

I hereby certify that the Minutes of the Ordinary Council Meeting held are a true and accurate record of the proceedings contained therein.

Shire President

Date



SHIRE OF WYNDHAM | EAST KIMBERLEY

**MINUTES
ORDINARY COUNCIL
MEETING**

30 August 2016

CONTENTS

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS.....	5
2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED).....	5
3. DECLARATION OF INTEREST	6
4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	7
5. PUBLIC QUESTION TIME	8
6. APPLICATIONS FOR LEAVE OF ABSENCE	9
7. PETITIONS	9
8. CONFIRMATION OF MINUTES.....	9
9. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION	10
10. MATTERS FOR WHICH THE MEETING MAY BE CLOSED	11
11. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS.....	11
12. REPORTS.....	11
12.1. MATTERS ARISING FROM COMMITTEES OF COUNCIL.....	11
12.1.1. Consideration of Recommendations Contained Within the Minutes of the Audit (Finance and Risk) Committee Meeting of 9 August 2016	11
12.2. CHIEF EXECUTIVE OFFICER	14
12.2.1. 2016/17 Delegations Register	14
12.2.2. Standing Item - Outstanding Actions from Council Resolutions	124
12.2.3. Meeting Procedures Local Law 2016	134
12.2.4. Standing Item - Use of the Common Seal.....	165
12.2.5. Request to attend OCM 27 September 2016 via Electronic Means	168
12.3. COMMUNITY DEVELOPMENT.....	175
12.3.1. Community Sporting and Recreation Facilities Fund (CSRFF) Applications for 2016/17 Funding Round.....	175
12.3.2. Policy Review - CP/PMG 3780 Leasing of Council Managed Reserve Land - Community	189
12.3.3. Policy Review - CP/COM-3582 Community Grant Scheme	202
12.3.4. Policy Review - CP/GOV 3100 - Community Engagement Policy.....	211
12.3.5. Shire Property - Lot 1381 (29) Boobiella Way Kununurra	217
12.3.6. Proposed Bed and Breakfast - Lot 44 Weaber Plain Road, Kununurra ..	223
12.3.7. Mosquito Management Plan.....	237
12.4. CORPORATE SERVICES	264
12.4.1. Consideration of Submissions Regarding a New Council Policy: CP/FIN-3217 Regional Price Preference.....	264
12.4.2. List Of Accounts Paid From Municipal Fund and Trust Fund	299
12.4.3. Interim Monthly Statement of Financial Activity for the Period Ended 31 July 2016	313
12.5. INFRASTRUCTURE	322
12.5.1. East Kimberley Regional Airport - Runway Extension Prefeasibility Study	322
12.5.2. Funeral Fee Waiver Request	560
13. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	564
14. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN	564
15. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION	564

15.1 SHOW CAUSE NOTICE - COUNCIL SUSPENSION.....	564
16. MATTERS BEHIND CLOSED DOORS.....	572
16.1. REQUEST TO WAIVER INTEREST AND PENALTIES ON ASSESSMENT NUMBER A2574	572
17. CLOSURE	574

**SHIRE OF WYNDHAM EAST KIMBERLEY
MINUTES ORDINARY COUNCIL MEETING
WYNDHAM COUNCIL CHAMBERS
HELD ON 30 AUGUST 2016 AT 5:30PM**

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 5.30pm.

**2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE
(PREVIOUSLY APPROVED)**

ATTENDANCE

Cr J Parker	Shire President
Cr K Wright	Deputy Shire President
Cr B Robinson	Councillor
Cr D Spackman	Councillor
Cr S Rushby	Councillor
Cr E Bolto	Councillor
Cr N Perry	Councillor
Cr S Cooke	Councillor (by phone)
Cr A Petherick	Councillor

C Askew	Chief Executive Officer
N Te Pohe	Director Corporate Services
D Klye	Director Infrastructure
L Gee	Director Community Development
M Le Riche	Executive Assistant (Minute Taker)

GALLERY

W Richards	SWEK
P Bawden	SWEK
R Adams	SWEK
L Hannagan	SWEK
C McLachlan	
J Williams	EKCCI
V McEvoy	KVC and individually
P O'Neill	
E Venables	SJA Wyndham
E Hooper	
B Martin	
J Spragg	
D Aladin	
P Aladin	
L Pedler	
C Magnay	
R Walsh	Kimberley Echo

APOLOGIES

Nil

LEAVE OF ABSENCE PREVIOUSLY APPROVED

Nil

3. DECLARATION OF INTEREST

- Financial Interest

Councillor/Officer	Item	Title	Description of Interest
Cr A Petherick	12.3.6	Proposed Bed and Breakfast – Lot 44 Weaber Plain Road, Kununurra	P & T Searle Lease one of our properties and one of their daughters work for me
Cr S Rushby	12.3.6	Proposed Bed and Breakfast – Lot 44 Weaber Plain Road, Kununurra	I have previously completed work on the road mentioned in the item and this may occur again
Cr B Robinson	12.4.1	Regional Price Preference Policy	Potential of future RFQ & Tenders submitted by my business
Cr S Cooke	12.4.1	Regional Price Preference Policy	My husband owns and operates a business that provides Tenders and RFQ's to the shire and this particular policy would be of benefit.

- Impartiality Interest

Councillor/Officer	Item	Title	Description of Interest
C Askew	12.2.1	2016/2017 Delegations Register	I am the delegate for the majority of delegations within the 2016/17 Delegations Register
D Klye	12.2.1	2016/2017 Delegations Register	The sub delegations resulting from this item have a direct effect on my role as Director Infrastructure

N Te Pohe	12.2.1	2016/2017 Delegations Register	As an employee of the Shire, I have been provided with sub-delegations by the CEO of some of the delegations contained in this register
L Gee	12.2.1	2016/2017 Delegations Register	Delegations provided to the CEO and directly to the Director Community Development, and subsequent sub delegations provide financial and legislative powers
Cr S Rushby	12.2.5	Request to Appear Remotely	Item pertains to myself
Cr N Perry	12.4.1	Regional Price Preference Policy	I have a number of family in Kununurra who have business interests that may benefit from this policy
Cr S Rushby	12.4.1	Regional Price Preference Policy	I have a personal connection to a contractor, however this contractor is not a contractor to the Shire or WALGA
Cr A Petherick	12.4.1	Regional Price Preference Policy	My family could have financial interest

- Proximity Interest

Nil

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Rhonda Guerinoni, Kununurra

Question – Fuel Trans are now renting Plant Hire Services old yard in Stockman road. Has the yard been now rezoned to a fuel farm for their use?

Lot 2204 Stockman Road, Kununurra is zoned Composite Industry under Town Planning Scheme No 7 – Kununurra and Environs.

Fuel Depot is a use class that Council may at its discretion permit ('AA') in the Composite Industry zone. As such, rezoning of the land is not required for this use to be considered and approved in this location.

FuelTrans has recently approached the Shire in relation to the use of the land, and their intention to submit a development application.

Donna Aladin, Kununurra

Question – why have street signs around town been erected and why have they been taken down and what is the expense to the Shire?

The Roads to Recovery signage was erected at the termination points of works funded by the Roads to Recovery program as a condition of receiving the funds for the works. The signage is required to remain in place for 12 months after the completion of the project. Signs are sometimes removed from one project and reused on a subsequent Roads to Recovery project.

