opinion.

Yours sincerely

Andrew Stevenson  
 ACTING MANAGER ADVISORY SERVICES  
 11 October 1996



All communications to be  
addressed to the  
Chief Executive Officer  
P.O. Box 94  
Donnybrook, W.A. 6205

From: Mr. J. Attwood  
To: Mrs. A2431  
Subject: John Attwood

Telephone: 08 9431 1500  
Facsimile: 08 9431 1507

Christine Freece  
Rosedeane Tourist Farm  
RMB 475  
DONNYBROOK WA 6239

Dear Madam

*Rosedeane Lane Bridge Number 5121*

Council acknowledges your letter dated 23 December 1996 and at the most recent meeting of Council on 22 January 1997 it was decided that even though ownership of bridge number 5121 - Rosedeane Lane has not yet been established, MRWA be requested to seek cooperation in having the bridge assessed and a safe load limit established.

A copy of the letter to Tony Vagg at Main Roads WA is enclosed for your information.

Yours faithfully

NM Welsh  
*Acting Chief Executive Officer*

24 January 1997





Enquiry 30-5121  
Our Ref A2431  
Enquirer John Attwood

All correspondence to be  
addressed to the  
Chief Executive Officer  
P.O. Box 94  
Donnybrook, W.A. 6237

Telephone 0973 31 1100  
Facsimile 0973 31 1677

Mr Tony Vagg  
Project Manager Bridges  
Main Roads WA  
PO Box 1593  
BUNBURY WA 6231

Dear Sir

*Rosedean Lane Bridge Number 5121*

I refer to your letter dated 8 November 1996 to Mr MF Bunny concerning ownership of bridge number 5121, Rosedean Lane.

As you are aware DOLA and the Department of Local Government have provided Council with differing opinions as to who's responsible for the management of the abovementioned bridge and consequently ownership has not yet been established.

However, on the request of the owners of Location 315, Mr Martin Bunny and Ms Christine Friece, could you please arrange for a detailed inspection, structural assessment and a safe load limit to be established on bridge number 5121 - Rosedean Lane.

Your response in due course would be appreciated.

Yours faithfully

NM Welsh  
*Acting Chief Executive Officer*

24 January 1997

cc M Bunny and C Friece



9661 1996

# SLEE ANDERSON & PIDGEON

Chartered Accountants and Valuers

Partners:  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon

Senior Associates:  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon

Solicitors:  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon

100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

Telephone: 9971 1222  
Fax: 9971 1271

Correspondence:  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon  
Mr. J. H. Anderson  
Mr. W. H. Pidgeon

100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

Our ref: RLR:PIR:ADT-970583  
Written: Robuey Kroup  
Your Ref:

RECEIVED

14 JUL 1997

11 July 1997

Shire of Donnybrook/Balingup  
PO Box 94  
DONNYBROOK WA 6239

Attention: John Attwood

Dear Sir

## ROSEDEANE LANE

Our searches of past titles and land surveys in the area of the bridge over the Preston River at the end of Rosedeane Lane.

The following are the factual situations pertaining to the gazettal of Rosedeane Lane

1. It appears there has always been a road dividing Preston Agricultural Area Lots 208 and 209 which runs from the Donnybrook Boyup Brook Road to Preston River. This lane was not officially gazetted originally and did not include the triangular bit at the northern end of the road.
2. The Preston Road Board by resolution passed on 19 November 1928 resolved to open the road which was then described as the road currently was but also went further to include the triangular portion at the northern end of the road. The road (including the triangular portion) was gazetted on 1 November 1929.
3. The name "Rosedeane Lane" was given to the road approved by the Minister for Lands on 14 August 1995.

The question which we have been asked to determine is whether the Shire is responsible for the maintenance and repair of a bridge over the Preston River at the northern end of this road which provides access to Wellington Location 315.

We have no information as to the circumstances surrounding the construction of the bridge other than that we are advised that the bridge was erected possibly by the owner of Wellington Location 315 at the relevant time of construction. This bridge is now in a state of disrepair and the issue of whether the Shire is responsible for this bridge has arisen.

Wellington Location 315 appears to be landlocked. There are no roads bordering or accessing the property and the title does not have the benefit of any registered easement over adjoining properties. It appears on the face of it that the only form of access to Wellington Location 315 is along Rosedeane Lane and over the subject bridge.

The bridge is located slightly off the alignment for Rosedeane Lane. We believe that this may account for the triangular portion which was gazetted as part of Rosedeane Lane back in 1929. Up to that time the bridge would not have been properly aligned with the road and would not have properly connected with the road without the triangular piece of land being gazetted. It would be useful to research the records of the Preston Road Board and look at the minutes of the meeting held on 19 November 1928 when it was resolved to include the triangular portion of land as part of the road which was to be gazetted as a public road. This may shed some light as to the circumstances for the inclusion of the triangular portion and as to the construction and responsibility for the bridge.

The Shire has been provided with conflicting opinions provided by the Department of Local Government and the Department of Land Administration. The Department of *Local Government* interpretation of the relevant statutory provisions advises that the bridge in question must be available for use by the public for Section 300 of the *Local Government Act 1960* to apply and they are of the view that as the bridge is not available for use by the public, Council does not have the care, control and management of the bridge under that section and consequently no responsibility lies with the Shire for controlling and managing the bridge under Section 3.53 of the *Local Government Act 1995*.

The Department of Land Administration is of a differing view stating that from the plan the road was provided to access Wellington Location 315. The Department of Land Administration relies on its interpretation of Section 3.53 of the *Local Government Act 1995* to say that, in their view, the Shire is responsible for the management of this bridge. This is largely based on the view that the river is flanked by vacant Crown land on the southern side of Preston River. Wellington Location 315 extends right to the northern bank of the Preston River.

The Department of Land Administration's view is that the Crown land to the southern side of the river is deemed a reserve created by virtue of licenced surveyors regulations. The Land Department relies strictly on the definition given to "otherwise unvested facility" (which can include a bridge) which pursuant to paragraph 3.53 of the *Local Government Act 1995*, the responsibility of controlling or management of which is in the authority responsible for that district.

We consider a search should be made of the minutes of the Preston Road Board meeting back in 1928 as we believe it may touch upon the origins of the bridge and the question of any responsibility or control.

Without the benefit of seeing those minutes at this point in time, we would make the further comments which may be of assistance in the interim:

1. The bridge may well be, by analogy, a private street if it is in fact a private structure. The difficulty with this is that the bridge spans the Preston River which is in space owned by the Crown.
2. The Preston River, no doubt, is under the control of the Water and Rivers Commission. The Water and Rivers Commission may therefore be responsible for any structures that span rivers under their control which are not otherwise vested or controlled by other authorities. This view is preferable to the private street view.

3. On the basis that the bridge is in a state of disrepair and unsafe, we believe the Shire may be able to issue a demolition notice regarding the bridge. If that course of action were to be undertaken the notice, in our view, should be posted on the bridge, served on the Crown, the Water and Rivers Commission and on the owner of Wellington Location 315. Such an action would in our view place the ball in one of their courts and they may well raise the issues raised here. One might expect they would make submissions with supporting authorities to say that the responsibility for the bridge is with the Shire. It would be easier to respond to any such submissions.
4. The demolition notice might be a preferable course of action as it will result in the bridge being removed, which in its present state is desirable. The writer has not looked into the demolition matter more thoroughly but presumes that if a demolition notice was issued, a notice prohibiting occupation and use could likewise be issued.
5. It would appear that when the triangular bit of land was included as part of the official road in 1929, that it was included for the purposes of extending the road to the bridge. Whether the bridge was already there or was built at that time is unknown. It is for this reason that we believe there may be some information in the Preston Road Board minutes which may shed more light on the matter. It is also our view that if the bridge was intended to be part of a public road for public use then the question must be asked as to why the bridge was not included in the formal gazetting of the road in 1929. The best assumption that can be made is that the bridge was clearly not for public use but was private.
6. The bridge accesses Wellington Location 315. There is nothing to actually prohibit members of the public from using the bridge to access Wellington Location 315. The fact that the public could actually use the bridge and that the bridge is in airspace technically owned by the Crown, could arguably bring this bridge within the provisions of Section 300 of the *Local Government Act 1960*. If this line of reasoning is to be preferred then the bridge would be a structure under the control and management of the Shire. If that were to be the case then the Shire would have the ability to close the bridge.
7. It would seem that apart from considering issuing a demolition order over the bridge, the Shire, possibly in conjunction with the Water and Rivers Commission, might consider closing the southern entrance to the bridge to prevent public use. This may result in the owners of Wellington Location 315 objecting but then they may not be currently using the bridge to access the property and any damage by the closure of the bridge in this manner may be inconsequential. Notwithstanding, even with the road partly closed, the public would still have access to the strip of land along the southern bank of the river. The warning signs should remain.
8. With regard to the different views of the Land Department and the Department of Location Government, it is appropriate to comment upon the meaning ordinarily given to the word "public". It seems that the matter of whether the public has use and access to the bridge is the essential issue between the differing views.

(R)



The public is not defined in the legislation, however, there are Court rulings to the effect that reference to the 'public' is not reference to a section to the public but is reference to the public at large and actually used by the public. We don't consider the bridge as being used by the public at large.

It is our view that the opinion of the Department of Local Government is the preferred view on the matter. This however needs to be qualified as being subject to any agreement between the Preston Road Board and the relevant land owners at the time of construction of the bridge and for this reason a perusal of the relevant minutes in 1928 would assist.

Finally, we believe the central issue to the Shire is whether it should or must repair the bridge, and if it doesn't, if the Shire would be liable for any claims resulting from any loss or injury consequential on the state of disrepair of the bridge.

( L The law currently provides that (subject to no statutory exception) relevant road authorities would not be liable for a non-feasance, only for a mis-feasance. That is to say that it cannot be sued for damages by a user of this bridge if it failed to do something, such as repair it or to maintain it in a good state, even if the bridge were under the Shire's control.

There is no statutory imposition of responsibility on the Shire to maintain this bridge if it were a bridge deemed to be under the Shire's control and management. The Shire could therefore take the course to do nothing.

Should you have any queries regarding the above advices and comments, please do not hesitate to contact the writer.

Yours faithfully



SLEE ANDERSON & PIDGEON

A2131

David Rice

Mr Martin Bunny  
RMB 475  
DONNYBROOK WA 6239

Dear Mr Bunny

*Rosedean Lane - Bridge Over Preston River*


This is to confirm the verbal advice given by our Shire Engineer, David Rice, on 21 September 1999 that Council does not accept any responsibility for this bridge.

As discussed, Council's legal advice includes an interpretation of the meaning of "public" in the context of whether the "public" has use and access to this bridge which is not in a public road reserve. Council's advice is that "public" must be "the public at large" rather than "a section of the public", and that the bridge was not provided for "the public at large" nor is being used by "the public at large".

It is also relevant to note that the Department of Local Government's interpretation is that no responsibility lies with the Council for managing the bridge under Section 3.53 of the Local Government Act, 1995.

This letter is also to confirm that you are carrying out basic maintenance on this bridge, especially ensuring the decking does not become displaced.

Yours faithfully


  
John Attwood  
Chief Executive Officer

22 September 1999

Inquiries: Peter Newhouse on 97255658  
Our Ref: 30-5121-3-21  
Your Ref:

**MAIN ROADS**  
Western Australia

Robertson Drive  
Perth WA 6230  
PO Box 2016  
BENTLEY WA 6211  
ABN: 50 961 676 021  
Telephone: (08) 9225 3677  
Facsimile: (08) 9225 4013



SENT TO	DONNYBROOK
RECEIVED	
07 NOV 2001	
TO	1111 5121
BY	RE 5121
BY	BSA
NO.	19
DATE	
TIME	
BY	
BY	

Mr Bret Howson  
Manager of Works and Services  
Shire of Donnybrook/Balingup  
P.O. Box 94  
DONNYBROOK WA 6239

Dear Bret

**BRIDGE NO. 5121 ON ROSEDEAN LANE OVER PRESTON RIVER**

I would like resolution on the ownership of the above bridge. Reference is made to the fax from David Rice dated September 26 2001 in which he stated "this bridge is privately owned". This bridge provides the sole access to Wellington Location 315. In a recent discussion with myself, the owner of this property stated that he believed that the bridge was the responsibility of the Shire.

As you may be aware, this issue has been unresolved for many years and as a result, the bridge has not been properly maintained and is currently load posted at 2 tonne.

To facilitate a resolution, a survey has been carried out by Main Roads and a copy of the associated plot is attached for your reference. The survey revealed that the bridge is located in vacant crown land in which contains the river.

On this basis, the bridge would be the responsibility of the Shire as DOLA has advised that any facilities on unvested state-owned land is the responsibility of the relevant local government authority.

It is important to the Main Roads that the ownership of the bridge is properly resolved so that decisions can be made on detailed inspection and load assessment. I look forward to your advice on the matter.

