



# PUBLIC ATTACHMENTS

Audit Committee Meeting

16 August 2021



# Thresholds and Requirements including Revised Threshold and RFQ Exemptions

## 1. Purchasing Thresholds

The value of a purchase is not limited to the financial year when the purchase was initiated, but may be over several financial years depending on the procurement or type of contract.

**Records** where required or obtained, the following are to be attached to the purchase order:

- Note of verbal specification and submission (**Record on the Quotation Acceptance Form – Appendix A**);
- Quotation Acceptance Form**, specification required, assessment criteria set, summary of submissions, evaluation made.

### General purchasing thresholds

Where the value of procurement (excluding GST) for the value of the contract over the full contract period (including options to extend) is, or is anticipated.

Anticipated Value of Purchase Excl. GST	Requirement	Documentation	Evaluation Panel
Less than \$1,500	Quotations not required for items of minor recurrent nature, such as groceries, stationery, hardware, mechanical, reticulation consumables etc.  Employee must be satisfied that the price is competitive	None	One Employee
\$1,500 to less than <b>\$10,000</b>	<b>Direct supplier</b>  <b>Seek one verbal quote or one written quote</b>  Written quotations recommended but not required	<b>Required</b>  Verbal quotations received must be recorded on Quotation Acceptance Form (Appendix A)  <b>Recommended</b>  Written quotations received	One Employee
<b>\$10,000</b> to less than \$25,000	Seek two written quotations	<b>Required</b>  Written quotations	One Employee
\$25,000 to less than \$50,000	Seek three written quotations	<b>Required</b>  Written quotations received  <b>Recommended</b>  <ul style="list-style-type: none"> <li>Written specifications</li> <li>Assessment criteria</li> <li>Evaluation panel</li> </ul>	Two Employees

\$50,000 to less than \$250,000	Seek three written quotations containing price and specification of goods and services	<b>Required</b> <ul style="list-style-type: none"> <li>• Written specification</li> <li>• Written assessment criteria</li> <li>• Written quotations received</li> <li>• Evaluation panel</li> </ul>	Two Employees
\$250,000 and above	Conduct a public tender process or  WALGA Preferred Supplier / State Government Common Use Agreement  Refer to Council for decision unless prior delegation to CEO	<b>Required</b> <ul style="list-style-type: none"> <li>• Written specification</li> <li>• Written assessment criteria</li> <li>• Written quotations received</li> <li>• Evaluation panel</li> </ul>	Two Employees or One Employee and One external person

#### WALGA Preferred Supplier or State Government Common Use Agreement Thresholds

Less than \$250,000	As per General threshold	As per General Thresholds	As per General Thresholds
\$250,000 and above	Seek three written quotations containing price and specification of goods and services.  Refer to Council for decision unless prior delegation to CEO	As per General Thresholds	As per General Thresholds

#### Quotation Acceptance Form

Appendix A to this Policy (Quotation Acceptance) must be completed for all purchase orders issued above \$1,500, with a summary of the verbal quotations received included in this form and/or a copy of all written quotations attached.

#### Exemptions From Request For Quote (Not Applicable to Tenders)

At times it may be necessary to vary from the requirements of Schedule 3.1(b) for a number of reasons including:

- The need to engage short term staff to relieve existing staff when on leave or due to a vacancy.
- Legal expenses where a specific firm is considered to be the preferred provider of such services.
- Emergency situations (See definition of Emergency Purchases).
- Urgent works such as electrical and plumbing repairs where immediate work is required to address a safety or operational issue.
- The services required rely on intellectual property (IP)\* accrued by a person or organisation that has undertaken previous work for the Shire.
- The purchase involves the acquisition of software and the preferred software has been identified following thorough investigation of available alternatives.

G. The purchase involves the renewal of software maintenance and service agreements where software continues to meet the needs of the Shire and the cost of running a procurement process or commissioning and implementing a new system would make a change uneconomical.

In the instance where staff deem it necessary to vary from these policy requirements as outlined above (the exemptions), the form attached as Appendix A must be completed and authorised by the Chief Executive Officer or Manager responsible for the employee.

\*IP is property that results from intellectual and creative efforts (organisation's activities). Refer to Guide to Intellectual Property Law May 2020 (Justice Connect).

### Definition of Emergency Purchases

Emergency purchases are defined as the supply of goods or services associated with:

- (a) A local emergency and the expenditure is required (within existing budget allocations) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets; OR
- (b) A local emergency and the expenditure is required (with no relevant available budget allocation) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets in accordance with s.6.8 of the *Local Government Act 1995* and Functions and General Regulation 11(2)(a); OR
- (c) A State of Emergency declared under the *Emergency Management Act 2005* and therefore, the Functions and General Regulations apply as follows:
  - a. 11(2)(aa) – the supply of the goods or services is associated with a state of emergency; or
  - b. 11(2)(ja) - the contract is a renewal or extension of the original contract where:
    - i. The original contract is to expire within 3 months; and
    - ii. The renewal or extension is for a term of not more than 12 months from the expiry of the original contract; and
    - iii. The contract for renewal or extension is entered into at a time when there is in force a state of emergency declaration applying to the district, or part of the district, of the local government;
  - c. (3) For the purposes of 11(2)(aa):
    - i. The contract for the supply is entered into while there is in force a state of emergency declaration applying to the district, or part of the district, of the local government; and
    - ii. The local government considers that the goods or services are required for the purposes of addressing a need arising from the hazard, or from the impact or consequences of the hazard, to which the state of emergency declaration relates.

Time constraints, administrative omissions and errors do not qualify for definition as an emergency purchase. Instead, every effort must be made to research and anticipate purchasing requirements in advance and to allow

sufficient time for planning and scoping proposed purchases and to then obtain quotes or tenders, as applicable.

#### How the Emergency Purchase is Applied – Within Budget

Emergency Purchases <i>(Within Budget)</i>	<p>Where goods or services are required for an emergency response and are within scope of an established Panel of Pre-qualified Supplier or existing contract, the emergency supply must be obtained from the Panel or existing contract using relevant unallocated budgeted funds.</p> <p>However, where due to the urgency of the situation; a contracted or tender exempt supplier is unable to provide the emergency supply <u>OR</u> compliance with this Purchasing Policy would cause unreasonable delay, the supply may be obtained from any supplier capable of providing the emergency supply. However, an emergency supply is only to be obtained to the extent necessary to facilitate the urgent emergency response and must be subject to due consideration of best value and sustainable practice.</p> <p>The rationale for policy non-compliance and the purchasing decision must be evidenced in accordance with the Shire/Town/City's Record Keeping Plan.</p>
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#### How the Emergency Purchase is Applied – No Budget Allocation

Emergency Purchases <i>(No budget allocation available)</i>	<p>Where no relevant budget allocation is available for an emergency purchasing activity then, in accordance with s.6.8 of the <i>Local Government Act 1995</i>, the President must authorise, in writing, the necessary budget adjustment prior to the expense being incurred.</p> <p>The CEO is responsible for ensuring that an authorised emergency expenditure under s.6.8 is reported to the next ordinary Council Meeting.</p>
Refer for Clause 1.4.3	<p>The Purchasing Practices prescribed for Emergency Purchases (within budget) above, then apply.</p>

#### **NOTES**

Any work done under warranty / guarantee is not considered to be a purchasing activity, but is a part of the original contract or agreement to purchase.

1. Any work done outside of warranty / guarantee, even if it may affect warranty / guarantee, is a purchasing activity.
2. Management of that risk is an administrative task, and may be a factor in a "value for money" consideration.

Where it is considered beneficial, tenders may be called in lieu of seeking quotations for purchases under the \$250,000 threshold (excluding GST). If a decision is made to seek public tenders for contracts of less than \$250,000, a Request for Tender process that entails all the procedures for tendering outlined in this policy must be followed in full.

## 2. Quotations/Submissions

1. If required or appropriate, any Evaluation Panel is to be established prior to the request for submissions. The Panel is to consist of a mix of skills and experience relevant to the nature of the purchase. The Panel is to assess the submissions against the specifications set, the assessment criteria, value for money, local price preference and any other relevant matter.
2. Where required and prior to submissions being requested, the specifications for the procurement and the assessment criteria for determining the procurement are to be determined in writing.
  - ☐ For quotations – by the purchasing officer, and approved by the relevant Manager within their approved purchasing limits, otherwise by the CEO
  - ☐ For tenders – by the purchasing officer, approved by the relevant Manager, and authorised by the CEO under delegated authority.
3. The general principles relating to written quotations / submission are:
  - ☐ An appropriately detailed specification should communicate requirement(s) in a clear, concise and logical fashion.
  - ☐ The request for written quotation should include as a minimum the:
    - Written specification
    - Assessment criteria to be applied
    - Price schedule
    - Conditions of responding
    - Validity period of offer
  - ☐ Invitations to quote should be issued simultaneously to ensure that all parties receive an equal opportunity to respond.
  - ☐ Offer to all prospective suppliers at the same time any new information that is likely to change the requirements.
  - ☐ Responses should be assessed for compliance, then against the selection criteria, and then value for money and all evaluations documented.
  - ☐ Respondents should be advised in writing as soon as possible after the final determination is made and approved.

The Local Government Purchasing and Tender Guide produced by the Western Australian Local Government Association (WALGA) should be consulted for further details and guidance.

## 3. Specifications, Assessment Criteria and Evaluation

### Specifications

Applies to all procurements as determined by the thresholds in clause 1:

A. Where a specification is provided or required by clause 1, the specification may include:

- ☐ Details, format and request to be appropriate to the procurement
- ☐ How many / how much
- ☐ What size / power etc
- ☐ How fitted out
- ☐ Standard / quality required
- ☐ Type of construction
- ☐ Where the work / product is to be delivered etc.

B. If a written specification has been issued the assessment criteria is to be included in the written specification.

### **Assessment Criteria**

Assessment criteria are to be determined prior to evaluation i.e. how the submission is to be assessed and scored, and may include:

- ☐ Details and record to be appropriate to the procurement
- ☐ Local provider or external
- ☐ Standard of work, quality of item
- ☐ Reliability, service, warranty
- ☐ References
- ☐ Price etc

### **Evaluation**

After close of the submission period, an evaluation is to be made based on the following i.e. how the submission was actually assessed and scored:

- ☐ To what extent was each specification met
- ☐ How does the submission measure against each criteria
- ☐ Which score provides best value for money



## Quotation Acceptance Form

Quotations sought regarding: \_\_\_\_\_

Nature of the supply: \_\_\_\_\_

Name of supplier:	1.	2.	3.
Price (GST included):			

Project/General Ledger Code:	
Budgeted Allocation:	Financial Year:

Have you complied with the requirement of the **Purchasing Policy**? Yes/No  
If no, please detail why the requirements of the Policy should be varied for this purchase.  
Please attach additional documentation if required.

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### Officer - Recommended Supplier

Name of supplier:	
Supporting narration:	
Signed:	Date:

### Manager - Recommended Supplier

Name of supplier:	
Supporting narration:	
Signed:	Date:

Version 1 - 7 July 2021

Schedule Ends \_\_\_\_\_





# Current Schedule 3.1b

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\$1,500 to less than \$5,000	Seek two verbal quotations  Written quotations recommended but not required	<b>Required</b> Note of verbal quotations received  <b>Recommended</b> Written quotations received	One Employee
\$5,000 to less than \$25,000	Seek two written quotations	<b>Required</b> Written quotations	One Employee
\$25,000 to less than \$50,000	Seek three written quotations	<b>Required</b> Written quotations received  <b>Recommended</b> <ul style="list-style-type: none"> <li>Written specifications</li> <li>Assessment criteria</li> <li>Evaluation panel</li> </ul>	Two Employees

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Schedule Ends \_\_\_\_\_

# Guide to intellectual property law

**A guide for community organisations in Australia on creating and protecting intellectual property**

May 2020



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# Why is intellectual property important?

This guide aims to give a broad overview of intellectual property (IP) and some of the key issues community organisations face regarding their IP.

## What is IP?

IP is property that results from intellectual and creative efforts. Ownership rights attach to IP.

## Why is IP important?

Your community organisation's IP is an **asset** and **identifier** and also **protects** the organisation's rights:

### Asset

- IP can be a financial asset to be exploited to raise funds for your community organisation and help it achieve its purposes.

### Identifier

- Members of the public refer to your IP to identify and differentiate your organisation (and its services) from other organisations (and their services).

### Protection

- IP also plays a critical role in your organisation's ability to protect its reputation, goodwill and creative endeavours.

Your organisation must take care not to infringe the IP rights of others - even unintentionally. If you infringe another's IP rights, there are likely to be undesirable consequences, including legal action against your organisation.

## How will IP be created in my organisation?

If you are setting up a new community organisation, some of the first things you are likely to think about are choosing a name, a slogan and a logo to represent your organisation. You might also plan to design a website, create advertising and marketing materials, or produce training materials for your volunteers.

If you work with a community organisation, you might revamp the organisation's fundraising merchandise, write a software program for the organisation's financial records, develop an action plan or report on the organisation's activities, or create photographic images for the organisation's use.

IP may be created by many of your organisation's activities, including:

- the choice and use of a name and logo for your organisation as well as the names or logos of individual programs, campaigns or services



- creating original publications, brochures, manuals, reports, fact sheets, action plans, annual reports and posters
- creating original promotional and advertising materials, including photographs, merchandising, jingles and videos
- website design, content and potentially some elements of the layout
- original computer applications, programs or databases, and
- any patentable innovations and inventions

You should always consider IP issues when doing these kinds of activities to make sure:

- your organisation doesn't make the mistake of infringing someone else's existing IP rights, and
- your organisation's IP is properly protected so it can stop others taking advantage of the goodwill and value in the IP

IP is important at the start of every project and continues to be important.

## How is IP protected?

In Australia, IP rights are protected under Commonwealth legislation, as well as by common law (law developed by judges' decisions, rather than through legislation passed by parliament).

## Types of IP

The most common types of IP are summarised in this table:

IP type	What does this IP type cover?
<b>Copyright</b>	Original forms of expression resulting from an author's effort (ie. not simply ideas). This includes literary, dramatic, musical or artistic works. Sound recordings, films, published editions and broadcasts are also copyright protected.
<b>Trade marks</b>	A trade mark may be a word, phrase, logo, sound, smell, shape, picture or any combination of these. They are usually brands, service or product marks and logos.
<b>Patents</b>	Inventions and innovations
<b>Designs</b>	Shapes, configurations, patterns and ornamentation of products
<b>Confidential information</b>	Information which the law recognises as being confidential in nature due to the circumstances of its creation and disclosure
<b>Moral rights</b>	Personal rights of the author or performer of a work to be attributed, not to have their authorship or performership falsely attributed, and to have the integrity of their authorship or performership maintained.

Different types of IP are differ in terms of:

- what they protect
- how they are protected, enforced and exploited, and
- how long protection lasts

For example, in some instances IP protection is automatic and doesn't require any formal registration (such as copyright). In other cases, you must formally register your IP and pay statutory application, registration and renewal fees (such as patents) to get protection. We've discussed these differences in further detail in this guide.





