

ORDINARY COUNCIL MEETING  
ATTACHMENTS

Tuesday  
20 September 2016  
3.00pm



## ATTACHMENTS

- 10.1.7 5. Acting CEO Policy – Draft
- 10.1.8 6. Probity Audit
- 10.1.9 7. Audit Committee Meeting Minutes – Unconfirmed
- 10.2.1 8. Finance Committee Minutes July 2016
- 10.2.1 9. Finance Committee Minutes August 2016
- 10.2.2 10. July 2016 Monthly Financial Report
- 10.2.3 11. August 2016 Monthly Financial Report
- 10.2.4 12. Creditors Payment Register
- 10.2.4 13. List of Accounts September
- 10.2.4 14. Credit Card Summaries



### ACTING CEO POLICY (DRAFT)

|                                     |  |
|-------------------------------------|--|
| <b>Policy Owner:</b>                | CEO  |
| <b>Distribution:</b>                | Management   |
| <b>Person Responsible:</b>          | CEO  |
| <b>Date of Approval:</b>            | 12 September 2016  |
| <b>File Reference:</b>              | ADM  |
| <b>Objective</b>                    | To provide Council policy direction in the appointment of an Acting CEO during periods of less than 3 months absence of the CEO.   |
| <b>Legislation</b>                  | This policy is informed by Section 5.36(2) (a) of the Local Government Act 1995 which provides that a local government is not to employ a person to fill the position of CEO unless council believes that the person is suitably qualified for the position.   |
| <b>Policy Statement</b>             | <p>In accordance with the Local Government Act as reference above, the Council has determined that the people appointed to the position of Manager to the Shire of Dowerin are suitably qualified to perform the role of Acting CEO. The Shire's incumbent Managers are:</p> <ul style="list-style-type: none"> <li>• The Finance Manager; and</li> <li>• The Works Manager.</li> </ul> <p>Managers may be appointed to the position of Acting CEO at the discretion of the CEO for periods of three months or less.</p> <p>Appointment to the role of Acting CEO will be made in writing from the CEO.</p> <p>Appointment for periods exceeding three months will require a Council resolution.</p> |
| <b>Roles &amp; Responsibilities</b> | The CEO is responsible for implementing and for bringing it to Council for annual review.  |







Government of **Western Australia**  
Department of **Local Government and Communities**

Doc. No: E1631880

# **SHIRE OF DOWERIN**

## **2016**

# **COMPLIANCE PROBITY AUDIT REPORT**

## Table of Contents

|  |           |
|--|-----------|
| <b>EXECUTIVE SUMMARY</b>                                 | <b>3</b>  |
| <b>RECOMMENDATIONS</b>                                   | <b>3</b>  |
| <b>1. INTRODUCTION</b>                                   | <b>6</b>  |
| <b>2. THE IMPORTANCE OF PROBITY</b>                      | <b>7</b>  |
| <b>3. SCOPE OF THE AUDIT</b>                             | <b>7</b>  |
| <b>4. STATUTORY COMPLIANCE</b>                           | <b>7</b>  |
| <b>5. DELEGATIONS</b>                                    | <b>8</b>  |
| <b>6. FINANCIAL INTEREST REGISTER</b>                    | <b>17</b> |
| <b>DISCLOSURE OF INTEREST AT MEETINGS</b>                | <b>17</b> |
| <b>DISCLOSURE OF INTEREST IN RETURNS</b>                 | <b>19</b> |
| <b>7. DISPOSAL OF PROPERTY</b>                           | <b>20</b> |
| <b>8. POLICY MANUAL</b>                                  | <b>21</b> |
| <b>9. PURCHASING AND PROCUREMENT</b>                     | <b>25</b> |
| <b>10. TENDER REGISTER</b>                               | <b>27</b> |
| <b>11. DECISION MAKING – COMMITTEE MEETING STRUCTURE</b> | <b>28</b> |
| <b>12. COMPLAINTS REGISTER</b>                           | <b>31</b> |
| <b>13. GIFTS REGISTER</b>                                | <b>32</b> |
| <b>14. CODE OF CONDUCT</b>                               | <b>33</b> |
| <b>GENERAL CONCLUSION</b>                                | <b>34</b> |

## EXECUTIVE SUMMARY

The Department of Local Government and Communities recommended that the Shire of Dowerin would benefit from a modified probity audit of its purchasing and procurement, statutory registers for gifts, delegations, policies and disclosures of interest, compliance and decision making committee structure.

The Dowerin Probity Audit found that the local government was not statutorily compliant with some provisions of the *Local Government Act 1995* (the Act) and associated regulations, and has not followed proper standards of practice in some areas.

There has been minimal focus on compliance for an extended period of time. The probity audit identified statutory non-compliance in the Shire's record keeping practices. There are indications that the local government has not had full or adequate control over its processes, which in turn raises concerns about the integrity of the Shire's procedures and whether the oversights deliver best value for money in terms of the Shire's expenditure.

The Shire needs to establish and maintain a number of registers required by the Act. The content of those registers must comply with the relevant provisions that govern the information that is to be included, and the Shire needs to regularly review the format and content. Whilst the Shire has a Purchasing Policy in place, it does not fully comply in certain areas with the regulations.

The Shire's purchasing and procurement processes require review. There is also considerable improvement needed in the Shire's record keeping practices. The report highlights the need for employees to be more aware of the proper application of policies and procedures. Key staff would benefit from relevant training in these areas, which in turn would support more efficient and cost effective practices for the Shire.

## RECOMMENDATIONS

### **Recommendation: 1**

That Council conduct a review of its Delegations Register. Delegations should be amended to improve their effectiveness, added if relevant or removed if unnecessary or redundant.

### **Recommendation: 2**

The CEO ensures the register of financial interests contains all disclosures made under section 5.70 of the Act with regard to Council and committee meetings.

### **Recommendation: 3**

The CEO and presiding member for Council and committee meetings ensures agendas and minutes contain the required information regarding business items for each meeting, and the details of each decision made at the meeting.



**Recommendation: 4**

The CEO introduce a procedure to ensure all financial interest returns are lodged by the statutory dates and that each return is checked for its standard of information in regard to dates, signatures, and the manner in which they are completed.

**Recommendation: 5**

The CEO introduces a procedure to ensure the Shire's compliance with the process for disposal of property as stipulated in section 3.58(3) of the Act.

**Recommendation: 6**

The CEO arranges a review of the Shire's policies to ensure compliance with the Act and regulations and council consider the development and adoption of further policies, such as those recommended for consideration on page 22 of this report.

**Recommendation: 7**

That CEO ensures the Shire's Purchasing Policy complies with Regulation 11A of the Local Government (Functions & General) Regulations 1996 as amended. The policy is to include clearly described procedures for recording and retaining written information or documents regarding quotations received for all purchases made by the Shire.

**Recommendation: 8**

The CEO reviews the Shire's purchasing and procurement processes. Where the value of goods and services is \$150,000 or more, the Shire must conduct a tender process in accordance with Part 4, Division 2 of the *Local Government (Functions & General Regulations) 1996*, unless otherwise exempt.

**Recommendation: 9**

The CEO ensures all employees with the authority to purchase goods and services are aware of and understand the requirements contained in the Shire's Purchasing Policy regarding obtaining quotations. Record Management Procedures should be introduced to provide for quotations or notations on quotations concerning purchasing. Records need to be more readily accessible and retrievable to support the procurement process.

**Recommendation: 10**

The CEO ensures all employees with the authority to invite tenders or involvement in the tender process are adequately skilled by providing relevant training.

**Recommendation: 11**

The CEO introduces a new Tender Register and ensures that it is properly maintained in accordance with regulation 17 of the *Local Government (Functions and General) Regulations 1996*.

**Recommendation: 12**

That Council review the operation of its committee structure to determine whether the powers and duties delegated to any of its committees are lawfully able to be delegated under the Act.

**Recommendation: 13**

That Council develops "Terms of Reference" or "Statements of Purpose" for each of its committees to improve transparency by providing information to the public on the purpose for establishing the committee and any limits on its operation.

**Recommendation: 14**

The CEO develops a system for providing written notices to call and convene Council meetings as specified in sections 5.4 and 5.5 of the Act.

**Recommendation: 15**

That the Shire's Complaints Officer (CEO) establishes and maintains a Complaints Register in accordance with section 5.121(1) of the Act.

**Recommendation: 16**

The CEO reviews the Shire's Gift Register to ensure all categories of gift disclosures are recorded by Council members and employees in a manner compliant with the statutory provisions of the Act and associated regulations.