If you require any further information please contact Peter Newhouse on 97255658. In reply please quote file reference 30-5121

Yours faithfully

  
PETER NEWHOUSE  
ASSET MANAGER STRUCTURES

November 2 2001

**CR BROWNING RE-DECLARED HIS INTEREST IN ITEM 7020  
- AS THE SELLING AGENT FOR THE PROPERTY AFFECTED BY THE BRIDGE  
CONDITION AND LEFT THE MEETING AT 3.43**

7048. 7020. SUBJECT: BRIDGE ON ROSEDENE LANE  
OVER PRESTON RIVER  
LOCATION: SHIRE OF DONNYBROOK / BALINGUP  
APPLICANTS: MAIN ROADS WESTERN AUSTRALIA  
ZONE: VACANT CROWN LAND  
FILE REF: BR 5121  
AUTHOR: BRET HOWSON, MANAGER, WORKS &  
SERVICES  
REPORT DATE: 3<sup>RD</sup> DECEMBER 2001

**Background**

Some time ago a private resident, with out the necessary approvals or controls, constructed Bridge No: 5121 on Rosedene Lane over the Preston River. This action, and a recent investigation by Main Roads WA reveals that this structure does not comply with the relevant Main Roads WA structural design standards.

Main Roads Western Australia has now requested Council to confirm the ownership and responsibility of Bridge 5121 on Rosedene Lane over Preston River.

Following a boundary survey by Main Roads WA showing the structure being located on Vacant Crown Land, and research of the Local Government Act 1996 by Council Officers, it was determined that the relevant Local Authority is responsible for the control and management of this structure.

**Comment**

Main Roads WA have investigated the structure and determined that it should be load limited to two (2) tonnes until the bridge can be refurbished to cater for all other vehicles which have right of access to public roads.

As this bridge is on vacant crown land the statutory control and management lies with the Shire of Donnybrook / Balingup. Attached is the copy of the boundary survey (ATTACHMENT 3).

Following the determination that this structure is under the management of Council then the following is recommended:

1. That Main Roads WA be requested to carry out a complete structural investigation and give a statutory recommendation to Council for action.
2. That the Landowner who uses the bridge for access be made aware of any structural repairs requiring immediate action, and to carry these out at rat cost to Council.
3. Should repairs not be made, Council considers closing this bridge to public access until the structure meets Main Road WA requirements.
4. The Landowner who uses the bridge for access immediately indemnify Council against any injury or loss until the above recommendations are determined.

Whilst it is understood that Rosedene Lane and bridge 5121 may be the only suitable access to Wellington Location 315, Council should take action to eliminate risk of public claims for a private structure incorrectly constructed on public land.

### **Policy/Statutory Implications**

Local Government Act 1996 Section 3.53 states that a Local Government is responsible for controlling and managing every otherwise unvested facility within its district. An otherwise unvested facility is defined in the Act to include a watercourse belonging to the Crown.

### **Financial Implications**

Until further advice is sort, Council has obligation to take responsibility for this structure. In this case Main Roads WA then has a statutory requirement to investigate and include the refurbishment in the shire's bridge program.

The refurbishment of this bridge is estimated to cost greater than \$100,000.

### **Strategic Implications**

The Bridge Program for the South West Region is more than 8 years behind the actual programmed dates. If this bridge is added to the bridge program, Main Roads WA will recommend priority, and this could further affect bridges by current delays to this program.

Council has the option to adjust these priorities in conjunction with Main Roads WA structural recommendations.

There are at least three other bridge structures known to exist across the Preston River that fall under this category.

### **Officer's Recommended Resolution**

That

- a) The Wellington Location 315 landowner using Bridge No. 5121 is requested to immediately provide and maintain a current insurance policy, covering this structure, to indemnify the Shire of Donnybrook - Balingup from injury or loss of life for any event whatsoever.
- b) Council request Main Roads Western Australia to carry out a structural investigation of Bridge No. 5121 on Rosedene Lane and make recommendation to Council for further action.
- c) Should insurance not be provided, Council close Bridge No. 5121 to public access until the structure meets Main Road WA requirements.

**Council Decision (Committee Recommended Resolution)**

**MOVED:**

**Cr Butler**

**SECONDED:**

**Cr Hearman**

That

- a) The Wellington Location 313 landowner using Bridge No. 512, is requested to immediately provide and maintain a current insurance policy covering this structure to indemnify the Shire of Derrybrook Balingup from injury or loss of life for any event whatsoever.
- b) Council request Main Roads Western Australia to carry out a structural investigation of Bridge No. 512 on Rosedene Lane and make recommendation to Council for required structural improvements or other action.
- c) Any structural improvements identified by MRWA requiring immediate action be completed by the landowner of Wellington Location 313 at no cost to Council.
- d) Should insurance not be provided, Council close Bridge No. 512 to public access until the structure meets Main Road WA requirements.

**Carried - 8-0**

**JUSTIFICATION:**

Recommendation was amended to clarify that the landowner of Wellington Location 313 would be required to complete any structural improvements required on Bridge 512 as determined by the MRWA structural investigation, at no cost to Council.

**CR BROWNING RETURNED TO THE MEETING AT 3.15PM**

James, Peter Newhouse on 97255658  
Our Ref: 30-5121-15621-21  
Your Ref: BR-5121

**MAIN ROADS**  
Western Australia

Robertson Drive  
Bunbury, WA 6230  
PO Box 5030  
BUNBURY WA 6231  
ABN: 50 860 676 024  
Telephone: (08) 9725 5600  
Facsimile: (08) 9725 5013

SHIRE OF DONNYBROOK BUNBURY  
**RECEIVED**  
14 FEB 2002  
COUNCIL CHAMBERS  
RD 1000  
ST 1000  
BUNBURY WA 6230  
TEL 08 9725 5600  
FAX 08 9725 5013

Mr Bret Howson  
Manager of Works and Services  
Shire of Donnybrook/Balingup  
P.O. Box 94  
DONNYBROOK WA 6239

Dear Bret

**BRIDGE NO. 5121 ON ROSEDEAN LANE OVER PRESTON RIVER**

Reference is made to your letter dated February 4 2002 regarding the above bridge.

Thank you for your efforts in obtaining a resolution from the Council. It is now anticipated that a strategy can be developed for the bridge to the satisfaction of all concerned parties.

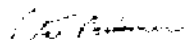
I would encourage you to consider this bridge in context with other bridges in the area (the Council minutes suggest that there are another three similar structures in the area). It may be prudent to consider rationalising the number of bridges by constructing a new bridge, removing the existing bridges and providing suitable road linkages to affected properties on the north side of the Preston River.

In relation to Resolutions b) and c) listed in your letter, I can advise that this bridge has been subjected to a detailed inspection by Main Roads this month. A report will be compiled shortly and a copy sent to you for your consideration. I have requested that a load assessment of the bridge be carried out as a matter of priority including any emergency repairs required.

To assist in the process of identifying emergency works required, you will need to advise whether maintaining the bridge at its current load limit of 2 tonnes is acceptable or whether a higher capacity is required. I await your advice on the matter.

If you require any further information please contact me on 97255658. In reply please quote file reference 30-5121.

Yours faithfully



PETER NEWHOUSE  
ASSET MANAGER STRUCTURES

11 February 2002

PO Box 94  
Cnr Bentley & Collins Streets  
DONNYBROOK WA 6239



Telephone: (08) 9780 4200  
Facsimile: (08) 9731 1677  
Email:  
bhewson@donnybrook.wa.gov.au

# Fax

---

<b>TO:</b>	<b>Christine Frieese &amp; Martin Bunny</b>	<b>FROM:</b>	<b>Bret Howson</b>
<b>COMPANY:</b>	<b>Roadwise</b>	<b>DATE:</b>	<b>2<sup>nd</sup> July 2002</b>
<b>FAX NO:</b>	<b>9731 1332</b>	<b>FILE REF:</b>	<b>BR 5121</b>
<b>NO. PAGES:</b>	<b>1</b>		

On completion of transmission:  File  Return  Dispose

---

**RE: Bridge No. 5121 on Rosdene Lane over Preston River**

Martin & Christine,

Further to our meeting on the 22<sup>nd</sup> June 2002 and your facsimile of the 26<sup>th</sup> June, I wish to confirm the following details.

As mentioned at our meeting, my priority for this matter is to improve the structural integrity of this bridge to increase the workability of your property, to reduce risk to yourselves, visitors and also reduce risk to Council should anything occur. I am very pleased that the program of repairs we have discussed, as this goes a considerable way to achieving these goals.

Unfortunately, after what seems to be a prolonged effort, we have now determined that the immediate repairs to this structure, to reach a 13tonne-load limit, falls as your responsibility. In line with our discussion your lump sum contribution of \$7,300 for the substructure repairs will be greatly appreciated. A purchase order has been issued to Mr Kerry Walker to carry out the repairs as quoted, and once we have received an invoice, I will request your contribution.

I have contacted Main Roads WA (Peter Newhouse) who confirmed that the load limit restriction could be adjusted to suit the staging of the repair works. Once this stage is complete, I will request the Main Roads re-inspect the bridge and re-post the limit to 5 tonnes, as per the bridge report.



Whilst the ownership of this bridge may still be determined by the Department of Land Administration and the Department of Local Government. As it stands today, once the repair works have been complete, the bridge will be placed on our system for regular inspections and maintenance in line with our annual bridge program

In the long term, I will "start the ball rolling" to investigate an overall bridge and road plan to service the properties collectively, which are on your side of Preston River.

I hope this proves satisfactory and if you have any questions, please do not hesitate to contact me on 9780 4211.

Regards



Bret A. Howson  
*Manager of Works and Services*

m e

11-  
11

PR 5121

Mr Bret Howson

Martin Bunny & Christine Frieese  
Rosdene Alpaca Farm  
RMB 475  
DONNYBROOK WA 6239

Dear Mr Bunny & Ms Frieese

### **Bridge 5121 on Rosdene Lane over Preston River**

Further to your request yesterday (30/12/2002) to clarify the maintenance responsibility for the above bridge, I wish to confirm the following details.

Section 3.53 of the *Local Government Act 1995* states that a Local Government is responsible for controlling and managing every otherwise unvested facility within its district. An "otherwise unvested facility" is defined in the Act to include any structure on land belonging to the Crown.

The ownership of Bridge No. 5121 may still be determined by the Department of Land Administration and the Department of Local Government. However as it stands today, now that the structural repairs are complete, this bridge has been placed on the Shire of Donnybrook/Balingup's system for regular inspections and maintenance in line with our routine bridge maintenance program.

In the long term, it may be possible to eliminate the need for this bridge, and other similar waterway crossings in your area with a new bridge, and connecting road, centrally located to service the properties collectively which are on the northern side of Preston River.

Due to the cost of the new bridge this project would not be expected to be completed within the next 10 years, therefore until the completion of this project Bridge 5121 will be maintained in its current state (13 tonne load limited) by the Shire of Donnybrook/Balingup and any upgrades or improvements will be the full responsibility of the property owner of Wellington Location 315.

If you have any questions, please contact me on the above telephone number.

Yours faithfully



**Bret A. Howson**  
**Acting Chief Executive Officer**

6 January 2003

**McLEODS**



**BARRISTERS & SOLICITORS**

Local Government Law  
Environmental Planning Law

Stirling Law Chambers  
220-222 Stirling Highway  
Claremont WA 6010  
Tel (08) 9383 3133  
Fax (08) 9383 4936  
Email:  
mcleods@mcleods.com.au

Dana McLeod (Partner)  
Neil Douglas  
Flane Grzech  
David Madgebaum  
Geoff Owen  
Andrew Roberts  
Craig Rennie  
Peter Withburn  
Elizabeth Stevenson (Senior Associate)  
David Winchcomb (Associate)  
Peter Gillen (Associate)

Our Ref

Your Ref

14 February 2007

Dear [REDACTED]

**RESPONSIBILITY FOR PRESTON RIVER BRIDGE**

**YOUR CLIENTS - [REDACTED]**

We refer to our letter to you of 25 January 2007.

Our client has now been provided with recent advice from the State Solicitor's Office that:

'local governments are not responsible under section 3.53(2) [of the *Local Government Act 1995*] for controlling and managing "private" bridges which do not belong to a "public thoroughfare" in the district. This maintains the position in relation to such facilities under previous legislation contained in the *Municipal Corporations Act 1906* and the *Local Government Act 1960*. Where unallocated land has been used for private purposes, there is no obligation on the local government to maintain such structures'.

The Preston River Bridge:

- (a) was erected privately, probably by an earlier owner of Wellington Location 315;
- (b) was erected for private purposes, and continues to be used for private purposes; and
- (c) is not, and does not belong to, a public thoroughfare.

The advice from the State Solicitor's Office, commissioned by the Department of Local Government and Regional Development, reinforces the Shire's view that it is not responsible for maintaining (or for controlling and managing) the Preston River Bridge.

In the circumstances, the Shire is unable to accede to your client's request that it expend public funds on the maintenance of a private bridge.