The recent reseal work in Kununurra was a Roads to Recovery funded project and Roads to Recovery signage was erected for that work. The work is now 12 months old and the signs are now being redeployed to a Roads to Recovery project in Wyndham.

The Roads to Recovery signage is provided and installed as part of Roads to Recovery project and funding

5. PUBLIC QUESTION TIME

Donna Aladin, Kununurra

My answer to my question was incorrect and was I was hoping on some more clarification. The signs were not put up 12 months ago (after road works was finished) they were put up and taken down within two weeks recently.

- 1. Why weren't the signs put up after the road works were completed*
- 2. Does Roads to Recovery know their conditions were not obeyed as stated in your letter to me?*

Cr J Parker responded – we will take the questions on notice and the Director of Infrastructure will be in touch to clarify details of the roads in question.

Vivienne McEvoy, Kununurra

Has the 2016/17 Shire budget been passed by Council? If not, is there an intention to pass the budget within the next 3 weeks, prior to the 21st September 2016 to ensure that we as a community can still financially survive? If this is no intention to meet this date, what plans are in place within the Shire to ensure the immediate operational requirements of the Shire?

Cr J Parker responded – The Shire Budget for 2016/17 has not been passed yet, however it is our intention to adopt the budget before the Minister's time limit expires.

Dorte Maria Bolten Magnay, Kununurra (in absentia)

Which Councillors and/or Senior Staff actions led to the appointed mediator Graham Castledine to find that there was "insufficient commitment to either the process proposed, or the desired outcomes"?

Cr J Parker – Question will be taken on notice due to questioner not being in attendance.

6. APPLICATIONS FOR LEAVE OF ABSENCE

Cr Petherick requested a leave of absence for the October 2016 Ordinary Council Meeting.

COUNCIL DECISION

Minute No:11449

Moved: Cr K Wright

Seconded: Cr N Perry

That Cr Petherick be granted leave of absence for the October 2016 Ordinary Council Meeting

Carried 9/0

7. PETITIONS

Nil

8. CONFIRMATION OF MINUTES

OFFICER'S RECOMMENDATION 1

That Council confirms the Minutes of the Ordinary Council Meeting held on 26 July 2016.

COUNCIL DECISION

Minute No: 11450

Moved: Cr K Wright

Seconded: Cr B Robinson

That Council confirms the Minutes of the Ordinary Council Meeting held on 26 July 2016.

Carried 9/0

Note: The Minutes of the Ordinary Council Meeting held on 26 July 2016 are provided under separate cover via www.swek.wa.gov.au

OFFICER'S RECOMMENDATION 2

That Council confirms the Minutes of the Special Council Meeting held on 23 August 2016 at 5pm.

COUNCIL DECISION

Minute No: 11451

**Moved: Cr K Wright
Seconded: Cr B Robinson**

That Council confirms the Minutes of the Special Council Meeting held on 23 August 2016 at 5pm.

Carried 9/0

Note: The Minutes of the Special Council Meeting held on 23 August 2016 at 5pm are provided under separate cover via www.swek.wa.gov.au

OFFICER'S RECOMMENDATION 3

That Council confirms the Minutes of the Special Council Meeting held on 23 August 2016 5:30pm.

COUNCIL DECISION

Minute No: 11452

**Moved: Cr K Wright
Seconded: Cr N Perry**

That Council confirms the Minutes of the Special Council Meeting held on 23 August 2016 5:30pm.

Carried 9/0

Note: The Minutes of the Special Council Meeting held on 23 August 2016 at 5:30pm are provided under separate cover via www.swek.wa.gov.au

9. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

Nil

10. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

11. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

Nil

12. REPORTS

12.1. MATTERS ARISING FROM COMMITTEES OF COUNCIL

12.1.1. Consideration of Recommendations Contained Within the Minutes of the Audit (Finance and Risk) Committee Meeting of 9 August 2016

DATE:	30 August 2016
AUTHOR:	Natalie Octoman, Director Corporate Services
RESPONSIBLE OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	Various
DISCLOSURE OF INTERESTS:	Nil

COUNCIL DECISION

Minute No: 11453

Moved: Cr B Robinson

Seconded: Cr N Perry

That Council accept the Audit (Finance and Risk) Committee Recommendations 1, 2, 3, 4 and 5 *en bloc*.

Carried 9/0

VOTING REQUIREMENT

Simple Majority

COMMITTEE'S RECOMMENDATION 1

In relation to Item "7.1 - Standing Item - Leases" that the Audit (Finance and Risk) Committee recommends to the Council that it notes the Confidential Lease Schedule and New Renewal Lease Schedule attached to the minutes of the Audit (Finance and Risk) Committee meeting of 9 August 2016.

VOTING REQUIREMENT

Simple Majority

COMMITTEE'S RECOMMENDATION 2

In relation to Item "7.2 - Standing Item - Rates Debtors" that the Audit (Finance and Risk) Committee recommends to the Council that the actions being undertaken by the administration in regard to rates debtors, including rates debts in legal process are sufficient and appropriate.

VOTING REQUIREMENT

Simple Majority

COMMITTEE'S RECOMMENDATION 3

In relation to Item "7.3 - Standing Item - Sundry Debtors" that the Audit (Finance and Risk) Committee recommends to the Council that the actions being undertaken by the administration in regard to sundry debtors including sundry debts in legal process are sufficient and appropriate.

VOTING REQUIREMENT

Simple Majority

COMMITTEE'S RECOMMENDATION 4

In relation to Item "7.4 - Standing Item - Insurance Claims" that the Audit (Finance and Risk) Committee recommends to the Council that it notes the Confidential Insurance Claims Register attached to the minutes of the Audit (Finance and Risk) Committee meeting of 9 August 2016.

VOTING REQUIREMENT

Simple Majority

COMMITTEE'S RECOMMENDATION 5

In relation to Item "8.1 - Update Regarding Lots 401 and 402 Pearse Street, Wyndham (Assessments A5594 and A5595" that the Audit (Finance and Risk) Committee reports to the Council that it note the status of Lots 401 and 402 Pearse Street, Wyndham for the purpose of a potential future reconsideration of the resolution from 27th May 2014 to take possession of the land, and on receipt of the recommendations from the Department of Environment Regulation make an informed decision.

PURPOSE

That the Council consider the recommendations from the Audit (Finance and Risk) Committee at its meeting of 9 August 2016.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Leader - plan and provide direction through policy and practices
Regulator - enforce state legislation and local laws

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

The background and details supporting the recommendations are contained in the Audit (Finance and Risk) Committee meeting minutes of 9 August 2016.

STATUTORY IMPLICATIONS

Various - detailed within the Minutes of the 9 August 2016 Audit (Finance and Risk) Committee meeting.

POLICY IMPLICATIONS

Various - detailed within the Minutes of the 9 August 2016 Audit (Finance and Risk) Committee meeting.

IMPLICATIONS

Various - detailed within the Minutes of the 9 August 2016 Audit (Finance and Risk) Committee meeting.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved services

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

RISK IMPLICATIONS

Various - detailed within the Minutes of the 9 August 2016 Audit (Finance and Risk) Committee meeting.

COMMUNITY ENGAGEMENT

No community engagement is required.

COMMENTS

Various - detailed within the Minutes of the 9 August 2016 Audit (Finance and Risk) Committee meeting.

ATTACHMENTS

Nil

12.2. CHIEF EXECUTIVE OFFICER

C Askew declares an impartiality interest as he is the delegate for the majority of delegations within the 2016/17 Delegations Register.

