



**Shire of Victoria Plains**

**Minutes for the Special Meeting of Council held**

|                  |                                    |
|------------------|------------------------------------|
| <b>On</b>        | <b>Monday 21 December 2015</b>     |
| <b>At</b>        | <b>Council Chambers, Calingiri</b> |
| <b>Commenced</b> | <b>8.35am</b>                      |

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**1 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS**

The President, Cr David Lovelock declared the meeting open at 8.35am.

**2 DISCLOSURE OF INTEREST**

Cr Pauline Carr declared an expression of interest being: Impartiality as a member of a community group.

**3 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE GRANTED**

**President:** Cr D Lovelock West Ward  
**Deputy President:** Cr S Penn South Ward

**Councillors:** Cr J Kelly West Ward  
Cr A Broadhurst East Ward  
Cr N Clarke South Ward  
Cr D Smith East Ward  
Cr J Corless-Crowther Central Ward  
Cr P Carr West Ward

**Apologies:** Cr J Brennan Central Ward

**Leave of Absence:** Nil

**Chief Executive Officer:** Mr H Hawkins  
**Finance & Administration Manager:** Mr I Graham  
**Executive Assistant:** Ms S Mearns

**Visitors**

|                    |                |
|--------------------|----------------|
| W Kerkhof          | Arie de Vries  |
| Topsy de Vries     | John Longman   |
| Wesley Porter      | Brian Kelly    |
| Virginia Linke     | Roslyn Cocking |
| Ave McDonald       | S. Nixon       |
| D K McDonald       | Bob Harridge   |
| Graham Nixon       | Laurie Rive    |
| Greg Drew          | Greg Linke     |
| Dave Bantock       | Rob Menzies    |
| Ken Harrison       | Noelene Pasco  |
| Michael Jackamarra | Louise Hahn    |
| Tania Menzies      | Rainer Duxorth |
| Rachel Walmsley    | Fiona Falconer |
| Sarah Mason        | Colin Headland |
| Anne Cooper        | Bill Coxon     |

**4 PUBLIC QUESTION TIME**

The President opened the meeting to public question time.

**Sarah Mason**

Ms Mason asked - What percentage of native vegetation remains in the SOVP?

The Shire President confirmed that this question would need to be taken on notice, however 6-10% would be an accurate figure.

**Bob Harridge**

Mr Harridge raised the point that a number of other activities have used the Mogumber Reserve in the past for Gymkhana, hockey, car parking and other activities and questioned whether Cr Penn was aware of these activities.

Mr Harridge directed further comment to Cr Penn as follows:

- that the Rodeo has been a fairy tale story (for the area), and the NYE Rodeo is the icing on the cake (for Mogumber)
- he knows that you (Cr Penn) live way over in Bolgart and we are way over in Mogumber
- Mr Harridge thinks there has been a lot of negativity, and that the rifle has been loaded, and someone has been firing the rifle with all the bullets.

At this point Cr Penn raised a 'point of order', and stated she took offence at the statement 'bullets fired'. The President then confirmed that the speaker needs to ask a question. Mr Harridge then stated he did not mean that he did not mean bullets fired 'at you'. Mr Harridge attempted to speak further however was interrupted by Cr Kelly who raised a 'Point of Order' and commented that 'this' is not what we would expect. Cr Penn then stated that she has already received rude texts (over this), Mr President, I am asking you, maybe you should address the rest of Council and let them know that I am not the one, and that at no stage did I ever say I didn't want the Rodeo at Mogumber.

The President then confirmed that it would appear that Cr Penn has answered the question raised by Mr Harridge – that being 'Was she aware of other activities held at the Mogumber Reserve prior to this time'.

**Graham Nixon**

Mr Nixon asked if they were aware that there has been constant campaigning and harassment of the activities being held at the Mogumber Recreation Reserve? Mr Nixon stated that it would be very unfortunate if Council were to vote against the motion made in the Agenda today. Mr Nixon stated that (it appears) there is a strong motive to find every trick in the book to try and get the (Rodeo) moved from there. A good example being the nesting boxes. At this point Cr Kelly interjected to ask the President – Can we please have the question is. Mr Nixon then expressed that he was substantiating his question by making this point – being that a nesting box was placed right by the oval so that if a Carnaby Cockatoo were to nest in the box, the whole place (Reserve)

would need to be shut down. Mr Nixon wanted Council to be aware that there is a constant campaign of trying to block and harass those people who are going about a very important activity for the district.