Despite this, the Shire is prepared to assist your clients by giving them information, which the Shire has obtained from other sources, about various types of replacement structures that your

clients may wish to consider. If your clients would like to take up this offer, will you please ask them to call Mr [REDACTED] (the Shire's Manager, Works and Services) directly.

On the basis of the advice from the State Solicitor's Office, the Shire intends to erect a sign or signs informing the public:

- (a) of where [REDACTED], the road closest to the Preston River Bridge, ends; and
- (b) that the Preston River Bridge is not a public thoroughfare.

Yours sincerely



Neil Douglas  
Partner

(on

S Walker  
RMB 475  
DONNYBROOK WA 6239

Dear Sue

**BR 5121 – ROSEDENE LANE**

Further to your letter of the 26<sup>th</sup> April 2010 the matters raised have been investigated and an onsite inspection has been conducted by Staff and Main Roads. From this we can advise that minor maintenance will be carried out on the bridge deck and approaches. Main Roads also advises that the 13T load limit will not be changed until a full inspection is conducted in 2011.

The bridges location places it on land not under the control of Council nor Main Roads. There has been an acceptance in the past by Main Roads and Council to conduct maintenance on the bridge to allow access by the landowner. The bridge is reported to have been built in the 1920's by persons unknown, not to any standard, nor the approval of the Council of the day.

Funding of a replacement bridge to meet 44T specification in the future is going to be difficult due to its location, limited traffic volume and that the bridge only services one landowner. There are currently no plans to replace the existing structure which has a replacement value of between \$350,000 to \$500,000.

Main Roads has requested Council consider alternative access to land such as yours with a road on the north side of the Preston River to eliminate several smaller bridges along this section of the river, but no planning has commenced. A lower level river crossing, of lesser costs could be considered, but an all weather all year access cannot be guaranteed at this location.

Should you require further information please contact the undersigned

Yours faithfully,



**Terry McCaughan**  
**Acting Manager Works and Services**  
19 May 2010

*The Shire of Donnybrook/Balingup is a thriving community living  
in harmony with its unique rural environment whilst cherishing  
its diversity of heritage and culture*

RMB 475  
DONNYBROOK  
WA 6239  
4<sup>th</sup> Jan 2012

Mr John Attwood,  
Chief Executive Officer,  
Shire of Donnybrook-Balingup,  
P O Box 94  
DONNYBROOK WA 6239

RECEIVED  
4 JAN 2012  
COUNCIL CHAMBERS  
BR 5121  
RM  
153  
1000 21 000

Dear Mr Attwood,

**Re: Access to Wellington Location 315**

Further to my letters of 26<sup>th</sup> April 2010 and 20<sup>th</sup> September 2011.

The only access to the above location is by means of a bridge over the Preston River

The bridge is in need of immediate repair as it has a hole in the decking large enough for a person to fall through. The rest of the decking requires replacement at the same time. The substructure of the bridge also needs to be brought up to a standard that allows for operation of the property as a rural enterprise. As you are aware this property is zoned "intensive Agriculture"

The state of the bridge meant that neither the shire workers who replaced the single sleeper nor the Telstra technician who replaced the telephone cable to my property would drive over the structure. The fire risk from the surrounding plantation is of concern especially as firefighting units would not be able to access the property given the condition of the bridge.

I note that the last grading of Rosedene Lane did not come down to the bridge approach; the grader only levelled a section of this road. I would request that the entire length of this access road is graded.

This matter requires immediate action as the bridge is not safe for a single passenger vehicle to use let alone larger vehicles.

Awaiting your earliest reply

Yours sincerely



Sue Walker

RR 5121  
D00R28047  
Michael Scott

Ms Sue Walker  
24 Rosedene Lane  
LOWDEN WA 6240

Dear Ms Walker

**RE: BRIDGE CROSSING ROSEDENE LANE, LOWDEN**

**This note is to advise you that the Rosedene Lane Bridge (#5121) has been inspected and is assessed as not suitable for vehicular traffic of any kind and therefore should not be used.**

The Shire of Donnybrook-Balingup recently inspected the river crossing facility on Rosedene Lane that services your property after a report was received that the structure was in need of repair.

Works and Services technical officers and the Main Roads South West Asset Manager for Structures went to the location on Friday 4<sup>th</sup> April 2014 and observed the following:

- The Abutment 2 bedlog has failed. The lack of solid timber in the bedlog has led to crushing of the bedlog particularly at the RHS.
- Span 4 Stringer 4 has also failed in shear at the Abutment 2 end of the stringer. This is evidenced by large cracks.
- The failure of the bedlog and stringer have led to significant subsidence at the Abutment 2 RHS of the bridge deck.

Following the inspection, Main Roads SW advised the Shire of Donnybrook-Balingup that the bridge should be closed immediately. Main Roads SW will subsequently remove the current load limit signage and Shire Officers will install a temporary barrier to deny vehicular access to the bridge on the Boyup Brook Road side.

Shire records show that the bridge was last repaired in 2002 in an arrangement that was paid for by the adjacent landholders. This followed an incident where the bridge failed while a loaded truck was using it. Shire officers are working with the Main Roads Asset Manager to obtain repair quotations from suitably qualified bridge repairers.

I understand that this may inconvenience you by not allowing vehicular access to your property however this is an important safety related notice. I request that you explore a suitable alternative arrangement for your property access that does not include use of the Rosedene Lane Bridge.

Please call me if you wish to discuss this notice (Phone: 97804 209)

Yours faithfully



**Michael Scott**  
**Manager Works & Services**

14<sup>th</sup> April 2014





All communications to be addressed to  
the Chief Executive Officer  
PO Box 41  
Donnybrook, W.A. 6225  
Telephone: (08) 9788 4200  
Facsimile: (08) 9788 1600  
Email: shire@donnybrook.balingup.wa.gov.au  
Website: www.donnybrook.balingup.wa.gov.au

Your Ref: BR5121  
Act Ref: ICOR45160/OCOR31289  
Enquiries: Michael Scott

Hon Nigel Hallett MLC  
Member for South West Region  
Parliament of Western Australia  
Legislative Council  
PO Box 535  
MANDURAH WA 6210



Dear Mr Hallett

**RE: Sue Walker/Rosedene Lane Bridge BR5121**

Thank you for your enquiry on behalf of Ms Sue Walker about the Rosedene Lane Bridge.

**In answer to your specific questions:**

***Who is ultimately responsible for the repair work of the Bridge 5121?***

The bridge is outside the Rosedene Lane road reserve and the Shire of Donnybrook-Balingup is only responsible for the road reserve.

Responsibility for the bridge cannot be simply determined from the state's legislation. Contrary views have been expressed however not tested through legal processes

***Why is the original proposal retracted?***

The original offer was made in good faith based on the Shire's knowledge of the Main Roads emergency funding pool. The Shire has been informed that because responsibility for the bridge is moot and there is no long term plan for the maintenance of the bridge, this funding is not applicable.

***How is the Shire proposing to resolve the situation?***

The Shire will fix the bridge if Ms Walker agrees to take on responsibility for it. There is a precedent for this arrangement elsewhere within the shire.

The shire has the option to simply close the road however is prepared to work with affected ratepayers in good faith to achieve a resolution that is fair to all parties and provides "fit for purpose" access.



***The bridge's condition is likely to deteriorate over the coming winter months, so what is the shire's timeline on finding a solution for Ms Walker?***

The shire has provided all information for an achievable resolution to Ms Walker's agent for consideration.

The Works and Services department at the Shire of Donnybrook-Balingup can initiate the work (to the quoted \$25,000 repair cost) as soon as the Council provides authority to proceed. Ideally, this would be done prior to the coming wet season.

I have attached copies of correspondence sent to Ms Walker's agent (her daughter) to further provide you with information relating to this matter.

**Background Information:**

This issue of ownership of Preston River crossing structures has been ongoing since various classes of land were made the responsibility of shires by the state in the 1990's. Specifically, the issue relates to structures within these unallocated crown land reserves which the affected shires had not approved, built, or funded.

You would know that Main Roads WA (MRWA) funds bridge inspections and maintenance and when these structures were on its inventory, that state organisation allocated them with bridge numbers and provided funding for maintenance

Most of the structures across the Preston River within the Shire of Donnybrook-Balingup were privately built (ie not to an approved standard) as "fit for purpose" river crossings to access timber lots or agricultural land. The shire has the view that its responsibility ends at culmination of the Rosedene Lane road reserve and this does not include the bridge structure.

As the issue of who should be responsible for these structures emerged, the Shire of Donnybrook-Balingup obtained legal advice which supported its view that its ratepayers could not be responsible for what are essentially private structures

In good faith and to support affected ratepayers, some work has been done on the various structures to keep them viable as river crossings. MRWA has previously provided some funding towards this however their funding criterion now precludes this

In summary, the Shire of Donnybrook-Balingup does not believe it is responsible for the structures outside the road reserve

My office approached MRWA for access to its emergency funding to repair the broken structure and informed Ms Walker that we were trying this approach. Unfortunately that funding while accessed previously is now not applicable.

I have worked closely with another similarly affected landowner to broker an arrangement that has been satisfactory to all parties. This involved the arrangement of a lease of the land at the Dept. of Lands at the crossing point with the support of the Shire of Donnybrook-Balingup. This is the "peppercorn" lease arrangement Ms Walker is referring to. All paperwork and an explanation of the process has been provided to Ms Walker through her daughter who has informed me she has authority to act on her mother's behalf.

The Shire of Donnybrook-Balingup has now been able to access sufficient funds and a quotation to of \$25,000 to undertake repairs to the Rosedene Lane structure. However, the shire cannot commit to ongoing ownership of the structure and has the requirement that this work can be undertaken if Ms Walker takes on the responsibility for the structure through an agreement supported by the shire and with a lease from the Dept. of Lands.

It is important to note that the structure was not built to any applicable standard which has important implications of responsibility for the shire. Construction of a bridge to an appropriate standard has been estimated to cost in the vicinity of \$250,000. The question of whether this is fair on the shire's ratepayers when the bridge services a single property needs to be kept in mind.

Please note also that the shire has an opinion that damage to the structure at Rosedene Lane has been exacerbated through its use to convey heavy livestock loads (in excess of its limited load rating) from Ms Walker's property.

In concluding, I am endeavouring to find a workable solution to a vexed issue that no state or local government agency has been able to achieve and assure you I maintain an obligation to assist Ms Walker in whatever way I am able to. I would welcome any assistance you can provide to achieving a resolution.

Yours sincerely,



**Michael Scott**  
**Manager Works & Services**

18<sup>th</sup> March 2015

Ms Sue Walker  
24 Rosedene Lane  
LOWDEN WA 6240

Dear Ms Walker

### BRIDGE CROSSING ROSEDENE LANE, LOWDEN

The Shire of Donnybrook-Balingup has been informed by Main Roads Western Australia (MRWA) that Rosedene Lane Bridge (#5121) should be closed to traffic immediately based on results from a capacity assessment.

The assessment identified that the following emergency repairs are required to maintain the capacity of the bridge at the current load posting of 13 tones:

Span/Pier Number	Member	Priority	Description of Repair Work	Propping Load (kN)	Rated Value	Achieved Load
Span 2	Stringer 1	1	Replace	TBA	10 t	13 t
Span 3	Stringer 3	1	Packing between deck and stringer	N/A		13 t
Span 4	Stringer 1	1	Replace	TBA		13 t
Span 4	Stringer 3	1	Replace	TBA	2 t	13 t

General comments from the assessment regarding the emergency repairs:

The inspection report indicates that:

- Span 2 Stringer 1 is heavily rotted
- Span 3 Stringer 3 is not supporting the deck
- Span 4 Stringer 1 has failed over Pier 3

- Span 4 Stringer 3 has failed near Pier 3.
- These defects result in an inadequate capacity for the current 13 tonne load posting.

As you are aware, the Shire's position is that the bridge is not a Shire asset, and we do not consider that we are responsible for the maintenance and replacement of the bridge.

From our property and bridge record files, I note the extensive negotiations held in relation to this structure in the past, and that emergency repair works were undertaken by the Shire in July 2015 to facilitate the bridge remaining open with a 13 tonne capacity load rating.

This work was undertaken based on your lawyers offer (Glen McLeod Legal letter dated 2 June 2015) to enter into a without prejudice agreement to resolve the bridge ownership issues.

To my knowledge, since the Shire undertook these works, no further progression on the ownership matter has occurred.

As the landowner, we request your comment by the 2nd of September 2016, as to what action is to be taken to address the required emergency repairs, and resolution of the ownership issue.

We would support a meeting being held to explore options for resolving this matter consistent with the previous agreement reached.

Please contact me to discuss the matter further.