D Klye declares an impartiality interest as the sub delegations resulting from this item have a direct effect on my role as Director Infrastructure.

N Te Pohe declares an impartiality interest as an employee of the Shire, she has been provided with sub-delegations by the CEO of some of the delegations contained in this register.

L Gee declares an impartiality interest as Delegations provided to the CEO and directly to the Director Community Development, and subsequent sub delegations provide financial and legislative powers

12.2.1. 2016/17 Delegations Register

DATE:	30 August 2016
AUTHOR:	Lisa Hannagan, Senior Risk and Governance Officer
RESPONSIBLE OFFICER:	Louise Gee, Acting Chief Executive Officer
FILE NO:	PL.02.1
DISCLOSURE OF INTERESTS:	The Acting CEO declares an impartiality interest in this item as they are the delegate for the majority of the delegations within the 2016/17 Delegations Register.

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That Council adopts the 2016/17 Delegations Register.

Cr Robinson moved the recommendation with the following amendment:

- The inclusion of correct version of delegation 34 as per email received and tabled at the meeting (and endorsed by Council at the 27 October 2015 Ordinary Council Meeting),
- Delegation 3 being amended to replace the words "one week" with "one month" and,
- Delegation 8 point 3 the amount of \$500 increased to \$1,000

Cr Perry seconded the recommendation with amendments.

Cr Spackman moved an amendment that the note in Delegation 7 be included into point 4 and include the word “publicly” between the words “were” and “invited” from the note. The mover and seconded accepted the amendment.

COUNCIL DECISION

Minute No: 11454

Moved: Cr B Robinson

Seconded: Cr N Perry

That Council adopts the 2016/17 Delegations Register with the following amendments:

- **the inclusion of correct version of delegation 34 as per email received and tabled at the meeting;**
- **Delegation 3 being amended to replace the words “one week” with “one month”;**
- **Delegation 8 point 3 the amount of \$500 increased to \$1,000; and**
- **the note in Delegation 7 be included into point 4 and include the word “publicly” between the words “were” and “invited” from the note.**

Carried 6/3

**For: Cr J Parker, Cr K Wright, Cr E Bolto, Cr N Perry,
Cr S Cooke, Cr B Robinson**

Against: Cr D Spackman, Cr A Petherick, Cr S Rushby

PURPOSE

To undertake the statutory annual review of the Delegations Register.

NATURE OF COUNCIL’S ROLE IN THE MATTER

Leader - plan and provide direction through policy and practices

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

The *Local Government Act 1995* allows Council to delegate to the Chief Executive Officer exercise of certain powers or the discharge of any of its duties under the Act.

The *Local Government Act 1995* also allows for the Chief Executive Officer to delegate any of their powers to another employee (sub delegate) and this is completed once the delegations to the CEO are adopted. Sub delegations are in writing and included in a separate Register.

Under certain legislation, Council is not able to delegate the responsibility for appointing authorised persons to the Chief Executive Officer. In these instances, appointment of authorised persons must be approved directly by Council. Although these authorisations do

not have delegated authority, they are included in this register for ease of reference and review.

The purpose of Council delegating authority to the CEO is to assist with improving the time taken to make decisions within the constraints of relevant legislation.

The Register of Delegations to the CEO is to be reviewed at least once every financial year.

The Delegations Register for 2015/16 was reviewed and adopted by Council at the Ordinary Council Meeting held 25 August 2015. An amendment was made to the Delegations Register at the Ordinary Council Meeting held 22 September 2015 and a further amendment was made at the Ordinary Council Meeting held on 31 May 2016.

STATUTORY IMPLICATIONS

Local Government Act 1995

5.42 Delegation of some powers and duties to CEO

- (1) *A local government may delegate* to the CEO the exercise of any of its power or the discharge of any of its duties under -*
- (a) This Act other than those referred to in section 5.43; or*
 - (b) The Planning and Development Act 2005*
- * Absolute majority required.*

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

5.43 Limits on delegations to the CEO

A local government cannot delegate to a CEO any of the following powers or duties:

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) appointing an auditor;*
- (d) acquiring or disposing of property value at an amount exceeding an amount determined by the local government for the purposes of this paragraph;*
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;*
- (f) borrowing money on behalf of the local government;*
- (g) hearing or determining an objection of a kind referred to in section 9.5;*
- (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;*
- (h) any power or duty that requires the approval of the Minister or Governor;*
- (i) such other powers as may be prescribed.*

5.44 CEO may delegate powers and duties to other employees

- (1) *A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty -*
 - (a) *the CEO's power under this section 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 imposed by the local government on its delegation to the CEO.*
- (4) *Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on the delegation under this section.*
- (5) *In subsections (3) and (4) -*

“Conditions” includes qualifications, limitations or exceptions.

5.45 Other matters relevant to delegations under this Division

- (1) *Without limiting the application of sections 58 & 59 of the Interpretation Act 1984 -*
 - (a) *a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and*
 - (b) *any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.*
- (2) *Nothing in this Division is to be read as preventing -*
 - (a) *a local government from performing any of its functions by acting through a person other than the CEO; or*
 - (b) *A CEO from performing any of his or her functions by acting through another person.*

5.46 Register of, and records relevant to, delegations to the CEO and employees

- (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.*
- (3) *A person to whom a power or duty is delegated under this Act is to keep records in accordance with the regulations in relation to the exercise of power or the discharge of the duty.*

POLICY IMPLICATIONS

The Delegations Register makes reference to numerous Policies, however there are no requirements for the Policies to be amended as a result of the proposed updates.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved services

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

RISK IMPLICATIONS

Risk: Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

Control: Review policies and procedures in accordance with review schedule.

COMMUNITY ENGAGEMENT

No community engagement is required, however Shire Officers will be notified of the amendments accordingly.

COMMENTS

The 2016/17 Delegations Register is separated into three sections for clarity and ease of reference:

1. Statutory Delegations - *Local Government Act 1995*
2. Statutory Delegations - Other legislation
3. Council Appointed Persons and Officers

The following amendments have been made to the 2015/16 Delegations Register:

2015/16 Delegation	Amendment
<i>Statutory Delegations - Local Government Act 1995</i>	
1. Right to inspect confidential information	No change
2. Authority to sign and certify documents and affix the common seal.	Minor text changes
3. Acting Chief Executive Officer	No change
4. Representing Local Government in Court	No change
5. Authority to initiate proceedings	No change
6. State Administrative Tribunal - response to applications for review	No change
7. Expressions of Interest and Tenders	Minor text changes
8. Disposal of Property	Minor text changes
9. Private Works	No change
10. Expenses of Elected Members and Staff	No change
11. Waive, grant concessions or write of debts	Minor text changes
12. Payments from the Municipal Fund and Trust Fund	No change
13. Rate Book	No change
14. Rates and Service Charges (Including Fees & Charges) payment agreements.	Minor text changes
15. Investments	No change
16. Expenditure before adoption of budget	No change
17. Contract variations	Amended
18. Recovery of debts	No change