**Recommendation: 17**

The CEO reviews the Shire's Code of Conduct and updates the information to include the content that is required by the Act, *Local Government (Administration) Regulations 1995* and the *Local Government (Rules of Conduct) Regulations 2007*.

**Recommendation: 18**

The CEO consolidates all the issues identified in this report and other matters from the Shire's Financial Forensic Audit and 2015 Statutory Compliance Audit Return for the CEO to use as a guide in addressing the Shire's level of compliance including improvements to its processes and procedures.

## 1. INTRODUCTION

The Shire of Dowerin covers an area of 1,867 square kilometres and is situated 156 kilometres North East of Perth. It is located in the Central Wheatbelt of Western Australia. The district is made up of fifteen localities; Amery, Booralaming, Daren Lakes, Doodarding, Dowerin, Ejanding, Goddard, Hindmarsh, Koombarkine, Manmanning, Minnivale, Moonijin, Nambling, Uberin and Ucarty. The major local industries are wheat, sheep, cattle, engineering and seed cleaning. Dowerin has some historical significance as one of the early pioneer farming areas and resting place for travellers on their way to the goldfields, with the first town site established in 1895.

The Dowerin Shire Council consists of eight elected members with the following three wards; Rural North Ward, Rural South Ward and Town Ward. The Shire administration office is located in Dowerin. The Council recently appointed Ms Andrea Selvey on 14 March 2016 as the new CEO to replace Mr Dacre Alcock who vacated the position on 20 May 2015. The total revenue of the Shire for 2014-15 was approximately \$5,026,936 and it has around 34 employees. The Shire is currently working towards two significant projects for the area; the Short Term Accommodation Facility and the Wheat Belt Heritage Rail Project.

As part of the Department's compliance and monitoring process, a probity audit was arranged with the Shire of Dowerin to examine its general level of compliance in its processes and practices. Representatives from the Department visited the Shire to conduct a Probity Compliance Audit. The audit was undertaken by Mr Stuart Fraser, Principal Advisory Officer and Ms Marina Sucur, A/Senior Project Officer who visited the Shire's offices at Dowerin on 15 and 16 June 2016.

During that visit relevant documents and registers were examined together with the Shire's procedures. This report examines certain areas of statutory compliance and also comments on matters relating to administrative best practice.

As a result of the Probity Compliance Audit, this report outlines certain probity processes of the Shire and examines the level of compliance with the *Local Government Act 1995* (the Act) and associated regulations relating to those processes. The report makes specific recommendations in circumstances where the Shire is not compliant with statutory requirements. The report also makes recommended process improvements where the Shire's processes do not appear to reflect best practice.

Prior to the Compliance Probity Audit and this report, the Shire had already identified areas of non-compliance in its Statutory Compliance Audit Return for 2015 and a financial forensic audit report prepared by a consultant who was engaged by the Shire. As a number of matters raised in both those documents are also identified in the Department's Compliance Probity Audit Report it is suggested that a consolidation of all three documents be undertaken with the view to producing a comprehensive implementation schedule for the CEO to use as a guide in addressing the Shire's level of compliance including improvements to its processes and procedures.

## **2. THE IMPORTANCE OF PROBITY**

Probity is the evidence of ethical behaviour in a particular process. Probity is defined as complete and confirmed integrity, uprightness and honesty. It contributes to sound processes that accord equal opportunities for all participants.

Processes must be conducted with probity in mind to enable all parties to deal with each other on the basis of mutual trust and respect.

Adopting an ethical, transparent approach enables the business of government to be conducted fairly, reasonably and with integrity. Probity rules must be clear, open, well understood and applied equally to all parties to the process.

It is accepted that conflicts of interest may arise in the course of business operations, especially during the decision making process. Possible conflicts are extremely varied but include pecuniary (financial) and non-financial interests, associations with external groups or bodies and non-direct personal interests. In carrying out one's duties, public officials must not allow themselves to be improperly influenced by family, personal or business relationships.

Maintaining a high level of probity in a local government's processes protects the reputation of not only the Council, but also the administration. This is important as a local government's activities involve the management and control of public money, and may be subject to considerable public scrutiny.

## **3. SCOPE OF THE AUDIT**

The following areas of compliance were examined for the purpose of the Audit and specifically for the period January 2015 to February 2016:

1. Delegations;
2. Financial Interest;
3. Policies;
4. Purchasing and Procurement;
5. Tender Register;
6. Committee Meeting Structure;
7. Complaints Register;
8. Gifts Register; and
9. Code of Conduct.

It should be noted that in some instances it was necessary to examine information outside that time frame.

## **4. STATUTORY COMPLIANCE**

An examination of the registers and documents listed above concluded that the Shire needs to review some of its policies and general administrative procedures.

The following is a summary of issues identified in this probity audit:

- Delegations – need for review of delegations;
- Disclosure of Interest – Maintenance of Disclosures and Returns
- Policies – need to establish a policy manual and review policies;
- Purchasing and Procurement – improvements required in processes and procedures;
- Tender Register – Introduction of new and compliant Tender Register;
- Review of Committee Meeting Structure;
- Establishment and maintenance of gift and complaints registers;
- Code of Conduct - update contents to include current legislative requirements.

## 5. DELEGATIONS

### Statutory Requirement

Section 5.46 of the *Local Government Act 1995* (the Act) states:

- (1) *The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.*
- (2) *At least once every financial year, delegations made under this Division are to be reviewed by the delegator.*

### 5.1 Delegations Register

#### Issues Identified

The Shire's last review of its Register of Delegations was adopted by council at its ordinary meeting of 18 August 2015. The Register contains up to twenty eight delegations which include the following:

|                          |   |  |
|--------------------------|---|--|
| <b>DELEGATION NUMBER</b> | - | <b>001 Acting CEO</b>                    |
| LEGISLATIVE POWER        | - | Local Government Act (1995) Section 5.42 |
| DELEGATION SUBJECT       | - | Acting Chief Executive Officer           |
| DELEGATE                 | - | Chief Executive Officer                  |

That in the absence of the Chief Executive Officer, Mr Dacre Alcock through leave of greater than 2 days duration, the Works Manager, Mr Steven Geerdink or the Finance Manager, Ms Sonia Dwaal be delegated to undertake the position of Acting Chief Executive Officer.

Reviewed at Council Meeting  
18 August 2015

The above instrument of delegation provides for a delegation from Council to senior employees, namely the Works Manager and Finance Manager. Council cannot delegate its powers or duties under the Act directly to any other employee, except to

the CEO. It is suggested that provision should be made for this matter in a Management Policy rather than a delegation. Once an employee is appointed as Acting CEO they automatically assume the powers and duties of the CEO including any delegations given to that position by Council.

As the CEO has the statutory function to manage, supervise and direct other local government employees, it is the CEO's responsibility and within their authority to appoint an Acting CEO for temporary periods whilst he or she is normally on leave or absent from the position of CEO.

The appointment of an Acting CEO may be handled differently in cases where the CEO has vacated the position or is on extended leave for other abnormal reasons.

|                          |   |  |
|--------------------------|---|--|
| <b>DELEGATION NUMBER</b> | - | <b>002 Industrial Relations</b>          |
| LEGISLATIVE POWER        | - | Local Government Act 1995 (Section 5.42) |
| DELEGATION SUBJECT       | - | Disputes, Arbitration and Industrial     |
| DELEGATE                 | - | Chief Executive Officer                  |

The Chief Executive Officer, Mr Dacre Alcock is delegated authority to provide the Fitz Gerald Strategies with consent to act on the Council's behalf in any matter regarding disputes with employees of Council.

Reviewed at Council Meeting  
18 August 2015

In reference to the instrument of delegation No.002 above, concerning industrial relations, it is not good policy to nominate a particular person or body to provide services to the local government. It may also be in breach of the local government's Purchasing and Procurement Policy as well as procurement practices.

A better approach would be to adopt the Shire's stance in delegation No.003 "Legal Representations Cost Indemnification" which states: *authorise the Chief Executive Officer to engage such services with a suitable legal firm (industrial relations representative or firm) as selected by the Chief Executive Officer in consultation with the Shire President.*

|                          |   |  |
|--------------------------|---|--|
| <b>DELEGATION NUMBER</b> | - | <b>004 Liquor – Sale from Council Property</b> |
| LEGISLATIVE POWER        | - | Local Government Act 1995 (Section 5.42)       |
| DELEGATION SUBJECT       | - | Liquor, Sale from Council Property             |
| DELEGATE                 | - | Chief Executive Officer                        |

The Chief Executive Officer, Mr Dacre Alcock is delegated authority to approve applications for the sale of liquor from property under the care, control and management of the Council and to approve applications to consume liquor on property under the care, control and management of Council.