Cr Lovelock thanked Mr Nixon for his comments but noted that some of the words used were (in my opinion), inappropriate. Cr Lovelock then confirmed that Council were aware of both opposition and support of the activities being held at the Mogumber Recreation Reserve both current and in the future.

### **Colin Headland**

Mr Headland asked whether Councillors were aware that clearing permits need to be submitted via the Yued People. Mr Headland also stated that when the Shire puts in for another clearing permit, then we (the Yued Working Party), will put in for a survey to be performed on the whole Reserve. Mr Headland further explained that this will incur a cost to the Shire, and if the Shire does not agree with that then there will be suggestions that the Mogumber Outback Club will be moved out of the Reserve.

Cr Lovelock confirmed that Council was aware of the process that needs to be undertaken with regards to clearing permits and sanctions by both the Department of Environment Regulation and the Yued working group.

Mr Headland went further to comment that even if DER give approval, it still needs to go through the Yued working group. The President stated that we (Council) would not take threats, to which Mr Headland advised that it was not a threat. At this point Cr Kelly interjected with a point of order as he felt the President was threatening (as he said 'not' 3 times). The President advised that he was not threatening at all. Cr Kelly stated that Mr Headland would well and truly be aware of what 'not' means.

### **Ave McDonald**

Ms McDonald asked what does the word 'Progress' mean?

Cr Lovelock gave his opinion on what he determined 'progress' meant as follows: Improving the lifestyle and living quality in the area as well as increasing physical buildings etc.

The President was then asked why there appears to be so much opposition to this one event a year?

Cr Lovelock answered that in his opinion the situation is complex with a number of groups being interested in the Reserve. It is Council's opinion that all of the groups can be facilitated and there is the potential for all groups to be involved (in decisions made about the Reserve).

Cr Kelly commented that he has never been against the progress of the Mogumber Rodeo, and he had even suggested that the Mogumber Outback Club should investigate purchasing a different, already cleared property to establish itself, similar to the Moora Equestrian Club.

**Brian Kelly**

Mr Kelly asked why the fence put up at the Reserve?

Cr Lovelock responded that the fence was erected to define an area that could be utilised by the Mogumber Outback Club and other community groups. The fence was erected in consultation with the people of Mogumber and a number of other related groups. Cr Lovelock also spoke of the fact that more vegetation had been cleared than initially asked for within the permit. The DER had determined that more vegetation had been cleared than the permit covered, mainly due to the difference in determination of what 'vegetation' meant. Cr Kelly requested that the full DER correspondence be read to meeting attendees, copy of which follows:



Government of Western Australia  
Department of Environment Regulation

Your ref:  
Our ref: ICMS 36783  
Enquiries: Katie Wren  
Phone: 6467 5047  
Fax:  
Email: [katie.wren@der.wa.gov.au](mailto:katie.wren@der.wa.gov.au)

Mr David Lovelock  
President  
Shire of Victoria Plains  
PO Box 21  
CALINGIRI WA 6569

By email only: [president@victoriaplains.wa.gov.au](mailto:president@victoriaplains.wa.gov.au)  
Cc: [deputy@victoriaplains.wa.gov.au](mailto:deputy@victoriaplains.wa.gov.au)  
[ceo@victoriaplains.wa.gov.au](mailto:ceo@victoriaplains.wa.gov.au)

Dear Mr Lovelock,

**LETTER OF WARNING FOR NON COMPLIANCE WITH THE *ENVIRONMENTAL PROTECTION ACT 1986***

The Department of Environment Regulation (DER) has conducted an investigation into the clearing of native vegetation on an area of land on Lot 4110 on Deposited Plan 217183 also known as 47 Mogumber-Yarawindah Road, Mogumber (Land).

DER has determined that there is *prima facie* evidence of a breach of section 51C of the *Environmental Protection Act 1986* (EP Act) – unauthorised clearing of native vegetation.

The clearing of native vegetation in this instance was not for exempt purposes or authorised by a clearing permit granted under the EP Act.

For an offence of this nature, the EP Act provides penalties upon conviction of up to \$500,000 for a body corporate and \$250,000 for an individual. There is also an ongoing daily penalty for this offence of \$100,000 for a body corporate and \$50,000 for an individual.

After careful consideration of the circumstances in this instance, and in accordance with DER's *Enforcement and Prosecution Policy*, DER has elected to deal with the Shire's alleged breach of the EP Act by way of this letter of warning.