19. Sale of impounded or confiscated vehicles, animals or goods	No change
20. Enforcement and Infringement Notices	No change
21. Certain things to be done in respect of land	No change
22. Powers of Entry	No change
23. Public Thoroughfares	No change
24. Gates across public thoroughfare	No change
25. Dangerous excavation in or near public thoroughfare	No change
26. Crossovers	No change
27. Permission to deposit materials on, or excavate adjacent to a street.	No change
28. Events on Roads	No change
29. Road trains and extra mass permits	No change
30. Temporary Road Closures	** NEW **
31. Traffic regulatory signs	No change
32. Appointment or authorised persons	No change
33. Audit (Finance & Risk) Committee	No change
<i>Statutory Delegations - Other Legislation</i>	
34. Local Planning Scheme No. 7	No change
35. Strata Titles - Issue of Local Authority Certificate	No change
36. Planning and Development Act 2005 - Illegal Development	No change
37. Planning and Development Act	** NEW **
38. Building Act 2011 and Building Regulations 2012 - Designate authorised person	No change
39. Building Act 2011 and Building Regulations 2012 - Building Orders	No change
40. Building Act 2011 and Building Regulations 2012 - Building and Demolition Permits	No change
41. Building Act 2011 and Building Regulations 2012 - Occupancy and Building Approval Certificates	No change

42. Bush Fires Act 1954 - Variation to Firebreak Orders	No change
43. Bush Fires Act 1954 - Variation to Prohibited Burning Times	No change
44. Food Act 2008 - Prohibition Orders, Certificates of Clearance	No change
45. Liquor Control Act 1988 - Certification	No change
46. Gaming and Wagering Commission Act 1987 - Gaming	No change
47. Cat Act 2011 - Powers, duties and functions	No change
48. Cat Act 2011 - Appointment of Authorised Persons	No change
49. Dog Act 1976 - Powers, duties and functions	No change
50. Dog Act 1976 - Appointment of Authorised Persons	No change
51. Pound Keepers - Appointment of Rangers	No change
<i>Council Appointed Authorised Persons & Officers</i>	
52. Health Act 1911 - Appointment of Deputy	No change
53. Food Act 2008 - Appointment of Authorised Officers	No change
54. Food Act 2008 - Appointment of Designated Officers	Amended
55. Caravan Parks and Camping Grounds Act 1995 - Appointment of Authorised Person	Amended
56. Caravan Parks and Camping Grounds Act 1995 - Infringements	"NEW"
57. Control of Vehicles (Off Road Areas) Act - Authorised Officer	No change

Changes within the Draft 2016/17 Delegations Register are marked in **red font**.

As noted above there have been minor text changes to reflect the terminology used in the regulations.

As highlighted above, there is 1 new delegation for Temporary Road Closures.

Under Statutory Delegations there is 1 new item under the *Planning and Development Act 2005* for Authorisations (#37).

Under Council Appointed Persons there is 1 new item under the *Caravan & Camping Grounds Act 1995* for Infringements (#56).

There have been minor text amendments to two Statutory Appointments.

ATTACHMENTS - Item 12.2.1

Attachment 1 - 2016/17 Draft Delegations Register

Attachment 2 - Local Government Operational Guideline - Number 17

COUNCIL DELEGATIONS REGISTER

2016/17



SHIRE OF WYNDHAM EAST KIMBERLEY

All Delegations included within this Register were adopted at a meeting of the Council held ~~22 September 2015~~ TBA.

Contents

OVERVIEW	3
LOCAL GOVERNMENT ACT REGISTER OF DELEGATIONS.....	3
LIMITS ON DELEGATIONS TO THE CEO	3
REGISTER OF, AND RECORDS RELEVANT TO, DELEGATIONS	4
ACTING THROUGH.....	4
COUNCIL APPOINTED AUTHORISED PERSONS & OFFICERS	5
STATUTORY DELEGATIONS– LOCAL GOVERNMENT ACT 1995	6
1. RIGHT TO INSPECT CONFIDENTIAL INFORMATION	6
2. AUTHORITY TO SIGN & CERTIFY DOCUMENTS & AFFIX THE COMMON SEAL	7
3. ACTING CHIEF EXECUTIVE OFFICER	8
4. REPRESENTING LOCAL GOVERNMENT IN COURT	9
5. AUTHORITY TO INITIATE PROCEEDINGS.....	10
6. STATE ADMINISTRATIVE TRIBUNAL – RESPONSE TO APPLICATIONS FOR REVIEW	11
7. EXPRESSIONS OF INTEREST AND TENDERS.....	12
8. DISPOSAL OF PROPERTY	13
9. PRIVATE WORKS.....	14
10. EXPENSES OF ELECTED MEMBERS AND STAFF	15
11. WAIVE, GRANT CONCESSIONS OR WRITE OFF DEBTS.....	16
12. PAYMENTS FROM THE MUNICIPAL FUND AND TRUST FUND	17
13. RATE BOOK	18
14. RATES AND SERVICES CHARGES (INCLUDING FEES AND CHARGES) PAYMENT AGREEMENTS	19
15. INVESTMENTS.....	20
16. EXPENDITURE BEFORE ADOPTION OF BUDGET	21
17. CONTRACT VARIATIONS	22
18. RECOVERY OF DEBTS.....	23
19. SALE OF IMPOUNDED OR CONFISCATED VEHICLES, ANIMALS OR GOODS.....	
20. ENFORCEMENT AND INFRINGEMENT NOTICES	25
21. CERTAIN THINGS TO BE DONE IN RESPECT OF LAND.....	26
22. POWERS OF ENTRY.....	28
23. PUBLIC THOROUGHFARES	29
24. GATES ACROSS PUBLIC THROUGHFARE.....	30
25. DANGEROUS EXCAVATION IN OR NEAR PUBLIC THOROUGHFARE	31
26. CROSSOVERS	32

27. PERMISSION TO DEPOSIT MATERIALS ON, OR EXCAVATE ADJACENT TO, A STREET	33
28. EVENTS ON ROADS	34
29. ROAD TRAINS & EXTRA MASS PERMITS.....	35
30. TEMPORARY ROAD CLOSURES ** NEW **	36
31. TRAFFIC REGULATORY SIGNS	37
32. APPOINTMENT OF AUTHORISED PERSONS.....	38
33. AUDIT (FINANCE AND RISK) COMMITTEE	39
STATUTORY DELEGATIONS– OTHERLEGISLATION.....	40
34. LOCAL PLANNING SCHEME No. 7	40
35. STRATA TITLES – ISSUE OF LOCAL AUTHORITY CERTIFICATE	42
36. PLANNING AND DEVELOPMENT ACT 2005 – ILLEGAL DEVELOPMENT	43
37. PLANNING AND DEVELOPMENT ACT 2005 – AUTHORISATIONS *NEW*.....	44
38. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 – DESIGNATE AUTHORISED PERSON	45
39. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 - BUILDING ORDERS.....	46
40. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 – BUILDING AND DEMOLITION PERMITS.....	47
41. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 – OCCUPANCY AND BUILDING APPROVAL CERTIFICATES.....	48
42. BUSH FIRES ACT 1954 - VARIATION TO FIREBREAK ORDERS	49
43. BUSH FIRES ACT 1954 - VARIATION TO PROHIBITED BURNING TIMES	50
44. FOOD ACT 2008 – PROHIBITION ORDERS, CERTIFICATES OF CLEARANCE .	51
45. LIQUOR CONTROL ACT 1988 - CERTIFICATION.....	52
46. GAMING AND WAGERING COMMISSION ACT 1987 – GAMING.....	53
47. CAT ACT 2011 – POWERS, DUTIES AND FUNCTIONS	54
48. CAT ACT 2011 – APPOINTMENT OF AUTHORISED PERSONS	55
49. DOG ACT 1976 – POWERS, DUTIES AND FUNCTIONS	56
50. DOG ACT 1976 – APPOINTMENT OF AUTHORISED PERSONS	57
51. POUNDKEEPERS – APPOINTMENT OF RANGERS	58
COUNCIL APPOINTED AUTHORISED PERSONS AND OFFICERS	59
52. HEALTH ACT 1911 – APPOINTMENT OF DEPUTY	59
53. FOOD ACT 2008 – APPOINTMENT OF AUTHORISED OFFICERS	60
54. FOOD ACT 2008 – APPOINTMENT OF DESIGNATED OFFICERS.....	61
55. CARAVAN PARKS AND CAMPING GROUNDS ACT 1995 – APPOINTMENT OF AUTHORISED PERSON **NEW **.....	62
56. CARAVAN PARKS AND CAMPING GROUNDS ACT 1995 – INFRINGEMENT NOTICES **NEW **	63
57. CONTROL OF VEHICLES (OFF-ROAD AREAS) ACT – AUTHORISED OFFICER .	64

