



Shire of Cunderdin

Minutes of an Ordinary Council Meeting

Dear Council Member,

The Ordinary Meeting of the Cunderdin Shire Council was held on **Thursday 18th March 2021** in the Council Chambers, Lundy Avenue, Cunderdin WA, 6407 **commencing at 5.00pm**

Stuart Hobley
Chief Executive Officer
12th March 2021

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MINUTES

1. Declaration of Opening

The President declared the meeting open at 5:05 pm.

The Shire of Cunderdin disclaimer was read aloud.

The *Local Government Act 1995* Part 5 Division 2 Section 5.25 and Local Government (Administration) Regulations 1996 Regulation 13

“No responsibility whatsoever is implied or accepted by the Shire of Cunderdin for any act, omission or statement or intimation occurring during this meeting. It is strongly advised that persons do not act on what is heard at this Meeting and should only rely on written confirmation of Council’s decisions, which will be provided within ten working days of this meeting”.

Read by Cr Dennis Whisson

2. Record of Attendance, Apologies and Approved Leave of Absence

2.1 Record of attendances

Councillors

Cr DA (Dennis) Whisson	Shire President
Cr AE (Alison) Harris	Deputy President
Cr TE (Todd) Harris	
Cr B (Bernie) Daly	
Cr NW (Norm) Jenzen	
Cr W (Sam) Stewart	
Cr A (Tony) Smith	

In Attendance

Stuart Hobley	Chief Executive Officer
Hayley Byrnes	Deputy Chief Executive Officer
Lauren Cole	Governance and Compliance Officer

Guests of Council

Nil

Members of the Public

Nil

2.2 Apologies

Nil

2.3 Leave of Absence Previously Granted

Nil

3. Public Question Time

Nil.

4. Petitions, Deputations & Presentations

Nil.

5. Applications for Leave of Absence

Nil.

6. Confirmation of the Minutes of Previous Meetings

6.1 Ordinary Meeting of Council held on 18th February 2021

Resolution 6.1 OCM March 2021

That the Minutes of the Ordinary Council Meeting held on Thursday 18th February 2021 be confirmed as a true and correct record.

Moved: Cr B (Bernie) Daly

Seconded: Cr W (Sam) Stewart

Vote – Simple Majority

Carried: 7/0

Note to this item:

The President will sign the minute declaration on the previous minutes.

7. Declaration of Members and Officers Interests

- Mr Stuart Hobley declared an Financial Interest on Item 9.12 Model Standards for CEO Recruitment, Performance and Termination.
- Mr Stuart Hobley declared an impartiality Interest on Item 9.13 Adoption of Policy on Appointing an Acting Chief Executive Officer.
- Mrs Hayley Byrnes declared an Financial Interest on Item 9.13 Adoption of Policy on Appointing an Acting Chief Executive Officer.
- Cr W (Sam) Stewart declared an Proximity Interest on Item 9.7 Reserve price – Lot 201 Bourke Street, Meckering.

8. Announcements by President without Discussion

Cr Whisson thanked Cr Jayson Goldson for his time on Council and wish him all the best in future endeavours.

9 Finance & Administration

9.1 Financial Reports for February 2021

Location:	Cunderdin
Applicant:	Deputy Chief Executive Officer
Date:	5 th March 2021
Author:	Hayley Byrnes
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	2 attachments – Monthly Report February 2021 and Rates Report

Proposal/Summary

The financial reports as at 28th February 2021 are presented for Councils consideration.

Background

The financial reports have been circulated to all Councillors.

Comment

Nil.

Consultation

Nil.

Statutory Environment

The *Local Government Act 1995* Part 6 Division 3 requires that a monthly financial report be presented to Council.

Policy Implications

Nil.

Financial Implications

All financial implications are contained within the reports.

Strategic Implications

Nil.

Resolution 9.1 OCM March 2021

That Council receives the monthly financial reports for the periods ending 28th February 2021.

Moved: Cr AE (Alison) Harris

Seconded: Cr NW (Norm) Jenzen

Vote – Simple Majority

Carried: 7/0

9.2 Accounts Paid – February 2021

Location:	Cunderdin
Applicant:	Deputy Chief Executive Officer
Author:	Hayley Byrnes
Report Date:	5 th March 2021
Item Approved By:	Stuart Hobley, Chief Executive Officer
Disclosure of Interest:	Nil
File Reference:	Nil
Attachment/s:	Creditors list of payments February 2021 Credit Card Statement February 2021

Proposal/Summary

Council is requested to confirm the payment of Accounts totalling:

Total for Municipal - \$346,742.43

Total for Trust - \$0.00

TOTAL - \$346,742.43

For December 2020 as listed in the Warrant of Payments for the period 1st to 28th February 2021.

Background

Nil.

Comment

Nil.

Consultation

Nil.

Statutory Environment

In accordance with Financial Management Regulations 12 & 13, a List of all accounts paid or payable shall be presented to Council (Refer Warrant of Payments attached).

Financial Management Regulations 12 & 13.

Policy Implications

Nil.

Financial Implications

All financial implications are contained within the reports.

Strategic Implications

Nil.

Resolution 9.2 OCM March 2021

1. That Council's payment of accounts amounting to \$346,742.43 being from Municipal Account for February 2021, as follows:

Municipal Account	\$	Total
Electronic Funds Transfer: EFT 4833 – 4906	\$323,254.52	
Direct Debit (Inc Bank Charges): DD2047.1-DD2075.11	\$17,073.74	
Cheques: 11678-11688	\$6,414.17	
TOTAL		\$346,742.43

be confirmed and noted; and,

2. That the Payments List as presented be incorporated in the Minutes of the Meeting.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr TE (Todd) Harris

Vote – Simple Majority

Carried: 7/0

9.3 Council Investments – As at 28th February 2021

Location:	Cunderdin
Applicant:	Deputy Chief Executive Officer
Author:	Hayley Byrnes
Report Date:	5 th March 2021
Item Approved By:	Stuart Hobley, Chief Executive Officer
Disclosure of Interest:	Nil
File Reference:	Nil
Attachment/s:	Bank Statements February 2021

Proposal/Summary

To inform Council of its investments as at 28th February 2021.

Background

The authority to invest money held in any Council Fund is delegated to the Chief Executive Officer. Council Funds may be invested in one or more of the following:

- Fixed Deposits;
- Commercial Bills;
- Government bonds; and
- Other Short-term Authorised Investments.

Council funds are to be invested with the following financial institutions:

- Major Banks & Bonds Issued by Government and/ or Government Authorities.

Comment

In addition to the Shire's Municipal Operating Accounts, the below investment accounts are held as at 28th February 2021.

COUNCIL ACCOUNTS					
Institution	Amount	Investment type/ Account details	Municipal Funds	Reserve Funds	Trust Funds
Westpac Bank	\$613,766.25	Municipal- 0000030	\$613,766.25		
Bendigo Bank	\$2,457,137.87	Municipal- 155971377	\$1,177,291.28	\$828,299.01	\$451,547.58
Westpac Bank	\$146.78	Business Cash Reserve 22-3647 0.50%		\$146.78	
Bendigo Bank	\$0.00	Bendigo Trust Account 164 488 686			\$0.00
Westpac Bank	\$0.00	Trust Working Account 12-2981			\$0.00
Bendigo Bank	\$251,915.25	Bendigo Term Deposit 0.4%\$ Expires:28/02/2021	\$251,915.25		
TOTAL INVESTMENTS	\$252,062.03		\$251,915.25	\$146.78	\$0.00

In addition to the above Shire funds, the Shire administers the Cunderdin Community Centre Trust Account being Westpac Account 000 073 - \$ 96,974.42 and Bendigo Account Ref: 3030072 – \$ 451,547.58.

CUNDERDIN COMMUNITY TRUST DETAILS		
28th February 2021		
Opening Balance as per Bank Statement & Term Deposits	INVESTMENT ACC	96,974.42
	MUNI ACC	451,547.58
	TOTAL	548,522.00
Credits		0.00
Debits		0.00
Closing Balance as Per Bank Statements & Term Deposits	TOTAL	548,522.00
INCOMING		
<i>Interest (Investment account)</i>		0.00
		0.00
OUTGOING		
		0.00
Balance as at end of month	TOTAL	548,522.00

Consultation

Nil.

Statutory Implications

Financial Management Regulation 19.

Policy Implications

Nil.

Financial Implications

There are no financial implications in considering this item.