Yours faithfully



**Damien Morgan**  
**Manager Works & Services**

16<sup>th</sup> August 2016

# SHIRE OF DONNYBROOK-BALINGUP **DRAFT**

---

<b>SUBJECT:</b>	<b>Control of Unvested Facilities across the Preston River in the Shire of Db-B</b>
<b>Location:</b>	<b>Donnybrook – Boyup Brook Road</b>
<b>File Ref:</b>	<b>BR 5324</b>
<b>Author:</b>	<b>Michael Scott, Mgr Works &amp; Services</b>
<b>Report Date:</b>	<b>8 September 2014</b>
<b>Attachments:</b>	<b>Map, Photos, Risk Assessment Tool</b>

---

## **Background**

The Shire of Db-B has four (4) non-conforming bridge structures which provide access across the Preston River while servicing a minimal number of private properties

These are located at the end of the road reserve on

1. Rainbow Downs Road
2. Guidice Road
3. Unnamed Road
4. Rosedene Lane

These are all accessed from the Donnybrook- Boyup Brook Road. The gazetted road reserves which lead to these structures ends before the Preston River reserve.

The Shire of Db-B is responsible for the road reserve – up to the river reserve boundary

The Dept. of Water is the state authority with responsibility for the Preston River reserve in which the facilities are situated.

Promulgation of the LG Act in the 1990's sought to clarify responsibility for these types of facilities in Section S 3.53. (See: Statutory Implications)

Prior to the Act, Main Roads W.A. (MRWA) provided an allocated bridge number to the structure, a load rating assessment through regular inspections and funding to the Shire of Db-B for general maintenance.

Maintenance on the structures by the Shire of Db-B since this time has either been ad hoc or to assist with the provision of emergency access and funded by ratepayers. In at least one case, a ratepayer was asked to contribute to the repairs undertaken by the Shire.

Properties accessed by the use of invested facilities across the Preston River are essentially "land locked" with the river crossing structure being the only legal access for the owners.

## **Comment**

The Shire of Db-B has received advice that it cannot be made responsible for structures of this type when they are not built or maintained to an acceptable public use standard and has adopted this as its position in relation to claims on the matter. The structures were inherited when shires were made responsible for unvested facilities.

The intention of the Act appears to cover minor facilities, not major engineering infrastructure.

# DRAFT

The Shire of Db-B considers that a structure of this type serves the basic purpose of a cross-over to provide access for the land holder that uses it. It is not in the interest of the majority of ratepayers to construct a structure to the appropriate standard at significant cost and which only provides subsidized access for one or two dwellings.

Subsequent sale of properties accessed by a structure of this type has seen the issue of ownership of the structures come to a head. It is fair to say that new owners have assumed or been told that the shire is responsible for the upkeep of their access structure. It is reasonable for the shire to assume that due diligence by the prospective purchaser would provide them with the Shire's position on the matter. Likewise, it is reasonable to assume that it is not in the interests of the vendor to limit a potential property sale by identifying the access structure as a matter of dispute which may hold up the sale.

## Consultation

The Council of the Shire of Db-B has been briefed on the situation relating to the unvested facilities and issues arising from the shire's inability to expedite a resolution to the issue of ownership.

Meetings have been held with affected landowners who until recently were universal in their view that they expected the Shire of Db-B to repair or replace the structure that accessed their property.

Garth and Larissa Giblett, who have purchased a block of land over the Rainbow Downs access, have recently negotiated approval for a lease arrangement with the Dept. of Water over the crossing point. The Giblett's have stated that they will build and maintain a structure to their requirements if the shire is amenable and provides maintained access and approaches on Rainbow Downs Road and permits a gate at the end of the road reserve.

In principle agreement has been forwarded to Mr & Mrs Giblett and the shire is currently awaiting the arrival of a formal agreement document for signing by all parties.

The Shire of Db-B Council would authorize this arrangement either through delegated authority to the CEO or by majority resolution.

Other affected landowners can be categorized as maintaining the view that the shire is responsible for their land access across the river.

## Statutory Implications

The relevant section of the Act is s. 3.53.

### *S. 3.53 Control of certain unvested facilities*

#### *(1) In this section —*

*former section 300 means section 300 of the Local Government Act 1960 as in force before the commencement of this Act;*

*otherwise unvested facility means a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section*

*(2) A local government is responsible for controlling and managing every otherwise unvested facility within its district unless subsection (5) states that this section does*

# DRAFT

*not apply.*

*(3) If the facility is partially within each of 2 or more districts, it is to be controlled and managed as the local governments for the districts concerned agree or, if they do not agree, as the Minister directs.*

*(4) An agreement or direction under subsection (3) has effect according to its terms.*

*(5) This section does not apply if any person was, immediately before the commencement of this Act, responsible for controlling or managing then facility unless:*

*(a) the responsibility arose under the former section 300; or*

*(b) the Governor, by order, declares that the facility is to be controlled and managed under this section.*

## Policy

There is no Shire of Db-B policy which covers access structures as unvested facilities.

## Statutory

The Shire of Db-B has accepted advice that it cannot be responsible for unvested facilities that provide access and where the structures were inherited from the state in dilapidated or sub-standard condition, and by state enacted legislation which did not consider the cost implications to the local authority

## **Risk Assessment**

The unvested facilities being used as access to properties across the Preston River represent Strategic, Operational and Hazard Risks to the Shire of Db-B when assessed using the shire's risk identification matrix. (See attached)

The Measure of Consequences results in a score of Major in the categories of Financial, Service Interruption, Compliance, Reputation and Property.

*The Measure of Consequence for Health and Safety is rated as Catastrophic due to the possibility of fatality or permanent disability through the failure of one of the facilities while being used.*

The shire's Existing Controls are rated as Inadequate.

The Overall Risk rating for three of the unvested facilities is High (15). One unvested facility (Rainbow Downs) is rated at Extreme (20)

## **Financial Implications**

Replacement of the four crossings to the accepted public use and MRWA standards is estimated to be approximately \$1,000,000

Non-standard replacement structures which do not require MRWA approval is estimated at \$200,000.

Urgent repair work to make the four structures safe without certification or to an approved standard is estimated at \$100,000.



# DRAFT

Ongoing annual maintenance would be in the order of 10% of the structure's cost per year, amortized over 20 years after which replacement may be required.

## **Strategic Implications**

The current situation in relation to unvested facilities represents a high level of risk to all stakeholders none of whom are resourced to resolve the impasse or simply repair or rebuilt the structures on their own.

A resolution through legal arbitration is not only an expensive option but fraught with risk of losing for the initiator.

A collaborative approach where all state and local government agencies use whatever means is available to them to achieve a resolution will assist the landholders who (generally) in good faith purchased properties isolated by the result of decisions outside their control.

## **Recommendations**

The Shire of Donnybrook supports a resolution which achieves the following outcomes:

Peppercorn leases in perpetuity are to be offered over the crossing points by the Dept. of Water for the affected landholders.

Landholders are to assume responsibility for the renovation or construction of a fit for their purposes crossing structure which includes whole of life maintenance and insurances.

Agreement with the Shire of Db-B would be on the basis that the shire is not bound or encumbered by any lease agreements entered into between the vested reserve authority and the ratepayer other than road reserve responsibilities within established service level guidelines.

Ideally a one off grant of (up to) \$100,000 would be made available from the state to the Shire of Db-B so that repairs to existing structures could be made and so allow for a hand over of responsibility to be made in "good faith" which will provide an incentive for the leasing option to be accepted by the property owner.

The Dept. of Local Government takes action to review and amend the Local Government Act in relation to unvested facilities to obviate the reoccurrence of this issue in any jurisdiction with Western Australia

End

**By Absolute Majority**

**\*\*6.04pm Edgar Hawter left the meeting\*\***

## **11.2 Manager Works & Services**

<b>11.2.1</b>	<b>SUBJECT:</b>	<b>COUNCIL SUPPORT FOR THIRD PARTY LEASE TO ENABLE ACCESS TO PRIVATE PROPERTY FROM RAINBOW DOWNS ACROSS THE PRESTON RIVER</b>
	<b>Location:</b>	<b>Location 4176</b>
	<b>Applicants:</b>	<b>Ms Larissa Giblett &amp; Mr Garth Fitzpatrick</b>
	<b>Zone:</b>	<b>N/A</b>
	<b>File Ref:</b>	<b>BR 3524</b>
	<b>Author:</b>	<b>Manager Works and Services</b>
	<b>Report Date:</b>	<b>17 November 2014</b>
	<b>Attachments:</b>	<b>Nil</b>

### **Background**

This item seeks the Council's support for a private lease between the owners of Location 4176 and the state Department of Lands over a parcel of land at the crossing point at the end of the Rainbow Downs road reserve, across the Preston River.

The owners of the property have pursued the lease as a resolution to the issue of responsibility for the dilapidated state of the existing structure that accesses Location 4176 which is not suitable for their intention to construct a house.

### **Comment**

Access across the Preston River to properties on the northern side of the Boyup Brook Road has been contentious since the 1990's when the state government made reserve management and structures within reserves the responsibility of the affected local government.

While the Preston River reserve is currently the responsibility of the state Department of Water, access structures like the dilapidated and sub-standard bridge at the end of the Rainbow Downs road reserve were deemed by the state to be the shire's responsibility

However, shire officers have previously been provided with a legal view that inherited river crossing structures outside the designated road reserve, particularly those that were never constructed to an acceptable standard like the bridge at Rainbow Downs, could not become the responsibility of the shire and a large cost burden to ratepayers while servicing only one or two properties.

Affected landholders obviously hold any number of views on which authority is responsible for maintenance of their river crossing structure. The lack of clarification of responsibility for the structures is the cause of frustration for affected landholders and ill-feeling towards shire officers who are unable to resolve the issue to their satisfaction.

Ms Giblett and Mr Fitzpatrick acquired the property at Location 4176 and want to construct a house on the property. They have arranged a lease of the crossing to access their property with the Department of Lands and have committed to construct a "fit for purpose" structure on that lease.

State and local government authorities have previously been unable to find a resolution to the question of ownership with no authority willing to accept the somewhat unfunded and onerous cost implications of that responsibility.

The Department of Water requires the Shire of Donnybrook-Balingup's endorsement for the lease to be approved.

### **Consultation**

Ms Giblett and Mr Fitzpatrick have worked with the Works and Services team, the Principal Planner and the Department of Lands to arrive at a considered and agreed resolution that will allow them to construct their house on Location 4176.

Shire officers are aware that there are a number of similar examples throughout the state for which this resolution may provide precedent. WALGA has attempted to find a resolution which can be applied across the board however little progress has been achieved to date.

Ms Gilbert and Mr Fitzpatrick are to be commended for the initiative they have shown in working towards this resolution.

### **Policy/Statutory/Voting Implications**

#### Policy

Endorsing the agreement with the current and future owners of Location 4176 is consistent with the Shire of Donnybrook-Balingup's policies.

The Shire of Donnybrook-Balingup's authority and policies only apply to the road reserve over which it has responsibility.

#### Statutory

Any responsibility for statutory implications arising from the lease will fall to the state Department of Water. The shire is not involved in the lease with Department of Lands other than to provide its endorsement.

The Shire of Donnybrook-Balingup's authority with regard to the lease only applies to the road reserve.

#### Voting

This endorsement requires a simple majority.

### **Risk Assessment**

The Shire of Donnybrook-Balingup is not at risk from endorsing the lease agreement. It is responsible for the Rainbow Downs road reserve and all matters regarding the lease relate to either private land or the Department of Lands, with the owners of Location 4176.

### **Financial Implications**

The Shire of Donnybrook-Balingup will provide a turnaround at the end of the Rainbow Downs road reserve and a no through road sign to deter casual access to Location 4176. This is consistent with maintenance throughout across the shire.

### **Strategic Implications**

Civic Leadership Objective: A progressive, actively engaged community working in partnership to achieve our aspirations.

Desired Outcome:

An open and accountable LG that is respected, professional and trusted.

Item 4 2 2 Seeking efficiencies in planning and operations

Endorsement of this arrangement resolves an ongoing issue relating to access to two properties on the northern side of the Preston River at the end of the Rainbow Downs road reserve.

### **Officer's Recommended Resolution**

**The Council endorses the lease agreement between Ms Larissa Giblett and Mr Garth Fitzpatrick, as current owners of Location 4176, Boyup Brook Road; and the Department of Lands to resolve the issue of access to Location 4176 across the Preston River.**

### **Council Decision**

**Moved: Cr McCabe**

**Seconded: Cr Dawson**

**That Council endorse the agreement between Council and Ms Larissa Giblett and Mr Garth Fitzpatrick, as current owners of Location 4176, Boyup Brook Road and acknowledge there is a lease agreement in place between the Department of Lands and Ms Larissa Giblett and Mr Garth Fitzpatrick to resolve the issue of access to Location 4176 across the Preston River.**

**Carried 9/0**

### **11.3 *Manager Development and Environmental Services***

Nil



Further to some of the issues raised, a copy of the current structure is available for viewing at the link provided. History will be added to this for the new structure.

Key options for the new structure are:

1. A new structure is proposed in Bridge 5004. This structure is now resolved to date and is being published to the Council. The new structure is a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.
2. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.
3. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.

As a result of the new structure, the new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.

As the report explains, it is not clear that a new structure is the most potential for a structure identified by Council subject to identifying the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.