Please be aware that any further clearing of native vegetation, will require authorisation through a clearing permit granted under the EP Act or be exempt from such a requirement.

The Atrium, 168 St Georges Terrace, Perth WA 6000  
Phone (08) 6467 5000 Fax (08) 6467 5562  
Postal Address: Locked Bag 33, Cloisters Square, Perth WA 6850  
[www.der.wa.gov.au](http://www.der.wa.gov.au)

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Information in relation to exemptions under the EP Act and the Regulations can be found under '**Guide 1 – Exemptions and regulations for clearing native vegetation**'. This guide and further information about native vegetation clearing and Clearing Permits can be found at [www.der.wa.gov.au/nvp](http://www.der.wa.gov.au/nvp).

If you have any queries or require further information, please contact Senior Investigator Katie Wren of Environmental Enforcement on 6467 5047, or via email at [katie.wren@der.wa.gov.au](mailto:katie.wren@der.wa.gov.au).

Yours sincerely,



Stuart Cowie  
EXECUTIVE DIRECTOR, COMPLIANCE AND ENFORCEMENT

4 December 2015



Cr Lovelock confirmed that no further clearing permits have been applied for and that no further clearing would be undertaken without DER, Yued People, and community approval.

Cr Carr asked that the President read the motion that Council moved at the May 2015 meeting (as follows). Cr Carr asked why this resolution has not yet been actioned.

**Resolution 97/2015**

**Moved Cr Young seconded Cr Rive that Council authorise an application for a clearing permit to be lodged for 2ha within the existing fenced area subject to the following conditions;**

- 1. The Yued People traditional owners of the site are consulted.**
- 2. The Kerkhoff Carnaby Group are required to reposition their 3 Carnaby Cockatoo nesting boxes in the reserve to a mutually acceptable site.**

**Amendment Put & Carried 4/3**

Cr Carr asked why the actions from the May 2015 meeting have not been undertaken, and what is stalling of actions since the meeting.

The CEO confirmed that discussions have been held between the Kerkhoff Carnaby Group and Council/staff members, however the repositioning of the nesting boxes has not been actioned. The CEO made note that the main hold up was waiting for a meeting of the Yued Working Party, which subsequently was held in October 2015, at which the CEO and Cr Kelly attended. Following this meeting the CEO contacted the legal people at SWALSC and the groups are currently working through a solution.

Cr Carr asked for confirmation that it is correct that Council has voted to apply for a clearing permit subject to the above consultations (Resolution 97/2015), Cr Lovelock confirmed this was correct.

**Sarah Mason**

Ms Mason showed a map of an area within the Reserve and asked whether the area marked in red be enough for the Mogumber Rodeo? Cr Carr responded (on behalf of the Mogumber Outback Club) that the area marked (on Ms Masons map) would not be sufficient, the area required would be that which is fenced off.

Cr Kelly stated at this point that, *for people that don't know, the area that is marked in blue, is the legal permit area. The Carnaby Cockatoos are well outside that permit area. Cr Kelly stated - All of the area (marked), has been illegally cleared, totalling approx 1.5 hectares, and as Mr President has said, the legal amount that was to be cleared was 0.27 hectares. In actual fact, the Carnaby Cockatoos are not on the legally permitted area to be cleared. All this area here has been illegally cleared and we have the warning here.....*

At this point member of the public, Mr Laurie Rive interjected with a point of order stating that the cockatoo nests were placed 'there' illegally, and wondered whether Cr Kelly was on the wrong track.

Cr Kelly reiterated that he just wanted people to know what area had been cleared illegally.

Cr Penn at this point wanted to make attendees aware of the following:

- After the 2013 Rodeo, on the 22 January 2014, DER officers inspected the Reserve following a review of Google maps.
- 2 July 2014 the Shire applied for the 2 hectare clearing permit. Because of the inspection the DER had carried out in January 2014, this amount was reduced to 0.27 of a hectare.
- 9 October 2014 – the Shire applied to clear another 0.5 of a hectare of land.
- November 2014 – the Shire withdrew that application.
- In between those two little sections, Council was not aware that the Mogumber Outback Club received a letter of warning from the DER. The Shire President and CEO were made aware of the letter however other Council members weren't.

### **Colin Headland**

Mr Headland showed attendees a photograph of native plants and stated that the Mogumber Outback Club wanted to park cars and horse floats on the area and stated that anyone with common sense should try to save this stuff and not ruin it.