# Copyright

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## This section covers:

- ▶ what is copyright?
  - ▶ how does an organisation get copyright?
  - ▶ who owns copyright?
  - ▶ what rights does copyright give an owner?
  - ▶ how long does copyright last?
  - ▶ how is copyright infringed and what should you do if copyright is infringed?
- 

**Copyright protects original literary, artistic, dramatic and musical ‘works’ to the extent that these works are the original expression of the author.**

**It doesn’t protect the underlying idea or concept of a work.**

**Once an original work has been fixed in material form (for example, written down, recorded or saved on a computer), copyright protection is likely to apply. In addition, recordings of sound and film, published editions (for example, books) and broadcasts are also protected.**

The following table provides examples of common types of copyright material that may be created or used by not-for-profit community organisations:

Copyright materials	Examples
Literary works (text based material)	Books, software source code, letters, emails, written case studies, training materials, reports, fact sheets, articles, music lyrics, written website content and some types of databases
Artistic works	Logos, paintings, drawings, sketches, photographs, cartoons, graphic design work and computer-generated graphics
Musical works	Musical score for a song
Dramatic works	Plays and dance choreography



Cinematograph films	Videos, commercials and other moving images (such as on websites and social media channels like YouTube)
Sound recordings	Advertising jingles and podcasts
Broadcasts	A television or radio broadcast (not an on demand podcast or video)



### Tip

Sometimes, an item may be the subject of more than one type of copyright. For example, a TV commercial may include separate copyright in the script, musical score, lyrics, sound recording and the cinematographic recording.

## How does copyright arise?

In Australia, copyright protection is free and applies automatically when an original work or other material in which copyright vests (such as sound recordings, films, broadcasts and published editions) is created.

It's not necessary (nor possible) to register a work for copyright protection in Australia. This means that you don't need to do anything to get copyright, and legal protection exists from the moment the copyrighted material is created.

The *Copyright Act 1968* (Cth) (**Copyright Act**) sets out the criteria for copyright to exist:

- there must be is a **sufficient connection to Australia**
- the work must be **original**, and
- the work must be in **material form** (it must be in writing or some other 'hard copy' form)

The **connection to Australia** depends on what the copyright subject matter is. For example, the connection to Australia can include that:

- the person who created the copyrighted material was a citizen or resident of Australia (or a country connected with Australia via an international treaty),
- the work was published for the first time in Australia (or a country connected with Australia via an international treaty), or
- the item was made in Australia (for sounds recordings, films and broadcast)

For the work to be **original**, the expression of the work must be the result of the author's choices, skill, labour or expertise. The work must not be merely copied from pre-existing material.

'**Material form**' includes modern versions of 'hard copies' such as documents or images stored in computer memory or other electronic devices.

Without a formal registration system for copyright, it can sometimes be difficult to determine whether published material is protected by copyright, and if it's protected, who owns the copyright. Organisations can maintain documents or other records showing how particular works were created, to prove this if required.

## Copyright notice

To alert people to the existence of copyright, many copyright owners use the © symbol and an accompanying statement (like you might find in the opening pages of a novel, or at the bottom of a webpage).

In Australia, it's not compulsory to use the © symbol or copyright notices on material to claim copyright. However, it's often a good idea as it:

- clearly notifies others of your copyright ownership



- it may dissuade others from attempting to use your work, and
- can affect the consequences when infringements do take place



### Examples of basic copyright notices

© XYZ Community Organisation 2019. All rights reserved.

or

© XYZ Community Organisation 2019. This material may be printed in hard copy by users for their own personal use, but must not be otherwise reproduced, published, performed, communicated to the public or adapted without prior written permission.

In the above examples, the reference to the year '2019' is the year of first publication of the material which is included so that others can determine whether the work is still protected by copyright.

In the first example, the words 'all rights reserved' mean that the organisation intends to protect all its rights under copyright law, whereas in the latter example the organisation is granting a licence to users to print the material in hard copy (without obtaining further permission).

## Who owns copyright?

When material subject to copyright is created for your organisation, or by people in your organisation, you should consider who owns the copyright in that material. There is a potential for misunderstanding about whether copyright is owned by the organisation as a whole, or by the person in the organisation who created it. This is a common issue faced by community organisations and we discuss this in greater detail in part 7 of this guide ('Ownership of IP').

As a general rule, copyright is owned by the creator of the material. There are exceptions to this rule.

### Exceptions

For example, employers will generally own copyright in works produced by employees in the capacity of their employment. Another example is where works are subject to an agreement with a government department. Unless the agreement specifies otherwise, there is a presumption that the copyright in any work produced under the agreement belongs to the government department. This rule applies even where the government department is not the creator of the material.

### Assignment

It's possible for a copyright owner to agree (by clear written agreement) to transfer ownership of copyright in a work to another person or organisation. This is called an assignment of copyright, and can be executed before or after the creation of copyrighted material. This may be relevant where work is created on commission for your organisation (for example, a logo or website design). If your organisation wants to own the copyright in material it commissions, or material created on a pro bono basis for them (for example by a volunteer), it should enter into a written agreement with the creator that expressly states that the copyright in the material created will be held by your organisation. The agreement should be signed by the creator and your organisation.

### Licence

It's also possible for one person to retain the copyright ownership in a work but to grant another person a licence to use the work in particular ways.





### Example

Your organisation commissions a researcher to produce a report on behalf of your organisation. Your organisation may enter into an agreement with the researcher that provides that your organisation owns the copyright in the report, but the researcher may be given a licence to use the work on certain terms – such as publishing the report within a broader academic study.

As with transfers of copyright ownership, any agreement to grant a licence should be made in writing. The type of information you should include in a licence is covered in greater detail in part 9 of this guide ('Selling and Licencing IP').

## What rights does copyright protection give the owner?

Subject to some exceptions, the owner of copyright has the exclusive right to do a number of things with the material. This includes:

- making copies or reproductions of the copyright material (for example, making a scan or print of a photograph or drawing, or creating copies of a film or sound recording)
- for works, being the first to publish the work in Australia (for example, in hardcopy or electronic form)
- performing the material in public (for example, presenting at a conference or training session, playing a sound recording in restaurant, or showing a film at a cinema)
- for literary, dramatic or musical works, making an adaptation of the material (for example, translating a book into a different language)
- communicating the material to the public (for example, making it available via the internet, or transmitting it electronically)
- for sound recordings and computer programs, to rent out copies of these commercially



### Tip

It is important to remember that copyright only protects the way material is expressed.

It doesn't protect the ideas in copyrighted material. This means, for example, that while the actual text of an organisation's training materials will be protected by copyright, the ideas in the materials are not.

## How long does copyright protection last?

For most material, copyright protection will last for at least 70 years.

## How is copyright infringed, and what can organisations to do when it is?

Copyright is generally infringed if someone, who is not the owner of copyright, exercises one of the copyright owner's exclusive rights (such as making copies of the material) without the owner's permission.

A person may also be liable for copyright infringement if they are found to have authorised another person's infringing conduct. 'Authorising' can mean requesting or directing someone to carry out an infringing act, or allowing someone working under your supervision or employment to infringe copyright.

Examples of uses of material that may infringe copyright include:

- photocopying, emailing, broadcasting or printing material



- recording a video that incorporates music that is subject to copyright protection, or
- communicating material to the public by making it available on a website

There are a limited number of exceptions to copyright infringement, including fair dealing for the purpose of research and study, parody and satire, or reporting the news. However, there is no general exception for not-for-profit community organisations. Therefore, if your organisation wants to use the copyright material of another person or organisation, it should first seek and obtain permission from the copyright owner before doing so.

If your organisation is concerned that its copyright has been infringed by someone who has used its material without permission, there are a number of options to address the problem. These include:

- asking the infringer to stop using the material
- asking the infringer to properly acknowledge the source of the material (for example by attributing the material to your organisation) or pay your organisation a fee equivalent to a licence fee your organisation would have charged if it had authorised the use of the material by the infringer, or
- taking legal action seeking remedies such as damages to compensate for loss resulting from the infringement of your organisation's copyright

When choosing between the different options, it's important that your organisation is clear about what it wants to achieve. This could range from wanting the infringer to simply stop using the copyrighted material without properly acknowledging the real owner, or requesting that compensation be paid as a result of the breach.

If there has been no real 'loss' to your organisation, the best course of action may be to simply write to the infringing party directly and ask them to stop the infringing activity, by either properly acknowledging your organisation or removing the material.

If you are not able to resolve the matter this way, your organisation can engage a lawyer to write a formal letter of demand to the infringing party which sets out the basis for the infringement claim, the action that should be taken by the other party, and the timeframe for taking that action.

Finally, if the matter is still not resolved, the organisation could consider court proceedings. Organisations should be aware that as a general rule they have six years to bring an action for breach of copyright.



### Caution

Court action is generally expensive and time consuming, so you should always consider whether taking court action will be worth the time and cost involved.





# Moral rights

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## This section covers:

- ▶ what are moral rights?
  - ▶ how should an organisation treat moral rights?
- 

**Moral rights are personal rights that belong to the individual author or performer of copyright material. They are separate to copyright and cannot be waived or assigned, although the person who has the moral rights can consent to certain uses of their material.**

Moral rights comprise the right to:

- be properly attributed as the author or performer of material
- not have material falsely attributed to someone else, and
- not have material treated in a 'derogatory' way

In practice, the moral rights provisions of the Copyright Act mean that your organisation must, in addition to not infringing the copyright in materials:

- correctly acknowledge the person who created the copyright material if it's reproduced (in addition to seeking permission to use copyright material, or even if you own copyright), and
- not use that material in a derogatory way

'Derogatory' is generally taken to mean that material is treated in a way which would be damaging to the creator's reputation or honour.

There is however a defence of reasonableness, and the Copyright Act sets out a range of matters to be taken into account in determining what is reasonable in the circumstances.

To be safe, your organisation should always try to contact the author of material before using it for its own purposes. Your organisation should explain how and for what purpose the material is intended to be used (this is in addition to any actions it may need to take in order to ensure it is not infringing copyright) and seek a written consent from the author or performer for its use or alterations of copyright material.

Your organisation should also try to secure consent from the creators of copyright material if commissions or uses, so that your organisation may use the copyright material in any way which might otherwise infringe the creator's moral rights. If you don't secure a consent of this nature, your organisation may find it's not able to amend, publish or otherwise use the copyright material to meet its business needs.

This consent should be included in contracts with employees and volunteers and contracts entered into by your organisation to commission the creation of copyright material or secure an assignment of copyright material to it.





# Trade marks

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## This section covers:

- ▶ what is a trade mark?
  - ▶ how are trade marks protected?
  - ▶ what can be registered as a trade mark?
  - ▶ trade mark registration
  - ▶ maintaining trade marks
  - ▶ when are trade marks infringed?
- 

**A trade mark is a mark or sign which is used to distinguish goods or services of one person or organisation from those of another. A trade mark may be a word, phrase, logo, sound, smell, shape, picture or any combination of these.**

Trade marks can be registered to secure exclusive rights and prevent others from using the same or a similar trade mark in respect of particular goods or services.

Trade marks are often confused with business and company names or domain names. Although these names can form part of a trade mark, it's important to understand that the registration of a business, company or domain name does not of itself confer any exclusive rights in the name, while registration of a trade mark with IP Australia does.

## How are trade marks protected?

Registration of a trade mark affords the strongest form of protection as this provides the owner with the exclusive rights to use the trade mark for particular goods or services. Where an organisation has used a trade mark but has not registered it, it's much more difficult to establish that the organisation has any rights in the mark. Whether the organisation will have rights in the mark depends on the organisation being able to show that it has a reputation in the trade mark from its use of the mark.

## 'Unregistered trade marks' - passing off and Australian Consumer Law rights

Trade marks used by organisations that have not been registered don't provide organisations with any exclusive rights. However, where the organisation can show that it has an existing reputation in a particular mark, the law may step in and prevent others from carrying out particular conduct relating to the use of that mark. This is by operation of the tort of 'passing off' and certain actions available under the Australian Consumer Law (which is set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*) (**CCA Act**) that relate to misleading and deceptive conduct or false representations. However, these types of



claims can be difficult to prove, and are typically more expensive and time consuming than claims arising from the infringement of a registered trade mark.

## Registered trade marks

Trade marks are registered under the regime set out in the *Trade Marks Act 1995* (Cth) (**Trade Marks Act**). The registration process is administered by an Australian Government agency called IP Australia. Its website is at [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au).

A registered trade mark gives the owner the right to:

- exclusive use of the trade mark throughout Australia in relation to the goods or services for which it is registered, and
- indefinite protection (there is no time limit), provided the trade mark is used consistently and the periodic government renewal fees are paid

Unless a trade mark is considered to lack distinctiveness or be too similar to an existing trade mark application or registration, there is no need to prove an existing reputation in the brand in order to get the mark registered. Therefore, an organisation can often register a trade mark even before it has started using it.

## What can be registered as a trade mark?

Essentially, any mark or sign used or intended to be used to distinguish a brand or product can be registered as a trade mark under the Trade Marks Act. This can be a logo, shape, word, or even a colour or sound. A mark might distinguish a brand or product because:

- it is 'inherently adapted' to distinguish the owner's goods or services (this means the mark is unique or distinctive – like APPLE for computers), or
- the owner has established a sufficient reputation in its trade mark, by virtue of its use of the mark in respect of the claimed goods or services (which can be a useful argument if the mark is not otherwise unique or distinguishable), or
- the trade mark is extremely 'well known' generally, even if it has not been used for the claimed goods or services – such as MCDONALDS

If any one of the above points can be satisfied for a class (or classes) of products or services, a mark will generally be registrable as a trade mark, provided that the mark is not:

- scandalous or contrary to law
- the same as or similar to an earlier filed mark on the Australian Trade Marks Register or, if the application is opposed by a third party, an unregistered mark currently being used in the market place, or
- likely to deceive or cause confusion (for example, if McDonalds was using a 'golden arch' logo that was not registered, and another fast food brand tried to register a very similar 'golden arch' logo, McDonalds would be able to oppose the registration based on McDonald's prior use of the 'golden arch' logo).

Generally, it's not possible to register a mark that is generic, or descriptive of the quality or characteristic of goods or services to which it relates. For example, it's likely that in the absence of a significant market reputation, a mark containing one of the following would be difficult to register (and possibly protect) as a trade mark:

- words that describe the aim or purpose of an organisation (for example, 'Charitable Organisation' for a charitable organisation)
- words that describe the quality of goods or services (for example, 'Best Services')
- words that describe an intended purpose (for example, 'Research Organisation'), and
- common surnames or geographical place names (for example, 'Smith' or 'Tasmania')

## Trade mark registration

A trade mark application must be filed with IP Australia. IP Australia will examine the application to determine whether the trade mark is available for registration and complies with the Trade Marks Act.



When applying to register a trade mark, an applicant must specify a class or classes of goods or services that the protection relates to and also identify the particular goods and services. Goods and services are divided into 45 classes – the [full list of classes](#) is available on IP Australia's website.

Registration will only protect use of the trade mark for the registered goods or services. A mark can be registered in multiple classes.

## Choosing classes

The choice of class for registration will depend on the nature of your organisation and the goods or services your organisation offers. More than one class can be chosen for a trade mark registration, however the costs increase with each class you include. For example, a trade mark used by a not-for-profit organisation that wishes to retail branded merchandise including clothing could be registered in the following classes to get relevant protection:

- Class 25: Clothing, footwear, headgear, and
- Class 35: Retail services.