Strategic Implications

This item related to the Integrated Planning and Reporting Framework, which feeds into the Long Term Financial Plan when determining annual Council Budgets.

Resolution 9.3 OCM March 2021

That the report on Council investments as at 28th February 2021 be received and noted.

Moved: Cr AE (Alison) Harris

Seconded: Cr W (Sam) Stewart

Vote – Simple Majority

Carried: 7/0

9.4 Amendment to Fees and Charges – 2020/21

Location:	Cunderdin
Applicant:	Administration
Date:	25 th February 2021
Author:	Lauren Cole
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	ATO – Goods and Services tax and burial rights

Proposal/Summary

For Council to authorise an amendment to the Cemetery Fees as set in the 2020/2021 Budget – Fees and Charges.

Background

In performing the functions of managing a cemetery within the Shire of Cunderdin, officers may grant to a person for a specified term a “Grant of Right of Burial” for a specified “plot” within the cemetery and the right to place a memorial on the “plot”. A “Right of Burial: can be in respect of a plot, vault or designated area of the cemetery where cremated ashes are placed.

On the 28th August 2020 the Australia Taxation Office (ATO) rules that GST was not applicable to a “Grant of Right of Burial” in respect to a cemetery elsewhere in the State. Currently, in accordance with the Schedule of Fees and Charges set by Council for it’s 2020/21 Budget a “Grant of Right of Burial” includes GST. In the interest of consistency, and in accordance with advice from the ATO , it is recommended that Council amend its Schedule of Fees and Charges for the Grant of Right of Burial” fee to be exempt from GST.

Comment

A key consideration in this decision is that “Grant of Right of Burial” fees are applied for the purpose of cost recovery for regulatory services provided on behalf of the Western Australian Government and for the benefit of the community.

It is recommended, in the interest of consistency that regional local governments managing a cemetery take steps to adopt the ruling to apply GST exemption to the “Grant of Right of Burial” component of fees.

Currently our 2020/21 Fees are;

<u>Internment and Associated Charges</u>		
Internment up to 2.1 Metres (Weekdays) (Including grant of right of burial)	\$ 1,111.00	GST Inc
Internment up to 2.1 Metres (Weekends, Public Holidays or RDO) (Including grant of right of burial)	\$ 1,738.00	GST Inc
Internment Single or Double Niche Wall	\$ 170.00	GST Inc
Internment with out due notice	\$ 150.00	GST Inc
Re- Issue of Grant of right of burial	\$ 121.00	GST Inc

As the “Grant of Right of Burial” is currently included in the Internment fee, it is recommended to separate the two fees to allow for separate GST allocations.

The Proposed fee amendment;

<u>Internment and Associated Charges</u>		
Internment up to 2.1 Metres (Weekdays) (plus grant of right of burial)	\$ 990.00	GST Inc
Internment up to 2.1 Metres (Weekends, Public Holidays or RDO) (plus grant of right of burial)	\$ 1,617.00	GST Inc
Internment Single or Double Niche Wall	\$ 170.00	GST Inc
Internment with out due notice	\$ 150.00	GST Inc
Issue/Re- Issue of Grant of right of burial	\$ 121.00	GST EXEMPT

Consultation

Australia Taxation Office
 Department of Local Government, Sport & Cultural Industries
 Mrs Hayley Byrnes, Deputy Chief Executive Officer

Statutory Environment

Local Government Act 1995 –

Subdivision 2 — Fees and charges

6.16. Imposition of fees and charges

- (1) A local government may impose* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.
** Absolute majority required.*
- (2) A fee or charge may be imposed for the following —
 - (a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;
 - (b) supplying a service or carrying out work at the request of a person;
 - (c) subject to section 5.94, providing information from local government records;
 - (d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;
 - (e) supplying goods;
 - (f) such other service as may be prescribed.
- (3) Fees and charges are to be imposed when adopting the annual budget but may be —
 - (a) imposed* during a financial year; and
 - (b) amended* from time to time during a financial year.

** Absolute majority required.*

6.17. Setting level of fees and charges

- (1) In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —
 - (a) the cost to the local government of providing the service or goods; and
 - (b) the importance of the service or goods to the community; and
 - (c) the price at which the service or goods could be provided by an alternative provider.
- (2) A higher fee or charge or additional fee or charge may be imposed for an expedited service or supply of goods if it is requested that the service or goods be provided urgently.
- (3) The basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —
 - (a) under section 5.96; or
 - (b) under section 6.16(2)(d); or
 - (c) prescribed under section 6.16(2)(f), where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.
- (4) Regulations may —
 - (a) prohibit the imposition of a fee or charge in prescribed circumstances; or

- (b) limit the amount of a fee or charge in prescribed circumstances.

A New Tax System (Goods and Services Tax) Act 1999 – Division 81 – Payments of taxes, fees and charges

81-1 What this Division is about

GST does not apply to payments of taxes, fees and charges that are excluded from the GST by this Division or by regulations.

GST applies to certain taxes, fees and charges prescribed by regulations.

81.5 Effect of payment of Tax

Australian tax not consideration

(1) A payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is an *Australian tax.

Regulations may provide for exceptions

(2) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of *consideration to the extent the payment is an *Australian tax that is, or is of a kind, prescribed by the regulations.

(3) For the purposes of subsection (2), the *consideration is taken to be provided to the entity to which the tax is payable, for a supply that the entity makes to you.

81-10 Effect of payment of certain fees and charges

Certain fees and charges not consideration

(1) A payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is an

*Australian fee or charge that is of a kind covered by subsection (4) or (5).

Prescribed fees and charges treated as consideration

(2) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of *consideration to the extent the payment is an *Australian fee or charge that is, or is of a kind, prescribed by the regulations.

(3) For the purposes of subsection (2), the *consideration is taken to be provided to the entity to which the fee or charge is payable, for a supply that the entity makes to you.

Fees or charges paid for permissions etc.

(4) This subsection covers a fee or charge if the fee or charge:

- (a) relates to; or
- (b) relates to an application for;

the provision, retention, or amendment, under an *Australian law, of a permission, exemption, authority or licence (however described).

Fees or charges relating to information and record-keeping etc.

(5) This subsection covers a fee or charge paid to an *Australian government agency if the fee or charge relates to the agency doing any of the following:

- (a) recording information;
- (b) copying information;
- (c) modifying information;
- (d) allowing access to information;
- (e) receiving information;
- (f) processing information;
- (g) searching for information.

Policy Implications

Nil.

Financial Implications

Fees amounts do not change, just the GST allocation to the fees.

Strategic Implications

Nil.

Resolution 9.4 OCM March 2021

That Council,

- a) Approve to amend the current Internment up to 2.1 Metres (Weekdays), from \$1,111.00 to \$990.00.
- b) Approve to amend the current Internment up to 2.1 Metres (Weekends, Public Holidays or RDO) from \$1,738.00 to \$1617.00.
- c) Approve to amend the current wording of Re-Issue of Grant of Right of Burial to Issue/Re-Issue of Grant of Right of Burial.
- d) Authorise to change Issue/Re-Issue of Grant of Right of Burial to be GST exempt as of the 18th March 2021, and;
- e) Advertise the change in accordance with the requirements of s6.19 of the Local Government Act, 1995.

Moved: Cr B (Bernie) Daly

Seconded: Cr TE (Todd) Harris

Vote – Absolute majority

Carried: 7/0

9.5 Move Behind Closed Doors

Resolution 9.5 OCM March 2021

That Council move behind closed doors in accordance with s.5.23 of the Local Government Act.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr B (Bernie) Daly

Vote – Simple Majority

Carried: 7/0

9.6 Financial Hardship Application – Extension Request – 82 Mitchell Street, Meckering

Resolution 9.6 OCM March 2021

That Council authorises the Chief Executive Officer:

1. Accept the extension of the current Financial Hardship Application submitted by Ms Joe-Janette Watts for Assessment A53180 being 82 Mitchell Street, Meckering, freezing accruing interest until 1st June 2021 and suspending payments until the 2nd June 2021; and
2. Accept the payment arrangement of \$50.00 per week commencing the 2nd June 2021; and
3. 2. If Ms Watts' financial situation changes in the future this arrangement be reviewed.

Moved: Cr TE (Todd) Harris

Seconded: Cr B (Bernie) Daly

Vote – Simple majority

Carried: 7/0

Cr W (Sam) Stewart declared a Proximity Interest to Item 9.7 and exited the meeting at 5.24pm.