OVERVIEW

LOCAL GOVERNMENT ACT REGISTER OF DELEGATIONS

The aim of delegated authority is to assist with improving the time taken to make decisions within the constraints allowed by the relevant legislation.

The *Local Government Act 1995* allows for a local government to delegate to the Chief Executive Officer (Sections 5.42 and 5.43) the exercise of any of its powers or the discharge of any of its duties under the Act.

The Act allows for the Chief Executive Officer to delegate any of their powers to another employee; this must be done in writing. The Act allows for the Chief Executive Officer to place conditions on any delegations if they desire. The powers cannot, however, be further sub-delegated.

The purpose of this document is to detail which authorities have been delegated by the Council to the Chief Executive Officer.

The manual details the related document(s) where the power to delegate is derived from. This enables easier cross referencing.

LIMITS ON DELEGATIONS TO THE CEO

In accordance with section 5.43 of the *Local Government Act 1995* the following are decisions that cannot be delegated to the Chief Executive Officer:

- Any power or duty that requires a decision of an absolute majority or 75% majority of the local government;
- accepting a tender which exceeds an amount determined by the local government;
- appointing an auditor;
- acquiring or disposing of any property valued at an amount determined by the local government;
- any of the local government's powers under Sections 5.98, 5.99 and 5.10 of the Act;
- borrowing money on behalf of the local government;
- hearing or determining an objection of a kind referred to in Section 9.5;
- any power or duty that requires the approval of the Minister or Governor; or
- such other duties or powers that may be prescribed by the Act.

Furthermore the following regulations prescribe powers and duties which cannot be delegated to the CEO:

- Regulation 18G of the *Local Government (Administration) Regulations 1996* prohibits the delegation to a CEO of the powers and duties under:
 - (a) Sections 7.12(a), 7.12A(3)(a) and 7.12A (4) of the *Local Government Act 1995* (relating to meetings with auditors); and
 - (b) Regulations 18C and 18D (relating to the selection and appointment of CEO's and reviews of their performance)
- Regulation 6 of the *Local Government (Financial Management) Regulations 1996* prohibits the delegation of the duty to conduct an internal audit to an employee (including a CEO) who has been delegated the duty of maintaining the local government's day to day accounts or financial management operations.

REGISTER OF, AND RECORDS RELEVANT TO, DELEGATIONS

A register of delegations relevant to the Chief Executive Officer and other employees is to be kept and reviewed at least once every financial year as per section 5.46(1) and (2) of the Act. If a person exercising a power or duty that they have been delegated, the Act requires that records be kept whenever the delegated authority is exercised as per section 5.46(3) of the Act.

The record is to contain the following information:

- How the person exercised the power or discharged the duty;
- When the person exercised the power or discharged the duty; and
- The persons or classes of persons, other than Council or committee members or employees of the Local Government, directly affected by the exercise of the power or the discharge of the duty under Regulation 19 of *Local Government (Administration) Regulations 1996*.

Business units responsible for a work process are to ensure that data is captured and records managed in accordance with all legislation, as well as preparing reports to Council where required under a specific delegation.

A person to whom a power is delegated under the Act is considered to be a 'designated employee' under section 5.74(1) of the Act and is required to complete a primary and annual return each year.

ACTING THROUGH

The Act does not specifically define the meaning of the term "acting through", however section 5.45(2) states;

"Nothing in this Division is to be read as preventing –

- (a) A local government from performing any of its functions by acting through a person other than the CEO; or
- (b) A CEO from performing any of his or her functions by acting through another person."

The Department of Local Government & Communities Guideline No.17 – Delegations, established the principal issue in determining whether a statutory function or duty is suitable for 'acting through' is that, were the statute provides no discretion in carrying out a function or duty, then the function or duty may be undertaken through the 'acting through' concept.

Conversely, where the statute allows for discretion on the part of the decision maker, then the function must be:

- Delegated; or,
- Where applicable a person authorised; or,
- A policy implemented that provides sufficient control,

For another person to have that authority and fulfil the function or duty.

Where considered appropriate and effective in operation, discretionary matters will be determined by Council through policy. The policy decision may then be implemented by officers through the 'acting through' concept. In these instances there is no need for a delegated authority as it is the responsibility of the CEO to implement the Shire's policies.

PERIOD OF ANY DELEGATION

A delegation of authority has effect for the period of time specified in the instrument of delegation or, where no period is specified, indefinitely.

Any decision by Council to revoke or amend a delegated authority must be passed by an absolute majority.

COUNCIL APPOINTED AUTHORISED PERSONS & OFFICERS

Under certain legislation, Council is not able to delegate the responsibility for appointing authorised persons to the Chief Executive Officer. In these instances, appointment of authorised persons must be approved directly by Council. These authorisations do not have delegated authority, however they are included in this register for ease of reference and review.

STATUTORY DELEGATIONS– LOCAL GOVERNMENT ACT 1995

1. RIGHT TO INSPECT CONFIDENTIAL INFORMATION

LEGISLATIVE POWER *Local Government Act 1995* Section 5.42

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to determine whether information prescribed as confidential may be made available for inspection under section 5.95(7) of the *Local Government Act 1995*.

Subject to:

- (a) Compliance with Regulations 29A and 29B of the *Local Government (Administration) Regulations*.

2. AUTHORITY TO SIGN & CERTIFY DOCUMENTS & AFFIX THE COMMON SEAL

LEGISLATIVE POWER *Local Government Act 1995*, Section 9.49A (4) and 9.31

DELEGATE Shire President and Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Shire President and the Chief Executive Officer to execute documents and affix the Common Seal thereto, where such documents result from the following transactions:

1. Where land is disposed of pursuant to Section 3.58 of the *Local Government Act 1995* (As Amended).
2. Where land is acquired pursuant to Section 3.55 and 3.59 of the *Local Government Act 1995* (As Amended).
3. In respect of leases of land and licence to occupy municipal property where approved by the Council.
4. In respect of leases for the purchase of plant and equipment approved by the Council.
5. In respect of easements and legal agreements over land for the purpose of drainage or conditions arising from subdivision of land and planning approvals.
6. In respect of withdrawal of caveats and surrender of easements where the Chief Executive Officer considers that the Council's interests have been satisfied.
7. In respect of agreements required for funding of Council works and services considered with the resolution of the Council or requiring renewal of the agreement for funding currently provided.
8. In respect of the final adoption of local laws by the Council.