Mr Headland also mentioned that there were cleared trees in the area which have not been removed and if we respected the land, then these trees would be removed.

Mr Headland asked - Why do people want to destroy stuff like this? Council was asked to take home the information and think about it.

### **Graham Nixon**

Does the Shire have adequate public liability insurance? Cr Lovelock confirmed that the Shire is adequately covered.

### **Greg Drew**

Mr Drew commented that the Reserve area is 61 hectares and asked - why weren't the boxes placed further into the reserve?

Cr Lovelock mentioned that was a question which he asked at the time but has never received a response.

**Wes Porter** – Chairperson of the Kerkhoff Carnaby Group asked to respond to this question and stated that he felt it was amazing that he had not been approached personally more often (with regards to the matter). Mr Porter stated - *These accusations that are flying, and people making ignorant*

*statements about the fact that by some freak of nature these nesting boxes 'may' be taken, it just astounds me, they were taken within two weeks. I took the advice of the Yued People first, the rightful owners, I took the advice of Council (that I could put them up), and I took the advice of the man who knows more about Carnabys than any of us here. I am like Jim, I am not opposed, we are not opposed to 'you' having your Rodeo. But you talk about your 'illegal' activities – come one, get real, who took this illegal activity? Who cleared more land than they were supposed to? The Shire, be ashamed of yourselves for being taken to task over it. Come on, there is plenty of room for parking outside this place. Get real!*

**Virginia Linke**

Ms Linke asked - What is the exact designation for the Reserve – is it a Recreation Reserve or a Nature Reserve? The CEO confirmed that the Reserve is designated a hall site, race course and recreation reserve, under the management of the Shire of Victoria Plains.

Ms Linke asked a second question - If we choose that these type of recreation activities do not proceed, will it impact on future recreational activities being proposed for the Reserve?

Cr Lovelock confirmed that Council will be required to make a decision on each individual activity proposed in conjunction with other necessary parties.

**Fiona Falconer**

Ms Falconer advised that she has carried out 2 technical assessments of the Mogumber Reserve site which was emailed to Councillors this morning. Ms Falconer commented on the size and condition of the Reserve.

Cr Lovelock thanked Ms Falconer for the information provided and confirmed that Council accepts that the area needs to be maintained for future generations but also the current generation needs to be catered for via the provision and support of entertainment and activities. Cr Kelly raised a point of order stating that the President was starting to go 'way off the mark' and advised the President that 'we are all not silly' and know what the Shire needs to provide.

Cr Carr asked Ms Falconer whether she was aware of the 239 hectares of nature reserve zoned in Mogumber. Ms Falconer confirmed that she was aware of the zoned nature reserve which was also located along the River in Mogumber.

**Cr Jim Kelly**

Cr Kelly asked whether the Mogumber Outback Club had considered the Shire purchasing another property, already cleared within the Mogumber townsite (*like just over the railway line or somewhere there*) and apply to Royalties for Regions money so you don't have to have an impact on the financial side of it, and have that as your designated area of 25 acres? Cr Kelly asked – why are you against that suggestion?

Mr Drew asked – where were you thinking?

Cr Kelly responded - I was thinking opposite the hotel on the corner (over there), where the trees and everything area. I know it's owned by one of the Outback Club riders (or what have you), or somewhere very close to Mogumber. Cr Kelly stated that we had 'missed the boat' and could have brought that place a couple of years ago. But my idea is having something close to Mogumber that can be your area.

Representatives of the Mogumber Outback Club advised that all of the facilities (Oval, Hall, Ablutions etc) they require are already on the Reserve, why can't the Mogumber Outback Club utilise what is already there?

Cr Kelly said that he could answer that question to a degree by saying that every time we want to do something in 'that' Reserve, we are going to have to apply for permits, go through appeals, it could take years to do what we want to do. I am saying let's stop fighting about this issue, let's get an area of land and designate it like Moora Equestrian Centre.

Mr Drew responded that we are not in Moora, we are in Mogumber, and we want our oval, hall, amenities block and rodeo right where it is.

#### **Colin Headland**

Mr Headland spoke of issues relating to toilet paper being on the reserve during past events and stated that there were no toilets located at events held during the first couple of years. Mr Headland stated that 'While I am on the Yued Working Party, the more 'youse' want it, the more we are going to fight for it'.

Mr Headland advised that more ideas will be coming out of the Yued meeting in March and confirmed that 90% of the Yued people don't agree with what is happening to this Reserve. Mr Headland stated that he could not understand why 'we' don't buy a property further out of town. Mr Headland also stated – You keep talking about the community in Mogumber, well where is it? You have only got a few people. Even in 20 years, you're not going to have (the population) what you're talking about.