9.7 Reserve Price – Lot 201 Bourke Street, Meckering

Note, the resolution in respect to item 9.7 Reserve Price – Lot 201 Bourke Street, Meckering, will be available following the auction of the property.

Cr W (Sam) Stewart re-entered the meeting at 5.24pm

9.8 Disposal of Asset – 81 Mitchell Street, Cunderdin

Resolution 9.8 OCM March 2021

That Council authorises the Chief Executive Officer:

1. To accept the offer of \$115,000.00 and the accepted contract of sale.
2. Authorise the CEO and President to sign the contract of sale for 81 Mitchell Street.
3. Mrs Halse be advised that the Shire would be required to comply with section 3.58 of the Local Government Act, before any contract for sale is entered into.
4. Council agree to rent the property at a weekly rental for \$200/week from acceptance of offer.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr B (Bernie) Daly

Vote – Simple majority

Carried: 7/0

9.9 Purchase property at 30 Mitchell Street, Cunderdin

Resolution 9.9 OCM March 2021

That Council authorises the Chief Executive Officer:

1. To accept the offer from Ms Naomi Paraskov and Ms Suzanne Wilson of \$40,000 to purchase their property at 30 Mitchell Street, Cunderdin; and,
2. Agree to pay all costs associated with the settlement of the property; and,
3. That the President and Chief Executive Officer be authorised to sign and affix the Common Seal to the Transfer of Land documents.

Moved: Cr W (Sam) Stewart

Seconded: Cr NW (Norm) Jenzen

Vote – Simple majority

Carried: 7/0

9.10 Move from behind closed doors

Resolution 9.10 OCM March 2021

That Council move from behind closed doors in accordance with s.5.23 of the Local Government Act.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr AE (Alison) Harris

Vote – Simple Majority

Carried: 7/0

9.11 Rates – Transfer property to Shire of Cunderdin – A53616

Location:	Cunderdin
Applicant:	Finance Officer
Date:	2 nd March 2021
Author:	Brooke Davidson
Item Approved by:	Stuart Hobley, Chief Executive Officer
Disclosure of Interest:	NIL
File Reference:	A53616
Attachment/s:	NIL

Proposal/Summary

For Council to review and approve the transfer of Assessment A53616, being Lot 286 on Plan 222787, Collins Street, Meckering to the Shire of Cunderdin.

Background

Council at its Ordinary Council Meeting on the 15th February 2018 resolved the following;

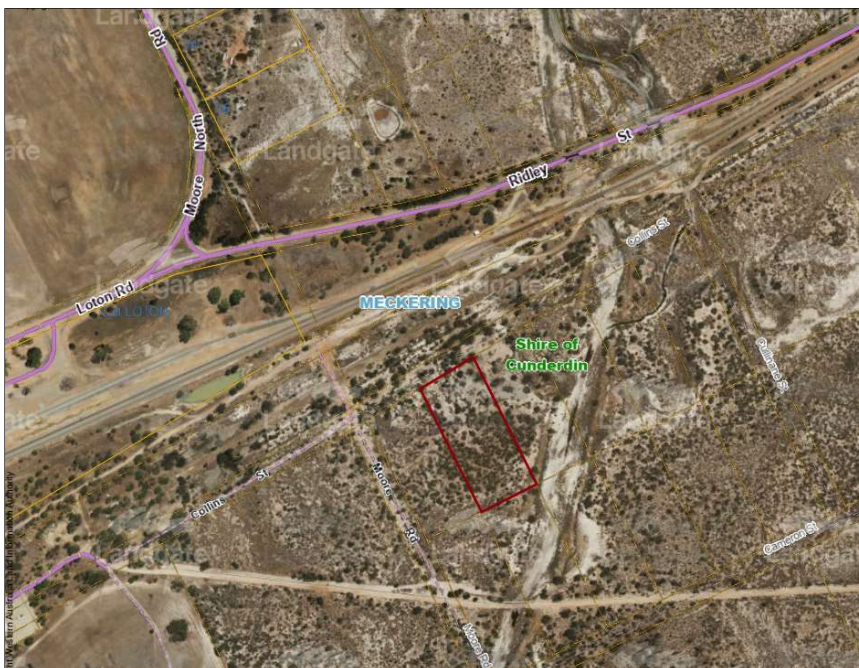
*“That Council, pursuant to section 6.64 of the Local Government Act 1995, proceed to sale of assessments A53560, A53602, A53614, **A53616**, A53667, A53669, A53675, A54849 and A53679.*

Council at its Ordinary Council Meeting on the 18th April 2019 resolved the following;

“That Council authorised the Chief Executive Officer:

- 1. Pursuant to section 6.64 (1)(b) of the Local Government Act 1995, proceed to sale of Assessment A53616, which has rates and services in arrears for 3 or more years.”*

Accordingly, the property was referred to AMPAC for recovery action. Forms 2, 3, 4 and 5 were executed and advertised as required and an auction date was set for the 20th February 2020 at 11:00am at the Cunderdin Ettamogah Pub, 75 Main Street Cunderdin. The property was passed in an auction, due to no bids received.



Comment

Under the powers of the *Local Government Act 1995*, if at the expiration of 12 months and a contract for sale of the land, has not been entered into by the local government, it may transfer the land to itself.

A Transfer of Land document is required to be completed by the President and Chief Executive Officer, with the Common Seal to be affixed.

Council would also be required to write off the outstanding debt associated with the property, currently at \$46,359.49.

The Shire will at this stage retain the land, however could in future submit a Form 6 Application to have the land to revested into the Crown.

Consultation

AMPAC Debt Recovery

Price Sierakowski Corporate

Statutory Implications

The Local Government Act 1995

6.71. Power to transfer land to Crown or to local government

- (1) If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the *Transfer of Land Act 1893*, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —
 - (a) the Crown in right of the State; or
 - (b) the local government.

Policy Implications

Nil.

Financial Implications

Council would be required to write off the outstanding debt, currently at \$46,359.49.

Strategic Implications

Community Leadership

CL5-Objective 4 - Ensure sound long term financial management and deliver value for money.

Resolution 9.11 OCM March 2021

That Council authorises the Chief Executive Officer:

1. Accept the land being assessment A53616, Lot 286 on Plan 222787, Collins Street, Meckering; and,
2. Write off all outstanding rates and charges associated with the property; and,
3. That the President and Chief Executive Officer be authorised to sign and affix the Common Seal to the Transfer of Land documents.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr W (Sam) Stewart

Vote – Simple majority

Carried: 7/0

Mr Stuart Hobley declared a Financial Interest on item 9.12.

Mr Hobley was permitted to stay in the meeting but did not speak on the item.

9.12 Model Standards for CEO Recruitment, Performance and Termination

Location:	Cunderdin
Applicant:	Administration
Date:	23 rd February 2021
Author:	Lauren Cole
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	3 x Attachments

Proposal/Summary

The government has enacted new legislation requiring all local governments to adopt mandatory minimum standards that cover the recruitment, selection, performance review and early termination of local government Chief Executive Officers.

The Local Government (Administration) Amendment Regulations 2021 (CEO Standards Regulations) bring into effect section 22 of the Amendment Act.

The Model CEO Standards provide a framework for local government to select a CEO, review their performance and terminate their contract of employment early, in accordance with the principles of merit, probity, fairness, equity and transparency.

Background

The following regulation took effect on 3rd February 2021, implementing the remaining parts of the Local Government Legislation Amendment Act 2019:

- Local Government (Administration) Amendment Regulations 2021;
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021; and
- Local Government (Model Code of Conduct) Regulations 2021.

Key features of the regulations relating to recruitment, selection, performance review and early termination of local government Chief Executive Officers include the requirements to:

- Establish a selection panel comprised of council members and at least one independent person to conduct the recruitment and selection process for the position of CEO;
- Establish a performance review process by agreement between the local government and the CEO; and
- Conduct a recruitment and selection process where an incumbent CEO has held the position for a period of ten or more consecutive years on expiry of the CEO's contract.

In addition, requirements for advertising vacant CEO position have been updated to align with amendments to state-wide public notice provisions.

Local governments will be required to prepare and adopt the Model Standards within three months of these regulations coming into effect (by 3 May 2021). Until such time as a local government adopts the Model Standards (with or without minor permitted variations), the regulations apply.

Local governments that have a CEO recruitment process currently underway, or are about to commence a CEO recruitment process, are encouraged to contact the department to discuss compliance with the new Standards.