Appropriate without knowing the actual cost of a new structure it is difficult to determine if you are agreeable to this option. However, the current structure has remained the same for a significant number of years, and it will require a number of years to work together to achieve a favourable outcome.

As a result of the new structure, the new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.

As a result of the new structure, the new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA. The new structure will be a merger of the current structure with the structure proposed in the 2017/18 MRA.

When they come across the final structure, please contact the Council on the 15<sup>th</sup> of October, however typically at least 10 days before the date to be shown. The Council will be able to make a decision on the structure proposed in the 2017/18 MRA.

The agenda items for the meeting will be available to view on the Council website on the day before the Council meeting.

Yours faithfully,

Damien Morgan  
Manager Works and Services  
Shire of Donnybrook, Balingup  
PH: 9780 4211 FX: 9781 1677  
Mobile: 0438 204 286  
dmorgan@donnybrook.wa.gov.au

The Shire of Donnybrook Balingup's vision is to grow our world, motivated and engaged community that values and maintains its rural lifestyle, cultural heritage and natural environment.

This email is private and confidential. If you are not the intended recipient, please advise us by returning the email immediately and deleting the email. Do not mail and any attachments without using or disclosing the contents in anyway. The views expressed in this email are those of the author and do not represent those of the Shire of Donnybrook Balingup unless it is clearly indicated. You should scan this email and any attachments for viruses. The Shire of Donnybrook Balingup accepts no liability for any direct or indirect damage or loss resulting from the use of any attachments to this email.

**From:** NEWHOUSE Peter (AMS) [mailto:peternewhouse@mainroads.wa.gov.au]  
**Sent:** Friday, 30 September 2016 1:49 PM  
**To:** Damien Morgan  
**Subject:** RE: Bridge 5121 - Rosedene Lane - Information for Council Presentation

Hi Damien

Main roads website link below

Regards

Peter Newhouse

Manager, Infrastructure & Operations  
Main Roads Western Australia  
PO Box 1000, Perth WA 6001  
www.mainroads.wa.gov.au



**From:** Damien Morgan [mailto:dmorgan@darrobybrook.wa.gov.au]  
**Sent:** Thursday, 29 September 2016 11:22 AM  
**To:** NEWHOUSE Peter (AMS)  
**Subject:** Bridge 5121 - Rosedene Lane - Information for Council Presentation

Good Morning Peter

We are looking to take an item to Council next month in relation to Rosedene Lane Bridge to seek some Council direction in relation to the negotiations over the bridge ownership.

To assist in providing the Council with the relevant detail, I have documented the Shire's understanding in relation to the emergency repair requirements, plus some additional questions that may arise via the Council process

Can you please clarify from MRWA if what is outlined below is consistent with previous discussions/advice, and provide a response to the new questions raised

- MRWA advised by email on the 26/7/2016 that the bridge should be closed to traffic immediately.
- MRWA is in the process of undertaking a review of the extent of the emergency repairs identified (may be greater than originally defined in the above advice), and will advise the Shire once determined, so that the information can be passed onto all parties.
- MRWA have advised that subject to the bridge ownership and management issues being resolved, that the bridge could be considered for emergency funding to undertake the outlined emergency repairs, or possible utilise these funds towards a replacement structure
- Through the above process MRWA will also review if the bridge structure can be allowed to remain open with a reduced load rating (which may possibly include some emergency works to facilitate this).
- MRWA have confirmed that they will undertake a waterways assessment which is anticipated to be completed by mid-October. From this MRWA will be able to advise on the different type of replacement structures that could be considered for the existing bridge, along with cost estimates for these types of structures.

Can MRWA please advise if there are any other funding sources that could be utilised by the Shire and land owners to assist with renewal of the existing structure, or the cost of building a new bridge at this location?

- Could MRWA please provide comment if there is any merit in salvaging timber from the soon to be decommissioned Trevena Road Bridge for use in renewal of the Rosedene Lane Bridge. These works could possibly be co-ordinated with the contractors scope for the Trevena Road, to achieve some cost savings.

Can you please provide comment on the above by the 7<sup>th</sup> of October, as I am required to have my agenda item prepared in this timeframe

Regards

Damian Morgan  
Manager Works and Services  
Shire of Donnybrook/Balingup  
PH: 9780 4211 FX: 9791 1677  
Mobile: 0438 204 286  
[dmorgan@donnybrook.wa.gov.au](mailto:dmorgan@donnybrook.wa.gov.au)

The Shire of Donnybrook-Balingup's vision is to grow our proud, motivated and engaged community that values and maintains its rural lifestyle, cultural heritage and natural environment.

This e-mail is private and confidential. If you are not the intended recipient, please advise us by returning the e-mail immediately, and deleting the e-mail, the e-mail and any attachments without using or disclosing the contents in anyway. The views expressed in this e-mail are those of the author, and do not represent those of the Shire of Donnybrook-Balingup, unless this is clearly indicated. You should scan this e-mail and any attachments for viruses. The Shire of Donnybrook-Balingup accepts no liability for any direct or indirect damage, or loss (total or partial) from the use of any attachments to this e-mail.

This e-mail was generated by the following system: [dmorgan@donnybrook.wa.gov.au](mailto:dmorgan@donnybrook.wa.gov.au)

This e-mail was delivered to you by the following system: [dmorgan@donnybrook.wa.gov.au](mailto:dmorgan@donnybrook.wa.gov.au)

--  
This e-mail was generated by the following system: [dmorgan@donnybrook.wa.gov.au](mailto:dmorgan@donnybrook.wa.gov.au)



South Western Highway

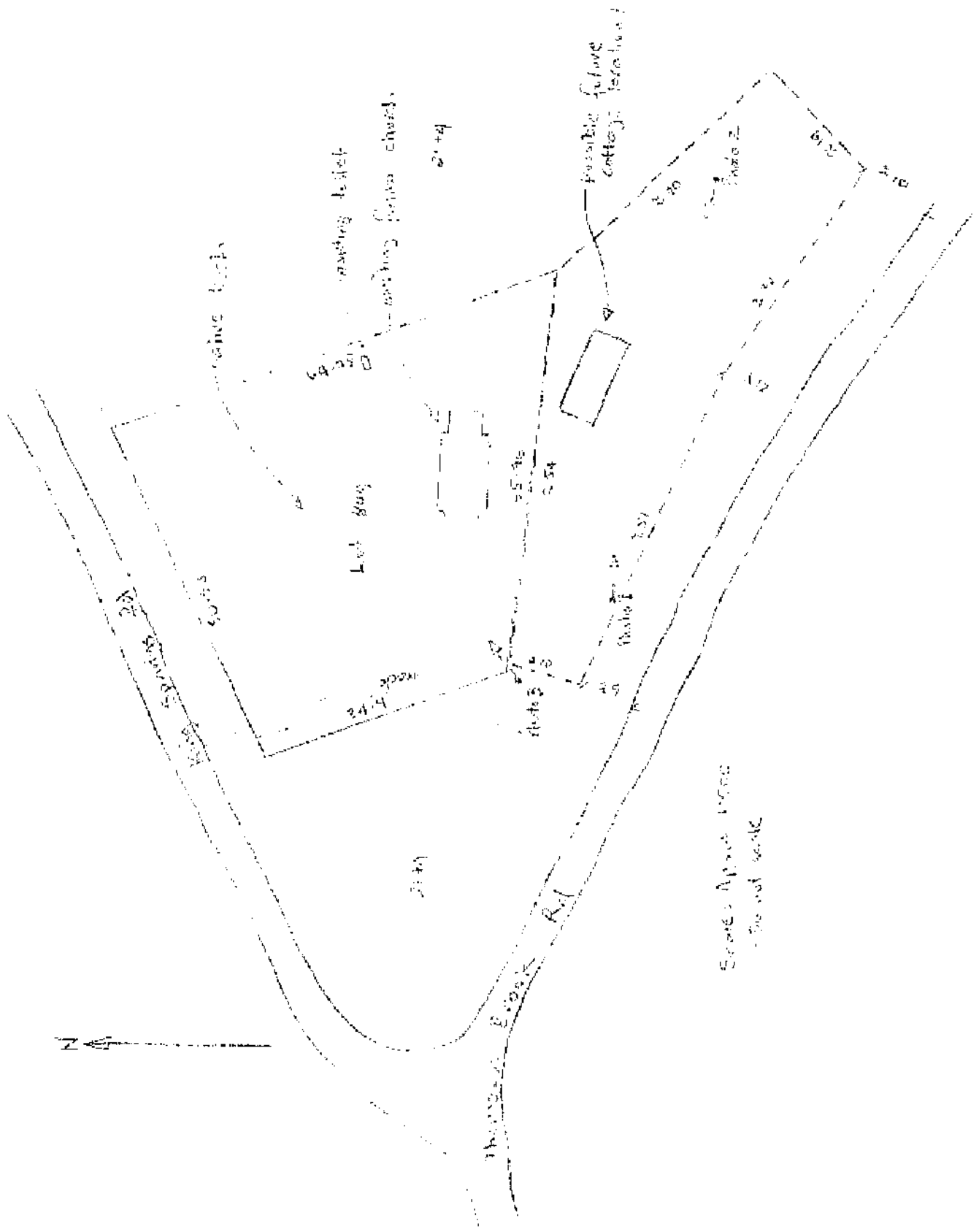
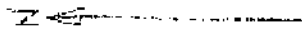
Railway Line (not used)

Billinghurst Road

Orange Outline:  
proposed land to be  
purchased

Red Outline: Lot 298  
South Western Highway





same back

meeting table

large empty container

21+2

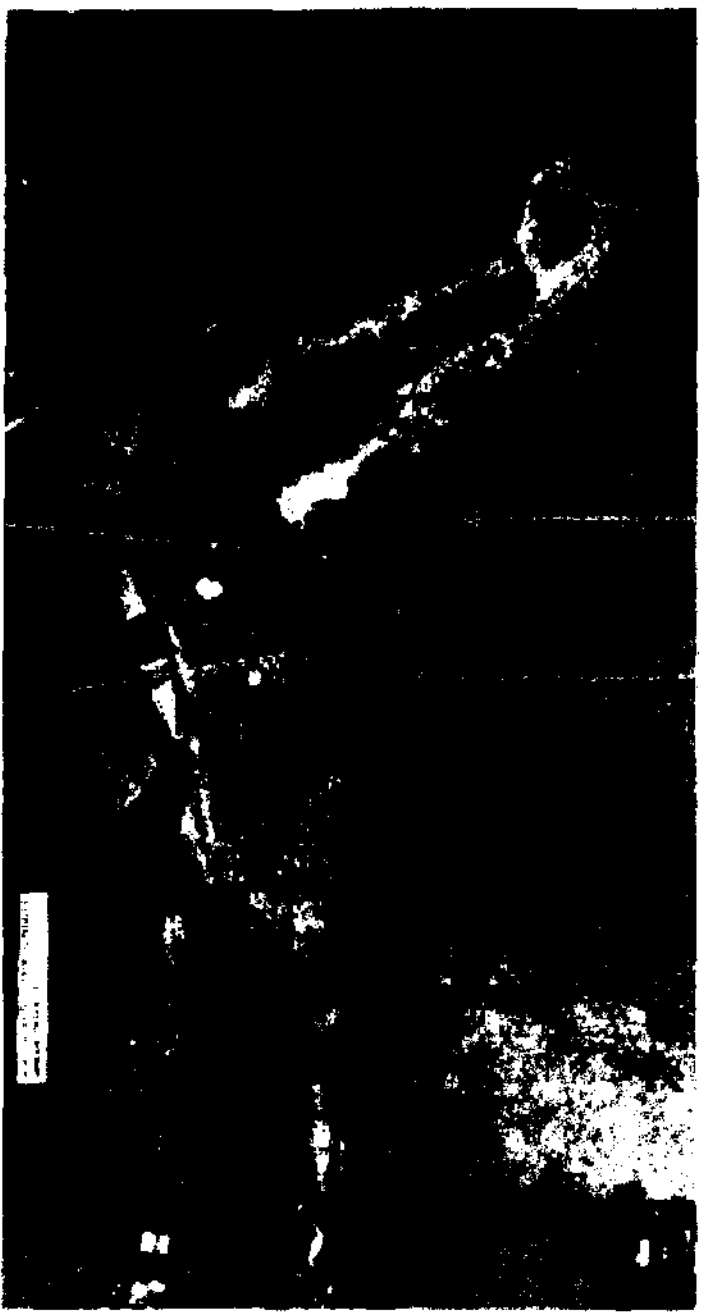
possible future cottage relocation

Lot 808

Some April 1988  
- Do not work

Lot 804 Thomson Brook Rd, Thomson Brook

King Spring Rd



Turnaround area

Thomson Brook Rd



## MEMORANDUM OF UNDERSTANDING

Between

**City of Bunbury**

And

**Bunbury Wellington Group of Councils, South West Development Commission,  
and Australia's South West**

### IMPLEMENTATION OF THE BUNBURY WELLINGTON AND BOYUP BROOK REGIONAL TOURISM STRATEGY

---

#### **1. Introduction**

The City of Bunbury (hereinafter "the City") has agreed to undertake the implementation of the Bunbury Wellington and Boyup Brook Regional Tourism Strategy ("the Strategy") on behalf of the Bunbury Wellington Group of Councils ("the BWGC") comprising Shire of Harvey, Shire of Capel, Shire of Collie, Shire of Dardanup, Shire of Donny Brook Balingup, and Shire of Boyup Brook for a period of three (3) years, in accordance with the terms and conditions contained in this Memorandum of Understanding ("the/this Memorandum").