**But – before using or applying to register a trade mark, an organisation should:**



## Trade mark searches

It's necessary to conduct a [thorough search of the Australian Trade Marks Register](#) and market enquiries for the following reasons:

- As trade mark registrations grant exclusive rights, an earlier trade mark application or registration for a mark which is the same or similar to your organisation's proposed trade mark may be a barrier to registration. IP Australia provides a paid '[TM Head Start](#)' service that can assist with this process, or you may consult an independent IP professional.
- Your use of a trade mark that is the same as or similar to a mark already in use may be 'passing off' or misleading or deceptive conduct in contravention of the Australian Consumer Law. Market enquiries may include searches of the internet, directories, media searches, trade journals and business, company and domain name registers. Again, an IP professional can assist with this process.

Once you are satisfied that your trade mark is distinctive and unique compared to other brands, the next step is to file an application with IP Australia in the relevant class or classes of goods or services. The application will then be examined by IP Australia. If the application is accepted by IP Australia, it will be advertised to give third parties an opportunity to oppose registration of the trade mark on certain grounds





(for example, the trade mark is too similar to the opponent's mark or is not distinctive of the goods or services claimed).

## How much does registration cost?

The costs to register a trade mark will depend on the nature of the trade mark, how you want to register it, and the number of classes to be covered by the application. A statutory application fee is payable for each class (see IP Australia's website for details). If you engage an IP professional they will be able to help you maximise the chances of a smooth registration.

## How long does an Australian trade mark registration last?

The period of time that it takes to achieve registration of a trade mark can vary, from a little under a year to over two years. Once registered, registration rights are backdated to the 'priority date', which is usually the date the application was filed with IP Australia. The initial registration period is 10 years from the date the application was filed.

At the end of that 10 year period, the registration can be renewed every 10 years for an indefinite period (a statutory renewal fee is payable).

## Maintaining trade marks

### Registered trade marks

To make sure a registered trade mark keeps its exclusive rights it must be used regularly and consistently. It should be used consistently in the same form or style in which it has been registered on the register. The way your organisation uses its trade marks might change over time. For example, your organisation may rebrand or decide to change its colours or update its logo. Your organisation should periodically check that its use of its trade mark reflects the mark as registered.

If your organisation has started to use an updated trade mark it may be necessary to file a new application for the updated version.

Registered trade marks can be challenged by a third party who wants to use the mark. A basis for challenging a mark could be that the mark has not been used for a period of three years in respect of the registered goods or services (or some of them), or is being used in a generic or confusing manner.



### Tip

Once your trade mark has been registered, your organisation must be prepared to 'use it or lose it'.

This means the trade mark should be used regularly in its registered form for the registered goods or services.

Registered trade marks should be used with the ® symbol. A suitable footnote that describes the ownership of the trade mark can also be used. For trade marks that are not yet registered, the ™ symbol can be used to indicate that the mark is being used as a trade mark.



### Examples

XYZ Communities®

XYZ Communities® is a registered trade mark of XYZ Communities Inc.

ABC Communities ™



If a third party uses your trade mark for the same or similar goods or services as those listed in your registration, you can take legal action against them. See part 8 of this guide for more information.

## **When are trade mark rights infringed?**

Registered trade marks are infringed if the same or a similar mark is used without the trade mark owner's permission in relation to the same or similar goods or services for which the mark is registered.

Action can then be taken under the Trade Marks Act (which is the easiest course of action), but action could also be taken under common law (for 'passing off') or under the Australian Consumer Law (which is set out in the *Competition and Consumer Act 2010* (Cth)) for misleading and deceptive conduct, or false and misleading representations.

IP Australia has published a [Trade Mark Guide](#) on its website.





# Patents

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## This section covers:

- ▶ what is a patent?
  - ▶ how is patent protection obtained?
  - ▶ how much does patenting cost?
  - ▶ patenting and confidentiality, and
  - ▶ patent infringement
- 

## What is a patent?

An approved patent protects new, inventive or innovative products or processes once registered. In Australia, the *Patents Act 1990* (Cth) (**Patents Act**) provides for the registration of two types of patents:

- standard patents – which cover patentable inventions and generally provide 20 years of protection, and
- innovation patents – which cover patentable innovations (that is, products and processes that demonstrate relatively minor advances in existing technology) and generally provide eight years of protection.

To be patentable, a product or process must:

- be new or novel, in the sense that it doesn't already exist anywhere in the world and has not been publicly disclosed anywhere in the world
- (for a standard patent) involve an inventive step, in the sense that it must not be obvious to a person skilled in the same technological field as the invention
- (for an innovation patent) involve an innovative step, in the sense that it makes a substantial contribution to the working of the invention, and
- be useful in the sense that it does what you say it does

If successfully registered, a patent provides the owner with the exclusive right to commercially exploit the invention or innovation in Australia, for the duration of the patent.

## How is patent protection obtained?

Patent protection is not automatic. The Patents Act requires an application for a patent to be made with the responsible government agency, IP Australia. IP Australia assesses applications to determine whether your idea or invention satisfies all the criteria for registration.



The patenting process can be very complex. We recommend that you seek the expert assistance of an IP professional to prepare and file your application. The IP professional can also advise on overseas protection for the invention, and if appropriate, will arrange searches of the Australian Patent Register to determine whether your invention is similar to an existing patent or application.

Patent rights are granted on a country-by-country basis.

## How much does patenting cost?

Patenting can be expensive, and this level of protection is generally only used for inventions or innovations that could potentially generate significant revenue.

IP Australia estimates that, depending on the complexity of the application, the total average cost of an Australian standard patent is between \$6,000 and \$10,000. Maintenance fees over the 20 year term are also substantial. Details of current fees are located on IP Australia's website.

## Patenting and confidentiality

It's critical to keep details of a new invention confidential, until a patent application has been considered and, if appropriate, filed. Public disclosure of the invention before this time may mean it is no longer 'new' and therefore can't be patented. If you wish to discuss your invention with another person (for example, a commercial partner, supplier, volunteer or financial backer), it's important to have them sign a confidentiality agreement before any discussions take place.

It's also important that you don't secretly use the invention before an application has been filed. Again, if the invention is disclosed or commercially used in any way, it may not meet the registration requirements and your patent application may be rejected. An IP professional can assist you with these issues.

## Patent infringement

Generally, a patent is infringed by someone who uses the patent in the protected period without the consent of the patent owner.

Patent infringement is an extremely complex area. If you believe that your organisation's patent rights are being infringed, or if you are concerned that your organisation may be infringing someone else's patent rights, you should immediately consult an IP specialist.

IP Australia has published a [Patent Guide](#) on its website.





# Designs

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## This section covers:

- ▶ what is a design?
  - ▶ design registration
  - ▶ how are designs infringed and what to do if your design is infringed
- 

**Design registration protects the overall appearance of a particular product. Protection is available for the shape of a three dimensional article or even a pattern on a two dimensional article. A design registration does not, however, protect how a product actually works - it simply protects how the object looks.**

To be registrable, a design must be 'new' and 'distinctive'. 'New' means that the same or a very similar design must not have been publicly used in Australia, and must not have been published in a document anywhere in the world. A design is 'distinctive' unless it is substantially similar in overall appearance to other designs already in the public domain, whether registered or not.

The initial period of design registration is five years from the date of filing. A design registration may be renewed for one further period of five years (making a total of 10 years registration).

## Design registration

Under the *Designs Act 2003* (Cth) (**Designs Act**), applications for a design need to be filed with the responsible government agency, IP Australia. Design applications only undergo a 'formalities check' before they are registered. After registration, there is an examination process where the substance of the design is assessed. This happens at the request of the design owner (not automatically) and often doesn't take place until the owner suspects its design has been infringed. The design owner may only enforce its design if examination has been completed and IP Australia has certified that the design is 'new and distinctive' in accordance with the requirements of the Designs Act.

Design protection can be very complex. We recommend that you seek the expert assistance of an IP professional to prepare and file an application. The IP professional can provide advice about overseas protection for the design and, if appropriate, will arrange searches of the Australian Designs Register to determine whether your design is similar to an existing design or application.

## How much does design registration cost?

There are statutory fees payable for filing a design application as well as for requesting the design to be examined and renewing the design registration. These statutory fees are published on IP Australia's



website, and are in addition to any legal fees which may be incurred if you engage an IP professional to assist with the application process.

## Design infringement

A registered design may be infringed when someone, without the authorisation of the registered owner, makes or deals in products that embody the design. If you believe that your organisation's rights in respect of a registered design are being infringed, or if you are concerned that your organisation may be infringing someone else's design rights, you should immediately consult an IP specialist for further advice.

IP Australia has published a [Designs Guide](#) on its website.







# Confidential information

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## This section covers:

- ▶ what is confidential information?
- ▶ how is confidential information protected?

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**Confidential information is information that is confidential or secret to an organisation or person. To be considered 'confidential', the information must not be available in the public domain.**

Examples of confidential information may include:

- an organisation's client and contact lists
- internal pricing and funding information
- internal business processes
- marketing or business strategies
- recipes
- trade secrets
- other processes or strategies such as special maintenance or advertising processes, or
- inventions

Strictly speaking, confidential information is not property, although materials containing the information may be the subject of separate IP rights such as copyright. If confidential information is passed on in particular circumstances, there may be obligations to maintain the confidentiality of that information. For example, employers often reveal confidential information to employees so that they can perform activities as part of their employment. The employee will be legally obliged not to use or disclose the information in a way that was not intended by the employer. Confidentiality obligations can also be set out explicitly in employment or engagement contracts.

Protection of confidential information lasts for as long as the information stays confidential. However, once confidential information has been disclosed (that is, made public) it will no longer be confidential and can't be confidential again. Organisations should therefore make sure they have strict protocols in place to maintain the confidentiality of information.

## How is confidential information protected?

As long as confidential information is stored and communicated in a particular way, the law may provide remedies (such as injunctions and financial compensation) if a person who receives confidential information breaches their duty of confidence.



This could happen if a person who receives confidential information discloses the information to others in circumstances where:

- the information is confidential (and is treated as confidential information). For example, where confidential documents are marked 'confidential' and access to them is restricted and secured
- the information was disclosed to the recipient in circumstances which indicate that the information is confidential and must be treated in confidence, and
- the use or disclosure of the information was not authorised



### Tip

It may be appropriate to include a notice, such as the following example, on particularly sensitive material to demonstrate there is no intention to disclose the material publicly, and to remind recipients of the information of its confidential nature:

**IMPORTANT NOTICE:** The information contained in this document is confidential information of XYZ Community Organisation and all copyright subsisting in any copyright works in this document is owned by XYZ Community Organisation. The information in this document is provided only for the purposes of *[insert authorised purpose]* and must not be disclosed, reproduced, published, performed, communicated to the public or adapted by any person for any other purpose, except with the prior written consent of XYZ Community Organisation. This notice must be retained on any copies or adaptations of all or any part of this document.

In some situations the law will assume that particular information must be treated confidentially by particular people. For example, this may arise regarding an organisation's employees, officers, or directors (or committee of management members) in respect of the organisation's internal confidential, commercially sensitive information.

Note that obligations to treat information in confidence don't necessarily extend to volunteers, students or contractors who may be involved in your organisation unless the confidentiality of the information is made very clear, or a confidentiality agreement is executed. The best way to make sure people understand they are receiving confidential information is to mark the information as confidential or make sure the intended recipients of confidential information sign a confidentiality agreement.



### Tip

A confidentiality agreement should:

- define the information that is considered confidential
- confirm that the confidential information must be kept confidential, and
- clearly define the limited purposes for which the confidential information may be used. For example, try to avoid general statements such as 'providing advice to the organisation' which is not as clear as 'providing advice to the organisation in relation to its options for the purchase of widgets'.

## Confidentiality Agreements

While organisations or individuals may be subject to legal obligations in respect of confidentiality arising from their transactions or dealings with other parties, a confidentiality agreement provides a more direct and immediate way to protect your rights in respect of confidential information.



A confidentiality agreement is an agreement between parties which sets out the terms and obligations applicable to confidential information which is received or shared between parties.

It is a good idea to ask people (like employees, volunteers or contractors) who may have access to sensitive information in your organisation, to sign a confidentiality agreement before they start working with you. The confidentiality agreement may be a separate agreement (or deed poll) or a set of clauses in a larger agreement. For example, a contract to engage a contractor to do work on a database may include a clause or paragraph about the confidential nature of the information the contractor receives.

Even if all steps are taken to protect the confidentiality of information, there are a number of circumstances in which disclosure can be required by law. For example, courts can impose an obligation that information (including confidential information) be produced to the court through a request known as a subpoena, where the disclosure of that information is considered to be in the interests of justice.





# Ownership of IP

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## This section covers:

- ▶ can your organisation own intellectual property?
  - ▶ ownership of copyright ownership of trade marks, patents and designs
  - ▶ joint ownership of IP
- 

To make sure that your organisation can deal with intellectual property as it expects, it should make sure:

- it has the legal capacity to own intellectual property, and
- it actually owns any intellectual property that has been developed for its use

These two issues are dealt with below.

## Can your organisation legally 'own' intellectual property?

Intellectual property rights are a form of property (similar to land, plant and equipment or shares). Only individuals and organisations which are recognised in law as having 'legal personality' (the capacity to enter into binding contracts) can own property directly.

### Incorporated organisations

If your organisation is incorporated (such as an incorporated association or a company limited by guarantee) it can be the legal owner of IP rights. For example, your organisation can apply to register a trade mark using its own name. Even if the membership base of the organisation changes, the trade mark will remain the property of the organisation.

An organisation that is incorporated can also enter into a contract that requires another party (for example, a contractor or volunteer) to assign IP rights in work they create for the organisation to it.

### Related Not-for-profit Resource

For more information on incorporation, go to Not-for-profit Law's webpage on [the incorporation decision](#).





## Unincorporated organisations

If your organisation is unincorporated, it can't legally own intellectual property in its own name. In this case, intellectual property must be held by a person or legal entity, on trust for the organisation.

One key disadvantage of not being able to own IP in the organisation's name (as an unincorporated association) is that over time it can become unclear who owns the IP rights. This is due to the fact that membership of the organisation is subject to change, and the individuals who hold IP on trust may move on or die.



### Tip

It's a good idea to designate someone in the organisation as a responsible person for maintaining a register of intellectual property owned by your organisation, including details of when it was created, by who, and any assignments of IP rights by creators to the organisation, or to someone who holds the property on trust for the organisation (if the organisation is unincorporated).

## Ownership of copyright

As a starting point, the law generally provides that the creator of a work will own copyright in that work, even if the creator is paid to create the work for an organisation.