Comment

The Department of Local Government, Sport and Cultural Industries (DLGSC) has produced Guidelines on the Standards, which is provided as an attachment to this item.

If the local government doesn't adopt the model standards, they are taken to be the Shire's Standards.

The Chief Executive Officer is of the opinion that they are satisfactory to be adopted without modification, however the Council is at liberty to adjust them, as long as they are not inconsistent with the default standards in the regulations.

There is a requirement to adopt a set of Standards by a Complaints Office by the 3 May 2021.

The current Chief Executive Officer's contract doesn't expire until 30th June 2024 and on this new legislative change, is only renewable for up to one more 5 year term, if both parties are agreeable, before the Council is legally bound to advertise the position in accordance with the adopted standards of the day.

Consultation

WALGA

Department of Local Government, Sport and Cultural Industries
Stuart Hobley, Chief Executive Officer

Statutory Environment

Sections of the Acts, Regulations and/or Local Laws that apply to this item include:

- Local Government Act 1995, Section 5.39B;
- Local Government (Administration) Amendment Regulations 2021; and
- Local Government (Administration) Regulations 1996.

5.39B, States:

"Adoption of model standards

(1) In this section —

model standards means the model standards prescribed under section 5.39A(1).

(2) Within 3 months after the day on which regulations prescribing the model standards come into operation, a local government must prepare and adopt standards to be observed by the local government that incorporate the model standards.*

** Absolute majority required.*

(3) Within 3 months after the day on which regulations amending the model standards come into operation, the local government must amend the adopted standards to incorporate the amendments made to the model standards.*

** Absolute majority required.*

(4) A local government may include in the adopted standards provisions that are in addition to the model standards, but any additional provisions are of no effect to the extent that they are inconsistent with the model standards.

(5) The model standards are taken to be a local government's adopted standards until the local government adopts standards under this section.

(6) The CEO must publish an up-to-date version of the adopted standards on the local government's official website.

(7) Regulations may provide for —

(a) the monitoring of compliance with adopted standards; and

(b) the way in which contraventions of adopted standards are to be dealt with".

Policy Implications

There are no current policies of the Council that conflict.

Financial Implications

The adoption of the model standard – which is required by law, with only minor variations permitted, and only to the extent that it is not inconsistent, will, in all probability, add to the cost of recruitment of a Chief Executive Officer. This by virtue of the additional administrative requirements of a consultant, if a consultant is utilised, as well as the need for an external person (in addition to the consultant) to be on the recruitment panel – which may require remuneration. Typically, prior to these legislative changes, the recruitment of a Chief Executive Officer, for a band 4 local government, and utilising a consultant (who must be licensed) costs anywhere from \$15,000 to \$35,000, plus advertising.

It is not known what additional cost might be incurred with the adoption of the ‘minimum’ standard, however it conceivably will certainly add administrative time, due to the additional legislated components and recording requirements.

One might argue that ‘gone are the days’ that a local government can recruit, or certainly terminate, a Chief Executive Officer without a consultant, with these new regulatory measures.

It will almost certainly add time, as any variations (no matter how seemingly insignificant or minor) to the proposed contract to be offered, have to be previously permitted / agreed by resolution of the Council.

Strategic Implications

Shire of Cunderdin Strategic Community Plan

Civic Leadership

CL5 – Objective 1

Deliver sustainable governance through transparent and robust policy and processes.

CL5 – Objective 2

Undertake the civic duties of Council with the highest degree of ethics.

CL5 – Objective 5

Improve organisational planning, processes and systems.

Resolution 9.12 OCM March 2021

That with respect to the new mandatory minimum standards that cover the recruitment, selection, performance review and early termination of local government Chief Executive Officers, Council;

1. Pursuant to section 5.69B (2) of the Local Government Act 1995, adopt the new Model Standards for Chief Executive Officer Recruitment, Performance and Termination as detailed in Attachment 9.12.1.
2. Pursuant to section 5.39B (6) of the Local Government Act 1995, request the Chief Executive Officer to ensure that the adopted Standards are published on the Shire’s official website, as soon as practical.

Moved: Cr AE (Alison) Harris

Seconded: Cr B (Bernie) Daly

Vote – Absolute majority

Carried: 7/0

Mr Stuart Hobley declared an Impartiality Interest on item 9.13.

Mrs Hayley Byrnes declared an Financial Interest on item 9.13.

Mrs Byrnes was permitted to stay in the meeting but did not speak on the item.

9.13 Adoption of Policy on Appointing an Acting Chief Executive Officer

Location:	Cunderdin
Applicant:	Administration
Date:	23 rd February 2021
Author:	Lauren Cole
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	1 x Attachment

Proposal/Summary

The government has enacted new legislation requiring all local governments to adopt a policy that covers the process to be followed by the local government in relation to the following —

- a) the employment of a person in the position of CEO for a term not exceeding 1 year;
- b) the appointment of an employee to act in the position of CEO for a term not exceeding 1 year.

The Local Government (Administration) Amendment Regulations 2021 (CEO Standards Regulations) bring into effect section 5.39C of the Local Government Act 1995.

Background

The following regulations took effect on 3 February 2021, implementing the remaining parts of the Local Government Legislation Amendment Act 2019:

- Local Government (Administration) Amendment Regulations 2021;
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021; and
- Local Government (Model Code of Conduct) Regulations 2021.

Comment

The DLGSC has not produced any regulations that stipulate the form or content of the required policy.

There is an expectation that the Council should adopt such a policy within a reasonable timeframe (no set date has been enshrined in legislation).

WALGA has advised that it is developing a model policy, however Council has had an accepted process for many years. Council current process for appointing an Acting Chief Executive Officer is mostly consistent with the new requirements. Minor small administrative changes have been proposed as detailed below.

These minor modification to the current process would suffice, from an immediate compliance perspective. The model can be reviewed once it becomes available from WALGA.

In its guidance on the subject, the Department of Local Government, Sport and Cultural Industries (DLGSC) notes:

“Where the role of CEO is not fulfilled for a significant period, this leads to increased risk to the operations and governance of the local government. Therefore, local governments are required to develop and implement a policy that outlines the arrangements to temporarily replace a CEO for any period less than twelve months, for example, when a CEO is on planned or unplanned leave. The policy must include the decision-maker(s) for appointing an acting CEO.

As an example, the policy may include employee position titles, specifying that the Council considers a person holding these positions to be suitably qualified and experienced for the position of CEO. In addition, the policy

should also include a methodology for the CEO to appoint an Acting CEO from the listed positions for a period of absence of up to four weeks; however any decision regarding the appointment of an Acting CEO for any period exceeding four weeks must be made by the council.

The policy must be made available on the local government's official website".

The Shire currently has guidance on the matter via existing Council Policy 2.2 Acting / Relieving CEO as follows:

"Policy Statement

- 1. The Manager Corporate Services and Finance is approved as Acting CEO in the following circumstances –
 - a) In the unforeseen, urgent absence of the CEO, and*
 - b) For a period of up to 1 month, or as otherwise determined by Council.**

The Shire also currently has guidance on the matter via existing Delegations Registers 1.2 Acting CEO – Appointments as follows:

"Delegations Register – Application

- 1. Process is outlines in Policy 2.2 Acting / Relieving CEO.*

It is recommended to also amend the current Council Policy 2.1 Senior employees – Designations, which currently reads:

"Policy Statement

- 1. Pursuant to Section 5.37 of the Local Government Act 1995, the following employees are designated as senior employees –
 - a) Manager Corporate Service and Finance*
 - b) Manager Works and Services**

The recommended solution to bring the Council's existing Policy and Delegation into compliance with the new requirement is to repeal the delegation and adopt an amended policy's as follows;

Amend the current Policy 2.1 Senior employees - Designation to read as follows:

"Policy Statement

- 1. Pursuant to Section 5.37 of the Local Government Act 1995, the following employees are designated as senior employees –
 - a) Deputy Chief Executive Officer*
 - b) Manager Works and Services**

Amend the current Policy 2.2 Appointing an Acting Chief Executive Officer to read as follows:

"Policy Statement

Pursuant to Section 5.36 (2) of the Local Government Act 1995, the Council has determined that the Deputy Chief Executive Officer is suitably qualified to be appointed as Acting CEO by the CEO, from time to time, when the CEO is on periods of leave, subject to the following conditions;

- a) The CEO is not an interim CEO or Acting in the positions;*
- b) For a period of up to 1 month, or as otherwise determined by Council.*
- c) That the employee's employment conditions are not varied other than the employee entitled at the CEO's discretion, no greater than the salary equivalent to that of the CEO during the Acting period.*

In the case of the unavailability of the CEO due to an emergency, the Deputy Chief Executive Officer is automatically appointed for up to 2 weeks from commencement, and continuation is then subject to determination by the Council.