The purpose of the Strategy is to create a unified approach to the management of tourism development, marketing and infrastructure. The strategy was developed by a Steering Committee comprising the BWGoC, South West Development Commission ("SWDC"), Australia's South West ("ASW"), Tourism Western Australia, and Regional Development Australia.

The Strategy includes a Regional Action Plan and Regional Marketing Plan outlining key areas of focus and their priority over a five-year period and focus on the following areas:

- Identifying tourism opportunities, priorities and gaps
- Developing a unified tourism brand for the region
- Marketing, governance and product development
- Identifying infrastructure and product priorities

After the initial agreed period of three (3) years, the responsibilities and management of regional tourism will be transitioned to an independent body or corporation to be determined in the course of the term of the Memorandum.

#### **2. Responsibilities of the City**

On an annual basis the City will:-

1. Commit to a regional approach to tourism to progress the aims and focus areas detailed in the Strategy and related Regional Action Plan and Regional Marketing Plan

- II. Employ a Regional Tourism Marketing and Development Manager on a fixed three (3) year contract. The salary will be up to \$120,000 inclusive of all staff on costs, ancillaries, provision of a vehicle and funded as outlined under item 3.
- III. Provide office accommodation and associated equipment for the Regional Tourism Marketing and Development Manager at its Administration Building located at 4 Stephen Street, Bunbury WA 6230
- IV. Contribute \$100,000 to fund marketing campaigns, tools, collateral, workshops, and other activities required to meet the high priority actions set out in the Regional Action Plan and Regional Marketing Plan.
- V. Seek additional funding in the form of grants and other contributions from private sector as appropriate.

### 3. Funding

The following cash contributions are to be paid to the City annually for a period of three (3) years toward the salary, on costs and vehicle of the Regional Tourism Marketing and Development Manager

- I. The Shire of Boyup Brook agrees to pay a contribution of \$2,000
- II. The Shire of Capel agrees to pay a contribution of \$10,000
- III. The Shire of Collie agrees to pay a contribution of \$5,000.
- IV. The Shire of Dardanup agrees to pay a contribution of \$10,000
- V. The Shire of Dunnybrook Balingup agrees to pay a contribution of \$10,000.
- VI. The Shire of Harvey agrees to pay a contribution of \$10,000

### 4. Role of the Regional Tourism Marketing and Development Manager

The role of the Regional Tourism Marketing and Development Manager is as follows:

- I. To develop and action an annual implementation plan to address the high priority areas in the Regional Action Plan and Regional Marketing Plan under direction of the Steering Committee
- II. To provide a quarterly report on progress against the implementation plan to the Steering Committee, SWDC, and ASW
- III. To include the brand developed as part of the Greater Bunbury Regional Growth Plan to regional tourism initiatives.
- IV. To identify potential sources of funding and, where appropriate, assist with the development of business planning and feasibility studies for Local Government infrastructure projects specifically relating to tourism and in accordance with the Regional Action Plan.
- V. To develop relationships and open dialogue with relevant Government agencies, associations, operators and stakeholders to progress collaborative high priority actions in the Regional Action Plan and Regional Marketing Plan.
- VI. Within the agreed period establish a governance model that will see regional tourism transitioned to an independent body or corporation at the conclusion of the Memorandum.
- VII. To engage with tourism industry stakeholders to build support and buy in, to guide the implementation of the Strategy, and to inform the development and implementation of a governance model
- VIII. To notify the BWGC of any identified or perceived issues such that would impact the implementation of the Strategy

## **5. Responsibilities of the individual Local Governments within the BWGC**

The individual Local Governments within the BWGC will:-

- I. Contribute financially for a three (3) year period as specified in part 3 above
- II. Nominate a primary point of contact for matters relating to regional tourism
- III. Share with the City available knowledge, documentation and stakeholder contacts relevant to tourism within their relevant Shire.
- IV. Be actively involved in meetings, forums, workshops and other activities as required.
- V. Promote to industry stakeholders the benefits of the Strategy and regional approach to build industry support and positive relationships

## **6. Responsibilities of the South West Development Commission**

- I. Contribute \$20,000 annually for a period of three (3) years toward the assessment, design or development of infrastructure related activities and products in accordance with the Regional Action Plan.
- II. Nominate a primary point of contact for matters relating to regional tourism
- III. If required, be involved with meetings, forums, workshops and other activities related to regional tourism
- IV. Funding is provided on a co-operative basis for development related projects and activities.
- V. Where appropriate, collaborate with, assist and support the City and the BWGC in the implementation of the Strategy, Regional Action Plan and Regional Marketing Plan.

## **7. Responsibilities of Australia's South West**

- I. Contribute \$10,000 annually for a period of three (3) years, on the following conditions:
  - a) Funding is subject to annual board approval of the ASW budget and Tourism Western Australia funding.
  - b) Funding is to support a marketing campaign to promote tourism in and to the Geographe sub-region.
  - c) The marketing campaign is to be run and managed by ASW with input from industry stakeholders;
  - d) Funding is subject to matching co-operative buy-in.
- II. Nominate a primary point of contact for matters relating to regional tourism
- III. If required, be involved with meetings, forums, workshops and other activities related to regional tourism.
- IV. Where appropriate, collaborate with and support, assist the City in the implementation of the Strategy, Regional Action Plan and Regional Marketing Plan

## **8. Tenure**

- I. This Agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

- II. The Memorandum shall be effective for a period of three (3) years, terminating on the \_\_\_\_\_ day of \_\_\_\_\_ 2019

**9. Documents forming part of this Memorandum**

- I. Bunbury Wellington and Boyup Brook Regional Tourism Development Regional Action Plan.
- II. Bunbury Wellington and Boyup Brook Regional Tourism Development Regional Marketing Plan.
- III. Draft project budget 2016-2019

**10. Governance Structure**

- I. A Steering Committee will be established, comprising the Bunbury Wellington Group of Council Chief Executive Officers (or nominated representatives) to provide oversight and direction to the Regional Tourism Marketing and Development Manager.
- II. The Steering Committee will be responsible for confirming the priority areas for implementation and review of progress on a quarterly basis.
- III. The day to day administrative and logistical arrangements will be the responsibility of the City of Bunbury

---

**Signatures**

*I have read the above Memorandum of Understanding and agree to the terms and conditions of use set out above.*

Signed     /     / 2016

Signed     /     / 2016

.....  
(print full name designation)  
**For:**

.....  
(print full name designation)  
**For:**

Signed     /     / 2016

Signed     /     / 2016

.....  
(print full name designation)  
**For:**

.....  
(print full name designation)  
**For:**

Signed / / 2016

.....  
(print full name designation)  
For:

Signed / / 2016

.....  
(print full name designation)  
For:

Signed / / 2016

.....  
(print full name designation)  
For:

Signed / / 2016

.....  
(print full name designation)  
For:

Signed / / 2016

.....  
(print full name designation)  
For:

Signed / / 2016

.....  
(print full name designation)  
For:



**INDICATIVE BUDGET**

**REGIONAL TOURISM STRATEGY IMPLEMENTATION**

<b>INCOME (\$)</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
<b>OPERATIONAL</b>			
City of Bunbury	21,541	70,256	73,154
Shire of Harvey	10,000	10,000	10,000
Shire of Donnybrook- Balingup	10,000	10,000	10,000
Shire of Dardanup	10,000	10,000	10,000
Shire of Capel	10,000	10,000	10,000
Shire of Collic	5,000	5,000	5,000
Shire of Boyup Brook	2,000	2,000	2,000
<b>MARKETING AND PROJECTS</b>			
City of Bunbury	82,500	100,000	100,000
SWDC (infrastructure-related)	20,000	20,000	20,000
AWS (cooperative marketing)	10,000	10,000	10,000
<b>TOTAL INCOME</b>	<b>181,041</b>	<b>247,256</b>	<b>250,154</b>

<b>EXPENSE (\$)</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
<b>OPERATIONAL</b>			
Cash Salary (IFTE)	49,600	85,000	87,125
Superannuation	4,710	8,075	8,277
Long Service Leave Provision	1,240	2,125	2,178
Workers Comp. Insurance	1,316	2,256	2,312.4
Uniforms	300	300	300
Training	583	1,000	1,000
Phone	875	1,500	1,537
Printing and Stationary	583	1,000	1,025
Vehicle Costs	6,417	11,000	11,275
FBT	2,917	5,000	5,125

<b>MARKETING AND PROJECTS</b>			
Marketing and activities	50,000	65,000	65,000
Infrastructure-related (SWDC matching funds)	40,000	40,000	40,000
Co operative marketing (ASW matching funds)	20,000	20,000	20,000
Workshops	2,500	5,000	5,000
<b>TOTAL EXPENDITURE</b>	<b>181,041</b>	<b>247,256</b>	<b>250,154</b>



Council Policy  
**1.16 Gratuity Payments**

---

**Objective**

The aim of this policy is to establish guidelines for the consideration of Gratuity Payments to employees in accordance with Section 5.50 of the Local Government Act 1995 ('the Act')

Pursuant to Section 5.50 of the Act, this gratuity policy outlines the circumstances in which gratuity payments may be made to an employee. These payments, when made, are in addition to any amount which the employee is entitled to under a contract of employment, enterprise agreement or award. This policy shall not be considered as a contractual entitlement under the employment relationship.

NOTE: As required by Section 5.50 of the Act this policy was advertised through Local Public Notice and prior to adoption and the Shire of Donnybrook/Balingup has not made any payments to employees prior to the giving of the public notification.

**Policy Procedures**

Eligibility to Gratuity Payments

It is the position of the Shire of Donnybrook/Balingup that when an employee's services are ceasing with Council for any of the reasons identified below, the employee may be entitled to a gratuity payment as outlined within this policy based on the completed years of service:

- Resignation (not as a result of any performance management or investigation being conducted by the Local Government),
- Retirement.
- Redundancy.

The Gratuity Payment identified within this policy does not apply to an employee who has been dismissed by the Shire of Donnybrook/Balingup for any reason other than redundancy

### Gratuity Amount

The Gratuity amount referred to in this policy shall be as follows:

<u>Number of Years' Service</u>	<u>Amount of Gratuity</u>
10 to a maximum of 15 Years Continuous Service	Up to a maximum of \$3,000.00
15 to a maximum of 20 Years Continuous Service	Up to a maximum of \$4,000.00
Above 20 Years' Service	Up to a maximum of \$5,000.00
A pro-rata payment applies to part-time employees	

The maximum amount payable under this policy shall be \$5,000.00.

The Council acknowledges that at the time that this policy was introduced, employees may be entitled to payments in addition to this policy as a result of accrued unused long service leave benefits, redundancy payments or notice periods as prescribed by the appropriate award, legislation or industrial instrument and that the Council has taken into consideration these provisions when setting the prescribed amount.

### Determining Service

For the purpose of this policy, continuous service shall deem to include:

- Any period of absence from duty of annual leave, long service leave, accrued paid bereavement leave, accrued paid personal leave and public holidays.
- Any period of authorized paid absence from duty necessitated by sickness or injury to the employee but only to the extent of three months in each calendar year but not including leave without pay or parental leave.
- Any period of absence that has been supported by an approved workers compensation claim up to a maximum absence of 1 year.

For the purpose of this policy, continuous service shall not include:

- Any period of unauthorised absence from duty unless the Local Government determines otherwise.
- Any period of unpaid leave unless the Local Government determines otherwise.
- Any period of absence from duty on Parental leave unless the Local Government determines otherwise.

### Financial Liability for Taxation

The employee accepts full responsibility for any taxation payable on the Gratuity Payment, and agrees to fully indemnify the Local Government in relation to any claims or liabilities for taxation in relation to the Gratuity Payment

### Payments in addition to this Policy

*The Local Government agrees not to make any payment in addition to that contained within this policy until the Policy has been amended to reflect the varied amount and caused local public notification to be given in relation to the variation.*

### Financial Implications

The Council acknowledged that at the time of the policy's introduction they were fully aware of the financial implications to the Local Government and that the financial implications had been investigated based on the current workforce position.

### Variation to Policy

This policy may be varied or cancelled from time to time at the discretion of Chief Executive Officer after the endorsement by Council.