Cr Lovelock thanked Mr Headland for his comments.

Cr Carr asked for a show of hands for who (of those present) were residents and ratepayers within the Shire of Victoria Plains.

Mr Headland commented that he was allowed anywhere on Yued country and can be here or anywhere else within the Shire of Victoria Plains – and no-one can stop him. The President confirmed that no-one was trying to stop him from going anywhere. Mr Headland then stated – well this thing about who is in the Shire of Victoria Plains, what's that got to do with anything? The President responded that it was just used to show the passion of the people who are in Victoria Plains.

Mr Brian Kelly then spoke of the groups needing to act like adults and compromise instead of (like) Mr Headland threatening that he can go anywhere within the Shire and do anything he likes. Mr Headland stated that his comment was not a threat, he was just letting people know where he was allowed to go (as a Yued person), the same as Councillors can do for the Victoria Plains Shire. Mr Headland then asked Mr Kelly to 'wake up to himself'.

Council was then questioned about the "No Go Zones" within the Reserve.

In response, Cr Lovelock read out the following DER letter however, it was confirmed that there are no "No Go Zones" mentioned in the letter.



Government of Western Australia  
Department of Environment Regulation

Your ref:  
Our ref: ICMS 36783  
Enquiries: Katie Wren  
Phone: 6467 5047  
Fax: 6467 5532  
Email: [katie.wren@der.wa.gov.au](mailto:katie.wren@der.wa.gov.au)

28 July 2015

Ms Pauline Carr  
Secretary  
Mogumber Outback Club Inc.  
PO Box 13  
MOGUMBER WA 6506

By email only: [mocinc@live.com](mailto:mocinc@live.com)

Dear Ms Carr,

**RE: UNAUTHORISED CLEARING OF NATIVE VEGETATION  
LOT 4110 ON DEPOSITED PLAN 217183  
MOGUMBER-YARAWINDAH ROAD, MOGUMBER**

It has come to the attention of the Department of Environment Regulation ('DER') that an area of land Lot 4110 on Deposited Plan 217183 also known as 47 Mogumber-Yarawindah Road, Mogumber (*Land*) has been cleared of native vegetation.

Investigations have revealed that, whilst the Shire of Victoria Plains (*Shire*) is the primary interest holder of the Land, Mogumber Outback Club Inc. (*MOC*) currently occupies and uses the Land.

Section 51C of the *Environmental Protection Act 1986* requires that clearing of native vegetation can only be done under the authority of a clearing permit unless it is for a purpose exempt from that requirement.

DER has no record of a native vegetation clearing permit being granted for this clearing and, as Secretary of MOC, invites you to provide it with information on the circumstances of the clearing, including any permit or exemption that you believe may apply.

To enable this matter to be resolved expeditiously, DER requests that you respond to this letter by 31 July 2015. The information can be provided by email to the writer at [katie.wren@der.wa.gov.au](mailto:katie.wren@der.wa.gov.au)

Please be advised that you are not obliged to respond to this letter but, if you choose to do so, any information you provide may be used in evidence.

The Atrium, 168 St Georges Terrace, Perth WA 6000  
Phone (08) 6467 5000 Fax (08) 6467 5562  
Postal Address: Locked Bag 33, Cloisters Square, Perth WA 6850  
[www.der.wa.gov.au](http://www.der.wa.gov.au)

If you have any queries or require further information, please contact the writer on the above telephone number or at the email address provided.

Yours sincerely,



Katie Wren  
Senior Investigator

Cr Kelly asked why Councillors were not advised of the above correspondence at the time. Cr Lovelock advised Council that he had assumed that all Councillors were aware of the correspondence received by the Mogumber Outback Club. Discussion was then held about the possibility of fines being enforced on the Shire by the DER with Cr Kelly advising the President to 'Not play games with the Police, they are as powerful as a Fisheries Inspector, and they are right on our rear end'.

Cr Carr then asked the President to read out correspondence received by the Shire from the Department of Environment Regulation stating that the areas within the Mogumber Recreation Reserve can continue to be used.