All other interim, Acting or CEO appointments to be referred to Council.

Consultation

WALGA

Department of Local Government, Sport and Cultural Industries

Mr Stuart Hobley, Chief Executive Officer

Statutory Environment

Sections of the Acts, Regulations and/or Local Laws that apply to this item include:

- Local Government Act 1995, Section 5.39C and 5.36 (2); and
- Local Government (Administration) Amendment Regulations 2021.

Section 5.39C states:

“5.39C. Policy for temporary employment or appointment of CEO

(1) A local government must prepare and adopt a policy that sets out the process to be followed by the local government in relation to the following —*

(a) the employment of a person in the position of CEO for a term not exceeding 1 year;

(b) the appointment of an employee to act in the position of CEO for a term not exceeding 1 year.

** Absolute majority required.*

(2) A local government may amend the policy.*

** Absolute majority required.*

(3) When preparing the policy or an amendment to the policy, the local government must comply with any prescribed requirements relating to the form or content of a policy under this section.

(4) The CEO must publish an up-to-date version of the policy on the local government’s official website”.

No regulations have been promulgated to give guidance on this matter at the current time, and the Administration is not aware of any proposed.

Further, it has been long held that section 5.36(2) also relates to the position of Acting Chief Executive Officers. This section states:

“A person is not to be employed in the position of CEO unless the council —

(a) believes that the person is suitably qualified for the position; and

(b) is satisfied with the provisions of the proposed employment contract”.*

Policy Implications

Recommended to amend Policy 2.1 Senior employees – Designation and Policy 2.2 Acting / Relieving CEO

Recommended to repeal Delegation 1.2 Acting CEO – Appointments.

Financial Implications

As the proposed policy mirrors the current practice / delegation, there are no financial implications (different to the current practice / process).

Strategic Implications

Shire of Cunderdin Strategic Community Plan

Civic Leadership

CL5 – Objective 1

Deliver sustainable governance through transparent and robust policy and processes.

CL5 – Objective 2

Undertake the civic duties of Council with the highest degree of ethics.

CL5 – Objective 5

Improve organisational planning, processes and systems.

Resolution 9.13 OCM March 2021

That with respect to the new mandatory policy that covers the appointment of local government Chief Executive Officers on terms less than one year (including those in an Acting capacity), Council;

1. Pursuant to section 5.39C (1) of the Local Government Act 1995, adopt the amended Policy 2.2 Appointing an Acting Chief Executive Officer as follows;

Pursuant to Section 5.36 (2) of the Local Government Act 1995, the Council has determined that the Deputy Chief Executive Officer is suitably qualified to be appointed as Acting CEO by the CEO, from time to time, when the CEO is on periods of leave, subject to the following conditions;

- a) The CEO is not an interim CEO or Acting in the positions;*
- b) For a period of up to 1 month, or as otherwise determined by Council.*
- c) That the employee's employment conditions are not varied other than the employee entitled at the CEO's discretion, no greater than the salary equivalent to that of the CEO during the Acting period.*

In the case of the unavailability of the CEO due to an emergency, the Deputy Chief Executive Officer is automatically appointed for up to 2 weeks from commencement, and continuation is then subject to determination by the Council.

All other interim, Acting or CEO appointments to be referred to Council.

2. Pursuant to section 5.39 of the Local Government Act 1995, adopt the amended Policy 2.1 Senior employees – Designation as follows;

Pursuant to Section 5.37 of the Local Government Act 1995, the following employees are designated as senior employees –

- a) Deputy Chief Executive Officer*
- b) Manager Works and Services*

3. Repeal Delegation 1.2 Acting CEO – Appointments as it is replaced by the above Policy.
4. Pursuant to section 5.39B (6) of the Local Government Act 1995, request the Chief Executive Officer to ensure that the adopted Standards are published on the Shire's official website, as soon as practical.

Moved: Cr B (Bernie) Daly

Seconded: Cr TE (Todd) Harris

Vote – Absolute majority

Carried: 7/0

9.14 Code of Conduct for Council Members, Committee members and Candidates

Location:	Cunderdin
Applicant:	Administration
Date:	9 th March 2021
Author:	Lauren Cole
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	4 x Attachments

Proposal/Summary

The government has enacted new legislation requiring all local governments to adopt a new Code of Conduct for Council Members, Committee Members and Candidates for a local government election, and to deal with ancillary matters.

Background

The following regulations took effect on 3 February 2021, implementing the remaining parts of the Local Government Legislation Amendment Act 2019:

- Local Government (Administration) Amendment Regulations 2021;
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021; and
- Local Government (Model Code of Conduct) Regulations 2021.

In regards to the Local Government (Model Code of Conduct) Regulations 2021, Local Governments are required to adopt a Code of Conduct for Council Members, Committee Members and Candidates within three (3) months of the Regulations taking effect.

To account for any breaches occurring on and from the first day that the Regulations take effect, Local Governments must authorise at least one person to receive complaints. This was required to be done by the 24th February 2021 to ensure compliance, the CEO was authorised (by the president) until the item could be presented to Council.

Comment

The Department of Local Government, Sport and Cultural Industries (DLGSC) has produced Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates, which is an attachment to this item. It is expected that a Model Code will be developed in coming months to meet the three (3) month deadline and its adoption will be the subject of a separate consideration / approval by Council.

In the interim, the Model Code of Conduct has been recommended and appears to be satisfactory.

The guidelines indicate that local governments must authorise at least one person to receive complaints regarding members and candidates. The Regulations state that the Local Government must, in writing, authorise one or more persons to receive complaints and withdrawals of complaints, but they do not specify who that person(s) will be. The Complaints Officer could be:

- President,
- Deputy President (especially for complaints about the President),
- Chief Executive Officer, or
- External Consultant

The DLGSC has also produced a template complaints form as the Regulations state that complaints are to be made in writing in a form approved by the Local Government. The DLGSC template form has been used to create the Shire of Cunderdin Complaint Form as per (Attachment 9.13.4).

For clarity, it is noted that there is still a requirement for a local government to have a Complaints Officer (section 5.120 of the Local Government Act 1995), to process allegations of 'Rules of Conduct' breaches, and these alleged breaches are still to be referred to the Local Government Standards Panel (refer Division 4 of the Model Code of Conduct). The position of Chief Executive Officer is currently designated, as that officer.

In time, with the development of templates by industry or the Western Australian Local Government Association (WALGA), Local Governments can determine the most appropriate and effective process for dealing with complaints under Division 3 of the Code of Conduct and how they are prioritised and managed. Having such processes at the moment is not required by the law and nor considered critical.

Consultation

WALGA

Department of Local Government, Sport and Cultural Industries

Stuart Hobley, Chief Executive Officer

Statutory Environment

Sections of the Acts, Regulations and/or Local Laws that apply to this item include:

- Local Government Act 1995,
- Local Government (Administration) Amendment Regulations 2021.
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021
- Local Government (Model Code of Conduct) Regulations 2021

Policy Implications

The Council's existing Code of Conduct, listed as Policy number 1.1, must be repealed, as the Act and Regulations now stipulates there are to be at least two separate Codes, one for Council Members, Committee Members and Candidates, and another for local government employees.

Financial Implications

Nil.

Strategic Implications

Shire of Cunderdin Strategic Community Plan

Civic Leadership

CL5 – Objective 1

Deliver sustainable governance through transparent and robust policy and processes.

CL5 – Objective 2

Undertake the civic duties of Council with the highest degree of ethics.

CL5 – Objective 5

Improve organisational planning, processes and systems.