The Local Government is committed to taking reasonable action to ensure that any variation or cancellation to this policy is notified to all employees prior to the variation taking effect, including (but not limited to) notifying all employees via normal correspondence of the variation including the proposed reasons for such variation. All employees shall be given an opportunity to provide feedback regarding the variation and these shall be taken into consideration by Council prior to variation

<b>Adopted:</b>	23 June 2004
<b>Last Amended:</b>	22 May 2013
<b>Last Reviewed:</b>	26 April 2016
<b>Next Review Date:</b>	2017
<b>Responsible Department:</b>	Council

Mr Ben Rose  
 Chief Executive Officer  
 Shire of Donnybrook-Balingup  
 PO Box 94  
 DONNYBROOK WA 6239

SHIRE OF DONNYBROOK-BALINGUP	
RECEIVED	
23 JAN 2018	
Record No	COR62624
File No	BR 5121
Officer	BGR
X Ref	00R40401
Correspondence	19584
Signed Off:	

Customer Reference  
 24 Donnybrook Lane  
 Donnybrook WA 6239

Dear Ben

**ROSEDENE LANE – BRIDGE 5121**

Thank you for your letter dated 21/12/17 referring to the abovementioned.

Romaine and I appreciated your time in meeting with us at our property, along with Mr Damien Morgan and the Shire President, Mr Brian Piesse, to further discuss the issues associated with Bridge 5121 and our proposed resolution to its ownership.

As mentioned at our meeting, Bridge 5121 not only is the sole way we are able to access our property, but allows neighbouring landowners an emergency evacuation route. Easements for this purpose have already been established. Additionally, Emergency Services would find access to this Bridge extremely advantageous should the need to attend the surrounding lands/people be required.

In summary of the discussion had, we confirm that the following conditions need to be met in order for us to take over ownership of Bridge 5121 from the Shire:

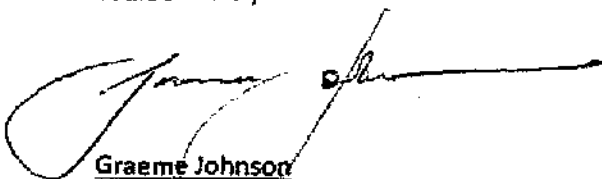
- The Shire restores/rebuilds the structure to the safety standards necessary to support the requirements of the landowner for private/business usage.
- A structural guarantee of no less than 12 years is to be provided in writing.
- The Load Rating for the Bridge is to remain the same, if not greater than the 13 tonnes it was originally listed at.

Your intent at our meeting was to discuss and pursue the matter with Main Roads WA, how has this progressed?

Whilst we are open to the erection of a barrier and signage at the end of the Road Reserve (at Shire cost) as sought by Main Roads WA to minimise any risk to the public by crossing Bridge 5121, the Bridge must remain open in order for us to access our home, livestock and business. Consequently, we urge you to prioritise this matter as urgent so that we are finally able to continue our lives without further turmoil and cost.

Romaine and I look forward to the attending the Council meeting in March where you have advised you will present the matter for further deliberation.

Yours sincerely



Graeme Johnson

20 January 2018



**mainroads**  
WESTERN AUSTRALIA

Enquiries: Peter Newhouse  
Our Ref: 04/8398-02  
Your Ref: BR5121

2 March 2018

Mr Benjamin Rose  
Chief Executive Officer  
Shire of Donnybrook/Balingup  
P.O. Box 94  
Donnybrook WA 6239

SHIRE OF DONNYBROOK BALINGUP	
RECEIVED	
- 7 MAR 2018	
Receipt No:	ICOR63247
File No:	BR5121
Officer:	BARDM
X Ref:	
Corresps:	
Signed Off:	

Dear Mr Rose

### **Bridge 5121 on Rosedene Lane over Preston River - Ownership**

Thank you for your letter of 12 January 2018 regarding the ownership of Bridge 5121, Rosedene Lane, Queenwood.

Main Roads' records in relation to this bridge go back to 1996. At that time, the Department of Land Administration (DOLA) provided advice that, based on the Local Government Act 1995, the Shire was responsible for Bridge 5121.

In 2001, Main Roads undertook a survey of the bridge location and confirmed that the bridge was located in vacant crown land (Unallocated Crown Land) which contained the Preston River. Based on the advice from DOLA and the survey results, Main Roads considered the bridge to be the responsibility of the Shire. This remains Main Roads' position in relation to the ownership of Bridge 5121 unless consistent, credible legal advice is obtained to the contrary.

Accordingly, in line with its statutory obligations for any bridge accessible by the general public, Main Roads has undertaken 5 yearly detailed inspections on Bridge 5121 and carried out load rating of the structure as required. The most recent detailed inspection was in 2015 and load rating in 2016.

In general, the bridge has been found to be in poor condition and has been load posted at 13 tonnes since 2002. It is clear that the bridge has received no preventative maintenance over its life. This has been due to the ongoing reluctance by any party to accept ownership of the bridge.

Main Roads has recommended over a number years that the Shire develop a formal strategy for the bridge. While there is no strategy in place for this bridge and the ownership is in dispute, Main Roads is not prepared to fund repairs or replacement of the structure.

Main Roads' position is that in the short term, the bridge should be closed to traffic until emergency repairs are undertaken at which point the bridge can be reopened to traffic with a posted load limit of 13 tonnes. The details of the required emergency repairs have been previously provided to the Shire.



**mainroads**  
WESTERN AUSTRALIA

For the long term, Bridge 5121 is effectively at the end of its life and should be replaced or some alternative access to the property arranged. Main Roads has arranged a waterways assessment for this crossing location and has identified that the appropriate replacement structure is an 18m long, two span, single lane bridge. The estimated cost of replacing Bridge 5121 with a concrete bridge is about \$700,000.

Should the Shire formally accept responsibility for the bridge, Main Roads could assist the Shire by arranging for the design of a replacement structure and seeking funds to replace the bridge. However, given the limited funding available for bridge replacement and the relatively low priority of this bridge (serves only one property) compared to other bridge needs across the State, there can be no guarantee when this funding could be secured. A joint funding arrangement between State/Federal Governments and the Shire may be more likely to receive support.

However, should the Shire's strategy be to hand over responsibility of the current bridge to the landowner by way of a lease or easement, Main Roads would not be supportive of using public funds to fund the replacement structure.

Yours sincerely

Peter Sewell  
**A/Executive Director Metropolitan and Southern Regions**



Mr Des Snook  
Main Roads Western Australia  
Executive Director Metropolitan and South West Regions  
And Heavy Vehicle Services  
PO Box 6202  
East Perth WA 6892

Dear Mr Snook

**SHIRE OF DONNYBROOK BALINGUP – STRUCTURES LOCATED ON  
UNALLOCATED CROWN LAND**

As you may be aware, throughout the State there is lack of clarity as to which agency is responsible for assets built on Unallocated Crown Land. With large areas of this land tenure type within our Shire, we are unfortunately in dispute over a number of assets where the ownership is disputed, including a Bridge referenced as Bridge 5121- Rosedene Lane, Queenwood.

Bridge 5121 is wholly located within Unallocated Crown Land and provides access to a single property. The Shire road reserve concludes prior to the structure and the Shire does not have any road reserve or land under its management on the opposite side of the bridge. There is also no history of the Shire being involved with the construction of the bridge.

Further details on the bridge history can be obtained from Main Roads South West Office; however, basically, the bridge has now deteriorated to a point where it was recommended by MRWA over 18 months ago that it should be closed to traffic.

MRWA have offered emergency funding to repair the bridge back to a standard equivalent to its last assessment, on the provision that the Shire resolves ownership of the asset.

The Shire has negotiated in good faith with the owners of the land benefitted by the bridge over the 18-month period since the closure advice was received. This process was made even more complex as the property was in settlement for sale. The new owners have declined to accept ownership based on the bridge being repaired to an equivalent standard, but have outlined they may consider ownership if the bridge is rebuilt/upgraded to higher standard.

The Shire does not have the financial capability to solely fund the reconstruction of the Bridge to a higher standard, and this leaves us to defend our position with both the landowners (benefitted by the bridge) and MRWA that Section

3.53 of the *Local Government Act 1995* (the Act) determines that we do not own Bridge 5121. It does outline we may have a management and control responsibility; however, this is not the case if:

- Any person was, immediately before the commencement of this Act, responsible for controlling or managing the facility unless –
  - (A) The responsibility arose under the former section 300; or
  - (B) the governor, by order, declares that the facility is to be controlled and managed under this section.

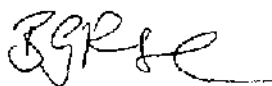
It is also quite important to note that the term 'care' is not used in section 3.53 of the Act.

How MRWA has come to the position that the bridge is fully a Shire responsibility is of concern, and we do request you clarify how MRWA has determined this position, considering that other State Agencies have not determined that these structures are Shire assets (refer included correspondence).

This aside, the current owners have presented a proposal where they may accept permanent ownership of the bridge asset, on the provision that it is 'handed' to them in good quality. As a representative of the State we consider MRWA should significantly fund restoration / reconstruction of the bridge to resolve the matter and ongoing ownership of the bridge.

We look forward to receiving your response on this matter.

Yours sincerely



Benjamin (Ben) Rose  
**Chief Executive Officer**

12/01/2017



7 November 2016

Our Ref: 05-001-03-0020lid:ld

Mr D Morgan  
Manager Works and Services  
Shire of Donnybrook/Balingup  
PO Box 94  
DONNYBROOK WA 6239

BY EMAIL: [dmorgan@donnybrook.wa.gov.au](mailto:dmorgan@donnybrook.wa.gov.au)

Dear Damien

**Responsibility for Bridges under Section 3.53 Local Government Act 1995**

I refer to your enquiry dated 27 October 2016 in relation to correspondence between the Shire of Donnybrook – Balingup, WALGA and the then Department of Local Government and Regional Development in mid-2007 regarding Local Government responsibilities for bridges under Section 3.53 of the Local Government Act 1995.

Examination of our records from 2007 have not lead to the discovery of any response from the Department of Local Government and Regional Development to our letter dated 21 September 2007.

More recently Section 3.53 of the Act has been considered by the Governance Roundtable. The Governance Roundtable brings together senior officers from the Department of Local Government and Communities, LGMA and WALGA. On behalf of Local Governments, WALGA has been strongly advocating in this forum that changes to Section 3.53 be prioritised and dealt with by a Local Government Act Amendment Bill. It is the view of the Department that this matter be considered at the next full review of the Local Government Act.

With only a few sitting days remaining for the current Parliament, the approach of the incoming Government to Local Government Act matters is now the focus. While political parties have made public comments about a review of the Local Government Act 1995, currently there is no timeframe for any proposed review.

Yours sincerely

**Ian Duncan**  
Executive Manager, Infrastructure

ONE70  
LV1, 170 Railway Parade, West Leederville, WA 6007  
PO Box 1544, West Perth, WA 6872  
T: (08) 9213 2000 F: (08) 9213 2077 [info@walga.asn.au](mailto:info@walga.asn.au)  
[www.walga.asn.au](http://www.walga.asn.au)





21 September 2007

Our Ref: 05-001-03-005 /MJH

Acting Director General  
Mr Quentin Harrington  
Department of Local Government and Regional Development  
GPO Box R1250  
PERTH 6844

**RESPONSIBILITY FOR BRIDGES UNDER PROVISIONS OF SECTION 3.53 OF THE LOCAL GOVERNMENT ACT 1995**

Dear Quentin,

The Association wrote to the Department of Local Government and Regional Development on the 18<sup>th</sup> August 2006 outlining Local Governments concerns and issues with *Section 3.53 Local Government Act 1995* and the belief that this section of the Act was transferring the responsibilities of unvested or private bridges to Local Government.

The Shire of Donnybrook-Balingup currently is negotiating with the owners of a property and may be sued over the ownership and the responsibilities to repair a privately owned bridge over the Preston River. This may be a test case to *Section 3.53 Local Government Act 1995* and the Shire of Donnybrook-Balingup may be facing considerable legal fees to defend a case that will be significant to the whole of Local Government.

The Association requests that if legal proceedings are taken against the Shire of Donnybrook-Balingup the Department of Local Government aid the Shire of Donnybrook-Balingup by requesting the State Solicitor to represent the State's interests, as the legal action if lost will have major ramifications for Local Government and the Crown has a interest in the outcome.

The Association requests that *Section 3.53 Local Government Act 1995* be amended to clearly outline that Local Governments have no responsibility for any structure on vacant crown land where ownership can not be verified or it is not a responsibility of Local Government such as the Ivanhoe Crossing in the Shire of Wyndham East Kimberley.

The Department of Local Government and Regional Development forwarded to the Association a précis of the State Solicitors Office advice in relation to the issue raised in the correspondence and Local Governments responsibilities for bridges under *Section 3.53 Local Government Act 1995*. (Refer to attachment 1).

Local Government House  
15 Altona Street  
West Perth WA 6005  
PO Box 1544  
West Perth WA 6872

Telephone: (08) 9321 5055  
Facsimile: (08) 9322 2611  
Email: [info@walga.asn.au](mailto:info@walga.asn.au)  
Website: [www.walga.asn.au](http://www.walga.asn.au)



The Association then forwarded this response to Local Government via an info page through the Associations normal communications channels. The Association received advice from effected Local Governments that *Section 3.53 Local Government Act 1995* was still causing them major concerns.