Some key exceptions to this general principal include:

- work created by an employee for an employer in the course of their employment by an organisation – in these circumstances the employer organisation will generally own copyright in the work
- a commissioned photograph, sound recording or film – in these circumstances, if the person creating the work is paid, the organisation commissioning the material will own copyright
- commissioned work that is subject to an agreement with a government department – in these circumstances, unless there is a contract providing otherwise, the crown (the relevant state, territory or commonwealth department) retains the copyright, or
- where there is a written agreement in which the creator has expressly agreed to give (assign) all of the copyright they may create to the organisation

**The following are examples of some common ownership scenarios for community organisations:**

Creator or author of materials	Who owns the copyright?
An employee	<p>Under the Copyright Act, an employer owns copyright in materials created by the employee 'in the course of their employment'. Your organisation should be clear whether it is hiring someone as an employee or as an independent contractor (in the case of a contractor, a written assignment is required).</p> <p>A way around this is to make sure all employees and contractors sign a written agreement that:</p> <ul style="list-style-type: none"> <li>• clearly defines their status (employee or contractor)</li> <li>• defines the scope of their employment or engagement, and</li> <li>• provides that the organisation will own copyright in all materials created in the course of the employment or engagement (unless otherwise agreed)</li> </ul>
A contractor (for example, a consultant) or volunteer	<p>If a contractor or volunteer creates copyright material for your organisation, they will continue to own the copyright in the material unless there is a written agreement to the contrary. It's important to reach an agreement with contractors and volunteers about</p>



copyright ownership before they begin creating material for your organisation, and to record this in a written document that is signed by that person.

#### Students on work experience

Students on work experience are unlikely to be considered employees, so, unless ownership is assigned in writing, copyright material created by students during work experience will not be owned by the organisation.

Your organisation should:

- discuss copyright with the student and their institution, before the student joins your organisation, and
- arrange for a written agreement assigning copyright to your organisation if you wish to retain the rights to any work created by that student

## Moral rights consents

As referred to above, moral rights are the rights of the author of a work and can't be assigned to another person or organisation. To avoid infringing the moral rights of employees, contractors or volunteers in works they may create for your organisation, your organisation should make sure it has written consent from authors and performers of material to use the material as your organisation requires.

This consent should allow your organisation to do certain things that might otherwise infringe the person's moral rights. For example, your organisation may not wish to identify the other person (for example, a volunteer) as an individual author of the work, or may wish to modify the work in future. In the absence of the author's consent, failing to identify the author may infringe the author's moral rights.

## Ownership of trade marks, patents and designs

### Trade marks

Generally the first person to use a trade mark, or the first person to apply to register a trade mark with IP Australia, will be the owner of IP rights in the trade mark. Therefore, if your organisation has developed a new brand name, logo or slogan, it's advisable to conduct searches and carefully document when your mark is first used and lodge a formal trade mark application. If another organisation uses or applies to register the same or a similar trade mark before your organisation in respect of the same or similar classes of goods or services, you may find that your organisation can't use its preferred mark or is liable for trade mark infringement.

### Patents and designs

A patent or design, or the right to apply to register rights for such, may be owned by:

- the inventor or designer
- a person who has taken an assignment of the inventor's or designer's rights, or
- the employer of the inventor or designer, where the item was created in the course of employment.

In Australia, the first person to file a patent or design application with IP Australia for a particular patent or design will be considered to have first rights in that item, but the registered right will only be valid if the person who filed the application was legally entitled to do so. This position may differ in some other countries. Again, it's important to document the creation process and if appropriate, to file a patent or design application as soon as possible, to make sure your application is not second in time to someone else's application for a similar invention or design.

## Joint ownership of IP

If more than one person creates material, then IP rights in the material may be jointly owned by the creators. Joint ownership of IP is complex and will vary depending on the type of IP right created. For example, joint owners of copyright are not entitled to exercise the rights of copyright ownership without the





consent of all the owners. These issues can be avoided by having the entire interest in particular IP rights assigned to one party.

If you are concerned about how jointly owned IP rights can be legally exploited, we suggest you consult an IP lawyer.





# Protection and infringement of IP

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## This section covers:

- ▶ enforcing your IP
  - ▶ avoiding IP infringement
  - ▶ what to do if you are accused of IP infringement
- 

**Different types of IP are protected in different ways. If someone is using your organisation's IP without permission, you should consider acting quickly, as a delay could prejudice your organisation's rights.**

However, you must also be careful that you are justified in taking action. Protection of IP rights is a difficult area and your organisation may wish to seek advice from an IP professional.

Essentially, a person or an organisation infringes the IP rights of another person or organisation if they use that person or organisation's IP without the owner's consent. Ignorance is not a defence to infringement.

This section covers the steps an organisation should take:

- if it thinks its IP rights are being infringed, and
- to make sure it doesn't infringe the IP rights of others

## Enforcing your IP rights

### Starting point

If you suspect that your IP rights are being infringed, the starting point is to swiftly find out as much information as possible about the alleged infringement and gather evidence of this, including details and documents showing:

- where, when and what infringing activity took place, and
- who was involved in the infringing activity, including company names, ACNs and other contact information, and any evidence of the infringement (for example, webpage printouts, photographs of use of IP, trap purchases of infringing goods).

### Seek legal advice

Once you have gathered the information listed above, you should seek advice. An IP professional will be able to review your IP rights, together with the alleged infringing activity, and assess whether your IP rights are being infringed.



Note – if unjustified threats of infringement proceedings are made, the person on the receiving end of those threats could take court action against the organisation.

Following confirmation by your IP professional that there is evidence that your IP rights are being infringed, there are a number of actions you may consider taking, including:

- sending a letter to the alleged infringer asking them to stop the infringing activity (also known as a letter of demand)
- out of court negotiations, or
- court proceedings



### Caution

It's very important that you follow the advice of your IP professional. There can be serious financial and legal consequences if you make an 'unjustified threat' of legal proceedings against an alleged infringer.

## Remedies

If you successfully enforce your IP rights in a court action, a number of remedies may be available, including:

- an injunction (an order that the infringer stop the infringing activity)
- damages (compensation for the loss you suffered because of the infringing activity) or an account of profits (the profit the infringer made from carrying out the infringing activity). The owner of the IP must choose between damages or an account of profits, or
- delivery up (the infringing party must either give you all infringing material or destroy it)

## Avoiding IP infringement

### Starting point

Defending an infringement claim can be a costly process, so it's advisable that your organisation takes steps to avoid infringing another person or organisation's IP. This could take the form of an internal policy that is available to your organisation's staff and volunteers.

Steps you can take to minimise this risk include:

- before using a name or logo, conduct searches of the 'Trade Mark Register' and other public sources to make sure your proposed trade mark doesn't infringe someone else's trade mark
- look for copyright and trade mark notices to identify IP rights and the owners of those rights
- make sure your employees, contractors and volunteers understand their basic responsibilities under IP law and assign any IP rights they may have in material they create for you to you
- seek permission in writing before using another person or organisation's material. It's not a defence to say the organisation didn't know that a particular person owned the IP in particular material, and
- keep records of the permissions received

**Tip**

The internet is a high risk area. When designing and populating your website and creating content for social media, you must be very careful that you don't inadvertently infringe someone else's IP. In particular you should avoid:

- using another person's trade mark, logo or graphic as a link symbol, and
- taking material from another website to use on your website without permission (including photos and other artistic works, and text)

As noted above, to avoid infringing moral rights, you should consider entering into written agreements with relevant people that provides consent to your organisation doing certain things that might otherwise infringe moral rights.

**What to do if you are accused of IP infringement**

If you are accused of infringing another person or organisation's IP, you should:

- seek legal advice, and
- if you consider the accusation has substance, stop the allegedly infringing activity as soon as possible





# Selling and licensing IP

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## This section covers:

- ▶ how to assign or license your IP
- 

**Intellectual property rights are ‘property’ that can be gifted, sold or licensed to another person or organisation.**

If your organisation owns IP, it's generally able to:

- sell the IP rights to another person or organisation (transfer for payment), and
- license the IP rights to another person (allow them to use the IP for free or for payment)

Your organisation can also purchase and license IP rights from third parties.

There may be tax and stamp duty consequences which flow from the assignment or licence of IP rights, including GST, CGT, transfer pricing and withholding tax. You should discuss these issues with an appropriate adviser before entering into an arrangement.

## How to effectively assign or license your IP

An agreement to assign or licence IP is a legally binding contract. An assignment or licence should be in writing and signed by both parties. The following are examples of the types of issues which you may wish to include in any assignment:

- a definition of the IP to be assigned
- the amount to be paid for the assignment (the consideration)
- the duration of any trade out or hand over period, and
- warranties and indemnities as to ownership of the IP and confirmation that the IP does not infringe third party rights

The following are examples of the types of issues which you may wish to address in a licence:

- the permitted uses of the material (for example, in the case of copyrighted material, the licence may permit copying but not broadcasting, and the copying may be limited to copying for a particular purpose)
- the term or duration of the licence
- whether the licence is exclusive or non-exclusive
- whether the licence is transferable (if you don't want the licensee to be able to allow other people to use your IP, the licence should stipulate that it is 'non-transferable' and the right to sub-licence should be excluded)



- the territory in which the licence will operate (for example, the licence may be limited to Australia and may be exclusive in one part of Australia but non-exclusive in another part)
- a dispute resolution process, in case there is a dispute between you and the licensee
- details of any payments, including royalties payable
- grounds for terminating the licence
- performance obligations or key performance indicators of the licensee, if appropriate, and
- confidentiality obligations, if appropriate



An **exclusive licence** allows only the licensee to use your IP and excludes you (the licensor), from using your own IP during the term of the licence and granting other parties the rights to use the IP.

A **non-exclusive licence** allows both you (licensor) and the licensee to use the IP, and means you can grant multiple (non-exclusive) licences at once.



### Tip

Your organisation should make sure it keeps proper records of all licences and that someone is responsible for checking, from time to time, that the licensee is complying with its obligations.



### Related Not-for-profit Law resource

For more information on signing agreements see Not-for-profit Law's webpage on [Important Agreements](#)





# Resources

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## Not-for-profit Law resources

- ▶ [Getting started](#)  
This page sets out resources relating to incorporation and getting started.
- ▶ [Important agreements](#)  
Visit this page for resources relating to agreements, such as contracts and leases.
- ▶ [The people involved](#)  
Visit this page for resources on an organisation's relationship with all the different people involved.

## Other related resources

- ▶ [Australian Copyright Council](#)
- ▶ [Arts Law Centre of Australia](#)  
For more information and advice on legal issues in the arts, including IP
- ▶ [IP Australia](#)  
To search the registers mentioned in this guide and find information about relevant fees.  
IP Australia has a range of useful resources including:
  - [A Guide to Applying for Your Design](#)
  - [A Guide to Applying for Your Patent](#)
  - [A Guide to Applying for Your Trade mark](#)

## Legislation

- ▶ [Copyright Act 1968 \(Cth\)](#)
- ▶ [Patents Act 1990 \(Cth\)](#)
- ▶ [Designs Act 2003 \(Cth\)](#)
- ▶ [Trade Marks Act 1995 \(Cth\)](#)
- ▶ [Australian Consumer Law \(Schedule 2 to the Competition and Consumer Act 2010 \(Cth\)\)](#)





Audit Findings for the  
Financial Year Ended 30<sup>th</sup> June 2020

**Report on Significant Matter**

Operating Surplus Ratio

Current Ratio

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## Background

The Shire of Victoria Plains (Shire) is required to prepare an audited Annual Financial Report each year under the *Local Government Act 1995* (the Act).

The Shire's auditor is the Office of the Auditor General (OAG). The OAG's 30 June 2020 Audit Report for the Shire is attached at Appendix 1.

A key audit requirement is the responsibility of the Auditor to identify any adverse (significant) financial trends.

Regulation 50 of the *Local Government (Financial Management) Regulations 1996* requires the inclusion of seven ratios in the Annual Financial Report.

### **50 Financial ratios to be included in annual financial report**

(1) *The annual financial report is to include, for the financial year covered by the annual financial report and the 2 preceding financial years –*

- (a) *the current ratio; and*
- (b) *the asset consumption ratio; and*
- (c) *the asset renewal funding ratio; and*
- (d) *the asset sustainability ratio; and*
- (e) *the debt service cover ratio, and*
- (f) *the operating surplus ratio; and*
- (g) *the own source revenue coverage ratio.*

For the financial year ended 30 June 2020, the OAG has reported a significant adverse trend in the Operating Surplus Ratio and Current Ratio for the Shire. It has been noted that: the Operating Surplus Ratio and Current Ratio have not met the Department of Local Government, Sport and Cultural Industries (DLGSCI) standard as set out in *Operational Guideline Number 18 Financial Ratios*.

The Auditor General reported the following:

### **Report on Other Legal and Regulatory Requirements**

In accordance with the Local Government (Audit) Regulations 1996 I report that:

In my opinion, the following material matters indicate significant adverse trends in the financial position of the Shire:

- a. The **Operating Surplus Ratio** as reported in Note 33 of the annual financial report is below the Department of Local Government, Sport and Cultural Industries' standard for the last three financial years.
- b. The **Current Ratio** as reported in Note 33 of the annual financial report is below the Department of Local Government, Sport and Cultural Industries' standard for the last two financial years with the current year also being below the previous year.

### **Note:**

The OAG made a significant finding in relation to the Operating Surplus ratio for the financial year ended 30 June 2019 i.e., the Operating Surplus Ratio is below the DLGSCI standard for the past 3 years.

## Five Year Trend

The following table presents the financial ratios for the Shire against DLGSCI benchmarks for the past five years. Within this table the two ratios of concern have been highlighted:

	Standard	2020	2019	2018	2017	2016	5 Year Average
Current ratio	≥ 1.00	0.94	0.99	1.26	1.67	1.85	1.78
Asset consumption ratio	≥ 0.50	0.70	0.72	0.68	0.97	0.98	0.81
Asset renewal funding ratio	≥ 0.75	0.96	1.12	0.84	0.94	1.03	0.98
Asset sustainability ratio	≥ 0.90	0.35	0.86	0.71	1.25	0.80	1.02
Debt service cover ratio	≥ 2.00	8.23	(8.54)	2.90	13.92	4.48	4.20
Operating surplus ratio	≥ 0.01	(1.16)	(1.60)	(0.60)	(0.32)	(0.86)	(0.91)
Own source revenue coverage ratio	≥ 0.40	0.38	0.34	0.50	0.51	0.46	0.44

### Operating Surplus Ratio

As per *Local Government Operational Guidelines No 18 – Financial Ratios*, the Operating Surplus Ratio measure is described as:

Operating Surplus Ratio	
Operating Surplus Ratio =	$\frac{(\text{Operating Revenue MINUS Operating Expense})}{\text{Own Source Operating Revenue}}$
Purpose:	This ratio is a measure of a local government's ability to cover its operational costs and have revenues available for capital funding or other purposes.
Standards:	<b>Basic</b> Standard between 1% and 15% (0.01 and 0.15) <b>Advanced</b> Standard > 15% (>0.15).
<b>Definitions:</b>	
'Operating Revenue'	Means the revenue that is operating revenue for the purposes of the AAS, excluding grants and contributions for the development or acquisition of assets.
'Operating Expense'	Means the expense that is operating expense for the purposes of the AAS.
'Own Source Operating Revenue'	Means revenue from rates and service charges, fees and user charges, reimbursements and recoveries *, interest income and profit on disposal of assets.

A key indicator of a local government's financial performance is measured by the 'Operating Surplus Ratio'. If a local government consistently achieves a positive operating surplus ratio and has soundly based long term financial plans showing that it can continue to do so in the future, having regard to asset management and the community's service level needs, then it is considered financially sustainable.

A positive ratio indicates the percentage of total own source revenue available to help fund proposed capital expenditure, transfer to cash reserves or to reduce debt.