Resolution 9.14 OCM March 2021

That with respect to the new Model Code of Conduct for Council Members, Committee Members and Candidates for a local government election, Council;

1. Repeal the existing Code of Conduct for Council Members, Committee Members and Employees listed as Policy 1.1;
2. Note that pursuant to section 5.51A of the Local Government Act 1995, the Chief Executive Officer will be preparing an interim Code of Conduct for all employees of the Shire, including the Chief Executive Officer, based on the repealed version, prior to any model being available from WALGA.
3. Pursuant to section 5.104 of the Local Government Act 1995, adopt the new Code of Conduct for Council Members, Committee Members and Candidates for local government elections for Cunderdin, listed as Attachment 9.13.3 and request the Chief Executive Officer to ensure all Elected Members and Committee Members are aware of its content;
4. Pursuant to the Local Government (Model Code of Conduct) Regulations 2021;
 - a. Clause 11 (2), adopt the form for lodging complaints, listed as Attachment 9.13.4;
 - b. Clause 11 (3), authorise the following persons to receive Division 3 complaints and withdrawals of same, relating to about Council Members, Committee Members and Candidates:
 - i. Complaints about Council Members or candidates for elections that become Council Members, excluding those made by the Shire President – the Shire President;
 - ii. Complaints made by the Shire President excluding those made by the Deputy Shire President – the Deputy Shire President;
 - iii. Complaints about the Shire President – the Deputy Shire President; and
 - iv. Complaints about the Deputy Shire President made by the Shire President – a committee comprising the remaining Council Members.
5. Pursuant to sections 5.551A (3) and 5.104 (7) of the Local Government Act 1995, request the Chief Executive Officer to ensure that the updated / adopted Codes of Conduct are published on the Shire's official website, as soon as practical.

Moved: Cr W (Sam) Stewart

Seconded: Cr AE (Alison) Harris

Vote – Absolute majority

Carried: 7/0

9.15 Letter of Resignation – Councillor Jayson Goldson

Location:	Cunderdin
Applicant:	Administration
Date:	3 rd March 2021
Author:	Lauren Cole
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	Letter of Resignation

Proposal/Summary

For Council to receive the letter of Resignation from Councillor Jayson Goldson and to request approval from the Electoral Commissioner for an exemption to not fill the vacancy until the October 2021 Ordinary Local Government Elections.

Background

Councillor Goldson has tendered his letter of resignation to take effect immediately as of the 3rd March 2021.

Cr Goldson was elected to Council at the October 2017 Ordinary Local Government Elections for a four year term. This term was due to expire at the October 2021 Ordinary Local Government Elections

Comment

Cr Goldson's resignation will result in a vacant position, which will either be filled via holding a extraordinary elections or hold the vacant position until the scheduled October 2021 Ordinary Local Government Elections.

Council can seek approval from the Electoral Commissioner to hold the vacant position until the next Ordinary Elections if the vacant positions is after the third Saturday in January but and before the third Saturday in July in that election year.

Cr Goldson's recent resignation falls within that time frame and Council may, seek approval to allow the vacancy to remain unfilled and, in the case, the term of the member who held the office is to be regarded as ending on the day on which it would have ended if the vacancy had not occurred.

Council will also need to consider Cr Goldson's positions on various committees that will need to be reallocated until his vacant position is filled;

Council has previously adopted the following appointments for Cr Goldson, at the OCM held on the 5th November 2019;

Buildings

Cr Jayson Goldson & Cr Alison Harris

Tourism Issues

Cr Jayson Goldson, Cr Alison Harris, Cr Todd Harris, Cr Tony Smith

Cunderdin Business Association

Cr Jayson Goldson

Youth

Cr Jayson Goldson

Consultation

Cr Jayson Goldson, Councillor

Cr Dennis Whisson, Shire President

Mr Stuart Hobley, Chief Executive Officer

Department of Local Government, Sport and Cultural Industries.

Statutory Environment

Local Government Act 1995

Division 6 — Postponement and consolidation of elections

4.16. Postponement of elections to allow consolidation

- (1) This section modifies the operation of sections 4.8, 4.9 and 4.10 in relation to the holding of extraordinary elections.
- (2) If a member's office becomes vacant under section 2.32 (otherwise than by resignation) on or after the third Saturday in July in an election year and long enough before the ordinary elections day in that year to allow the electoral requirements to be complied with, any poll needed for the extraordinary election to fill the vacancy is to be held on that ordinary elections day.
- (3) In the case of a member's office becoming vacant under section 2.32 by resignation, if —
 - (a) the resignation takes effect, or is to take effect, on or after the third Saturday in July in an election year but not later than one month after the ordinary elections day in that year; and
 - (b) the CEO receives notice of the resignation long enough before that ordinary elections day to allow the electoral requirements to be complied with,any poll needed for the extraordinary election to fill the vacancy is to be held on that ordinary elections day.
- (4) If a member's office becomes vacant under section 2.32 —
 - (a) after the third Saturday in January in an election year; but
 - (b) before the third Saturday in July in that election year,the council may, with the approval of the Electoral Commissioner, fix the ordinary elections day in that election year as the day for holding any poll needed for the extraordinary election to fill that vacancy.

[Section 4.16 amended: No. 66 of 2006 s. 7; No. 2 of 2012 s. 11.]

4.17. Cases in which vacant offices can remain unfilled

- (1) If a member's office becomes vacant under section 2.32 on or after the third Saturday in July in the election year in which the term of the office would have ended under the Table to section 2.28, the vacancy is to remain unfilled and the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.
- (2) If a member's office becomes vacant under section 2.32 —
 - (a) after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but
 - (b) before the third Saturday in July in that election year,the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.
- (3) If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow* the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

** Absolute majority required.*

- (4A) Subsection (3) applies —
 - (a) if —
 - (i) the office is for a district that has no wards; and
 - (ii) at least 80% of the number of offices of member of the council in the district are still filled;or

- (b) if —
- (i) the office is for a ward for which there are 5 or more offices of councillor; and
 - (ii) at least 80% of the number of offices of councillor for the ward are still filled.
- (4) If an ordinary or an extraordinary election is to be held in a district then an election to fill any vacancy in the office of councillor in that district that was allowed to remain unfilled under subsection (3) is to be held on the same election day and Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.

[Section 4.17 amended: No. 49 of 2004 s. 31; No. 66 of 2006 s. 8; No. 17 of 2009 s. 12.]

Policy Implications

Nil.

Financial Implications

If Council had to complete an extraordinary elections and all associated advertising to fill the vacant position prior to the October 2021 Election it would be expected that the advertising cost would be somewhere between \$10,000 and \$15,000.

If Council resolve to hold the position vacant there will be no additional costs as it will be part of the Ordinary Electoral process.

Strategic Implications

Shire of Cunderdin Strategic Community Plan

Civic Leadership

CL5 – Objective 1

Deliver sustainable governance through transparent and robust policy and processes.

CL5 – Objective 2

Undertake the civic duties of Council with the highest degree of ethics.

CL5 – Objective 5

Improve organisational planning, processes and systems.

Resolution 9.15 OCM March 2021

That Council,

1. Receives Councillor Jayson Goldson letter of Resignation from Council, effective immediately.
2. Write to the Electoral commissioner requesting permission to hold the position vacant until the Ordinary October 2021 elections.
3. That Cr NW (Norm) Jenzen be appointed as the Council Representative for the Building Portfolio
4. That Cr W (Sam) Stewart be appointed as the Council Representative for the Tourism Portfolio
5. That Cr TE (Todd) Harris be appointed as the Council Representative for the Cunderdin Business Association; and
6. That Cr A (Tony) Smith be appointed as the Council Representative for the Youth Portfolio.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr W (Sam) Stewart

Vote – Absolute majority

Carried: 7/0

9.16 Shire of Cunderdin Compliance Audit Return 2020

Location:	Shire of Cunderdin
Applicant:	Governance and Compliance Officer
Date:	12 th March 2021
Author:	Lauren Cole
Item Approved by:	Stuart Hobley, Chief Executive Officer
Disclosure of Interest:	Nil
File Reference:	Nil
Attachment/s:	Compliance Audit Report

Proposal/Summary

The Council is requested to review and give consideration to the Shire of Cunderdin Compliance Audit Return 2020, as presented.

Background

It is a requirement of all Local Governments to complete the annual Compliance Audit Return as part of its regulatory obligations to the Department of Local Government, Sport and Cultural Industries.

The Compliance Audit Return (CAR) is completed for the period 1 January to 31 December, and is required to be submitted to the Audit Committee for review prior to being presented to Council.

Comment

The Compliance Audit Return (CAR) for the Shire of Cunderdin for period 1 January 2020 to 31 December 2020 has been completed and a copy circulated to Councillors with the Audit Committee Meeting Agenda. The CAR is to be submitted to the Department of Local Government by 31 March each year.

While completing the Compliance Audit it was noted that the Shire was unable to answer the following sections due to the Final Audit Report not being received yet.

Finance, Question 6:

Reference – S7.12A(3)

Where the local government determined that matters raised in the auditor’s report prepared under s7.9 (1) of the Act required action to be taken, did the local government ensure that appropriate action was undertaken in respect of those matters?