Correspondence reads as follows:

*Dear Mr Hawkins*

*As you are aware the Department of Environment Regulation is currently undertaking an investigation into alleged clearing of native vegetation at the Mogumber Town Reserve.*

*I understand that you have raised concerns about the use of this site pending the outcome of the investigation. It is anticipated that the investigation will be concluded by mid-December and you will be advised of the outcome at that time.*

*An assessment of the cleared areas of the site has indicated that the cleared vegetation is unlikely to regenerate. Given that there is no longer vegetation on the cleared areas, these areas can continue to be used.*

*Note that any area of remaining vegetation remains the subject to the requirements of the Environmental Protection Act 1986.*

*Yours sincerely*

*Stuart Cowie  
Executive Director Compliance and Enforcement*

Department of Environment Regulation | The Atrium  
168 St Georges Terrace Perth 6000 | Locked Bag 33, Cloisters Square  
Ph 6467 5000 | [stuart.cowie@der.wa.gov.au](mailto:stuart.cowie@der.wa.gov.au)

Cr Carr suggested that policies and procedures be established by Council for this event and other events to ensure that native vegetation is protected.

Suggestions were made that there should be a vote by the community members (at the meeting) on the subject. Cr Lovelock advised attendees that as the meeting was a Special Meeting of Council and not a 'Public Meeting', then motions could not be put to the Council. Cr Carr confirmed that there have already been 3 forms of consultation held within the community to support these facilities remaining within the current location. These activities being:

- Community Survey
- Community Meeting
- Petition

Cr Carr concluded that community consultation has occurred and that no further motions are required.

Cr Kelly then raised the issue of a recent request for a financial review of the Mogumber Outback Club. Cr Carr called a Point of Order as this comment had nothing to do with the discussion, whereby Cr Kelly stated it was a membership game.

### **Colin Headland**

Mr Headland commented that after listening to comments made at the meeting, people still do not understand that it doesn't matter what other steps are taken, you (the Shire) still has to go through the Yued People and the Yued People's lawyers.

Cr Kelly then quoted from the Cultural Heritage Plan at which time Cr Lovelock confirmed that liaison with our neighbour shires is currently being undertaken with regards to developing an appropriate action plan.

It was questioned whether the Mogumber Outback Club would ensure that public, competitors, vehicles and horses would be kept off native vegetation areas of the recreation reserve?

Mogumber Outback Club representatives confirmed that, in conjunction with Shire staff, areas which are deemed inaccessible will be 'bunted' off. It was also confirmed that any competitors who entered these areas would be disqualified from the event and will face fines. Additionally, parking attendants will direct the public and competitors into the correct designated parking areas.

It was also confirmed that Shire employee Shayne Willcocks will be enforcing a traffic management plan and will be on site during the event.



It was asked that the CEO write to the Mogumber Outback Club to request confirmation of penalties that would be applied to competitors.

Cr Lovelock declared that public question time was over at 10.07am and the meeting would be adjourned for 10 minutes.

Meeting re-commenced at 10.17am.

**5 BUSINESS FOR DISCUSSION**

**S1 Mogumber Rodeo use of reserve 8588**

|                                       |   |
|---------------------------------------|---|
| <b>FILE REFERENCE</b>                 | F1.8.4                                  |
| <b>REPORT DATE</b>                    | 17 December 2015                        |
| <b>APPLICANT/PROPONANT</b>            | Cr S Penn                               |
| <b>OFFICER DISCLOSURE OF INTEREST</b> | Nil                                     |
| <b>PREVIOUS MEETING REFERENCES</b>    | 249/15 December 2015                    |
| <b>AUTHOR</b>                         | Harry Hawkins – Chief Executive Officer |
| <b>ATTACHMENTS</b>                    | None                                    |

**PURPOSE OF REPORT**

To allow Councillors to discuss the use of the Mogumber Reserve by the Mogumber Outback Club.

**BACKGROUND**

Earlier in 2015 notification was received from the Senior Investigator Environmental Enforcement from the Department of Environment Regulation advising that she was investigating alleged illegal clearing at the Mogumber Reserve. The investigation was based on not mechanical clearing but trampling of low scrub by people, livestock and vehicles during rodeo events held at the reserve.

For the junior rodeo held on the 22<sup>nd</sup> November 2015 the following advice was received from DER *please be aware that if:*

- *Large groups of people walk;*
- *vehicles are driven;*
- *horses are grazed, walked, ridden and/ or tied to trees (which may cause ringbarking); and/or*
- *other structures, buildings and/or equipment is set up anywhere on the reserve outside of the areas covered by CPS 6172/1, and this results in regrowth of any native vegetation being prevented and/or substantially damaged in those areas, it will constitute a separate and additional offence of unauthorised clearing pursuant to section 51C of the Act.*

The junior rodeo went ahead utilising the oval for the additional area required. The Mogumber Outback Club then contacted the shire due to the upcoming New Years Eve Rodeo where additional area would be required and the oval would not suffice and a letter was sent to the Ministers for Environment and Sport and Recreation to see if additional areas of the reserve could be used and the following response was received.