Subject to-

- (a) Council being notified via a report to be submitted to each Council Meeting in relation to the execution of documents and affixing of the Common Seal, **subsequent to the Common Seal being utilised.**

3. ACTING CHIEF EXECUTIVE OFFICER

LEGISLATIVE POWER *Local Government Act 1995, Sections 5.36 and 5.39*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to appoint one of the Shire of Wyndham East Kimberley's Directors to perform the role of Acting Chief Executive Officer during any periods of approved leave of absence or absence from the Shire for periods up to one week. For periods in excess of one week this will be referred to Council for consideration.

In making this delegation the Council has determined that the Shire's Directors are suitably qualified to perform the role of Acting Chief Executive Officer.

The Shire's Directors are, Director Corporate Services, Director Infrastructure and Director Community Development.

4. REPRESENTING LOCAL GOVERNMENT IN COURT

LEGISLATIVE POWER *Local Government Act 1995* Section 9.29

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to appoint persons pursuant to section 9.29 of the *Local Government Act 1995*, to represent the Shire of Wyndham East Kimberley generally in proceedings in the court of petty sessions and Local Court.

Definitions-

proceedings means —

- (a) proceedings in the Magistrates Court, the Children's Court or the State Administrative Tribunal; or
 - (b) proceedings in respect of a claim against a person who takes the benefit of an Act for the relief of bankrupt debtors.
- (2) In proceedings a person who is —
- (a) the CEO; or
 - (b) an employee of the local government appointed in writing signed by the CEO to represent the local government generally or in a particular case, may represent the local government in all respects as though the person were the local government.
- (3) The person representing the local government in the proceedings is entitled to be reimbursed by the local government for any money paid or required to be paid by the person as a result of representing the local government in the proceedings.

5. AUTHORITY TO INITIATE PROCEEDINGS

LEGISLATIVE POWER *Local Government Act 1995* Section 9.24

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to commence a prosecution for an offence against this Act or under a Local Law under Section 9.24 of the *Local Government Act 1995*.

6. STATE ADMINISTRATIVE TRIBUNAL – RESPONSE TO APPLICATIONS FOR REVIEW

LEGISLATIVE POWER *Local Government Act 1995 and State Administrative Tribunal Act 2004*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

1. The Council delegates its authority and power to the Chief Executive Officer to respond to applications for review, lodged with the State Administrative Tribunal, including preparation of statements by respondent, liaison with the State Administrative Tribunal and representation of the Council at review hearings, where a decision made by the Council, or a condition or conditions associated with that decision, is substantively in accordance with the Responsible Officer's recommendation
2. Council delegates its authority and power to the Chief Executive Officer to engage independent professional advice, including legal advice, where a decision made by the Council, or a condition or conditions associated with that decision, is substantially different from the Responsible Officer's recommendation.

7. EXPRESSIONS OF INTEREST AND TENDERS

LEGISLATIVE POWER *Local Government Act 1995* Sections 5.42 and 5.43 (b), 3.57(1), *Local Government Functions and General Regulations 1996*, Regulations 11, 14(2a), 18(4) & (5), 20, 20(1), 20(2), 21(1), 23(3)

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to:

1. Publicly invite tenders before the local government enters into a contract for the supply of goods and services.
2. Publicly invite tenders where considered beneficial, in lieu of seeking quotations or purchases under the \$150,000 threshold (excluding GST).
3. Determine in writing, before tenders are publicly invited, the criteria for deciding which tender should be accepted.
4. ~~Make minor variations to a specification for goods or services before it enters into the contract with the successful tenderer.~~
4. **Make minor variations to a specification for goods and/or services before it enters into a contract with the chosen tenderer**
5. Seek expressions of interest before entering into the tender process.
6. Consider any expressions of interest and tenders that have not been rejected and decide which, if any, of those expressions of interest **and tenders** are from persons who it thinks could satisfactorily supply the goods or services and execute the associated contract up to a value of \$500,000 (excluding GST) provided that appropriate provision has been made in the Council's budget.
7. Decline any tender; and
8. ~~Select the next most appropriate tender if the successful tenderer does not want to accept the contract with the variation or the CEO and the tenderer cannot reach agreement.~~
8. **Select the next most appropriate tender if the chosen tenderer is unable or unwilling to enter into a contract to supply the variation requirement or the CEO and the tenderer cannot agree on the variation requirement.**

Provided that appropriate provision is made with reference to Council Policy CP/FIN-3204 Purchasing.

Condition-

The CEO must ensure safe custody of tender documents submitted.

~~NOTE: Minor variations to a specification for goods or services shall be deemed to be variations the value of the supply or to the scope of a specification that is expected to be less than approximately 10% of the value of the contract or specification.~~

NOTE: Minor variations to a specification for goods and/or services shall be variations that are less than 10% of the value of the chosen tender and do not alter the scope of the total goods and/or services that tenderers were invited to supply

8. DISPOSAL OF PROPERTY

LEGISLATIVE POWER *Local Government Act 1995 Section 3.58 and Local Government (Functions and General) Regulations 1996, Regulation 30*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

~~The Council delegates its authority and power to the Chief Executive Officer to dispose of property by public tender or public auction where the individual value of the property disposal is greater than \$20,000 but less than \$100,000 per item or land valued at an amount not exceeding \$500,000, provided that appropriate provision is made in the Council's Adopted Budget.~~

~~Property can be disposed of by other means than public tender or public auction, if before agreeing to dispose of the property, local public notice is given of the proposed disposition and submissions are considered, or if the market value is less than \$20,000.~~

~~That the Council delegate authority to the Chief Executive Officer to dispose, gift or donate property with a maximum written down value of \$500.~~

The Council delegates its authority and power to the Chief Executive Officer to:

1. Dispose of property by public tender or public auction where the individual value of the property disposal is greater than \$20,000 (Excluding GST) but less than \$100,000 (Excluding GST) per item or land valued at an amount not exceeding \$500,000, provided that appropriate provision is made in the Council's Adopted Budget.
2. Dispose of property by other means than public tender or public auction, if before agreeing to dispose of the property, local public notice is given of the proposed disposition and submissions are considered, or if the market value is less than \$20,000 (Excluding GST).
3. Dispose, gift or donate property with a maximum written down value of \$500.

In this delegation:

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.

9. PRIVATE WORKS

LEGISLATIVE POWER *Local Government Act 1995, Section 5.42 and 5.43(b)*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to enter into commercial arrangements under which the Shire is to provide works or services, subject to Council Policy CP/OPS-3650 Private Works and that the value of each arrangement must not exceed the amount determined by the Council for the purposes of section 5.43(b) of the *Local Government Act 1995*.

10. EXPENSES OF ELECTED MEMBERS AND STAFF

LEGISLATIVE POWER *Local Government Act 1995* Sections 5.98, 5.101, 5.102 & 5.42

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

That Council delegates its authority and power to the Chief Executive Officer to:

1. approve expenses which are to be reimbursed to elected members, provided that the expenses are of the kind prescribed as those which the local government can approve for reimbursement (subject to section 5.98(3));
2. approve reimbursement, either generally or in a particular case, to an elected member of an expense;
3. reimburse an employee for an expense that was incurred in relation to a Shire matter; and
4. make a cash advance to a person for an expense which can be reimbursed.