Response: N/A

Comments: Auditors report is yet to be received.

Finance, Question 7:

Reference – S7.12A(4)(a)

Where matters identified as significant were reported in the auditor’s report, did the local government prepare a report that stated what action the local government had taken or intended to take with respect to each of those matters?

Response: N/A

Comments: Auditors report is yet to be received.

Finance, Question 8:

Reference – S7.12A(4)(b)

Where the local government was required to prepare a report under s.7.12A(4)(a), was a copy of the report given to the Minister within three months of the audit report being received by the local government?

Response: N/A

Comments: Auditors report is yet to be received.

Finance, Question 9:

Reference – S7.12A(5)

Within 14 days after the local government gave a report to the Minister under s7.12A(4)(b), did the CEO publicsh a copy of the report on the local government official website?

Response: N/A

Comments: Auditors report is yet to be received.

Finance, Question 11:

Reference – Audit Reg 10(1)

Was the auditor's report for the financial year ending 30 June received by the local government within 30 days of completion of the audit?

Response: N/A

Comments: Auditors report is yet to be received.

While completing the Compliance Audit it was noted that the Shire has not complied with the following part of the Compliance Audit:

Optional Questions, Question 5:

Reference – S5.90A(2)

Did the local government prepare and adopt by absolute majority a policy dealing with the attendance of council members and the CEO at events?

Response: No

Comments: Council currently has a Policy for Elected Members only, does not include CEO.

Optional Questions, Question 6:

Reference – S5.90A(5)

Did the CEO publish a up-to-date version of the attendance at events policy on the local government's official website?

Response: No

Comments: Council currently has a Policy for Elected Members only, does not include CEO

Council has previously adopted Policy 1.8 – Elected Members – Conference & Training Expenses, this will need to be reviewed and amended to include the CEO and social events to ensure compliance with S5.90A(5).

Council will be presented with an updated policy for review at the April Ordinary Council Meeting.

Consultation

Mr Stuart Hobley, Chief Executive Officer

Mrs Hayley Byrnes, Deputy Chief Executive Officer

Mrs Lauren Cole, Governance and Compliance Officer

Statutory Implications

Local Government Act 1995, section 7.13 (1)(i)

7.13. Regulations as to audits

(1) Regulations may make provision —

- (i) requiring local governments to carry out, in the prescribed manner and in a form approved by the Minister, an audit of compliance with such statutory requirements as are prescribed whether those requirements are —
 - (i) of a financial nature or not; or
 - (ii) under this Act or another written law.

Local Government (Audit) Regulations 1996, clauses 13, 14 & 15

13. Prescribed statutory requirements for which compliance audit needed (Act s. 7.13(1)(i))

For the purposes of section 7.13(1)(i) the statutory requirements set forth in the Table to this regulation are prescribed.

14. Compliance audits by local governments

- (1) *A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.*
- (2) *After carrying out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.*
- (3A) *The local government’s audit committee is to review the compliance audit return and is to report to the council the results of that review.*
- (3) *After the audit committee has reported to the council under subregulation (3A), the compliance audit return is to be —*
 - (a) *presented to the council at a meeting of the council; and*
 - (b) *adopted by the council; and*
 - (c) *recorded in the minutes of the meeting at which it is adopted.*

15. Compliance audit return, certified copy of etc. to be given to Executive Director

- (1) *After the compliance audit return has been presented to the council in accordance with regulation 14(3) a certified copy of the return together with —*
 - (a) *a copy of the relevant section of the minutes referred to in regulation 14(3)(c); and*
 - (b) *any additional information explaining or qualifying the compliance audit, is to be submitted to the Executive Director by 31 March next following the period to which the return relates.*
- (2) *In this regulation —*
 - certified** *in relation to a compliance audit return means signed by —*
 - (a) *the mayor or president; and*
 - (b) *the CEO.*

Policy Implications

Policy 1.8 – Elected Member – Conference and Training Expenses will need to be reviewed and amended following the completion of the Compliance Audit Return.

Financial Implications

Nil.

Strategic Implications

*“Shire of Cunderdin Strategic Community Plan
Civic Leadership*

Our Councillors and community leaders have vision, are accessible, act with transparency and integrity, and act in good faith on behalf of their constituents.”

Resolution 9.16 OCM March 2021

That Council adopt the Audit committees recommendation of;

1. Adopt the Shire of Cunderdin Compliance Audit Return for the period 1 January 2020 to 31 December 2020, as presented; and
2. Authorising signing by the Shire President and Chief Executive Officer and its lodgement with the Department of Local Government, Sporting and Cultural Industries.

Moved: Cr B (Bernie) Daly

Seconded: Cr TE (Todd) Harris

Vote – Absolute majority

Carried: 7/0

9.17 Chief Executive Officers Report

Location:	Cunderdin
Applicant:	Chief Executive Officer
Date:	12 th February 2021
Author:	Stuart Hobley
Item Approved by:	Stuart Hobley, Chief Executive Officer
File Reference:	Nil
Attachment/s:	Nil

Proposal/Summary

To provide an update on the matters the Chief Executive Officer has been addressing over the past month.

Background

Land Sales Update

At the November 2020 Meeting, Council resolved to sell 17 Byfield Street Meckering and advertise Lots 159, 160 and 161 First St (the Doctors House and Surgery) via expression of interest.

The Doctors House and Surgery has been advertised for Expression of Interest. During the month the Shire disposed of several assets via tender however there are several items remaining. There has been some interest in the property, however the real estate agent has suggested that advertising the property with a sale price would be beneficial.

The Shire has been made aware that there may be an issue with a neighbours shed that could be built over the boundary. The Shire is seeking advice on the best way to move forward with this.

Local Roads and Community Infrastructure Program Projects

Round 1 Projects

Basketball Courts – Retaining Wall and Fencing \$30,000

The construction of the retaining wall and fencing at the basketball courts has been completed. The site will be cleaned and a small section of the original fencing fixed during the month. If any funding remains at the completion of the project Council may wish to consider asphaltting around the outside of the courts to assist with drainage. This project will be completed before the 30 June 2021 and is under budget.

AAA Garden - \$160,000

Quotes have been requested for the construction of the AAA garden as per the schematic design. Council has requested quotes from more businesses that are considered able to complete the scope of works. These quotes will be presented to Council for discussion. This project will be completed before 30 June 2021.

Oval Lights - \$270,000 (\$180,000 LRCIP)

Greenlite have advised that works on the trenching and footings will commence in late March. The poles and the lights are ready and are waiting to be shipped. Shipping will take approximately 6 weeks, all going well. This project will be completed before the 30 June 2021 and is on budget.

Round 2 Projects

Cunderdin Swimming Pool

Council has budgeted \$110,000 to complete this project. One quote has been received and the cost to repair the cracks in the pool is \$160,000. We are still waiting on further quotes from suitably qualified contractors.

This project is time critical and further information will be provided at the meeting.

Building Better Regions Fund – Infrastructure Projects Round 5

The Shire has submitted an application to the BBRF for \$360,000 to complete works at the swimming pool. The works include, repairs to the base of the pool, recreation pool furniture, solar heating, fencing and shade sails.

If the Shire is successful it will need to contribute 50% of the cost, however this can be sourced from other grants.

National Honour Board

At the Ordinary Council Meeting on the 18th February 2010 Council resolved to support the purchase and installation of the Imperial and Australian Honour Board. Brain Reading from the Cunderdin Historical Society held the original discussion with Council in regards to a commemorative Honour Board displaying all the Shire of Cunderdin residents that receive Imperial or Australian Honour Awards including the Order of Australia and Order of British Empire Awards, in addition to Defence Awards, Fire and Emergency Awards and Bravery Awards.

Attached is the list of the Imperial Honours and the Australian Honours proposed when the item was first presented to Council.

Off the basis of the original Council agenda item and resolution we have organised plaques and congratulations letter on behalf of Council for the follow two award winners;

Member (AM) in the General Division

Ms Fiona Elizabeth Harris

For Significant service to the finance, investment, resources and not-for-profit sectors.

Medal (OAM) in the General Division

Dr Patricia Elizabeth Canning

For the service to the community, to nursing, and to aged care.

Town Planning Scheme – Update

Due to recent changes in the Planning Regulations, we are required to readvertise the Town Planning Scheme for an additional 39 day (+7 if advertising occurs over Easter). This is due to the amendments proposed within the Meckering Town site. The Regulations do not differ between the initial advertising and re-advertising. So the Department of Planning, Lands and Heritage are requiring us to advertise for additional days to make up the full time period.