*As you are aware the Department of Environment Regulation is currently undertaking an investigation into alleged clearing of native vegetation at the Mogumber Town Reserve.*

*I understand that you have raised concerns about the use of this site pending the outcome of the investigation. It is anticipated that the investigation will be concluded by mid-December and you will be advised of the outcome at that time.*

*An assessment of the cleared areas of the site has indicated that the cleared vegetation is unlikely to regenerate. Given that there is no longer vegetation on the cleared areas, these areas can continue to be used.*

*Note that any area of remaining vegetation remains the subject to the requirements of the Environmental Protection Act 1986.*

*Yours sincerely*

*Stuart Cowie*

*Executive Director Compliance and Enforcement  
Department of Environment Regulation*

At the ordinary meeting of Council held on the 9<sup>th</sup> December 2015 a discussion was held in confidence on the risk of Council approving the use of this additional area and in particular the consequences if additional unintended clearing took place. The CEO was asked to write to DER to have someone come up and mark out the areas of the reserve that could and could not be used and the following response was received,

*Thank you for contacting the Department of Environment Regulation (DER) regarding a request from the Mogumber Outback Club Inc. for some maintenance work to be undertaken in the Mogumber Reserve and surrounds before the next rodeo event on New Years Eve. As discussed on the phone today I advise the following.*

*Under Western Australia's Environmental Protection Act 1986 (EP Act), it is against the law to clear native vegetation without, either, a clearing permit or under a valid exemption. I have attached a fact sheet for you that explains the legislation (fs1 – legislation).*

*There are some exemptions for clearing for specific purposes which do not required a clearing permit. A guide to exemptions and regulation for clearing native vegetation is available from our website at <http://www.der.wa.gov.au/our-work/clearing-permits/48-guidelines-clearing-permits> , which you can access to see what types of exemptions exist. I note that the Shire has a current permit CPS 6172/1 (attached for information) that covers part of the area referred to by Mogumber Outback Club Inc. I have also included an annotated map and a table of GPS points of the mapped area approved under the permit.*

*From the information provided to DER I note that some of the works requested fall outside of the approved area of CPS 6172/1, however I am unable to comment on if the works required will involve the clearing of native vegetation. Mowing of areas that contain native vegetation will require a permit or valid exemption to be lawful.*

*Given the current DER investigation into alleged unlawful clearing at this site, if you decide to use an exemption to clear native vegetation without a clearing permit or that no native vegetation is going to be cleared I advise to keep detailed written records of the exemption you use, details of the extent of the clearing, relevant photos before and after clearing and why you believe it fits an exemption or contains no native vegetation, in case you get asked about it in the future.*

*If you would prefer to obtain a clearing permit, or don't think an exemption applies I have attached a fact sheet on applying (fs10 – how to apply) here for your reference.*

*More information and fact sheets on the rules governing the clearing of native vegetation are available from our website <http://www.der.wa.gov.au/your-environment/native-vegetation>  
Please don't hesitate to give me a ring to discuss any of this information or any other specific exemptions you wish to investigate.*

*Regards  
James Widenbar  
Manager  
Clearing Regulation  
Department of Environment Regulation*

Clarification of the areas that could or could not be used was then sought and the following reply was received,

*The only approval Clearing Regulation can provide is in the form of a clearing permit. I cannot "approve" activities the Shire undertakes in preparation of the Rodeo event. As I previously advise if the works required will involve the clearing of native vegetation the Shire will require a permit or valid exemption for the clearing to be lawful. It is up to the Shire to decide if they need to apply for a clearing permit based on the works being conducted. I do not have enough information to determine if native vegetation will be cleared by the activities having not been on site or having been provided photos of all areas to be cleared and a clear description of all activities to be undertaken. From the information you have supplied sounds that the Shire does not believe native vegetation will be cleared but if the Shire decides that no native vegetation is going to be cleared then as a risk management strategy I can advise the Shire to keep detailed written records of the activities including, details of the extent of the clearing, relevant photos before and after clearing and why you believe it contained no native vegetation.*

*Thank you  
Regards  
James Widenbar  
Manager, Clearing Regulation*

### **COMMENT**

The risk management strategy implemented by the CEO was to visit the site and take photographs of the area before the event and arrange for follow up photographs to be taken after the event to ensure that no additional unintended clearing has taken place and to provide evidence that can be used if another investigation was to take place after this years New Years Eve Rodeo.