11. WAIVE, GRANT CONCESSIONS OR WRITE OFF DEBTS

LEGISLATIVE POWER *Local Government Act 1995, Section 6.12(1)(b) and (c)*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer ~~in~~ **exceptional circumstances** to:

1. Waive or grant concessions in relation to sundry debts owed to the Shire (other than rates and services charges)
2. Write off money owed to the Shire
3. Determine the conditions to be applied to waive, grant a concession or write off money owed to the Shire

Conditions:

- a) Limited to individual debts not exceeding \$500
- b) Write-off rates and service charges not exceeding \$200
- c) Report to the Audit (Finance and Risk) Committee on the exercise of this delegation

In this delegation:

Waive means to provide a special concession to a person or organisation that extinguishes a debt that would have been owed to the Shire. A waiver may be provided prior to, or subsequent to the date that the debt is incurred.

Write Off occurs following the realisation that the asset can no longer be converted into cash (eg. a bad debt), can provide no further use to the Shire, or has no market value.

12. PAYMENTS FROM THE MUNICIPAL FUND AND TRUST FUND

LEGISLATIVE POWER *Local Government (Financial Management) Regulations 1996, Regulations 5, 11, 12, 12(1)(a) and 13*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to-

- 1 Sign and issue purchase orders to incur liabilities from the Municipal Fund or the Trust Fund on behalf of the Shire,

Subject to-

- (a) Compliance with Council Policy CP/FIN-3204 Purchasing; and
- (b) Purchase orders only being issued for items of expenditure detailed within the adopted annual budget, or for payments that have been authorised by a resolution of Council in advance, or authorised in advance by the president in an emergency.

- 2 Authorise and make payments by cheque, direct debit or electronic funds transfer (EFT) from the Municipal Fund or the Trust Fund,

Subject to-

- (a) The payment(s) only being for items of expenditure detailed within the adopted annual budget, or for payments that have been authorised by a resolution of Council in advance, or authorised in advance by the president in an emergency; and
- (b) The Chief Executive Officer signing payments made by cheque, or authorising payments made by EFT; and
- (c) Compliance with the requirements of Regulation 13 of the *Local Government (Financial Management) Regulations 1996*.

13. RATE BOOK

LEGISLATIVE POWER *Local Government Act 1995* Section 5 and 6

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to perform the following functions:

1. Extend the time for making an objection to the rate record for a period of time as it sees fit in accordance with section 6.76(4) of the *Local Government Act 1995*; and
2. Consider any objection to the rate record and may either disallow it or allow it, wholly or in part.
3. After making a decision on the objection, is to promptly serve upon the person whom the objection was made, written notice of the decision and a statement of reasons for that decision.

14. RATES AND SERVICES CHARGES (INCLUDING FEES AND CHARGES) PAYMENT AGREEMENTS

LEGISLATIVE POWER *Local Government Act 1995* Section 5 and 6

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to perform the following functions:

1. Enter into an agreement under section 6.49 of the *Local Government Act 1995* for the payment of a rate or service charge; subject to the requirements of Council Policy CP/FIN-3212 Rates and Charges Debt Collection.

~~b. The arrangements agreed to being on the basis that the total debt outstanding will be extinguished by 30 June next following.~~

15. INVESTMENTS

LEGISLATIVE POWER *Local Government Act 1995 Section 5.42 and Local Government (Financial Management) Regulations 1996, Regulation 19*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

That Council delegates its authority and power to the Chief Executive Officer:

1. to invest any monies held in the municipal fund or the trust fund that is not, for the time being, required by the local government for any other purpose; and determine to invest these monies in accordance with Council Policy CP/FIN-3203 Investment;
2. to establish and document internal control procedures to be followed by employees to ensure control over investments. The control procedures are to enable the identification of:
 - (a) the nature and location of all investments, and
 - (b) transactions related to each investment.

16. EXPENDITURE BEFORE ADOPTION OF BUDGET

LEGISLATIVE POWER *Local Government Act 1995* Section 5 and 6

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to authorise operating expenditure and appropriate capital expenditure that is to be carried over from the previous Annual Budget from the municipal fund prior to the adoption of the annual budget.

Condition-

The CEO must include the expenditure in the draft budget to be presented to the Council.

17. CONTRACT VARIATIONS

LEGISLATIVE POWER *Local Government Act 1995, Section 5.42*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

~~The Council delegates its authority and power to the Chief Executive Officer to approve variations of up to 10% to the value or 10% of the specification for goods or services for a proposed supply, or up to \$100,000 for contracts that would otherwise require authorisation by the Council, subject to the funds required to meet the cost of the variations being within the amount set aside in the budget adopted by the Council.~~

The Council delegates its authority and power to the Chief Executive Officer to:

1. Approve individual contract variations up to a value of \$150,000 (excluding GST), on the condition the variation is necessary for the goods or services to be provided and does not alter the scope of the contract.
2. Approve contract variations up to \$500,000 (excluding GST) that are a renewal or extension to the term of a contract, for contracts that contain a provision for an option to renew or extend its term.

Conditions:

1. The funds required to meet the cost of the variation is within the amount set aside in the budget adopted by council.
2. For the purposes of this delegation a contract is defined as a legally binding agreement between the Shire and another Party for the supply of goods and/or services.
3. The Chief Executive Officer is to ensure that documented procedures are established and agreed in writing, prior to entering into a contract with regard to variations.
4. The Chief Executive Officer is to ensure that proposed variations to contracts are agreed in writing, prior to commencement.

18. RECOVERY OF DEBTS

LEGISLATIVE POWER *Local Government Act 1995, Part 6 Financial Management*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to determine if -

1. Court action should be taken to recover an unpaid rate or service charge that is due and payable,

Subject to-

- (a) Recovery action having been taken in accordance with Council Policy CP/FIN-3212 Rates and Charges Debt Collection.

19. SALE OF IMPOUNDED OR CONFISCATED VEHICLES, ANIMALS OR GOODS

LEGISLATIVE POWER *Local Government Act 1995* Section 3.47(1), (2), (2a),
3.47A (1), 3.48, 3.58

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to:

1. Sell or otherwise dispose of any confiscated or impounded goods
2. Destroy an impounded animal where it is determined to be too ill or injured to treat
3. Where an offender is convicted, recover from the offender expenses incurred for removing, impounding and disposing confiscated or impounded goods.

20. ENFORCEMENT AND INFRINGEMENT NOTICES

LEGISLATIVE POWER *Local Government Act 1995*, Part 9, Division 2, Subdivision 1 and 2

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to appoint authorised persons to exercise the-

1. Powers and duties set out in the *Local Government Act 1995* in respect of-
 - (a) Section 3.25(1) – Notices requiring certain things to be done by owner or occupier of land.
 - (b) Section 3.27 – Things local government can do on land that is not local government property.
 - (c) Section 3.31 – Entering property.
 - (d) Section 3.39 – Power to remove and impound.
 - (e) Section 3.40A (1) – Abandoned vehicle wreck may be taken.
 - (f) Section 9.11 – Persons found committing breach of Act to give name on demand.
 - (g) Section 9.13 – Onus of proof in vehicle offences may be shifted.
 - (h) Section 9.16 – Giving a Notice.
 - (i) Section 9.17 – Content of Notice.
 - (j) Section 9.19 – Extension of Time.
 - (k) Section 9.20 – Withdrawal of Notice.
 - (l) Section 9.24(1), (2) – Enforcement and legal proceedings – Commencing prosecutions – Offence against the Act or Shire's Local Laws.
 - (m) Section 9.29(2) – Enforcement and legal proceedings – Representing local government in court.
- 2 Duties and functions set out in the Shire's local laws.