Advertising will be published in the Bandicoot on the 18th March and will be open for submissions until the 3rd of May 2021. If Council do not receive any new submission it will go directly back to the Department.

If submissions are received, the item will be re-presented to Council to review.

Comment

Nil.

Consultation

Nil.

Statutory Implications

Nil.

Policy Implications

Nil.

Financial Implications

Nil.

Strategic Implications

Nil.

Resolution 9.17 OCM March 2021

That the Chief Executives Officers Report be received.

Moved: Cr TE (Todd) Harris

Seconded: Cr AE (Alison) Harris

Vote – Simple majority

Carried: 7/0

10. Environmental Health and Building

Nil

11. Planning & Development

Nil

12. Works & Services

Nil

13. Urgent Items

13.1 Accept Urgent Item's

Resolution 13.1 OCM March 2021

That Council accepts Urgent item's as per the following:

- 13.2 Shire of Cunderdin Audit Committee Minutes
- 13.3 Move Behind Closed Doors
- 13.4 Tenders for Gravel Re-sheeting
- 13.5 Disposal of Asset – Lots 159,160 and 161 on DP 222359 (Sale of Doctors House and Surgery)
- 13.6 Move from behind closed doors

Moved: TE (Todd) Harris

Seconded: A (Tony) Smith

Vote – Simple Majority

Carried: 7/0

13.2 Shire of Cunderdin Audit Committee Minutes

Location:	Cunderdin
Applicant:	Deputy Chief Executive Officer
Date:	15 th March 2021
Author:	Hayley Byrnes
Item Approved By:	Chief Executive Officer
Disclosure of Interest:	Nil
File Reference:	Nil
Attachment/s:	Item Audit Committee Minutes Annual Financial Statements 2019-20 Final Management Letter - For year ended 30 June 2020 SOC Audit Completion Report 2020 DRAFT Opinion- Shire of Cunderdin 2020 2019/2020 Annual Report

Proposal/Summary

Council to receive the minutes of the Audit Committee Meeting held on Thursday 18th March 2021.

Background

The Audit Committee Meeting is scheduled to be held before the Ordinary Council Meeting. Minutes will be tabled after the Audit Committee Meeting.

Comment

There following items of business were on the Audit Committee Agenda:

That the Audit Committee:

1. Adopt the 2019/20 Financial Report;
2. Receive the Auditor's Report and Management Report from Macri Partners for the 2019/20 financial year;
3. Recommend to Council the adoption of the 2019/20 Financial Report, and receipt of the Auditor's Report and Management Report from Macri Partners for the 2019/20 financial year;
4. Recommend to Council that the Annual Electors Meeting be held on Thursday 15 April 2021; and;
5. Pursuant section 5.54 of the Local Government Act 1995, accepts the Annual Report for the 2019/2020 Financial Year.

And

That the Audit Committee:

1. Notes the actions that have been taken or intended to be taken in addressing the matters identified as significant by the auditor in the 2019/20 Audit Report and;
2. That this report will be sent to the minister within 3 months of the Audit report being received by Council.

Consultation

Nil

Statutory Environment

Local Government Act 1995 Part 5 Division 2 Subdivision 3 - Section 5.22 (2)

The minutes of a meeting of a council or a committee are to be submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.

Local Government Act 1995

7.12A. Duties of local government with respect to audits

- (1) A local government is to do everything in its power to —
- (a) assist the auditor of the local government to conduct an audit and carry out the auditor's other duties under this Act in respect of the local government; and
 - (b) ensure that audits are conducted successfully and expeditiously.
- (2) Without limiting the generality of subsection (1), a local government is to meet with the auditor of the local government at least once in every year.
- (3) A local government must —
- (aa) examine an audit report received by the local government; and
 - (a) determine if any matters raised by the audit report, require action to be taken by the local government; and
 - (b) ensure that appropriate action is taken in respect of those matters.
- (4) A local government must —
- (a) prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters; and
 - (b) give a copy of that report to the Minister within 3 months after the audit report is received by the local government.

5.27. Electors' general meetings

- (1) A general meeting of the electors of a district is to be held once every financial year.
- (2) A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.
- (3) The matters to be discussed at general electors' meetings are to be those prescribed.

5.53. Annual reports

- (1) The local government is to prepare an annual report for each financial year.
- (2) The annual report is to contain —
 - (a) a report from the mayor or president; and
 - (b) a report from the CEO; and
 - [(c), (d) deleted]
 - (e) an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year; and
 - (f) the financial report for the financial year; and
 - (g) such information as may be prescribed in relation to the payments made to employees; and
 - (h) the auditor's report for the financial year; and
 - (ha) a matter on which a report must be made under section 29(2) of the Disability Services Act 1993; and
 - (hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —
 - (i) the number of complaints recorded in the register of complaints; and
 - (ii) how the recorded complaints were dealt with; and
 - (iii) any other details that the regulations may require; and
 - (i) such other information as may be prescribed.

5.54. Acceptance of annual reports

(1) *Subject to subsection (2), the annual report for a financial year is to be accepted* by the local government no later than 31 December after that financial year.*

** Absolute majority required.*

(2) *If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.*

Policy Implications

Nil.

Financial Implications

There are no financial implications in considering this item.

Strategic Implications

Good Governance Framework.

Resolution 13.2 OCM March 2021

That Council:

1. Receive the Minutes of the Shire of Cunderdin Audit Committee Meeting held on 18th March 2021;
2. Adopt the 2019/20 Financial Report;
3. Receive the Auditor's Report and Management Report from Macri Partners for the 2019/20 financial year;
4. Schedule the Annual Electors Meeting be held on Thursday 15 April 2021; and
5. Pursuant to section 5.54 of the Local Government Act 1995, accepts the Annual Report for the 2019/2020 Financial Year.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr B (Bernie) Daly

Vote – Absolute majority

Carried: 7/0

13.3 Move Behind Closed Doors

Resolution 13.3 OCM March 2021

That Council move behind closed doors in accordance with s.5.23 of the Local Government Act.

Moved: Cr B (Bernie) Daly

Seconded: Cr AE (Alison) Harris

Vote – Simple Majority

Carried: 7/0

13.4 Tenders for Gravel Re-sheeting

Resolution 13.4 OCM March 2021

Council Delegates authority to the Plant and Works Committee (Cr NW (Norm) Jenzen and Cr TE (Todd) Harris) and Cr D (Dennis) Whisson to accept a Tender in regard to Tender No.4 - 2020/2021 – Gravel Re-sheeting not exceeding \$180,000.00.

Moved: Cr AE (Alison) Harris

Seconded: Cr W (William) Stewart

Vote – Absolute Majority

Carried: 7/0

13.5 Disposal of Asset - Lots 159, 160 and 161 on DP 222359 (Sale of Doctors House and Surgery)

Recommendation 13.5

That Council authorises the Chief Executive Officer:

1. To accept the offer of \$353,000 and the associated contract of sale.
2. Authorise the CEO and President to sign the contract of sale for Lots 159,160 and 161 on Deposited Plan 222359;
3. Mr Draffin be advised that the Shire would be required to comply with section 3.58 of the Local Government Act, before any contract for sale is entered into.
4. That the net proceeds from the sale of the building be transferred into the Building Reserve, and that a future budget item be presented to Council to detail the amendment.

Moved: Cr NW (Norm) Jenzen

Seconded: Cr A (Tony) Smith

Vote – Simple majority

Carried: 7/0

13.6 Move from behind closed doors

Resolution 13.6 OCM March 2021

That Council move from behind closed doors in accordance with s.5.23 of the Local Government Act.

Moved: Cr B (Bernie) Daly

Seconded: Cr W (Sam) Stewart

Vote – Simple Majority

Carried: 7/0

14. Scheduling of Meeting

14.1 April 2021 Ordinary Meeting

The next ordinary meeting of council is scheduled to take place on Thursday 15th April 2021 commencing at 5pm at the Cunderdin Shire Council Chambers, Cunderdin, WA 6407

15. Closure of meeting

There being no further business the Shire President will declare the meeting closed at 6:30 pm.

16. Certification

DECLARATION

I, Dennis Whisson, certify that the minutes of the Ordinary Council Meeting held on 18th March 2021 as shown were confirmed at the ordinary meeting of Council held on 15th April 2021.

Signed: _____

Date: _____