Reviewed at Council Meeting  
18 August 2015

The above delegation No.004 “Liquor – Sale from Council Property” provides authority to the CEO to approve applications for the sale and consumption of liquor on property that is under the care, control and management of the local government. It states this power is derived from section 5.42 of the *Local Government Act 1995*. That reference to the Act is incorrect as that section does not allow for the power which has been delegated. The requirement to approve the consumption of liquor on Shire premises is found in section 119(1) of the *Liquor Control Act 1988* which states:

*A person who consumes liquor in any place or on any premises, including any park or reserve, without the consent of the occupier, or of the person or authority having control, of that place or those premises commits an offence.*

In regard to the sale of liquor, a Liquor Licence from the Department of Racing, Gaming and Liquor must be obtained for the sale of liquor from a premise. Local government certification is required to be submitted with the application. Prior to submitting an application for a Liquor Licence, the applicant must seek a Section 40 Certificate from the relevant local government.

|                          |   |   |
|--------------------------|---|---|
| <b>DELEGATION NUMBER</b> | - | <b>005 Conferences, Seminars &amp; Training Courses</b> |
| LEGISLATIVE POWER        | - | Local Government Act 1995 (Section 5.42)                |
| DELEGATION SUBJECT       | - | Conferences, Seminars & Training Courses                |
| DELEGATE                 | - | Chief Executive Officer                                 |

The Chief Executive Officer, Mr Dacre Alcock is delegated authority to approve the attendance by Council staff at conferences, seminars and training courses where attendance will enhance the professional development of the officer, provide benefits to the Council and is relevant to the duties and responsibilities of the officer.

Reviewed at Council Meeting  
18 August 2015

The above instrument of delegation No.005 "Conferences, Seminars & Training" allows the CEO to approve staff attendance at training courses for professional development. This matter would be better dealt with in Shire administrative management policy.

The CEO of a local government has the statutory function and responsibility to manage employees, including approving training for professional development of staff. The CEO may approve suitable training for employees on the basis there are sufficient funds allocated in the annual budget for that purpose.



|                          |   |  |
|--------------------------|---|--|
| <b>DELEGATION NUMBER</b> | - | <b>007 Rate Book</b>                     |
| LEGISLATIVE POWER        | - | Local Government Act 1995 (Section 5.42) |
| DELEGATION SUBJECT       | - | Rate Book                                |
| DELEGATE                 | - | Chief Executive Officer                  |

The Chief Executive Officer, Mr Dacre Alcock is hereby delegated the performance of the following functions of the Council.

1. The discharge of the obligations specified in Section 6.39(1) of the Local Government Act 1995.
2. The service of Notices of Valuation and Rates referred to in Section 6.41(1) of the Local Government Act 1995 (as amended).
3. The time allowed for the payment of the rate before it becomes in arrears 6.50(2) of the Local Government Act 1995.
4. The powers conferred in Section 6.40 of the Local Government Act 1995.
5. The exercise of discretion in regard to granting of any extension of time for service of objections to the Rate Book 6.76(4) of the Local Government Act 1995.
6. The recovery of rates by complaint or action pursuant to the provisions of 6.56(1) of the Local Government Act 1995.
7. Entering into an agreement in accordance with 6.49 of the Local Government Act 1995.
8. Requiring a lessee to pay rent to the Council in satisfaction of rates or service charges due and payable in accordance with 6.60(2) of the Local Government Act 1995.

Reviewed at Council Meeting  
18 August 2015

Delegations 1, 2 and 4 in the above instrument of delegation No.007 "Rate Book" are duties suitable for "acting through" situations rather than a delegation. Acting through is different to a delegation in that there is no discretion required as the Act requires a task or duty to be performed by the person i.e. *the local government must reassess the service charge and give notice.*

|                          |   |                                      |
|--------------------------|---|--------------------------------------|
| <b>DELEGATION NUMBER</b> | - | <b>013 Demolition Licences</b>       |
| LEGISLATIVE POWER        | - | Building Act 2011 Sections 21 and 22 |
| DELEGATION SUBJECT       | - | Demolition Licences                  |
| DELEGATE                 | - | Chief Executive Officer              |

The Chief Executive Officer, Mr Dacre Alcock is delegated authority to approve the issue of a demolition licence to take down a building or a part of a building and such licence may be subject to such conditions as the Chief Executive Officer considers necessary for the safe and proper execution of the work.

*The Chief Executive Officer, in exercising authority under Section 5.44 of the Local Government Act 1995, has delegated this power/duty to the Environmental Health and Building Office, Mr Linton Thomas.*

Reviewed at Council Meeting  
18 August 2015

|                          |   |                                       |
|--------------------------|---|---------------------------------------|
| <b>DELEGATION NUMBER</b> | - | <b>015 Appoint Authorised Persons</b> |
| LEGISLATION POWER        | - | Building Act 2011, Section 96         |
| DELEGATION SUBJECT       | - | Appoint Authorised Persons            |
| DELEGATE                 | - | Chief Executive Officer               |

The Chief Executive Officer, Mr Dacre Alcock is delegated to appoint authorised persons for the purposes of the Building Act 2011.

|                          |   |   |
|--------------------------|---|---|
| <b>DELEGATION NUMBER</b> | - | <b>016 Authority to Issue Building Orders</b> |
| LEGISLATIVE POWER        | - | Building Act 2011, Section 110                |
| DELEGATION SUBJECT       | - | Authority to Issue Building Orders            |
| DELEGATE                 | - | Chief Executive Officer                       |

The Chief Executive Officer, Mr Dacre Alcock is the delegated authority to;

- a) Stop work, demolish/remove a building, alter a building or evacuate a building, where there is a contravention of a provision of the Building Act 2011.
- b) Take specific action to prevent the contraventions of the Building Act 2011; and
- c) Finish and outward facing side of a wall; building which are considered as being unsafe or not fit for human habitation.

*The Chief Executive Officer, in exercising authority under Section 5.44 of the Local Government Act 1995, has delegated this power/duty to the Environmental Health and Building Officer, Mr Linton Thomas.*

Reviewed at Council Meeting  
18 August 2015

|                          |   |  |
|--------------------------|---|--|
| <b>DELEGATION NUMBER</b> | - | <b>017 Authority to Commence Prosecution</b> |
| LEGISLATION POWER        | - | Building Act 2011, section 139               |
| DELEGATION SUBJECT       | - | Authority to Commence Prosecution            |
| DELEGATE                 | - | Chief Executive Officer                      |

The Chief Executive Officer, Mr Dacre Alcock is delegated to commence prosecution for breaches of the Building Act 2011.

*The Chief Executive Officer, in exercising authority under Section 5.44 of the Local Government Act 1995, has delegated this power/duty to the Environmental Health and Building Officer, Mr Linton Thomas.*

Reviewed at Council Meeting  
18 August 2015

All of the above instruments of delegation regarding the *Building Act 2011* make reference to powers that may be exercised by a "Permit Authority" which includes a local government. None of the delegations clearly make reference to the power in the *Building Act 2011* that provides for the local government to delegate those powers.

Section 127 of the *Building Act 2011* enables a local government to be a permit authority to delegate any of its powers or duties under another provision of that Act.

Section 127 of the *Building Act 2011* states:

(1) A special permit authority or a local government may delegate any of its powers or duties as a permit authority under another provision of this Act.

(2) A delegation of a special permit authority's powers or duties may be only to an employee of the special permit authority, or to an employee of one of the legal entities that comprise the special permit authority.

(3) A delegation of a local government's powers or duties may be only to a local government employee.

(4) The delegation must be in writing executed by or on behalf of the delegator.

(5) Except as provided for in subsection (6A), a person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(6A) The CEO of a local government may delegate to any other local government employee a power or duty of the local government that has been delegated to the CEO under this section but in the case of such a power or duty —

(a) the CEO's power under this subsection to delegate the exercise of that power or the discharge of that duty; and

(b) the exercise of that power or the discharge of that duty by the CEO's delegate, are subject to any conditions, qualifications, limitations or exceptions imposed by the local government on its delegation to the CEO.

| <b>DELEGATION NUMBER</b> | - | <b>028 Caravan Parks &amp; Camping Grounds</b>               |
|--------------------------|---|--|
| LEGISLATIVE POWER        | - | Caravan Parks & Camping Grounds Act 1995 (Section 17)        |
| DELEGATION SUBJECT       | - | Enter and inspect Caravan Parks & Camping Grounds facilities |
| DELEGATE                 | - | Environmental Health/Building Officer                        |

The Environmental Health/Building Officer, Mr Linton Thomas is appointed the "Authorised Person" for the purposes of the Caravan Parks and Camping Grounds Act and may at all reasonable times for the purpose of the Act enter and inspect facilities, stop, enter, inspect and detain any vehicle in a caravan

park or camping ground, conduct examinations and inquiries and exercise such other powers as are prescribed for the purpose of the Act.