Penalties that may be incurred should additional damage occur would be covered by the Management Liability Insurance cover held through Local Government Insurance Services (LGIS).

As a part of the Risk management Strategy the Mogumber Outback Club needs to be made aware of the requirement to ensure that no further clearing takes place on the reserve and the consequences if it does.

### **POLICY REQUIREMENTS**

None

### **LEGISLATIVE REQUIREMENTS**

Division 2 of the Environmental Protection Act 1986 deals with the clearing of Native Vegetation.

### **STRATEGIC IMPLICATIONS**

There are no known strategic implications related to this item.

#### ➤ **Environment**

There are no known significant environmental implications associated with this proposal.

#### ➤ **Economic**

There are no known significant economic implications associated with this proposal.

#### ➤ **Social**

There are no known significant social implications associated with this proposal.

### **FINANCIAL IMPLICATIONS**

There are no financial implications to Council in relation to this item.

### **VOTING REQUIREMENTS**

*Absolute Majority Required:*                      *Yes/No*

The CEO received an email from the Minister of Environment at 9.48am this morning with correspondence attached which read as follows:



**Hon Albert Jacob MLA  
Minister for Environment; Heritage**

Our Ref: 50-11250

Mr Harry Hawkins  
Chief Executive Officer  
Shire of Victoria Plains  
PO Box 21  
CALINGIRI WA 6569

Dear Mr Hawkins

Thank you for your email received on 23 November 2015 regarding the 2015 Mogumber New Year's Eve Rodeo and an investigation by the Department of Environment Regulation (DER) into alleged unauthorised clearing of native vegetation at the Mogumber Reserve.

The Department has advised me that its investigation has been finalised and that you have been advised of the outcome.

I also understand that the Department has advised you that the cleared areas of the Mogumber Reserve are unlikely to regenerate and therefore the cleared areas can continue to be used.

Any clearing of the remaining native vegetation will be subject to the requirements of the *Environmental Protection Act 1986* and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. Information about the regulation of native vegetation can be obtained from DER's website at [www.der.wa.gov.au/nvp](http://www.der.wa.gov.au/nvp) or by telephone on (08) 6467 5020.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Albert Jacob'.

Albert Jacob MLA  
MINISTER FOR ENVIRONMENT; HERITAGE

21 DEC 2015

12th Floor, Dumas House, 2 Havelock Street, West Perth Western Australia 6005  
Phone: +61 8 6552 5800 Facsimile: +61 8 6552 5801  
Email: [Minister.Jacob@dpc.wa.gov.au](mailto:Minister.Jacob@dpc.wa.gov.au)

Cr Penn asked how the Risk Management Strategy would be enforced while the Shire of Victoria Plains (Administration Centre) was closed?

The CEO confirmed that photographs had been taken prior to the event, and would be taken after the event to compare and see if any damage had been caused. It was again confirmed that the Works Manager would ensure the erection of bunting (to protected areas), and that a Shire employee experienced in Municipal Law and Ranging would be policing the Reserve on the night together with MOC volunteers.

Cr Clarke commented that permanent fencing be installed to the area over the next financial year. The CEO confirmed that placement and costing of permanent fencing would be investigated and could be proposed for the next budget.

Cr Kelly once again requested information from the Mogumber Outback Club in relation to fines enforcement and ABCRA guidelines, to which representative of the Mogumber Outback Club confirmed would be supplied once in receipt of a written request by the CEO.

**RESOLUTION S1/2015**

**Moved: Cr Penn**

**Seconded: Cr Kelly**

**That Council:**

- 1. endorses the Risk Management Strategy put in place by the CEO for the New Years Eve Rodeo in Mogumber to be held at Reserve 8588.**
- 2. the CEO write to the Mogumber Outback Club to make them aware of the strict requirement to police patrons and competitors to ensure that they do not damage any native vegetation in any part of the Mogumber reserve 8588.**

**Resolution is carried: 8/0**

**6 DELARATION OF CLOSURE**

The meeting was closed at 10.28am.

Signed this 17<sup>th</sup> day of Feb 2016

Presiding Member 