The Association requested advice from the Department of Local Government and Regional Development with further clarification on *Section 3.53 Local Government Act 1995* as Local Governments were being threatened with legal action regarding the ownership of bridges on unallocated crown land under *Section 3.53 Local Government Act 1995*. The response received from the Department of Local Government and Regional Development has been attached to this letter as attachment 2.

The association reaffirmed the advice given by the Department of Local Government to its members once again through normal communications channels.

Major concern was again raised by Local Governments along with the legal firm representing a Local Government being challenged on the issue of bridge ownership through legal action. The concern raised was that the advice from the State Solicitors Office had to be treated with extreme caution. The Department of Planning and Infrastructure Land Asset Section also advised a Local Government to treat such advice with caution. Please find attached a letter received from the Shire of Wyndham East Kimberley (Attachment 4) where it states that the Department of Planning and Infrastructure refers the Shire of Wyndham East Kimberley to its obligations under *Section 3.53 Local Government Act 1995*.

The Association met with representatives of the Department of Local Government to discuss the issues with the State Solicitors office advice and the concerns being re raised by Local Governments especially the Shire of Donnybrook-Balingup and requested amendments be undertaken to *Section 3.53 Local Government 1995* to clearly define Local Government responsibilities for bridges and clearly show that Local Government has no responsibility for bridges that have been privately built or ownership can not be verified on unallocated crown land such as the case over the Preston River in the Shire of Donnybrook-Balingup. The advice received from the Department of Local Government and Regional Development from this meeting was that there has been no new information provided to the Department that necessitated the Department seeking further clarification from the State Solicitors Office and the action being taken against the Shire of Donnybrook-Balingup in relation to the bridge over the Preston River needed to be through the Shires own Solicitors as the Department does not have a role in this respect.

I await your response to this letter as this issue is one of major concern to Local Government and needs to be resolved as soon as possible.

Yours sincerely

**Ricky Burges**  
Chief Executive Officer

Cc Shire of Donnybrook-Balingup  
Shire of Manjimup  
Joint Councils  
Shire of Wyndham-East Kimberley



Department of Local Government and Regional Development  
Government of Western Australia

Your Ref: 05-001-03-005 MJH  
Our Ref: E0701985

Ms Debbie Terelink  
Executive Manager, Transport and Roads  
Western Australian Local Government Association  
PO Box 1544  
WEST PERTH WA 6872

Dear Ms Terelink

I refer to your previous correspondence of 18 August 2006 regarding the responsibilities of local governments for bridges under section 3.53 of the *Local Government Act 1995*.

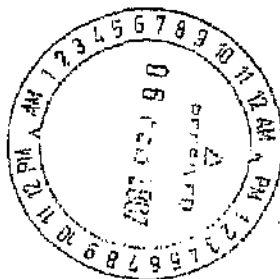
The Department sought advice from the State Solicitor's Office (SSO) regarding this matter and I am now able to provide you with details of the response.

SSO has advised that local governments are not responsible under section 3.53(2) for controlling and managing 'private' bridges which do not belong to a 'public thoroughfare' in the district. This maintains the position in relation to such facilities under previous legislation contained in the *Municipal Corporations Act 1906* and the *Local Government Act 1960*. Where unallocated land has been used for private purposes, there is no obligation on the local government to maintain such structures.

I trust that this will allay the concerns expressed by your members in relation to this matter.

Yours sincerely

Cheryl Gwilliam  
DIRECTOR GENERAL



February 2007

cc: Mr Rick Miller, Manager Works & Services, Shire of Donnybrook-Balingup.



Department of Local Government and Regional Development  
Government of Western Australia

Your Ref: 06-001-02-0020 MJH  
Our Ref: D0701017

RECEIVED  
31 MAY 2007  
334

Ms Michelle Mackenzie  
Acting Executive Manager, Transport and Roads  
Western Australian Local Government Association  
PO Box 1544  
WEST PERTH WA 6872

MM - ✓  
MH - Info Page

Dear Ms Mackenzie *Michelle*,

**RESPONSIBILITY FOR BRIDGES UNDER PROVISIONS OF SECTION 3.53 OF THE LOCAL GOVERNMENT ACT**

Thank you for your letter of 7 March 2007 in reference to the responsibility of bridge ownership on unallocated land.

The matter was raised by the Shire of Harvey that has a number of timber bridges constructed by the Water Corporation over irrigation channels within its district. The Shire is now concerned at inheriting responsibility if the Water Corporation divests itself of responsibility for the irrigation scheme. These bridges are on Unallocated Crown Land (UCL) and if section 3.53 were applied, then these bridges may become the responsibility of the local government to maintain.

Tim Fowler, Director of Capacity Building, spoke to Mark Hook from your office on this matter following receipt of this and an earlier letter.

Section 3.53(2) of the *Local Government Act 1995* indicates "a local government is responsible for controlling and managing every otherwise unvested facility within its district unless subsection (5) states that this section does not apply".

Section 3.53(5) indicates that this section does not apply, if any person was, immediately before the commencement of this Act, responsible for controlling or managing the facility unless the responsibility arose under the former section 300 of the *Local Government Act 1960*, or the Governor, by order, declares that the facility is to be controlled and managed under this section.

Under previous legislation a local government was not held responsible for private bridges in local government districts. They were responsible for streets as part of a public highway and also to any other thing which was appurtenant to it (now expressly stated to include "bridges" and "culverts").



From the legal opinion received by the Department from the State Solicitors Office, section 3.53 re-enacted the key provisions of the *Municipal Corporations Act 1906* and the *Local Government Act 1960* scheme, and accordingly created no new responsibilities for bridges in local government districts. As has been the case since 1906, bridges appurtenant to private streets are not within any statutory responsibility for control and management of local governments.

Therefore, a local government is not responsible under section 3.53(2) for controlling and managing "private bridges; ie those which are not appurtenant to public thoroughfares in its district. Those facilities do not "belong to the Crown" within the meaning of the definition of "otherwise unvested facility" in section 3.53(10) of the Act.

If you need further advice on this matter please speak to Jenni Law on 9217 1531 or Peter Hayes on 9217 1513.

f  
Yours sincerely



Cheryl Gwilliam  
DIRECTOR GENERAL

29 May 2007



Department of Local Government and Regional Development  
Government of Western Australia

Your Ref: WRK 28 Bridge 3857  
Our Ref: 434-98#06/D0702436

MANJIMUP SHIRE COUNCIL		
FILE	WRK 28	No. 69092
DATE - 1 JUN 2007		
Officer	MTS	Init
FILE	ANS	DATE

Mr Graham Lantzke  
Manager Technical Services  
Shire of Manjimup  
PO Box 1  
MANJIMUP WA 6258

Dear Mr Lantzke

### BRIDGES ON UNALLOCATED CROWN LAND

Thank you for your letter dated 8 May 2007, requesting advice in relation to private bridges on unallocated crown land.

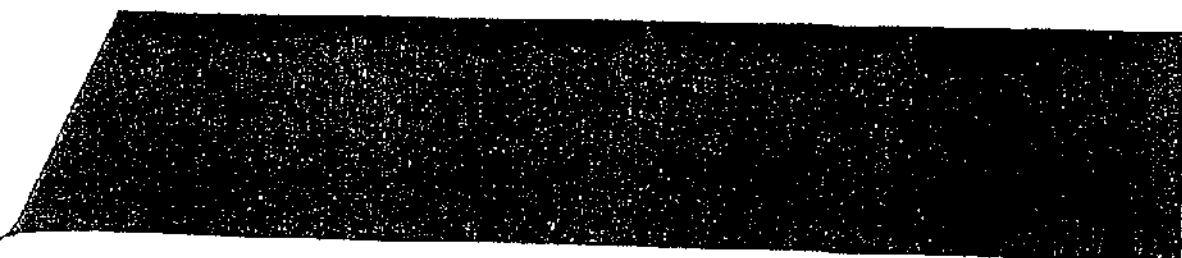
The Department received a similar request recently from WALGA and has responded based on advice from the State Solicitors Office.

Section 3.53(2) of the *Local Government Act 1995* indicates "a local government is responsible for controlling and managing every otherwise unvested facility within its district unless subsection (5) states that this section does not apply".

Section 3.53(5) indicates that this section does not apply, if any person was, immediately before the commencement of this Act, responsible for controlling or managing the facility unless the responsibility arose under the former section 300 of the *Local Government Act 1960*, or the Governor, by order, declares that the facility is to be controlled and managed under this section.

Under previous legislation a local government was not held responsible for private bridges in local government districts. They were responsible for streets as part of a public highway and also to any other thing which was appurtenant to it (now expressly stated to include "bridges" and "culverts").

From the legal opinion received by the Department from the State Solicitors Office, section 3.53 re-enacted the key provisions of the *Municipal Corporations Act 1906* and the *Local Government Act 1960* scheme, and accordingly created no new responsibilities for bridges in local government districts. As has been the case since 1906, bridges appurtenant to private streets are not within any statutory responsibility for control and management of local governments.



Therefore, a local government is not responsible under section 3.53(2) for controlling and managing "private bridges; ie those which are not appurtenant to public thoroughfares in its district. Those facilities do not "belong to the Crown" within the meaning of the definition of "otherwise unvested facility" in section 3.53(10) of the Act.

If you need further advice on this matter please speak to Jenni Law on 9217 1531 or Peter Hayes on 9217 1513.

F  
Yours sincerely



Cheryl Gwilliam  
DIRECTOR GENERAL

27 May 2007  
K

Our Ref: 21.10.504  
Your Ref:  
Enquiries: Alex Douglas

Chief Executive Officer  
Western Australian Local Government Association  
PO Box 1544  
WEST PERTH WA 6872

19 NOV 2007

Dear Ricky,

RE: APPLICATION OF S3.53, LOCAL GOVERNMENT ACT 1995

The Shire of Wyndham East Kimberley has recently has exchanged correspondence with the Department of Planning and Infrastructure's (DPI) Kununurra office over responsibility for the Ivanhoe Crossing, Kununurra.

Whilst the specific circumstances of the floodway are not initially relevant the response from the DPI is the subject of this correspondence.

In short the floodway and approach roads (either side) are located within the Ord River reservation, that is, not within a road reserve or portion of gazetted public road. The road from the south (Kununurra side) is Ivanhoe Road which effectively terminates at the boundary of the river reservation. A road on the north side was a continuation of the original Wyndham-Darwin Rd long since de-gazetted and now locally referred to as Parry Creek Road.

The concrete floodway was constructed in 1943/44 by the armed forces to allow the movement of equipment to and from Wyndham across the Ord River during the dry season. In recent years the opening and closing of access across the floodway has typically been managed by the Shire but most recently in view of duty of care/insurance concerns the Shire feels that the onus for public access across the floodway should lie with DPI as it is substantively unallocated crown land.

A locality plan and site map are attached.

The response from DPI was to refer the Shire to its obligations under S3.53 of the Act. In reading the section the obligations implied within it causes significant concern, not the least of which is the apparent potential for cost shifting by state agencies on to local government.

We seek WALGA's assistance in: -

- a) clarifying the intent of the section;
- b) evaluating the application of S3.53 in instances such as our own, and



Shire of  
Wyndham  
East  
Kimberley

All communications  
to be addressed to the  
Chief Executive Officer

PO Box 614

Kununurra WA 6743

Ph (08) 9168 4

Fax (08) 9168 1798

Email:

mail@thelastfrontier.com.au

Kununurra Office:

115 Coolbah Drive

Kununurra

Wyndham Office:

Conlama Street

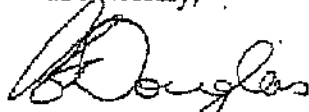
Wyndham

THE LAST FRONTIER

- c) whether the Association would offer guidance as to the means to limit/protect local authorities from the abuse of the section by government agencies to achieve cost shifting and/or transfer of liability and responsibility for any 'otherwise unvested facility'.
- d) clarification of former section 300 of the Local Government Act 1960 and how it relates.

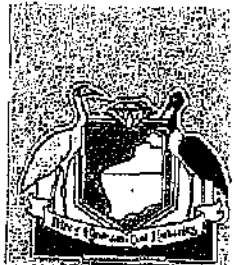
Please do not hesitate to contact Mr Peter Stubbs, CEO or myself on 9168 4100 if you wish to discuss the issue, or have any queries.

Yours sincerely,



ALEX DOUGLAS  
EXECUTIVE MANAGER  
ENGINEERING & DEVELOPMENT SERVICES

7 June 2007



Shire of  
Wyndham-  
East  
Kambrey

All communications  
to be addressed to the  
Chief Executive Officer  
PO Box 614  
Kununurra WA 6743  
Ph (08) 9168 4100  
Fax (08) 9168 1798  
Email:  
mail@thelastfrontier.com.au

Kununurra Office:  
115 Coolbah Drive  
Kununurra

Wyndham Office:  
Koolana Street  
Wyndham

The  
Last  
Frontier