Reviewed at Council Meeting  
18 August 2015

The above instrument of delegation No.028 "Caravan Parks & Camping Grounds" appoints an authorised person to exercise powers and duties under the *Caravan Parks & Camping Grounds Act 1995*. An authorisation is not the same as a delegation as it has different legal implications for the person exercising those powers and duties and the person with the power to appoint an authorised person.

An authorised person is not acting on behalf of another person, but may exercise powers and duties in their own right.

Section 17 of the *Caravan Parks and Camping Grounds Act 1995* states:

17. *Appointment of authorised person*

(1) *The chief executive officer of the Department or a local government —*

*(a) may appoint such persons to be authorised persons for the purposes of this Act as the chief executive officer or the local government considers necessary.*

Reference to the CEO exercising their power to delegate powers and duties under other acts in accordance with section 5.44 of the *Local Government Act 1995* (the Act) is not relevant or correct. The power to on-delegate is only provided in regard to powers or duties under the Act, not under any other acts, unless specified.

There are instruments of delegation that make reference to individual employee(s). Delegations may be made to the position not the person, so it is suggested that the Shire revise its delegations accordingly.

The Department's Operational Guideline No.17 "Delegations" provides that the exercise of a power or duty may sometimes be treated as an "Acting Through" situation which does not require a delegation.

The following legislation provides for delegations and authorisations which are either excluded from the Register or should not be treated as a delegation as statutory provisions only provide for the appointment of authorised officers.

1. *Bush Fires Act 1954*: Section 17(10) - a local government may by resolution delegate to its mayor, or president, and its Chief Bush Fire Control Officer, jointly its powers and duties under subsections (7) and (8).
2. *Cat Act 2011*: Section 44(1) - the local government may delegate to its CEO the exercise of any of its powers or the discharge of any of its duties under another provision of this Act.
3. *Dog Act 1976*: Section 10AA(1) - A local government may, by absolute majority as defined in the *Local Government Act 1995* section 1.4, delegate to its chief executive officer any power or duty of the local government under another provision of this Act.
4. *Food Act 2008*: Section 118 – the CEO (the chief executive officer of the department of the Public Service principally assisting in the administration of this Act); may delegate any power or duty of the CEO under another provision of this Act to a local government. The local government may then, as the enforcement agency, appoint authorised officers.
5. *Planning and Development (Local Planning Scheme) Regulations 2015* – Part 10, Division 2 provides for delegations by the local government and by the CEO of any of the powers or duties that may be delegated under a scheme.

## **Conclusion**

A number of delegations in the Delegations Register are either unnecessary or irrelevant, and other ones require improvement to render them more effective. There are also some missing delegations that should be included in the Register.

**Recommendation: 1**

That Council conduct a review of its Delegations Register. Delegations should be amended to improve their effectiveness, added if relevant or removed if unnecessary or redundant.

**6. FINANCIAL INTEREST DISCLOSURES**

**DISCLOSURE OF INTEREST AT MEETINGS**

**Statutory Requirement**

Section 5.70 of the Act states:

*Employees to disclose interests relating to advice or reports*

(1) *In this section —*

*employee includes a person who, under a contract for services with the local government, provides advice or a report on a matter.*

(2) *An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.*

(3) *An employee who discloses an interest under this section must, if required to do so by the council or committee, as the case may be, disclose the extent of the interest.*

Section 5.88 of the Act states:

*Register of financial interests*

(1) *A CEO is to keep a register of financial interests.*

(2) *The register is to contain —*

*(a) the returns lodged under section 5.75 and 5.76; and*

*(b) a record of the disclosures made under sections 5.65, 5.70 and 5.71, and be in the form that is prescribed (if any).*

Section 5.22 of the Act states:

*Minutes of council and committee meetings*

(1) *The person presiding at a meeting of a council or a committee is to cause minutes to be kept of the meeting's proceedings.*

**Issues Identified**

Disclosures of interest either by Council members at meetings or by employees when providing verbal advice and in reports are to be recorded in the minutes of the meeting. Those disclosures also need to be included in the local government's register of financial interests.

An examination of the minutes of meetings and the Financial Interests Register indicated that there were instances where disclosures were made and recorded in the minutes, but no record of the disclosures were contained in the Register.

An example of one of those disclosures follows:

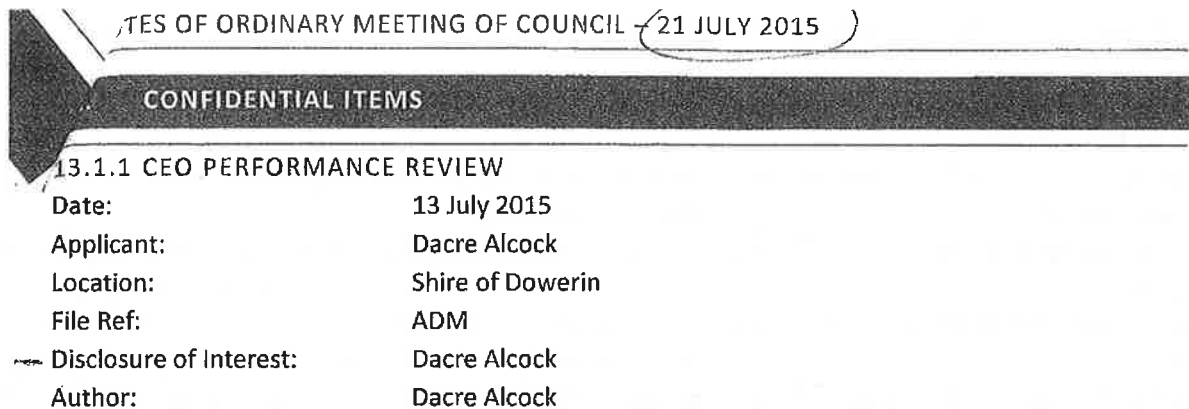
MINUTES OF ORDINARY MEETING OF COUNCIL – 21 JULY 2015

50 | Page

11. NEW BUSINESS OF AN URGENT NATURE

12. ELECTED MEMBERS MOTIONS

Dacre Alcock, CEO declared a financial interest in item 3.1.1 and left the meeting at 5.15pm.



The minutes of the 21 July 2015 meeting do not list Item 13 at all, nor is there a record of a resolution being passed regarding that item.

### Conclusion

Not all disclosures of interest are being recorded in the Financial Interest Register in accordance with section 5.88 of the Act. In addition some items of business, especially those relating to confidential items, are not being properly recorded in the minutes.

#### **Recommendation: 2**

The CEO ensures the register of financial interests contains all disclosures made under section 5.70 of the Act with regard to Council and committee meetings.

#### **Recommendation: 3**

The CEO and the presiding member for Council and committee meetings ensures agendas and minutes contain the required information regarding business items of each meeting, and the details of each decision made at the meeting.

## DISCLOSURE OF INTEREST IN RETURNS

### Statutory Requirement

Section 5.75 of the Act states:

#### **Primary returns**

*(1) A relevant person other than the CEO must lodge with the CEO a primary return in the prescribed form within 3 months of the start day.*

*(2) A CEO must lodge with the mayor or president a primary return in the prescribed form within 3 months of the start day.*

*(3) This section does not apply to a person who —*

*(a) has lodged a return within the previous year; or*

*(b) has, within 3 months of the start day, ceased to be a relevant person.*

Section 5.76 of the Act states:

#### **Annual returns**

*(1) Each year, a relevant person other than the CEO must lodge with the CEO an annual return in the prescribed form by 31 August of that year.*

*(2) Each year, a CEO must lodge with the mayor or president an annual return in the prescribed form by 31 August of that year.*

Section 5.88 of the Act states:

#### **Register of financial interests**

*(1) A CEO is to keep a register of financial interests.*

*(2) The register is to contain —*

*(a) the returns lodged under section 5.75 and 5.76;*

### Issues Identified

On examination of the Shire's Register of Financial Interests, it was noted that all eight council members had lodged their returns together with all designated employees (including the CEO, Works Manager and Finance Manager).

However, prior to the Department's Probity Audit being undertaken at the Shire, an annual return was not lodged within the required time, or if it had been lodged it was not sighted in the register. It was also reported that three Primary Returns for newly elected members were not sighted in the register.

A further issue was identified regarding the former CEO signing his own acknowledgment letters to verify receipt of his returns. The acknowledgement for the receipt of the CEO's returns is to be done by the Shire President.

Some of the returns examined were not completed correctly as there were blank sections, addresses missing and in one case the return was not dated or signed.