A negative ratio indicates the percentage increase in total own source revenue (principally rates) that would have been required to achieve a break-even operating result.

The DLGSCI considers a "basic" standard to be between 1% and 15% and an "advanced" standard with a measure of over 15%.

## Current Ratio

As per *Local Government Operational Guidelines No 18 – Financial Ratios*, the Current Ratio measure is described as:

Current Ratio	
Current Ratio =	$\frac{(\text{Current Assets MINUS Restricted Assets})}{(\text{Current Liabilities MINUS Liabilities Associated with Restricted Assets})}$
Purpose:	This is a modified commercial ratio designed to focus on the liquidity position of a local government that has arisen from past year's transactions.
Standards	<p>The standard is not met if the ratio is lower than 1:1 (less than 100%)</p> <p>The standard is met if the ratio is greater than 1:1 (100% or greater)</p> <p>A ratio less than 1:1 means that a local government does not have sufficient assets that can be quickly converted into cash to meet its immediate cash commitments. This may arise from a budget deficit from the past year, a Council decision to operate an overdraft or a decision to fund leave entitlements from next year's revenues.</p>
<b>Definitions:</b>	
'Current Assets'	Means the total current assets as shown in the balance sheet.
'Current Liabilities'	Means the total current liabilities as shown in the balance sheet.
'Restricted Asset'	Means an asset the use of which is restricted, wholly or partly, by a law made or a requirement imposed outside of the control of the local government, where the restriction is relevant to assessing the performance, financial position or financing and investment of the local government. This includes all section 6.11 cash reserves as these are restricted by the Act '... by a law made ...', unspent specific grants and other restricted cash identified by the local government, as these are restricted by '... a requirement imposed outside of the control of the local government ...'
'Liabilities Associated with Restricted Assets'	<p>Means the lesser value of a current liability or the cash component of restricted assets held to fund that liability. Commonly this is the cash reserve for long service leave, annual leave and other employee entitlements. Ideally the cash reserve amount should be the same as the provision amount but this is rarely the case.</p> <ul style="list-style-type: none"> <li>• Only make a deduction if there is a cash reserve.</li> <li>• If the cash reserve is greater than the provision amount, only deduct the amount of the provision.</li> <li>• If the provision amount is greater than the cash reserve, only deduct the amount of the cash reserve.</li> <li>• If the cash reserve is for the purpose of long service leave (or other specific leave) then only adjust for that specific leave provision and not the total of all leave provisions.</li> </ul>

Liquidity refers to how quickly and cheaply an asset can be converted into cash. A local government's liquidity is measured by the 'Current Ratio'. This ratio provides information on the ability of a local government to meet its short-term financial obligations out of unrestricted current assets.

A ratio of less than one means that the local government's current unrestricted liabilities exceed its current unrestricted assets which can impact on the local governments ability to meet its obligations.

## Report per Section 7.12A(4)(a) of the Local Government Act 1995

S7.12A of the Act requires the following relating to significant matters raised in the audit report

(4) A local government must –

- (a) prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters; and
- (b) give a copy of that report to the Minister within 3 months after the audit report is received by the local government.

Council considered a recommendation from the Shire Audit Committee and resolved on 28 July 2021 the following response in accordance with s7.12A(4)(a) of the Act.

### Purpose of Report

To report in compliance with s7.12A of the *Local Government Act 1995* relating to two significant matters raised in the 2020 audit report.

### Significant Matters Identified by OAG

In my opinion, the following material matters indicate significant adverse trends in the financial position of the Shire:

- a. The Operating Surplus Ratio as reported in Note 33 of the annual financial report is below the Department of Local Government, Sport and Cultural Industries' standard for the last three financial years.
- b. The Current Ratio as reported in Note 33 of the annual financial report is below the Department of Local Government, Sport and Cultural Industries' standard for the last two financial years with the current year also being below the previous year.

#### Note:

The OAG made a significant finding in relation to the Operating Surplus ratio for the financial year ended 30 June 2019 i.e., the Operating Surplus Ratio is below the DLGSCI standard for the past 3 years.

### Implications

#### Operating Surplus Ratio

If a Local Government runs ongoing under-lying operating deficits, it needs to recognise longer-term implications. Not addressing ongoing deficits is likely to mean that future Councils will struggle to be able to accommodate asset renewal needs and that service levels will decline over time. It is acknowledged that a trending reduction in the operating deficit is necessary for improved sustainable financial health of the Shire.

#### Current Ratio

Although widely regarded as a measure of short-term debt paying ability, the current ratio must be interpreted with great care. A declining ratio may be a sign of a significant adverse trend in the financial position of the Shire; however, it is important to look at the individual assets and liabilities involved in the calculation.

### Management Comment

The Shire is continuing to transition towards improved long-term financial sustainability. This is outlined in the Strategic Resource Plan (SRP) adopted at the 12 August 2019 Special Council Meeting. The SRP contains both the Long-Term Financial Plan and the Asset Management Plan for the Shire.



### Operating Surplus Ratio

The SRP forecasts rate revenue along with fees and charges to increase by 7.0% (CPI 2.0% + 5%) from year 1 to year 5 of the Plan, with a 3.0% increase (CPI 2.0% + 1%) for the remaining term of the Plan. These increases are to assist in the long-term financial stability of the Shire and to maintain the level of services to the community.

The forecast increases in rate revenue and fees and charges result in an improvement to the Operating Surplus ratio from (0.66%) in 2020 to (0.31%) in 2034.

Whilst it is acknowledged that the forecast Operating Surplus ratio remains below the DLGSCI benchmark, the 2020 ratio of (1.16) is a significant improvement from the 2019 ratio of (1.60).

### Current Ratio

The 2020 current ratio is impacted by the recognition of contract liabilities of \$209,544 in relation to the implementation of AASB 15 and AASB1058 which came into effect for the year ended 30 June 2020.

The contract liabilities relate to incomplete projects at year end.

The recognition of these liabilities led to a deterioration in the current ratio as noted by the auditor. Had the contract liabilities not been recognised, the current ratio would have met the DLGSCI benchmark (estimated ratio would have been 1.23).

### Action Taken or Intended to be Taken

The following Integrated Plans have been adopted by Council:

- Strategic Community Plan (28 March 2018);
- Strategic Resource Plan (12 August 2019)
- Workforce Plan (12 August 2019)
- Corporate Business Plan (12 August 2019)

The Integrated plans include increases to Rates and Fees and Charges which will improve the Own Source Revenue Ratio over the course of the Strategic Resource Plan.

The Shire will continue to monitor its Current Ratio and consider if any factors impacting the ratio represent a significant adverse trend.

### Proposed Completion Date

Council is committed to the following;

1. Reduction of the Operating Deficit; and
2. Monitoring the Operating Surplus Ratio for significant adverse trends.

It is expected that the implementation of the strategies outlined in the Strategic Resource Plan with respect to Rates and Fees and Charges increases will result in improvements in the Operating Surplus Ratio over the duration of the Strategic Resource Plan. The Shire will continue to monitor its Current Ratio and consider if any factors impacting the ratio represent a significant adverse trend.

A copy of the Forecast Financial Ratios from the Shire's Strategic Resource Plan is provided in Appendix 2.

### Recommendation

That Council is committed to a trending improvement in the Operating Surplus Ratio and the long term sustainable financial health of the Shire through continued implementation and funding of its Integrated Financial Planning Framework. Also, that it will continue to monitor the Shire's Current Ratio.

## Appendix 1: OAG 30 June 2020 Audit Report



## Auditor General

### INDEPENDENT AUDITOR'S REPORT

To the Councillors of the Shire of Victoria Plains

#### Report on the Audit of the Financial Report

##### *Opinion*

I have audited the annual financial report of the Shire of Victoria Plains which comprises the Statement of Financial Position as at 30 June 2020, the Statement of Comprehensive Income by Nature or Type, Statement of Comprehensive Income by Program, Statement of Changes in Equity, Statement of Cash Flows and Rate Setting Statement for the year then ended, and notes comprising a summary of significant accounting policies and other explanatory information, and the Statement by the Chief Executive Officer.

In my opinion the annual financial report of the Shire of Victoria Plains:

- (i) is based on proper accounts and records; and
- (ii) fairly represents, in all material respects, the results of the operations of the Shire for the year ended 30 June 2020 and its financial position at the end of that period in accordance with the *Local Government Act 1995* (the Act) and, to the extent that they are not inconsistent with the Act, Australian Accounting Standards.

##### *Basis for Opinion*

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of my report. I am independent of the Shire in accordance with the *Auditor General Act 2006* and the relevant ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to my audit of the annual financial report. I have also fulfilled my other ethical responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

##### *Emphasis of Matter – Basis of Accounting*

I draw attention to Notes 1 and 11 to the annual financial report, which describe the basis of accounting. The annual financial report has been prepared for the purpose of fulfilling the Shire's financial reporting responsibilities under the Act, including the Local Government (Financial Management) Regulations 1996 (Regulations). My opinion is not modified in respect of these matters:

- (i) Regulation 17A requires a local government to measure vested improvements at fair value and the associated vested land at zero cost. This is a departure from AASB 16 *Leases* which would have required the entity to measure the vested improvements also at zero cost.
- (ii) In respect of the comparatives for the previous year ended 30 June 2019, Regulation 16 did not allow a local government to recognise some categories of land, including land under roads, as assets in the annual financial report.

##### *Responsibilities of the Chief Executive Officer and Council for the Financial Report*

The Chief Executive Officer (CEO) of the Shire is responsible for the preparation and fair presentation of the annual financial report in accordance with the requirements of the Act, the Regulations and, to the extent that they are not inconsistent with the Act, Australian Accounting Standards. The CEO is also responsible for such internal control as the CEO determines is necessary to enable the preparation of the annual financial report that is free from material misstatement, whether due to fraud or error.

In preparing the annual financial report, the CEO is responsible for assessing the Shire's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the State Government has made decisions affecting the continued existence of the Shire.

The Council is responsible for overseeing the Shire's financial reporting process.

**Auditor's Responsibility for the Audit of the Financial Report**

The objectives of my audit are to obtain reasonable assurance about whether the annual financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the annual financial report.

A further description of my responsibilities for the audit of the annual financial report is located on the Auditing and Assurance Standards Board website at [https://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](https://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). This includes the identification and assessment of the risk of material misstatement due to fraud arising from management override of controls. This description forms part of my auditor's report.

**Report on Other Legal and Regulatory Requirements**

In accordance with the Local Government (Audit) Regulations 1996 I report that:

- (i) In my opinion, the following material matters indicate significant adverse trends in the financial position of the Shire:
  - a. The Operating Surplus Ratio as reported in Note 33 of the annual financial report is below the Department of Local Government, Sport and Cultural Industries' standard for the last three financial years.
  - b. The Current Ratio as reported in Note 33 of the annual financial report is below the Department of Local Government, Sport and Cultural Industries' standard for the last two financial years with the current year also being below the previous year.
- (ii) The following material matters indicating non-compliance with Part 6 of the *Local Government Act 1995*, the Local Government (Financial Management) Regulations 1996 or applicable financial controls of any other written law were identified during the course of my audit:
  - a. For approximately 15% of purchase transactions we sampled, there was inadequate or no evidence that a sufficient number of quotations were obtained to test the market, and no documentation to explain why other quotes were not sought.
  - b. For approximately 17% of purchase transactions we sampled, the purchase orders raised were dated after the dates of the corresponding supplier invoices.These practices increase the risk of fraud or favouritism of suppliers, not obtaining value for money in procurement, and inappropriate or unnecessary purchases.
- (iii) All required information and explanations were obtained by me.
- (iv) All audit procedures were satisfactorily completed.
- (v) In my opinion, the Asset Consumption Ratio and the Asset Renewal Funding Ratio included in the annual financial report were supported by verifiable information and reasonable assumptions.

**Other Matter**

The financial ratios for 2018 in Note 33 of the annual financial report were audited by another auditor when performing their audit of the Shire for the year ending 30 June 2018. The auditor expressed an unmodified opinion on the annual financial report for that year.

**Matters Relating to the Electronic Publication of the Audited Financial Report**

This auditor's report relates to the annual financial report of the Shire of Victoria Plains for the year ended 30 June 2020 included on the Shire's website. The Shire's management is responsible for the integrity of the Shire's website. This audit does not provide assurance on the integrity of the Shire's website. The auditor's report refers only to the annual financial report described above. It does not provide an opinion on any other information which may have been hyperlinked to/from this annual financial report. If users of the annual financial report are concerned with the inherent risks arising from publication on a website, they are advised to refer to the hard copy of the audited annual financial report to confirm the information contained in this website version of the annual financial report.



ALOHA MORRISSEY  
ASSISTANT AUDITOR GENERAL FINANCIAL AUDIT  
Delegate of the Auditor General for Western Australia  
Perth, Western Australia  
25 February 2021

## Appendix 2: Strategic Resource Plan 2019 2034 Extract – Forecast Financial Ratios

	Target Range		Average	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34
	Basic	Advanced																
LIQUIDITY RATIOS																		
Current Ratio	> 1.00	> 1.20	0.69	0.66	0.66	0.68	0.68	0.68	0.67	0.68	0.69	0.69	0.70	0.73	0.73	0.73	0.73	0.73
OPERATING RATIOS																		
Operating Surplus Ratio	> 1.00%	> 15.00%	(40.97%)	(65.58%)	(58.96%)	(52.58%)	(46.60%)	(40.45%)	(39.28%)	(38.24%)	(37.16%)	(36.05%)	(34.98%)	(34.91%)	(33.71%)	(32.72%)	(32.34%)	(30.99%)
Own Source Revenue Coverage Ratio	> 40.00%	> 60.00%	57.26%	48.38%	50.41%	52.54%	54.71%	57.11%	57.59%	58.04%	58.51%	59.01%	59.50%	59.66%	60.19%	60.68%	60.94%	61.58%
BORROWINGS RATIOS																		
Debt Service Cover Ratio	> 3	> 5	16.18	4.09	4.60	5.99	9.21	11.24	11.84	12.48	14.77	17.79	18.75	67.23	-	-	-	-
FIXED ASSET RATIOS																		
Asset Sustainability Ratio	> 90.00%	> 110.00%	61.01%	85.15%	30.69%	49.97%	46.24%	55.08%	51.14%	54.95%	51.08%	78.59%	71.52%	112.26%	50.12%	56.31%	50.50%	71.51%
Asset Consumption Ratio	> 50.00%	> 60.00%	67.08%	72.54%	71.57%	70.65%	69.75%	69.05%	68.39%	67.65%	66.89%	66.32%	65.64%	65.14%	64.36%	63.54%	62.70%	62.00%
Asset Renewal Funding Ratio	> 75.00%	> 95.00%	68.24%	111.66%	96.37%	51.00%	41.57%	40.59%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A



Audit Findings for the  
Financial Year Ended 30<sup>th</sup> June 2020

**Report on Material Matters 7.12A(3) – Non Compliance  
Rated Significant and Moderate Risks**

Financial Management, Purchasing, ICT Management, Staff  
Leave

July 2021
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## Improvements to Work Practices:

It was reported by the Auditor General regarding the 2019-2020 Audit there were two significant matters regarding the Shire's purchasing practices that are required to be addressed by the Shire. The Management Letter (Attachment 1) highlighted the following **significant risks**:

1. Purchase orders dated after invoice dates:
  - 10 out of 60 (17%) purchase transactions sampled were found to have date applied after invoice received;
  
6. Quotations for purchases
  - During testing, 60 purchases were tested with 9 (15%) purchases between \$1,500 and \$56,000, showing no evidence that the minimum number of quotes required by the Shire's purchasing policy had been obtained. For 2019, it was 12 such purchases.