### Conclusion

The completion standard of the returns requires improvement, including checking the basic administrative information for any inaccuracies.



The manner of maintaining the Financial Interests Register requires further attention. A procedure should be introduced to check returns are lodged accurately within the statutory time frame.

**Recommendation: 4**

The CEO introduce a procedure to ensure that all financial interest returns are lodged by the statutory dates and that each return is checked for its standard of information in regard to dates, signatures, and the manner in which they are completed.

## 7. DISPOSAL OF PROPERTY

### Statutory Requirement

Section 3.58 of the Act states:

Disposing of property

(1) *In this section —*

*dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not; property includes the whole or any part of the interest of a local government in property, but does not include money.*

(2) *Except as stated in this section, a local government can only dispose of property to —*

*(a) the highest bidder at public auction; or*

*(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

(3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*

*(a) it gives local public notice of the proposed disposition —*

*(i) describing the property concerned; and*

*(ii) giving details of the proposed disposition; and*

*(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*

*(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

### Issues Identified

Over the period under review the Shire had resolved to dispose of the following pieces of land within its district:

- Amery Reserve No.49356 Avon Location 321;
- An area of veranda in front of the Commercial Hotel;
- Lot 7 Stacy Street Dowerin.

No record was found that indicated the Shire properly complied with section 3.58 of the Act.

Expressions of interest were sought for the Amery Acres cropping lease for a period of between one to five years. Although an expression of interest was intended to be advertised, section 3.58 of the Act only allows for disposal by public auction, public tender or private treaty.

An expression of interest is not considered a public tender and if the disposal of the land is conducted by an expression of interest, the proposed disposal should be advertised in accordance with section 3.58(3) of the Act before a final decision is made to dispose of the property.

The area of land on the veranda of the Commercial Hotel also was not advertised in accordance with section 3.58 of the Act and nor was there any record of advertising for the proposed disposal of Lot 7 Stacy Street Dowerin.

Since the disposal of Lot 7 Stacy Street did not proceed, it was suggested that the last recorded resolution of Council on 18 August 2015 to accept the offer for the purchase of the property be revoked.

#### **Conclusion**

The Shire's records indicate that it does not comply with the disposal of property process under section 3.58 of the Act. If a public auction or public tender process is not followed, the disposal must be advertised in accordance with section 3.58(3) of the Act prior to approval of the disposal.

#### **Recommendation: 5**

The CEO introduces a procedure to ensure the Shire's compliance with the process for disposal of property as stipulated in section 3.58(3) of the Act.

## **8. POLICY MANUAL**

### **Statutory Requirement**

Section 2.7(2)(b) of the Act states:

*Without limiting subsection (1), the council is to —*  
*(b) determine the local government's policies.*

Regulation 11A of the *Local Government (Functions and General) Regulations 1996* states:

*(1) A local government is to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$150 000 or less or worth \$150 000 or less.*

(2) *A purchasing policy is to make provision for and in respect of the policy to be followed by the local government for, and in respect of, entering into contracts referred to in subregulation (1).*

(3) *A purchasing policy must make provision in respect of —*

- (a) *the form of quotations acceptable; and*
- (ba) *the minimum number of oral quotations and written quotations that must be obtained; and*
- (b) *the recording and retention of written information, or documents, in respect of —*
  - (i) *all quotations received; and*
  - (ii) *all purchases made.*

### **Issues Identified**

At the time of the Probity Audit, the Shire had five policies in place:

- Corporate Credit Card Policy;
- Council Purchasing Policy;
- Freedom of Information Policy;
- Recruitment and Selection Policy; and
- Sundry Debtor Management Policy.

The Act and regulations requires a local government to have the following policies in place when dealing with certain matters:

- Employee Payment on Finishing Employment (s5.50);
- Purchasing Policy (F&G Reg.11A(1));
- Pre-qualified Suppliers Panel (F&G Reg. 24AC)
- Regional Price Preference Policy (F&G Reg.24E)
- Provision of Motor Vehicle (Council Members) (Admin Reg. 34AD);
- Gifts to Council Members (Retirement) (Admin Reg. 34AC);

It is also recommended that a local government consider adopting the following policies:

- Public Question Time;
- Use of Council Property;
- Disruptive Behaviour at Council Meetings;
- Elected Member and Employee Legal Representation and Indemnification;
- Execution of Documents (Common Seal and by Signature);
- Complaints Handling (Procedures)
- Induction for Council Members and Staff;
- Record Keeping;
- Access to Information; and
- Confidential Information.

Whilst the Shire has a Purchasing Policy in place, it does not fully comply in certain areas with the regulations.

The Shire's Purchasing Policy does not make provision for the form of quotations acceptable in accordance with regulation 11A(3)(a) of the *Local Government*

*(Functions & General) Regulations 1996. The following is an example of what should be included:*

### **Form of Quotations**

*Both a verbal and written request for quotation must include:*

- 1. details of the goods and services required;*
- 2. the time when the goods and services are required; and*
- 3. a date by which the quotation must be submitted.*

### **Verbal**

*Where a verbal quotation is required under this policy, then both the request for quotation and the submission of a quotation may occur verbally or in writing.*

### **Written**

*Where a written quotation is required under this policy, then both the request for quotation and the submission of a quotation must occur in writing.*

The Shire's policy does not mention recording and retention of written information relating to all quotations received and all purchases made in accordance with regulation 11A(3)(b)(i),(ii). The following is an example of appropriate policy:

### **Record Keeping**

*All written records that are required under this policy must be stored in the Shire's Records system. A record of a request for quotation and any submissions of quotation must be kept even if there is no subsequent purchase. In addition to this, pricing schedules obtained from written quotes must be stored in the Shire's Purchasing system as part of the Requisition.*

### **Verbal**

*Where a verbal quotation is required under this policy, then the following information must be noted or stored in the Shire's purchasing system:*

- 1. details of the goods and services required;*
- 2. the name of any supplier who has been requested to provide a quotation and the date on which it was requested; and*
- 3. the name of any supplier who submitted the quotation, the amount of the quotation and the date on which it was received.*

### **Written**

*Where a written quotation is required under this policy then the written request for quotation and any written submission of quotation must be recorded. A written record of the name of the successful supplier must also be made.*

The Shire's Sundry Debtor Management Policy made reference to writing off bad debts in accordance with section 76 of the Act as stated below:

*Bad debts can only be written off in accordance with Section 76 of the Local Government Act 1993*

The Policy also stated that the CEO had delegated authority to write off any sundry debtor bad debt to the amount of \$5,000 as stated below:

*The CEO has delegated authority to write off any sundry debtor bad debt to the amount of \$5,000.*

Firstly, there is no section 76 in the *Local Government Act 1995* that relates to writing off bad debts and the date of the Act is 1995 not 1993. The section of the Act that deals with writing off bad debts is section 6.12(1)(c) of the Act.

The policy cannot contain a delegation of authority to write off bad debts and the Shire's Delegations Register had no record of any delegation to the CEO for writing off bad debts

#### **Conclusion**

The Shire is deficient in the area of policy development and adoption. The number and standard of policies it has in place are not considered sufficient to provide a satisfactory set of policies to properly support the Shire's decision making governance structure.

The Shire's Purchasing Policy does not contain specific information or make proper provision for "*the form of quotations acceptable and the recording and retention of written information, or documents, in respect of all quotations received and all purchases made*" in accordance with Regulation 11A of the *Local Government (Functions and General) Regulations 1996*.

It is also noted that should the Shire wish to establish panels of pre-qualified suppliers, it will need to have a written policy in place in accordance with regulation 24AC of the *Local Government (Functions and General) Regulations 1996* as amended. Currently, the Shire has no policy in regard to panels of pre-qualified suppliers.

The Council's Purchasing Policy and Sundry Debtor Management Policy require review in regard to compliance with the statutory requirements and accuracy of information contained in the policies.

#### **Recommendation: 6**

The CEO arranges for a review of the Shire's policies to ensure compliance with the Act and regulations and Council consider the development and adoption of further policies, such as those recommended for consideration on page 22 of this report.

#### **Recommendation: 7**

The CEO ensures the Shire's Purchasing Policy complies with Regulation 11A of the *Local Government (Functions & General) Regulations 1996* as amended. The policy is to include clearly described procedures for recording and retaining written information or documents regarding quotations received for all purchases made by the Shire.

## 9. PURCHASING AND PROCUREMENT

### Statutory Requirement

Regulation 11(1) of the *Local Government (Functions and General) Regulations 1996* states:

*Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$150 000 unless subregulation (2) states otherwise.*

Regulation 11A(3) of the *Local Government (Functions and General) Regulations 1996* states:

*A purchasing policy must make provision in respect of —*

- (a) the form of quotations acceptable; and*
- (b) the recording and retention of written information, or documents, in respect of —*
  - (i) all quotations received; and*
  - (ii) all purchases made.*

The Shire's Purchasing Policy places the following limits and requirements in relation to obtaining quotations:

| Amount of Purchase  | Model Policy   | Approval Required   |
|---------------------|--|---|
| < \$500             | Direct purchase from local suppliers where possible.   | Authorised staff member to issue order number.  |
| \$501 to \$9,999    | Direct purchase from local suppliers where possible with two verbal quotes. Refer to CEO or Finance Manager for approval of purchase.            | Authorised staff member to issue order number.<br><b>Management to sign approval.</b> |
| \$10,000 - \$49,999 | Obtain at least three verbal or written quotations and refer to CEO or Finance Manager for approval of purchase.                                 | Authorised staff member to issue order number.<br><b>Management to sign approval.</b> |
| \$50,000 - \$99,999 | Obtain at least three written quotations containing price and specification of goods and services and refer to Council for approval of purchase. | <b>Council to approve.</b>  |
| \$100,000 >         | Conduct a public tender process.   | <b>Council to select and approve.</b>   |

The following positions have delegated authority to purchase and sign purchase orders within the set limits:

| <b>Position</b>            | <b>Amount</b> |
|----------------------------|---------------|
| Chief Executive Officer    | Unlimited     |
| Works Manager              | \$50,000      |
| Finance Manager            | \$50,000      |
| Community Services Officer | \$500         |
| Administration Staff       | \$500         |
| Maintenance                | \$500         |
| Parks and Gardens          | \$500         |

### Issues Identified

A random sample of the Shire’s creditors indicated some significant expenditure over an extended period with certain suppliers of goods and services.

Those suppliers and the period applicable for those purchasers are as follows:

| <b>Company</b>            | <b>Period</b>         | <b>Total Expenditure</b> |
|---------------------------|-----------------------|--------------------------|
| Western Stabilisers       | Sept 2014 to Apr 2016 | \$341,292                |
| Contract Aquatic Services | Apr 2012 to Apr 2016  | \$282,780                |
| Twinkarri Pty Ltd         | Oct 2014 to Nov 2015  | \$90,856                 |
| Blackwell Plumbing        | Jul 2014 to Oct 2015  | \$64,672                 |

The Shire’s expenditure far exceeds the current tender threshold of \$150,000 for two of the above suppliers; Western Stabilisers and Contract Aquatic Services.

Expenditure for at least two other suppliers is also significant enough to monitor the amount of funds spent to determine whether it will exceed the \$150,000 threshold for which tenders are required to be invited.

The time periods for the expenditure are provided to indicate that in some cases, within a relatively short period time, significant expenditure has been incurred. This suggests that the suppliers should be invited to tender for fixed written contracts for the supply of goods or services.

It should be noted that the period (i.e. 12 months) is not a factor when determining whether the procurement should go to tender. Inviting tenders relates to any period over which the purchase is regularly made with one supplier, and the amount purchased is, or is expected to be, \$150,000 or greater (unless an exemption applies).

The audit also checked the frequency of staff compliance with the requirements to obtain verbal and written quotations. The sample of payment vouchers together with purchase requisitions and other records examined indicated that verbal or written

quotes were either not obtained in accordance with the Shire's Purchasing Policy or were not be kept or recorded in accordance with proper record keeping practices.

### **Conclusion**

The Shire in at least two instances has not complied with the requirement to invite tenders in accordance with Regulation 11(1) of the *Local Government (Functions & General) Regulations 1996*. Evidence indicates there was a failure to invite tenders for the purchase of goods and services where the consideration under the contract is, or is expected to be, more or worth more than \$150,000.

There needs to be greater clarity and understanding by the Shire's employees regarding the legislative requirements for inviting tenders. This may be addressed by providing procurement staff with relevant training.

The Shire's records indicate that the procedure set out in its Purchasing Policy for obtaining quotations for purchasing goods and services below the tender threshold of \$150,000 is not being followed and not being complied with in accordance with Regulation 11A of the *Local Government (Functions & General) Regulations 1996*.

#### **Recommendation: 8**

The CEO reviews the Shire's purchasing and procurement processes. Where the value of goods and services is \$150,000 or more, the Shire conducts a tender process in accordance with Part 4, Division 2 of the *Local Government (Functions & General Regulations) 1996*, unless otherwise exempt.

#### **Recommendation: 9**

The CEO ensures all employees with the authority to purchase goods and services are aware of and understand the requirements contained in the Shire's Purchasing Policy regarding obtaining quotations. Record Management Procedures should be introduced to provide for quotations or notations on quotations concerning purchasing. Records need to be more readily accessible, and retrievable to support the procurement process.

#### **Recommendation: 10**

The CEO ensures all employees with the authority to invite tenders or involvement in the tender process are adequately skilled by providing relevant training.

## **10. TENDER REGISTER**

### **Statutory Requirement**

Regulation 17 of the *Local Government (Functions and General) Regulations 1996* states:

(1) *The CEO is responsible for keeping the tenders register and making it available for public inspection.*



- (2) *The tenders register is to include, for each invitation to tender —*
- (a) *a brief description of the goods or services required; and*
  - (b) *particulars of the making of —*
    - (i) *the decision to invite tenders; and*
    - (ii) *if applicable, the decision to seek expressions of interest under regulation 21(1); and*
  - (c) *particulars of —*
    - (i) *any notice by which expressions of interests from prospective tenderers was sought; and*
    - (ii) *any person who submitted an expression of interest; and*
    - (iii) *any list of acceptable tenderers that was prepared under regulation 23(4); and*
  - (d) *a copy of the notice of the invitation to tender; and*
  - (e) *the name of each tenderer whose tender has been opened; and*
  - (f) *the name of any successful tenderer.*
- (3) *The tender register is to include for each invitation to tender the amount of the consideration or a summary of the amount of the consideration sought in the tender accepted by the local government.*

#### **Issue Identified**

The Shire has a Tender Register, but there were no tenders recorded in the register for the period 1 April 2015 to 31 March 2016. The last entry in the register relating to a tender was for the provision of audit services for the periods 2013/14 and 2016/17.

The Tender register did not contain all the details required under regulation 17 of the *Local Government (Functions & General) Regulations 1996*.

#### **Conclusion**

The Shire's Tender Register is non-compliant with regulation 17 of the *Local Government (Functions and General) Regulations 1996* in respect to recording details concerning tenders. The register requires updating and re-establishment in a format to accommodate the statutory information.

#### **Recommendation: 11**

The CEO introduces a new Tender Register and ensures that it is properly maintained in accordance with regulation 17 of the *Local Government (Functions and General) Regulations 1996*.

## **11. DECISION MAKING – COMMITTEE MEETING STRUCTURE**

The Shire's committee and meeting structure contained one standing committee, with some advisory and/or working groups. There are some non-Council committees that are not part of the internal Shire meeting structure.

The Standing Committee was the:

- Finance and Audit Committee.

This has since been split as of 15 December 2015 into the:

- Audit Committee; and
- Finance Committee.

Other Committees and Groups comprise the:

- Dowerin Bush Advisory Committee.
- Australia Day Honours Committee.
- Short Term Accommodation Committee.
- Goomalling Medical Centre Advisory Committee.
- Dowerin Local Emergency Management.
- HACC Management Committee.
- Wheatbelt Work Camp Committee.
- Leeuwin Youth Scholarship Committee.
- Dowerin Events Management Board.
- Kellerberrin Sub-Regional Road Group.
- Avon Regional Organisation Councils (AROC).
- Great Eastern Zone WALGA

#### **Statutory Requirement**

Section 5.8 of the Act states:

*A local government may establish committees of three or more persons to assist the council, and to exercise the powers and discharge the duties of the local government that can be delegated to committees.*

Section 5.4 of the Act states:

#### *Calling council meetings*

*An ordinary or a special meeting of a council is to be held —*

*(a) if called for by either —*

*(i) the mayor or president; or*

*(ii) at least 1/3 of the councillors, in a notice to the CEO setting out the date and purpose of the proposed meeting; or*

*(b) if so decided by the council.*

Section 5.5 of the Act states:

#### *Convening council meetings*

*(1) The CEO is to convene an ordinary meeting by giving each council member at least 72 hours' notice of the date, time and place of the meeting and an agenda for the meeting.*

*(2) The CEO is to convene a special meeting by giving each council member notice, before the meeting, of the date, time, place and purpose of the meeting.*

## Issues Identified

It is noted that the Standing Committees do not appear to have been given any delegated powers, including the recently established Audit Committee.