The material matters rated as **significant risk** above were raised in the previous audit. Mr Robert Hall at the time advised the CEO that if this matter occurs for a third time, there will be a formal investigation into this matter. The status on the amelioration of all risks identified are presented in the action plan as follows:

Improvement	Who	Status	Due
<p><b>1. Purchase orders dated after invoice dates</b></p> <p>If purchases are made without obtaining sufficient quotes, there is a risk of favouritism of suppliers and not obtaining value for money.</p> <p>There is a risk that the ordering of goods/services was not approved prior to ordering, which could result in financial loss to the Shire if the purchase is not valid.</p> <p>We recommend that purchase orders are raised and approved prior to the ordering of goods and services.</p>	OffM	<p>10 out of 60 transactions, the purchase orders were raised after the dates of the corresponding supplier invoices.</p> <p><b>Action</b> Agree with finding. The Shire will contact creditors and advise them that "the invoice will not be paid unless a PO is quoted". The Office Manager has emailed all Shire staff the most recent Shire Purchasing Policy &amp; directed staff that purchase order requests are to be sent to the Office Manager for review and approval. The Office Manager will raise the purchase order &amp; send to the requesting officer.</p> <p><b>Outcome?</b> Unknown</p>	31/03/21

<p><b>2. Monthly bank reconciliations not completed in a timely manner</b></p> <p>Untimely completion and review of bank reconciliation increases the risk of errors, omissions or fraud remaining undetected, which could lead to misstatements in financial reporting.</p>	OffM SFO	<p>Monthly bank reconciliations for November 2019 and June 2020 were only completed and reviewed 3 months after the end of the month.)</p> <p><b>Action</b> Agree with finding. The Shire has implemented a monthly financial reconciliation program. Reconciliations of accounts are compiled by the Senior Finance Officer and are reviewed by the Office Manager. This includes bank reconciliations which are prepared through the system – IT Synergy (rather than manually). This process makes the reconciliations automated with less risk of human error and completed in a more timely manner.</p> <p><b>Outcome</b> Unknown.</p>	1/07/20
<p><b>3. Monthly bank reconciliation not independently reviewed</b></p> <p>Errors in the bank reconciliation may not be detected and resolved promptly when reconciliations are not independently reviewed.</p> <p>We recommend that bank reconciliations are independently reviewed by an appropriate senior officer</p>	OffM SFO	<p>The monthly bank reconciliation for February 2020 was prepared and reviewed by the same officer. There was no evidence that the reconciliation had been independently reviewed by an appropriate senior officer.</p> <p><b>Action (See Attachment A)</b> The Auditor's comments are noted. As part of the Shire's monthly financial reconciliation process, the reconciliations are being reviewed by the Office Manager. In the absence of the Office Manager, the CEO/Authorised Officer will undertake the review and sign.</p> <p><b>Outcome</b> Unknown</p>	1/10/20

<p><b>4. 4 out of 20 employees, the timesheets for the fortnight ended 29 April 2020 had not been completed and reviewed</b></p> <p>Without a formal record of timesheets, the existence of employees and accuracy of hours worked cannot be verified. There is also a risk of employees being paid incorrectly, which could result in financial loss to the Shire.</p> <p>We recommend that timesheets are diligently completed and signed by the employees, and then appropriately reviewed and signed by the reviewer, before they are processed by the payroll team.</p> <p>We also recommend that timesheets are maintained and appropriately retained to support the payroll records.</p>	OffM SFO	<p>Without a formal record of timesheets, the existence of employees and accuracy of hours worked cannot be verified. There is also a risk of employees being paid incorrectly, which could result in financial loss to the Shire.</p> <p><b>Action</b> The Auditor's comments are noted, and actions will be taken to improve the existing procedures. The timesheets are cross referenced with the timesheet summary spreadsheet, thus ensuring any missing timesheets will be picked up prior to the commencement of payroll.</p> <p><b>Outcome</b> Unknown</p>	1/03/21
<p><b>5. No ICT Strategic Plan</b></p> <p>Lack of an ICT strategy plan increases the risk of the IT resources not being aligned to the business strategy and priorities.</p> <p>We recommend that management develop an ICT Strategic Plan, identifying and documenting key ICT risks along with the treatments to reduce the risk to an acceptable level.</p>	CEO	<p><b>Action</b> Wallis Computers (Shire IT Support Consultants) are currently drafting an ICT Strategic Plan. If there are particular requirements requested from the Auditor's Office, the Shire will include such detail in scope of works. Estimated time for completion is mid March 2021</p> <p><b>Outcome</b> Wallis Computing Presented outline of ICT Plan at the June 2021 Briefing Session</p>	TBA

<p><b>6. Quotations for purchases</b></p> <p>If purchases are made without obtaining sufficient quotes, there is a risk of favouritism of suppliers and not obtaining value for money.</p> <p>We recommend that management ensure:</p> <ol style="list-style-type: none"> <li>1. For purchases below the tender threshold, quotes should be obtained, in accordance with the Shire's purchasing policy.</li> <li>2. If instances arise where it is impractical to obtain the requisite number of quotations, the reasons should be recorded and attached to the purchase order at the time of the purchase being made.</li> </ol>	CEO OffM	<p>Tested 60 purchases and identified 9 purchases between \$1,500 and \$56,000, where there was no evidence that the minimum number of quotes required by the Shire's purchasing policy had been obtained.</p> <p><b>Action</b></p> <p>The Auditor's comments and recommendations are noted. The Shire purchasing policy has being redistributed to all staff to ensure ongoing compliance. Former staff (including interim or acting staff) whilst having been provided the Purchasing Policy have not adhered strictly to the Purchasing Policy and the requirements attached and have since left the Shire's employment. Staff have been expressly advised that consultants and/or contractors are not authorised to make purchases on behalf of the Shire. The Office Manager will be reviewing purchase orders to ensure they meet compliance checks.</p> <p><b>Outcome</b></p> <p>In place. Staff are adhering to requirements</p>	10/02/21
<p><b>7. Leave Forms</b></p> <p>When leave taken is not approved, there is a risk that leave records will be inaccurate which may result in financial loss to the Shire.</p> <p>When leave taken is not approved, there is a risk that leave records will be inaccurate which may result in financial loss to the Shire.</p>	OffM SFO	<p>Noted 2 instances for 2 employees where the annual leave taken was not supported by approved leave forms. We could not locate the leave forms on file.</p> <p><b>Action</b></p> <p>The Auditor's comments and recommendations are noted. The approved leave form will be filed together with the timesheets and payroll reports. The Payroll team should ensure that the form is signed by an employee and approved by the manager before</p>	10/02/21

We recommend that valid leave forms are completed and appropriately approved for all leave taken. We also recommend that all leave forms are retained on file to support the entries in the payroll reports.		the leave is processed. The procedure going forward will be that the payroll officer will email the approved leave form to the employee or their manager & leave is not deemed approved until receipt of the approved leave form by the employee.  <b>Outcome</b> Unknown	
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**Legend**

0 -49%
50-69%
70-100%

It can be seen that further feedback is required from key staff regarding the status of the actions to date.

**Sean Fletcher**  
Governance Officer

**Glenda Teede**  
Chief Executive Officer

## Attachment 1 – Management Letter

INDEX OF FINDINGS	RATING		
	Significant	Moderate	Minor
1. Purchase orders dated after invoice dates	✓		
2. Monthly bank reconciliations not completed in a timely manner		✓	
3. Monthly bank reconciliation not independently reviewed		✓	
4. Missing timesheets for employees		✓	
5. No ICT Strategic Plan		✓	
<b>Issues outstanding from prior year</b>			
6. Quotations for purchases	✓		
7. Leave forms		✓	

**KEY TO RATINGS**

The Ratings in this management letter are based on the audit team's assessment of risks and concerns with respect to the probability and/or consequence of adverse outcomes if action is not taken. We give consideration to these potential adverse outcomes in the context of both quantitative impact (for example financial loss) and qualitative impact (for example inefficiency, non-compliance, poor service to the public or loss of public confidence).

- Significant** - Those findings where there is potentially a significant risk to the entity should the finding not be addressed by the entity promptly.
- Moderate** - Those findings which are of sufficient concern to warrant action being taken by the entity as soon as practicable.
- Minor** - Those findings that are not of primary concern but still warrant action being taken.

## **1. Purchase orders dated after invoice dates**

### **Finding**

During our procurement testing, we noted that for 10 out of 60 transactions, the purchase orders were raised after the dates of the corresponding supplier invoices.

### **Rating: Significant**

#### **Implication**

There is a risk that the ordering of goods/services was not approved prior to ordering, which could result in financial loss to the Shire if the purchase is not valid.

### **Recommendation**

We recommend that purchase orders are raised and approved prior to the ordering of goods and services.

### **Management Comment**

Agree with finding. The Shire will contact creditors and advise them that "the invoice will not be paid unless a PO is quoted". The Office Manager has emailed all Shire staff the most recent Shire Purchasing Policy & directed staff that purchase order requests are to be sent to the Office Manager for review and approval. The Office Manager will raise the purchase order & send to the requesting officer.

**Responsible Person:** Office Manager / Finance Officer  
**Completion Date:** 31 March 2021



## **2. Monthly bank reconciliations not completed in a timely manner**

### **Finding**

We noted that the monthly bank reconciliations for November 2019 and June 2020 were only completed and reviewed 3 months after the end of the month.

### **Rating: Moderate**

### **Implication**

Untimely completion and review of bank reconciliation increases the risk of errors, omissions or fraud remaining undetected, which could lead to misstatements in financial reporting.

### **Recommendation**

We recommend that bank reconciliations are prepared and independently reviewed promptly after the end of each month.

### **Management Comment**

Agree with finding. The Shire has implemented a monthly financial reconciliation program. Reconciliations of accounts are compiled by the Senior Finance Officer and are reviewed by the Office Manager. This includes bank reconciliations which are prepared through the system – IT Synergy (rather than manually). This process makes the reconciliations automated with less risk of human error and completed in a more timely manner.

**Responsible Person:** Office Manager / Senior Finance Officer  
**Completion Date:** 1 July 2020

### **3. Monthly bank reconciliation not independently reviewed**

#### **Finding**

We noted that the monthly bank reconciliation for February 2020 was prepared and reviewed by the same officer. There was no evidence that the reconciliation had been independently reviewed by an appropriate senior officer.

#### **Rating: Moderate**

#### **Implication**

Errors in the bank reconciliation may not be detected and resolved promptly when reconciliations are not independently reviewed.

#### **Recommendation**

We recommend that bank reconciliations are independently reviewed by an appropriate senior officer.

#### **Management Comment**

The Auditor's comments are noted. As part of the Shire's monthly financial reconciliation process, the reconciliations are being reviewed by the Office Manager. In the absence of the Office Manager, the CEO/Authorised Officer will undertake the review and sign.

**Responsible Person:** Office Manager / Senior Finance Officer

**Completion Date:** 1 October 2020

#### **4. Missing timesheets for employees**

##### **Finding**

During our payroll testing, we noted that for 4 out of 20 employees, the timesheets for the fortnight ended 29 April 2020 had not been completed and reviewed.

##### **Rating: Moderate**

##### **Implication**

Without a formal record of timesheets, the existence of employees and accuracy of hours worked cannot be verified. There is also a risk of employees being paid incorrectly, which could result in financial loss to the Shire.

##### **Recommendation**

We recommend that timesheets are diligently completed and signed by the employees, and then appropriately reviewed and signed by the reviewer, before they are processed by the payroll team.

We also recommend that timesheets are maintained and appropriately retained to support the payroll records.

##### **Management Comment**

The Auditor's comments are noted, and actions will be taken to improve the existing procedures. The timesheets are cross referenced with the timesheet summary spreadsheet, thus ensuring any missing timesheets will be picked up prior to the commencement of payroll.

<b>Responsible Person:</b>	Office Manager / Senior Finance Officer
<b>Completion Date:</b>	1 March 2021

## 5. No ICT Strategic Plan

### **Finding**

We noted that the Shire does not have an ICT Strategic Plan in place.

### **Rating: Moderate**

### **Implication**

Lack of an ICT strategy plan increases the risk of the IT resources not being aligned to the business strategy and priorities.

### **Recommendation**

We recommend that management develop an ICT Strategic Plan, identifying and documenting key ICT risks along with the treatments to reduce the risk to an acceptable level.

### **Management Comment**

Wallis Computers (Shire IT Support Consultants) are currently drafting an ICT Strategic Plan. If there are particular requirements requested from the Auditor's Office, the Shire will include such detail in scope of works. Estimated time for completion is mid March 2021

### **Responsible Person:**

### **Completion Date:**

**Issues outstanding from prior year****6. Quotations for purchases****Finding 2020**

During our procurement testing, we tested 60 purchases and identified 9 purchases between \$1,500 and \$56,000, where there was no evidence that the minimum number of quotes required by the Shire's purchasing policy had been obtained.

**Finding 2019**

During our procurement testing, we identified 12 purchases between \$1,500 and \$5,000, where there was no evidence that the minimum number of quotes required by the Policy Manual were obtained.

We also noted that the Shire did not attach all the quotations obtained for purchases to the payment documentation supporting the payment. Instead, only the selected quotation supporting the invoice for payment was filed.

**Rating: Significant  
Implication**

If purchases are made without obtaining sufficient quotes, there is a risk of favouritism of suppliers and not obtaining value for money.

**Recommendation**

We recommend that management ensure:

1. For purchases below the tender threshold, quotes should be obtained, in accordance with the Shire's purchasing policy.
2. If instances arise where it is impractical to obtain the requisite number of quotations, the reasons should be recorded and attached to the purchase order at the time of the purchase being made.

**Management Comment**

The Auditor's comments and recommendations are noted. The Shire purchasing policy has been redistributed to all staff to ensure ongoing compliance. Former staff (including interim or acting staff) whilst having been provided the Purchasing Policy have not adhered strictly to the Purchasing Policy and the requirements attached and have since left the Shire's employment. Staff have been expressly advised that consultants and/or contractors are not authorised to make purchases on behalf of the Shire. The Office Manager will be reviewing purchase orders to ensure they meet compliance checks.

**Responsible Person:** Chief Executive Officer / Officer Manager  
**Completion Date:** 10 February 2021

## 7. Leave forms

### Finding 2020

We noted 2 instances for 2 employees where the annual leave taken was not supported by approved leave forms. We could not locate the leave forms on file.

### Finding 2019

During our review of the payroll reports, we noted 2 instances where there was no approved leave form for employees taking leave.

### Rating: Moderate

#### Implication

When leave taken is not approved, there is a risk that leave records will be inaccurate which may result in financial loss to the Shire.

### Recommendation

We recommend that valid leave forms are completed and appropriately approved for all leave taken. We also recommend that all leave forms are retained on file to support the entries in the payroll reports.