However, Council was presented with an Instrument of Appointment and Delegation for the Audit Committee that states:

*The committee does not have executive powers or authority to implement actions in areas over which the CEO has legislative responsibility and does not have any delegated financial responsibility.*

Other than the Audit Committee, the purpose or status of other committees and whether they have any delegated powers or duties is not clear.

It is also not clear which committees are established under section 5.8 of the Act and which are working or advisory groups that have no status under the Act.

It is important to identify the status and purpose of a local government committee to distinguish it from other committees or groups as there are statutory provisions that apply to committees established under the Act.

An example of statutory provisions that apply to committees of Council established under the Act is the requirement to call and convene meetings, particularly special meetings of council.

At the Council meeting held on 15 December 2015 a resolution was passed regarding the dates for holding Council meetings over the next twelve months. Those meeting dates were publicly advertised in accordance with regulation 12 of the *Local Government (Administration) Regulations 1996*.

However, Special Council meetings were held in 2015 and 2016 where no record could be found of any written notice for the calling and convening of those meetings in accordance with sections 5.4 and 5.5 of the Act.

## Conclusion

The status and purpose for Council committees and working/advisory groups needs to be clarified in order to improve the control and management of Council's decision making structure.

Clarification of the status and purpose of Council committees will clearly identify those committees that are formal standing committees established under the Act and whether Council has delegated any powers and duties to its committees.

As there is no record of a written notice calling and convening special Council meetings, the process for holding special meetings of Council may not be compliant with sections 5.4 and 5.5 of the Act.

**Recommendation: 12**

That Council review the operation of its committee structure to determine whether the powers and duties delegated to any of its committees are lawfully able to be delegated under the Act.

**Recommendation: 13**

That Council develops “Terms of Reference” or “Statements of Purpose” for each of its committees to improve transparency by providing information to the public on the purpose for establishing the committee and any limits placed on its operation.

**Recommendation: 14**

The CEO develops a system for providing written notices to call and convene Council meetings as specified in sections 5.4 and 5.5 of the Act.

## 12. COMPLAINTS REGISTER

### Statutory Requirement

Section 5.121 of the Act states:

Register of certain complaints of minor breaches

*(1) The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in action under section 5.110(6)(b) or (c).*

*(2) The register of complaints is to include, for each recorded complaint —*  
*(a) the name of the council member about whom the complaint is made; and*  
*(b) the name of the person who makes the complaint; and*  
*(c) a description of the minor breach that the standards panel finds has occurred; and*  
*(d) details of the action taken under section 5.110(6)(b) or (c).*

### Issues Identified

The Shire has a book titled “Comments Register” in which it records complaints which relate to maintenance issues, but not for the purpose of recording details in regard to complaints made under section 5.107 of the Act.

The Shire’s Complaints Officer, usually the CEO, is required to maintain a register of complaints in accordance with section 5.121(1) of the Act.

This register is not being maintained as required by the Act in regard to recording of the required details for complaints made under section 5.110(6)(b) & (c) of the Act.

### Conclusion

The Shire’s Complaints Register is non-compliant with section 5.121 of the Act.

**Recommendation: 15**

That the Shire's Complaints Officer (CEO) establishes and maintains a Complaints Register in accordance with section 5.121(1) of the Act.

### 13. GIFTS REGISTER

#### Statutory Requirement

Regulation 12(4) and (5) of *Local Government (Rules of Conduct) Regulations 2007* state:

*(4) Notification of the acceptance of a notifiable gift is to be in writing and is to include —*

- (a) the name of the person who gave the gift; and*
- (b) the date on which the gift was accepted; and*
- (c) a description, and the estimated value, of the gift; and*
- (d) the nature of the relationship between the person who is a council member and the person who gave the gift; and*
- (e) if the gift is a notifiable gift under paragraph (b) of the definition of "notifiable gift" (whether or not it is also a notifiable gift under paragraph (a) of that definition) —*
  - (i) a description; and*
  - (ii) the estimated value; and*
  - (iii) the date of acceptance,**of each other gift accepted within the 6 month period.*

*(5) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.*

Section 5.89A of the Act states:

Register of gifts and contributions to travel

- (1) A CEO is to keep a register of gifts and contributions to travel.*
- (2) The register is to contain a record of the disclosures made under sections 5.82 and 5.83.*
- (3) The register is to be in the form that is prescribed (if any).*
- (4) The CEO is to make the register available for public inspection.*
- (5) The CEO is to publish the register on the local government's official website.*

#### Issues Identified

The Shire has a Gift Register in place that has no recent disclosures of gifts recorded by any Council members or staff.

There are three categories of gifts provided for in the legislation including gifts over \$200 which were previously disclosed in annual financial interest returns. Now they need to be disclosed in a register which is published on the local government's

website. The other two gift categories are notifiable and prohibited gifts, and electoral gifts.

The Shire of Dowerin's current Gifts Register does not appear to make proper provision for any of those gifts

### Conclusion

The Shire's Gift Register is non-compliant with the statutory requirements in regard to keeping and maintaining the relevant register(s) for the purpose of disclosing gifts received by Council members and employees of the Shire.

### **Recommendation: 16**

The CEO reviews the Shire's Gift Register to ensure all categories of gift disclosures are recorded by Council members and employees in a manner compliant with the statutory provisions of the Act and associated regulations.

## 14. CODE OF CONDUCT

### Statutory Requirement

Section 5.103 of the Act states:

Codes of conduct

- (1) *Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.*

Regulation 34B of the *Local Government (Administration) Regulations 1996* states:

- (2) *A code of conduct is to contain a requirement that a person who is an employee refrain from accepting a prohibited gift from a person who —*
  - (a) *is undertaking or seeking to undertake an activity involving a local government discretion; or*
  - (b) *it is reasonable to believe is intending to undertake an activity involving a local government discretion.*
- (3) *A code of conduct is to contain a requirement that a person who is an employee and who accepts a notifiable gift from a person who —*
  - (a) *is undertaking or seeking to undertake an activity involving a local government discretion; or*
  - (b) *it is reasonable to believe is intending to undertake an activity involving a local government discretion,*
  - (c) *notify the CEO, in accordance with subregulation (4) and within 10 days of accepting the gift, of the acceptance.*

Regulation 34C of the *Local Government (Administration) Regulations 1996* states:

- (2) *A code of conduct is to contain a requirement that a person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person disclose the nature of the interest —*
- (a) *in a written notice given to the CEO before the meeting; or*
  - (b) *at the meeting immediately before the matter is discussed.*

### **Issues Identified**

The Shire's Code of Conduct was last reviewed on 29 June 2006. There are references to statutory provisions regarding gifts that are out of date. There are also implications for the Code in regard to other matters contained in the *Local Government (Rules of Conduct) Regulations 2007*.

### **Conclusion**

The Shire's Code of Conduct contains information that is not up to date regarding current gift provisions in the regulations or the Act. For example, it is not compliant with Regulation 34B and 34C of the *Local Government (Administration) Regulations 1996* which deals with "notifiable" and "prohibited" gifts and impartiality interest (non-financial).

### **Recommendation: 17**

The CEO reviews the Shire's Code of Conduct and updates the information to include the content that is required by the Act, *Local Government (Administration) Regulations 1995* and the *Local Government (Rules of Conduct) Regulations 2007*.

## **GENERAL CONCLUSION**

### **Statutory Environment:**

Regulation 17 of the *Local Government (Audit) Regulations 1996* states:

- (1) *The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to —*
- (a) *risk management; and*
  - (b) *internal control; and*
  - (c) *legislative compliance.*
- (2) *The review may relate to any or all of the matters referred to in subregulation (1)(a), (b) and (c), but each of those matters is to be the subject of a review at least once every two calendar years.*
- (3) *The CEO is to report to the audit committee the results of that review.*

### **Conclusion**

The Shire's procedures are in a poor state of compliance and have been for some time. This conclusion is based not only on what has been identified in the

Department's compliance probity audit, but also the findings in the Shire's recent Forensic Audit and Statutory Compliance Audit Return completed for 2015.

A number of statutory registers that are to be kept by a local government were either non-existent or failed to comply with the requirements set out in the Act and regulations.

A key contributing factor to the Shire's performance in this area is its record keeping systems for maintaining efficient and effective records and documents.

In view of the state of the Shire's processes, the CEO needs to focus on improving standards of the relevant systems, processes, procedures and practices in regard to risk management, internal controls and statutory compliance.

**Recommendation: 18**

The CEO consolidates all the issues identified in this report and other matters from the Shire's Financial Forensic Audit and 2015 Statutory Compliance Audit Return for the CEO to use as a guide in addressing the Shire's level of compliance including improvements to its processes and procedures.







# Shire of Dowerin

## Audit Committee Meeting Minutes - Unconfirmed

29 August 2016

12noon

| COMMITTEE MEMBERS            | REPRESENTING                            |
|------------------------------|---|
| Cr D.E. Metcalf              | Shire of Dowerin                        |
| Cr A.J. Metcalf              | Shire of Dowerin                        |
| Cr R.I Trepp                 | Shire of Dowerin                        |
| Mr Jason Whiteaker           | External Advisor of the Audit Committee |
| OBSERVER                     | REPRESENTING                            |
| Andrea Selvey – CEO          | Shire of Dowerin                        |
| Sonia King – Finance Manager | Shire of Dowerin                        |
| Leanne Oliver                | Shire Auditor (Byfields)                |

## COMMITTEE TERMS OF REFERENCE

1. At the Ordinary Meeting of Council on 19 July 2016, Council adopted the Terms of Reference for the Audit Committee. These Terms of Reference are available on request.

Shire of Dowerin  
13 Cottrell Street  
Dowerin WA 6461  
08 9631 1202  
[www.dowerin.wa.gov.au](http://www.dowerin.wa.gov.au)

**SHIRE OF DOWERIN**

**AGENDA FOR THE AUDIT COMMITTEE MEETING TO BE HELD ON 29 AUGUST 2016**

**TABLE OF CONTENTS**

**Contents**

|  |   |
|--|---|
| COMMITTEE TERMS OF REFERENCE .....                               | 2 |
| 1. DECLARATION OF OPENING .....                                  | 4 |
| 2. ATTENDANCE .....  | 4 |
| 3. APOLOGIES .....   | 4 |
| 4. APPLICATIONS FOR LEAVE OF ABSENCE .....                       | 4 |
| 4. DECLARATION OF INTEREST .....                                 | 4 |
| 5. CONFIRMATION OF MINUTES .....                                 | 4 |
| 6. PRESENTATIONS .....   | 5 |
| 7. AUDIT REPORTS .....   | 6 |
| 7.1 SCOPE OF THE AUDIT OF THE 2015/16 FINANCIAL STATEMENTS ..... | 6 |
| 8. QUESTIONS FROM MEMBERS .....                                  | 8 |
| 9. URGENT BUSINESS .....   | 8 |
| 10. DATE OF NEXT MEETING .....                                   | 8 |
| 11. CLOSURE OF MEETING .....                                     | 8 |

**1. DECLARATION OF OPENING**

The Presiding Member declared the meeting open at 12noon.

**2. ATTENDANCE**

Cr D. Metcalf - Chairperson

Cr A.J. Metcalf

Cr R.I. Trepp

Mr J. Whiteaker

Observers

A. Selvey - Chief Executive Officer

S. King – Finance Manager

L. Oliver – Shire Auditor

**3. APOLOGIES**

Nil

**4. APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**4. DECLARATION OF INTEREST**

IMPORTANT: Parts of Division 6 Subdivision 1 of the Local Government Act 1995 requires Council members and employees to disclose any direct or indirect financial interest or general interest in any matter listed in this agenda.

The Act also requires the nature of the interest to be disclosed in writing before the meeting or immediately before the matter being discussed.

NB A Council member who makes a disclosure must not preside or participate in, or be present during, any discussion or decision making procedure relating to the disclosed matter unless the procedures set out in Sections 5.68 or 5.69 of the Act have been complied with.

**5. CONFIRMATION OF MINUTES**

OFFICER'S RECOMMENDATION

***THAT THE MINUTES OF THE MEETING OF THE SHIRE OF DOWERIN AUDIT COMMITTEE HELD ON 10 AUGUST 2016 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF THAT MEETING.***

Moved: Cr AJ Metcalf

Seconded: Cr R Trepp

Carried: 4/0

**6. PRESENTATIONS**

Presentation by Leanne Oliver on the progress of the Interim Audit.

## 7. AUDIT REPORTS

### 7.1 SCOPE OF THE AUDIT OF THE 2015/16 FINANCIAL STATEMENTS

|                         |   |
|-------------------------|---|
| Date:                   | 1 August 2016   |
| File Ref:               |   |
| Disclosure of Interest: | Nil   |
| Author:                 | Andrea Selvey, CEO  |
| Attachments:            | Scope of Audit as approved at the 10 August Audit Committee Meeting |

#### Summary

The item seeks the Audit Committee's review and recommendations regarding the scope of work for the 2015/16 audit.

#### Background

At the Audit Committee meeting held on 10 August, the Committee considered a draft scope of work for the 2015/16 audit. The scope includes the model minimum standard audit specification as outlined by the DLGC and three additional procedures. The Audit Scope was approved at the meeting and subsequently approved by Council at the Ordinary Meeting of Council on 16 August 2016. See attachment one - Scope for the audit of the 2015/16 financial statements.

#### Comment

Further to this meeting, the CEO met with the Auditor on 12 August to discuss items arising from the Audit Committee meeting. As per the Committee recommendation, the discussion included the potential to include the additional scope requirement as part of the standard audit. The Auditor had some feedback in relation to that request and it was more appropriate for the Audit Committee to discuss the scope directly with the Auditor. Therefore, this meeting between the Audit Committee and Auditor was scheduled accordingly.

#### Financial Implications

The scope for the 2015/16 audit that includes the model minimum standard audit specification as outlined by the Department of Local Government and Communities has been budgeted in the 2016/17 at a cost of \$16,500.

The following additional procedures have been quoted as follows and can be accommodated in the 2016/17 compliance budget of \$50,000 as approved by council.

- a. Tracing transaction and delegation/authorisation limits at a cost of \$2,400(+gst) = \$2640; and
- b. Separation of duties at a cost of \$1,800(+gst) = \$1980

#### Policy Implications

NIL

#### Statutory Implications

Local Government (Audit) Regulations 1996 - Reg 7 deals with Agreements with auditors, contents of an agreement between a local government and an auditor including:

- (a) the objectives of the audit; and
- (b) the scope of the audit; and

- (c) a plan for the audit; and
- (d) details of the remuneration and expenses to be paid to the auditor; and
- (e) the method to be used by the local government to communicate with, and supply information to, the auditor.

Strategic Implications

Aligns with the Strategic Community Plan Theme 4 – Local Government Leadership

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**OFFICER'S RECOMMENDATION – ITEM 7.1**

**THAT THE AUDIT COMMITTEE CONSIDERS THE SCOPE FOR THE AUDIT OF THE 2015/16 FINANCIAL STATEMENTS AND SHOULD ANY CHANGES BE REQUIRED PUT THE CHANGES BEFORE THE ORDINARY MEETING OF COUNCIL ON 20 SEPTEMBER 2016**

*(To be finalised during the meeting with the Auditor)*

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**COMMITTEE RECOMMENDATION – ITEM 7.1**

Moved: Mr J Whiteaker

Seconded: Cr AJ Metcalf

Carried: 4/0

**THAT COUNCIL PURSUANT TO REG 7 OF THE LOCAL GOVERNMENT (AUDIT) REGULATIONS 1996 RESOLVES TO:**

1. **ENDORSE THE SCOPE OF AUDIT FOR THE 2015/16 YEAR WITH THE FOLLOWING AMENDMENTS:**
  - a. **TRACING TRANSACTIONS PROCEDURE BE FOCUSED ON THE PERIOD 1 NOVEMBER 2015 TO 30 JUNE 2016;**
  - b. **A DETERMINATION ON THE SAMPLE SIZE FOR THE TRANSACTION REVIEW BE MADE BY FULL COUNCIL ON RECEIPT OF A REPORT TO BE PROVIDED BY BYFIELDS ACCOUNTING OUTLINING LEVELS OF CONFIDENCE COUNCIL CAN HAVE IN THE TRANSACTION REVIEW AS A RESULT OF THE CHOSEN SAMPLE SIZE.**
2. **NOTE THAT THE PROPOSED SAMPLE SIZE OF 30 TRANSACTIONS FOR DELEGATIONS/AUTHORISATION LIMITS AND SEPARATION DUTIES IS SUFFICIENT TO SATISFY RIGOROUS AUDIT REQUIREMENTS AND CAN BE DELIVERED AS PART OF THE SCOPE OF THE AUDIT AT NO ADDITIONAL COST.**



**8. QUESTIONS FROM MEMBERS**

Nil

**9. URGENT BUSINESS**

Nil

**10. DATE OF NEXT MEETING**

Date: TBC

Items for next meeting: TBC

**11. CLOSURE OF MEETING**

The presiding member closed the meeting at 1.00pm.