### Management Comment

The Auditor's comments and recommendations are noted. The approved leave form will be filed together with the timesheets and payroll reports. The Payroll team should ensure that the form is signed by an employee and approved by the manager before the leave is processed. The procedure going forward will be that the payroll officer will email the approved leave form to the employee or their manager & leave is not deemed approved until receipt of the approved leave form by the employee.

**Responsible Person:** Office Manager / Senior Finance Officer  
**Completion Date:** 10 February 2021



Audit Findings for the  
Financial Year Ended 30<sup>th</sup> June 2019

**Report on Material Matters – Non Compliance With Part 6  
of the *Local Government Act 1995***

Tenders

Update July 2021
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## Improvements to Procurement Policies and Practices:

It was reported by the OAG regarding the 2018-2019 Audit there was a material matter regarding tenders that is required to be addressed by the Shire.

Accordingly, the required outcome of Audit is that the Shire of Victoria Plains communicates its purchasing thresholds effectively to employees and implement internal controls to prevent non-compliance with the purchasing policy and the Financial Management Regulations.

The CEO in the management letter (Part A and B) to the Office of the Auditor General (OAG) specified a range of improvements that will be undertaken including:

Improvement	Who	Status	Due
1. LGA section 6.8 - not to incur expenditure without an adopted budget unless by resolution	CEO	<p>Requirement is in place under <b>Function 1 (b)</b> of Delegation 3.1 – Municipal Fund Incurring Expenditure.</p> <p><b>Action</b> This needs to be encapsulated within employee delegations (i.e. a delegation from the CEO to employees) as appropriate</p> <p><b>Update July 2021</b> Correct delegation is 3.2. CEO implemented appropriate delegation instruments to staff 03/07/20</p>	30/04/20
2. LGA Section 6.10 - regulations to outline the management of and the making of payments from the muni and trust funds	MFA	<p><b>Clause 3</b> under <b>Application</b> within Delegation 3.2 stipulates who can make payments from the muni and trust funds and who can authorise the payments (i.e. two signatories)</p> <p><b>Action</b> The CEO will implement:</p> <ul style="list-style-type: none"> <li>• Executive Policies regarding Accounts Payable processes/procedures;</li> <li>• An appropriate delegation instrument for other staff regarding 3.2</li> </ul> <p><b>Update July 2021</b> Correct delegation is 3.2. CEO implemented appropriate</p>	30/04/20



		<p>delegation instruments to staff 03/07/20</p> <p>Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.</p>	
3. Function and Gen Reg 11. - specifies the process and rules regarding tenders. Tenders must be used for anything over \$150,000 unless an exemption applies.	CEO	<p><b>Policy 3.1 – Purchasing Framework</b> Schedule 3.1(b) Purchasing Thresholds and Requirements (Including Tenders) already exists</p> <p><b>Action (See Attachment A)</b></p> <ul style="list-style-type: none"> <li>• Employees required for Evaluation Panels for each threshold added;</li> <li>• Schedule 3.1(b) restructured so that it is easier for employees to follow (checklist format)</li> </ul> <p><b>Update July 2021</b> With the onset of the pandemic, the tender threshold was increased to \$250,000.</p> <p>Purchasing Policy was amended and implemented by Council at the May 2020 OCM re Attachment A – Purchasing Framework.</p> <p>Internal audit conducted re Tenders in Feb 2021 and Audit Committee advised only one area of non compliance: notifying successful tenderers of the outcome of the tender.</p>	21/04/20
4. Ensure proper authorisation for the incurring of liabilities and the making of payments	CEO	<p>Delegation 3.1 to be updated and Delegation Instrument implemented to reflect CEO's instruction to staff 3 October 2019:</p> <ul style="list-style-type: none"> <li>• Manager of Works up to \$50,000</li> <li>• Finance Manager up to \$5,000</li> <li>• Works Supervisor up to \$2,000</li> <li>• Finance Officer up to \$2,000</li> <li>• Depot Clerk up to \$5,000</li> </ul>	30/04/20

		<p>It would seem letters were issued accordingly, although not in the correct form</p> <p><b>Action</b> New letters of delegation to employees required</p> <p><b>Update July 2021</b> Correct delegation is 3.2. CEO implemented appropriate delegation instruments to staff 03/07/20.</p> <p>CEO issued letters of authority to staff regarding payment authorisation limits.</p>	
5. Before the approval of the payment of accounts, the requirement to confirm relevant debt was incurred by a person properly authorised to do so	MFA	<p>Delegation 3.2 sets out the requirements.</p> <p><b>Action</b></p> <ul style="list-style-type: none"> <li>To implement an Executive Policy that sets out the basic financial controls to govern the Shire's Accounts Payable – Creditors (See Attachment A)</li> <li>Payment – practice. This needs to be encapsulated within an appropriate employee delegation</li> </ul> <p><b>Update July 2021</b> Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.</p>	30/04/20
6. Monthly list of accounts provided to Council showing who has been paid how much and when	MFA	<p>The MFA has improved the level of information provided in the list of payments in the first quarter of 2020</p> <p><b>Action</b> NFA</p> <p><b>Update July 2021</b> Completed at April 2020 ACM</p>	Mar 2020

7. The Shire has recently obtained a quote to update the Shire Purchasing Policy to set up a Panel of Pre-Qualified Suppliers which will assist considerably.	CEO	<p>Policy developed by CEO and GO was submitted to Council at the Feb 2020 OCM</p> <p><b>Action</b> Panels to be established in due course</p> <p><b>Update July 2021</b> Completed at April 2020 ACM</p>	Feb 2020
<p>8. Review of implementing the following:</p> <ul style="list-style-type: none"> <li>• Policy -Debt Management</li> <li>• Policy - Procurement Framework</li> <li>• Policy - Strategic Policy Framework</li> <li>• Policy - Purchasing Exemptions</li> <li>• Policy - Credit Card use</li> </ul>	MFA	<p>Regarding policies to be introduced or amended to improve procurement practices, a number of relevant policies, executive policies and memos were obtained by the CEO from the Shire of Narembeen.</p> <p>The GO has reviewed these and drafted new/variations as required and identified executive policies and approval memos for implementation. See attachment A</p> <p><b>Action</b> Changes to procurement policies to be implemented as per GO's recommendation</p> <p><b>Update July 2021</b> Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.</p>	21/04/20
9. Additional Training Presentation Module in place and to be delivered by January 2020 (Employee Accreditation)	CEO GO	<p><b>Elected Members</b> Training module explained to EMs by GO at a briefing session before Feb OCM</p> <p><b>Employees</b> CEO to conduct with staff</p> <p><b>Update July 2021</b> EMs completed Understanding Local Government Finance Module September 2020</p>	May 2020

		Employees have been mentored by Jill Brazil during the last 12 months	
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**Legend**

0 -49%
50-69%
70-100%

It can be seen that the CEO was able to address most measures. However, the outstanding matters have not been completed due to mainly being impacted by the ongoing changes to the key finance management role at the Shire during the last 12 months.

**Sean Fletcher**  
Interim Governance Officer

**Glenda Teede**  
Chief Executive Officer

## Attachment A – Detailed Summary of Procurement Improvements

### Council Policies

The following is a summary of the changes required to the Shire's Procurement Policy Framework and Other Financial Management Policies. Copies of the new/amended policies are attached separately.

Management Letter A	Type Council or CEO	New Amend Delete	Changes Required	Who	Status and Other Course of Action Required
Strategic Policy Framework	Council	Amend	<p>Policy 1.5 amended to incorporate policy hierarchy and methodology:</p> <p>A. Council Policy. B. Executive Policy. C. Procedures/Manuals. D. Reusable Components (Tools/Templates) and Measurements of Success.</p>	CEO	<p>Based on Shire of Narembeen policy. However, restructured to reflect correct policy protocol and modern policy approach re better practice. This also includes the CEO (in conjunction with staff) consideration of the following:</p> <ul style="list-style-type: none"> <li>• The implementation of Executive Policies (Instructions to Staff);</li> <li>• Recognising the need for procedures and manuals;</li> <li>• The focus on tools e.g. templates and the need to measure the success of a policy from time to time</li> </ul> <p>Includes the Executive Policy Template, Memo Template and Delegation Instrument Template</p> <p><b>July 2021 Update</b> Reviewed by Audit Committee ACM 2020. Adopted and implemented at April 2020 OCM</p>
Debt Management	Council	New	<p>Policy 3.6 introduces the Council's position on collecting debt for general debtors and rate debtors.</p> <p>This includes the CEO to provide reports to Council from time to time (six monthly re general</p>	MFA	<p>Only a handful of local governments have implemented such a policy. It is based on Shire of Narembeen policy.</p> <p><b>Note:</b> the CEO is already required (has direct authority) to put systems and procedures in place for monies owing as per the Local Government (Financial Management) Regulations.</p> <p><b>July 2021 Update</b></p>

			debtors and 36 monthly re selling of debtor property) and suggestions (guidance) on what the CEO should consider in an Executive Policy		Reviewed by Audit Committee ACM 2020. Adopted and implemented at April 2020 OCM
Purchasing Framework	Council	Amend	<p>The main change required is to <b>Schedule 3.1(b)</b> as follows:</p> <p><b><u>Clause 1 – Purchasing Thresholds</u></b></p> <p><b>General Thresholds</b> Table amended to reflect the Purchasing Thresholds presented to Council in February 2020</p> <p><b>Requirements</b> Changed throughout the purchasing thresholds is the need to “obtain the required number of quotes” to “seek the number of quotes”</p> <p><b>Evaluation Panels</b> Introduced for the first time is the number of staff/persons required to evaluate a quote or tender and is set out against each threshold</p> <p><b><u>Clause 2 – Quotations/Submissions</u></b></p> <p>Clause restructured so that it is easier to follow. Also list of</p>	MFA	<p><b>Purchasing Framework</b> It was suggested that the Narembeen Procurement Framework Policy was introduced. The Shire’s current procurement framework is sufficient, however, it is recommended that the suggested changes to Schedule 3.1(b) clauses 1, 2 and 3 are implemented.</p> <p><b>Staff Accreditation</b></p> <ul style="list-style-type: none"> <li>• The CEO obtained the presentation on Staff Accreditation from Narembeen regarding purchasing. This is to ensure that staff involved with purchasing understand the purchasing policy framework;</li> <li>• Interim GO presented this to Council in Feb 2020, which includes the requirements for purchasing. Staff need to attend this presentation in order to undertake the purchasing process;</li> <li>• The presentation has additional criteria regarding the Purchasing Thresholds. These need to be included in the Procurement Policy.</li> </ul> <p><b>Delegations</b></p> <ul style="list-style-type: none"> <li>• Delegation 3.1 will need to be updated to reflect an appropriate delegation from the CEO to appropriate staff regarding purchase orders;</li> <li>• The CEO issued an email on 3 October 2019 clarifying who was authorised to make a purchase and the levels. However, it is not in the correct form i.e. by way of letter or instrument. The purchasing levels are: <ul style="list-style-type: none"> <li>○ Manager of Works up to \$50,000</li> <li>○ Finance Manager up to \$5,000</li> <li>○ Works Supervisor up to \$2,000</li> <li>○ Finance Officer up to \$2,000</li> <li>○ Depot Clerk up to \$5,000</li> </ul> </li> </ul> <p><b>Obtain/Seek Quotes</b></p>

			<p>requirements turned into checklist format</p> <p><b><u>Clause 3 – Specifications, Assessment Criteria and Evaluation</u></b></p> <p>Clause restructured so that it is easier to follow. Also list of requirements turned into checklist format</p>		<p>By changing the wording from “obtain” to “seek”, it will make it easier for staff to manage a request for quote. This means that once the time frame has expired or no response has been received, a decision can be made on the number of quotes received, even if it is below the number required.</p> <p><b>Evaluation Panels</b></p> <p>By introducing the number of staff/persons required to assess each quote/tender will ensure that an additional level of scrutiny has been introduced. Due to SoVP being a small local government, the minimum number for an evaluation panel is two employees. With regard to tender panels, the regulations allow for one employee and for the CEO to approve one other person who is not an employee.</p> <p><b>July 2021 Update</b></p> <p>Reviewed by Audit Committee ACM 2020. Adopted and implemented at April 2020 OCM</p>
Purchasing Exemptions	Council	Existing	<p>Not required as this appropriately covered in:</p> <p>Policy 3.1 Purchasing Framework Schedule 3.1(c) Regulatory Compliance for all Purchases – Clause 1. re</p>	CEO	<p>Part of Procurement Framework – Schedule 3.1(c) Regulatory Compliance for all Purchases – Clause 1. Refer to Reg.11 of the Local Government (Function &amp; General) Regulations.</p> <p><b>CEO must approve the following purchase orders regardless of delegation to employees:</b></p> <p><u>Sole Supplier</u></p> <p>When the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier.</p> <p><u>Emergency Situations</u></p> <p>CEO can incur expenditure initially subject to approval by the President without the need to adhere to the number of quotes required for each general purchasing threshold. This expenditure is then reported to the next Council meeting.</p> <p><b>Other Exemptions that do not require CEO approval are:</b></p> <ul style="list-style-type: none"> <li>• the goods to be supplied under the contract are: <ul style="list-style-type: none"> <li>○ petrol or oil; or</li> </ul> </li> </ul>

					<ul style="list-style-type: none"> <li>○ any other liquid, or any gas, used for internal combustion engines;</li> <li>• the goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA up to \$250 000</li> <li>• the goods or services are to be supplied by an Australian Disability Enterprise;</li> <li>• the contract is a renewal or extension of the term of a contract (the <b>original contract</b>)</li> <li>• the goods or services are to be supplied by a pre-qualified supplier under Division 3.</li> </ul> <p><b>July 2021 Update</b> NFA</p>
Corporate Credit Card	Council	Existing	Policy 3.3 is adequate	MFA	<p>No change required. CEO to implement Executive Policy for staff to follow</p> <p><b>July 2021 Update</b> NFA</p>
Panel of Pre-qualified Suppliers	Council	New	Yet to be initiated	MFA	<p>Implemented at the February 2020 OCM</p> <p><b>July 2021 Update</b> NFA</p>
Financial Hardship Policy	Council	New	Implement initially as part of COVID-19 measures.	CEO	<p><b>To be Subsequently Implemented as part of the Shire's COVID-19 Response</b></p> <p>Not included in the original list of measures for improvement. Based on WALGA Template and supplements the proposed new Debt Management Policy.</p> <p>Key elements include:</p> <ul style="list-style-type: none"> <li>• Focus is on all ratepayers experiencing financial hardship regardless of their status, be they a property owner, tenant, business owner etc;</li> <li>• Anticipated financial hardship (COVID-19) statement;</li> <li>• Financial hardship criteria i.e: <ul style="list-style-type: none"> <li>○ Recent unemployment or under-employment</li> <li>○ Sickness or recovery from sickness</li> </ul> </li> </ul>



					<ul style="list-style-type: none"><li>○ Low income or loss of income</li><li>○ Unanticipated circumstances such as caring for and supporting extended family</li></ul> <p>Payment arrangements, waiving of interest charges, deferment of rates (senior card holders), suspension of debt recovery</p> <p><b>July 2021 Update</b> Adopted and implemented at May 2020 OCM</p>
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### Executive Polices (CEO Instructions to Staff)

The following is a summary of the new CEO instructions to Staff that will be implemented to improve the application and adherence to the Shire's Procurement Policy Framework and Other Financial Management Policies.

Management Letter A	Type Council or CEO	New Amend Delete	Changes Required	Who	Status
Strategic Policy Framework	CEO	New	To reflect the amendments to Policy 1.5 regarding the new policy framework	CEO	<b>21 April 2020</b> Currently being drafted. Expect implementation by 30 April 2020 <b>Update July 2021</b> Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.
Debtor Management	CEO	New	Directions to staff regarding managing general debtors, including sundry debtors and rate debtors	MFA	<b>21 April 2020</b> Currently being drafted. Expect implementation by 30 April 2020 <b>Update July 2021</b> Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.
Debt Management	CEO	New	This policy provides a clear process for the raising of invoices to debtors and the scope for recovery procedures to facilitate effective debt recovery practices	MFA	<b>21 April 2020</b> Currently being drafted. Expect implementation by 30 April 2020 <b>Update July 2021</b> Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.
Accounts Payable	CEO	New	To implement basic financial controls to govern the Shire's Accounts Payable - creditor payment - practice	MFA	<b>21 April 2020</b> Currently being drafted. Expect implementation by 30 April 2020 <b>Update July 2021</b> Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.
Corporate Credit Card	CEO	New	Directions to staff regarding managing the issue of a corporate credit card, fuel card or other type of card. Also	MFA	<b>21 April 2020</b> Currently being drafted. Expect implementation by 30 April 2020 <b>Update July 2021</b>

			includes the need to keep a register and copy of signed terms of use		Implementation of Executive Policies has been extremely difficult with the ongoing changes to the key finance management role during the last 12 months.
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## Memos (CEO Procurement Approvals – Sole Supplier and Emergency Purchases)

Management Letter A	Type Council or CEO	New Amend Delete	Changes Required	Who	Status
Purchasing Exemptions	CEO	New		CEO	<b>21 April 2020</b> Currently being drafted. Expect implementation by 30 April 2020

## Procurement Training and Development

Management Letter A	Type Council or CEO	New Amend Delete	Changes Required	Who	Status
Procurement Accreditation Training and Presentation	CEO	New		CEO	<p><b>Elected Members</b> Training module explained to EMs by GO at a briefing session before Feb OCM</p> <p><b>Employees</b> CEO is to workshop this with staff by mid May 2020.</p> <p><b>Update July 2021</b> EMs completed Understanding Local Government Finance Module September 2020</p> <p>Employees have been mentored by Jill Brazil</p>



## SoVP Corporate Business Plan Year 2 Update December Quarter 2020/2021 (Q4)

Priority Area	Strategy	Action	Who	Cost	Q1	Q2	Q3	Q4	Completed %	Comment
Community	1.1 Better publicise upcoming events and activities in the Shire	1.1.1 Continue to actively engage with the community using multiple platforms	CEO							Completed Yr1. Includes community newsletter, Shire Facebook Page. Evolving on a regular basis
	1.2 Improve aged care and support	1.2.1 Advocate for improved aged care and support services and facilities	CEO						0	Plan for 2021/2022 regarding an advocacy strategy
	1.3 Promote community health and wellbeing	1.3.1 Continue to apply for and facilitate community health and wellbeing grants	?						0	Yrs 1 & 2 Impacted by COVID-19 and lack of resources in this area
		1.3.2 Encourage community participation in community groups and events	?	\$39,000					25	Impacted by COVID-19 and lack of resources in this area. Mogumber NYE Rodeo cancelled. Piawaning Expo proceeding September 2021 in conjunction with SoVP 150 Celebrations
	1.4 Support sporting, volunteer and community groups	1.4.1 Support community groups with grant applications	?						0	Yrs 1 & 2 Impacted by COVID-19 and lack of resources in this area
		1.4.2 Support community groups in facilitating community events	?						0	Impacted by COVID-19 and lack of resources in this area
		1.4.3 Advocate for funding for multi-use collocated facilities	CEO						0	Not commenced. See 1.6.1. Reallocated to commence Yr 4
	1.5 Increase community activities	1.5.1 Celebrate community achievements and host community events and functions	OIM						50	Australia Day held in Bolgart, Anzac Day did not proceed for 2021 - due to COVID Lockdown 2. Thank a Volunteer impacted by COVID-19 and lack of resources in this area.
		1.5.2 Promote community based activities Support community groups in facilitating community events	?						12.5	Impacted by COVID-19 - See 1.3.2. Piawaning Expo - 100?
	1.6 Develop new/reuse existing community facilities	1.6.1 Advocate for funding for multi-use collocated facilities	CEO						0	See 1.4.3. Not commenced. Recreation Plan required first - 2021/2022 (Yr3)?
		1.6.2 Construct multi-use collocated facilities	CEO						0	Not commenced. See 1.6.1
		1.6.3 Maintain and improve community facilities in line with asset management planning	MWS	Halls \$115,000 Recreation \$436,000					50	This will take the MWS at least six months before the requirements of the AMP can be assessed and appropriate action plans put in place. <b>March Quarter:</b> Routine maintenance work undertaken including repairs to reticulation; Electrical works undertaken in Roads Board Building. <b>June Quarter:</b> Impacted by changes to key staff, insufficient staffing numbers. Discussions held re resourcing
Economic	2.1 Examine opportunities to diversify the local economy through initiatives such as tourism	2.1.1 Promote local facilities and attractions	CEO						0	Planned for 2021/2022. There is a lack of resources in this area to undertake promotion regarding this action
	2.2 Improve tourist/ caravan park accommodation	2.2.1 Investigate upgrade options for tourist accommodation sites within the district	?						0	Plan for 2021/2022 including economic development plan. There is a lack of resources in this area to carry out such an investigation and level of planning
		2.2.2 Improve accommodation facilities in line with asset management planning and annual budget	MWS	\$62,000					50	The MWS has not had a chance to look at the AMPs. Work is carried out on a reactive basis at present. <b>March Quarter:</b> Gutters cleaned out, roofing screws to staff housing replaced. Soakwells to facilities to be replaced in 2021/2022. <b>June Quarter:</b> Impacted by changes to key staff, insufficient staffing numbers. Discussions held re resourcing
	2.3 Improve community connectivity	2.3.1 Advocate for improved telecommunications services	CEO						0	Matter for commencement in 2021/2022 (Yr3)
	2.4 Initiatives to reverse ageing population	2.4.1 Promote local facilities, attractions and events	?						0	Not commenced. Impacted by lack of resources in this area. Commence Yr 3
	2.5 Art installations to support marketing of localities	2.5.1 Investigate opportunities to increase public art, promoting local attractions	?						0	Not commenced. Impacted by lack of resources in this area. Commence Yr 3
	2.6 Review land supply in town sites	2.6.1 Review Town Planning Scheme	TP						85	<b>Omnibus amendments.</b> Omnibus approved August OCM 2020. Initially were waiting on final approval by Minister, which was not to occur before March 2021 State Election. <b>New LPS</b> WAPC has developed a new LPS instead at no cost in line with the new model as of 15/02/21. This means Shire does not need to review its LPS for a further 5 years and is a significant saving for the Shire. Joe Douglas currently reviewing draft LPS
	2.7 Create a regional brand that encompasses all towns	2.7.1 Investigate regional branding development	CEO						0	Conduct in conjunction with AROC?
		2.7.2 Participate in regional marketing events and initiatives	CEO						0	Conduct in conjunction with AROC?
	2.8 Develop a business and industry attraction strategy	2.8.1 Develop a business and industry attraction strategy	CEO						0	Planned for 2022/2023 (Yr3). Resources needed to develop strategy

Shire of Victoria Plains		Undertake initiatives to improve recycling	3.1.1	Expand recycling program	EHO						90	Container Deposit Scheme commenced 1 October 2020. Community Groups can access Donation Points - Community provided with information. Moora Tip has offered to do a pick up at Yerecoin and Piawaning. Awaiting further information regarding liability and risk. Plan other initiatives for 2021/2022 onwards?
	3.2	Support environmental sustainability initiatives and community forums	3.2.1	Work with stakeholders and community to promote initiatives to reduce environmental impact	EHO						0	Planned to commence 2021/2022
Infrastructure	4.1	Undertake town beautification programs	4.1.1	Develop a townscape and signage plan	MWS						0	Planned for 2021/2022. SP and CEO met with Progress Association heads to discuss signage required. Also discussed at LRCG
	4.2	Improve utilities (power, water, etc)	4.2.1	Continue to lobby for appropriate power and water supplies	CEO						25	Evaluate 2020/2021. Issues identified with Piawaning/Gillingara Water Standpipe - are swipe cards required? Standpipe funding submitted LRCIP. Funding for Stage 2 received. Discussion at July Briefing Session re AROC Water Plan - Melissa Price
			4.2.2	Develop sewerage asset management plan	EHO	\$40,000 \$50,000					50	High pressure cleaning and CCTV inspection completed (\$40,000). Funding for Yerecoin inspection hatches submitted and approved (\$50,000). Quotes now due April 2021. EHO has completed requirements except for Sewerage Financial Hardship Policy - Licence due for renewal 28 April 2021. Council at the June 2021. OCM endorsed deferral of the licence. Council endorsed the completion of the Sewerage Scheme Asset Management Plan after the LRIP funded works are completed. FRA Exemption expires May 2022.
	4.3	Maintain/ improve community facilities to an agreed standard	4.3.1	Enhance and maintain Shire controlled facilities in line with asset management plans	MWS						50	Office recarpeted (safety) and repainted. June Quarter: Impacted by changes to key staff, insufficient staffing numbers. Discussions held re resourcing
	4.4	Develop a process to deal with miscellaneous works requests	4.4.1	Respond to requests in line with asset management plans	MWS	\$4,500					75	Rebranded to customer service request system. A register has been established and the customer request form uploaded to the Shire's website. Request for Customer Service Module has been submitted to the Budget Review
	4.5	Improve facilities for trucks and drivers	4.5.1	Maintain and where possible improve facilities for trucks and drivers (include in town planning scheme review)	MWS						25	Currently managed according to the SoVP Public Property Local Law. Refer 2.6.1.
	4.6	Instigate a road verge maintenance program	4.6.1	Continue to provide transport infrastructure in line with asset management plans	MWS	C \$4.66M O \$4.09M					75	September Quarter Full circuit of maintenance grading completed. Some drainage and culvert work completed. Bolgart West seal & widening 1.2km completed. 2km shoulder and road damage repairs undertaken. Works on SE Yerecoin Rd commenced. December Quarter Yerecoin in South East Rd complete. Bolgart West Rd complete. March Quarter: Mogumber Yarrawindah upgrade completed to final seal (to occur April 2021). Maintenance grading completed as per MWS March Briefing Report. June Quarter: Impacted by changes to key staff, insufficient staffing numbers, and claims for funding not submitted on time. Discussions held with Council during 2021-2022 Budget workshops re resourcing (Works Crew and key Plant)

*Audit Committee Meeting*

Shire of Victoria Plains			5.1.1	Develop a communications strategy/policy	CEO	\$10,000						50	Specification drafted to develop strategy/policy. Interim Engagement Policy adopted March 2021 OCM. Also see 1.1.1. Bi monthly newsletters initially issued during first part of the pandemic. Facebook posts have increased and providing greater range of information. eMeeting protocols for Council meetings still in place due to the pandemic. Public attendance at OCMs recommenced June 2021.
			5.1.2	Continue to actively engage with the community	CEO							75	See 1.1.1. Shire President and CEO have engaged with community extensively regarding COVID-19 and recently with Progress Associations. Interim Engagement Policy adopted at March 2021 OCM
	5.2	Improve elected member performance	5.2.1		Council	\$15,000						75	EMs attended EM Essentials training late September and in October. Advice provided to February 2021 Briefing Session re latest changes to the LG Act including EM Code of Conduct and Interim Staff Code of Conduct. WA/ GA Webinar obtained as induction training on new EM Code of Conduct (Access in Q1 2021-2022)
	5.3	Develop an advocacy and lobbying capacity	5.3.1	Participation in Regional, State and Council boards / bodies	CEO/SP/ Council							100	Shire actively participates in Zone, AROC, RRG, SRRG
	5.4	Measures to improve organisational efficiency	5.4.1	Review, update and maintain strategic and operational plans	CEO	\$5,000						100	CBP Action Plan implemented September OCM 2020. Quarterly reporting to Council in place. <b>March Quarter:</b> Council adopted the process to conduct the development of the next Disability Access Inclusion Plan and the next Major Strategic Review (4 yearly) of the Strategic Community Plan along with the adoption of the Interim Engagement Policy.
			5.4.2	Maintain accountability and financial responsibility in accordance with Long Term Financial Plan	OFIM							100	RSM assists as follows: 2020/2021 Budget adopted; 2019/2020 annual financial statements completed and adopted March 2021 OCM, the 2020/2021 Budget Review completed Feb 2021 OCM.
			5.4.3	Maintain controls to promote a high level of legislative compliance throughout the organisation	GO							75	Significant matters re 2019/2020 Audit addressed and report submitted to Audit Committee, Council and the Minister. Compliance Calendar introduced in August 2020. Staff were programmed each month regarding compliance matters until Q3. Changes in staff has caused disruption to its effectiveness. Internal Audits commenced Feb 2021. However, further audits delayed due to lack of time. Audit Committee terms of reference redrafted and adopted at October OCM 2020. Better Practice Improvement Plan nearing completion. CAR 2020 completed. Internal audits for Feb 2021 completed. The Public Information Disclosure (PID) process was implemented. Key changes to the Local Government Act regarding a new Code of Conduct for Elected Members and a separate Code of Conduct for Employees were also undertaken.
			5.4.4	Support and facilitate ongoing relevant training and capacity building for staff	CEO/ MFA/ MWS	Admin \$9,000 Outside \$8,000						55	Training for Admin staff has been ongoing and has included on the job re debtors/creditors, Transport Licensing for CSOs, Bendigo Bank training and one on one records training. Council election training provided for March 2021 extraordinary election. Training matrix to be established for Outside Crew.
			5.4.5	Maximise operational efficiencies whilst maintaining appropriate controls	CEO/ OFIM/ MWS	\$75,000						75	Difficult to quantify in current form. However, a key efficiency and control is the Record Keeping Improvement Project: File list developed, verifying of records is underway, one on one training has occurred, hard copy files implemented on an as needs basis, the review of the current RKP is nearly completed. The Reg 17 Review and Financial Systems Management Review did not occur in June Quarter (Q4)
			5.4.6	Continue to provide regulatory services (including health/building inspections, ranger services)	CEO	Program Budget						100	Appropriate resources in place re EHO re environmental health and building (staff 20/21), TP and Ranger Services (currently outsourced services)

### Legend

	?	Indicates lack of staff resource in this area.
Off-track	0 - 49% completed	Road block could be due to funding revoked or deferred, inadequate resources available, other priorities take over, natural event, or is not due to start at the moment
Monitor	50 - 69% completed	Project is progressing adequately, staff need to ensure it does not fall into "off track"
On-track	70 - 100% completed	The desired range when adequate resourcing is available for an action (key project, facility or service)
Deferred	date	Sometimes, project funding is not available until a later date, or has been withdrawn and the matter is outside the Shire's resourcing and so on
Other	Other factors impacting	Disruption has occurred due to changes in key staff, difficulties in sorting key funding, and so on