21. CERTAIN THINGS TO BE DONE IN RESPECT OF LAND

LEGISLATIVE POWER *Local Government Act 1995* Sections 3.24, 3.25, 3.26, 3.27, 3.31, 3.34, 3.36 & 5.42

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to appoint Authorised Persons in accordance with Section 3.24 and 3.25 of the Act for the purposes of exercising those powers as defined in Sub Division 2 'Certain Provisions About Land' of the Local Government Act 1995 and as prescribed in Schedule 3.1 'Powers under notices to owners or occupiers of land'.

Schedule 3.1 – Things a notice may require to be done

1. Prevent water from dripping or running from a building on the land onto any other land.
2. Place in a prominent position on the land a number to indicate the address.
3. Modify or repair, in the interests of the convenience or safety of the public, anything constructed as mentioned in Schedule 9.1, clause 8, or repair any damage caused to the public thoroughfare or other public place mentioned in that clause.
4. (1) Ensure that land that adjoins a public thoroughfare or other public place that is specified for the purposes of this item by a local law —
 - (a) is suitably enclosed to separate it from the public place; and
 - (b) where applicable, is enclosed with a close fence, to the satisfaction of the local government, suitable to prevent sand or other matter coming from the land onto the public place.
- (2) The notice cannot be given to an occupier who is not an owner.
5. (1) Ensure that unsightly land is enclosed, to the satisfaction of the local government, with a fence or other means suitable to prevent the land, so far as is practicable, from being unsightly.
- (2) In this item —

unsightly, in relation to land, means having an appearance that, because of the way in which the land is used, does not conform with the general appearance of other land in the locality.
- (3) The notice cannot be given to an occupier who is not an owner.
- 5A. (1) Ensure that overgrown vegetation, rubbish, or disused material, as specified, is removed from land that the local government considers to be untidy.
- (2) In this item —

disused material includes disused motor vehicles, old motor vehicle bodies and old machinery.
- 5B. Ensure that graffiti that is —
 - (a) applied with the consent of the owner or occupier; and
 - (b) visible from a public place; and
 - (c) considered by the local government to be unsightly or offensive,is obliterated in a manner acceptable to the local government.

6. Take specified measures for preventing or minimising the movement of sand, silt, clay or rocks on or from the land if, in the opinion of the local government, that movement would be likely to adversely affect other land.
7. Ensure that land that adjoins a public thoroughfare or other public place that is specified for the purposes of this item by a local law is not overgrown.
8. Remove all or part of a tree that is obstructing or otherwise prejudicially affecting a thoroughfare that is under the local government's control or management and adjoins the land where the tree is situated.
9. Ensure that a tree on the land that endangers any person or thing on adjoining land is made safe.
10. Take specified measures for preventing or minimizing —
 - (a) danger to the public; or
 - (b) damage to property,
 which might result from cyclonic activity.
11. Remove bees that are likely to endanger the safety of any person or create a serious public nuisance.
12. Ensure that an unsightly, dilapidated or dangerous fence or gate that separates the land from land that is local government property is modified or repaired.
13. Take specific measures to prevent —
 - (a) artificial light being emitted from the land; or
 - (b) natural or artificial light being reflected from something on the land,
 creating a nuisance.
14. (1) Remove or make safe anything that is obstructing or otherwise prejudicially affecting a private thoroughfare so that danger to anyone using the thoroughfare is prevented or minimised.
- (2) In this item —

private thoroughfare has the same meaning as in Schedule 9.1 clause 7(1).

[Division 1 amended in Gazette 29 Apr 1997 p. 2144; amended by No. 49 of 2004 s. 72; No. 17 of 2009 s. 46.]

In addition, authority is delegated to:

1. do anything considered necessary to achieve the purpose for which the notice was given in order to make a person comply with the notice;
2. undertake works that are not carried out by the owner or occupier and recover the costs as a debt;
3. go onto private land in circumstances prescribed in Schedule 3.2 and carry out works, even without the consent of the owner;
4. authorise a person to enter land, premises or thing without consent, after notice has been given, unless the owner or occupier has objected to the entry;
5. enter land in an emergency without notice or consent; and
6. make an opening in a fence to do works on property subject to providing the owner or occupier with 3 day's written notice.

22. POWERS OF ENTRY

LEGISLATIVE POWER *Local Government Act 1995* Sections 3.32, 3.33, 3.34, 3.36

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer pursuant to Section 5.42 and 5.43 of the *Local Government Act 1995* to:

1. Authorise entry onto land to fulfil any statutory function that the local government has under the *Local Government Act 1995*
2. Give a Notice of Entry
3. Seek and execute an entry under warrant
4. Execute an entry in an emergency
5. Give notice and execute the opening of a fence.

Subject to:

- (a) A warrant to enter may only be sought after the employee has a sworn affidavit setting out circumstances that gave rise to the need for a warrant (unless and emergency)

23. PUBLIC THOROUGHFARES

LEGISLATIVE POWER *Local Government Act 1995* Sections 3.50, 3.51 & 5.42

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to:

1. close a thoroughfare wholly or partially, for a period not exceeding 4 weeks;
2. provide public notice of intentions and reasons for, and invite and consider submissions prior to ordering the closure of a thoroughfare, wholly or partially, to vehicles for a period exceeding 4 weeks' and
3. give notice of proposal and invite and consider submissions before –
 - (a) fixing or altering the level of, or the realignment of, a public thoroughfare;
 - or
 - (b) draining water from a public thoroughfare or other public place onto adjoining land.
4. To revoke an order to close a thoroughfare subject to the provisions of Section 3.50(6) of the *Local Government Act 1995*.

Any proposal to close a thoroughfare for any period exceeding 3 months must be referred to Council for determination.

24. GATES ACROSS PUBLIC THROUGHFARE

LEGISLATIVE POWER *Local Government Act 1995 Section 5.42 and Local Government (Uniform Local Provisions) Regulations 1996 Regulation 9*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to-

1. Grant permission to a person to have a gate or other device across a public thoroughfare under the care, control and management of the Shire, and impose conditions in respect to the permission,
Subject to-
 - (a) The requirements of Regulation 9 of the *Local Government (Uniform Provisions) Regulations 1996*; and
 - (b) A register of gates and other devices being kept in accordance with Clause 9(8) of the *Local Government (Uniform Provisions) Regulations 1996*.
2. Issue a notice under Section 3.25(1)(b) to a person who has not complied with a condition imposed on a permission given under (1) above.
3. Do anything that is considered necessary to achieve, so far as is practicable, the purpose for which the notice was given under (2) above.
4. Recover the cost of anything done under (3) above as a debt due from the person who failed to comply with the notice issued subject to notification being given to Council prior to legal action commencing.

25. DANGEROUS EXCAVATION IN OR NEAR PUBLIC THOROUGHFARE

LEGISLATIVE POWER *Local Government Act 1995* Section 5.42 and *Local Government (Uniform Local Provisions) Regulations 1996* Regulation 11

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to exercise each of the functions under regulation 11 of the *Local Government (Uniform Local Provisions) Regulations 1996*, including the powers –

1. to fill in or fence an excavation;
2. to give a written request to an owner or occupier to fill in or securely fence the excavation; and
3. to determine applications for permission to make, or make and leave, an excavation in a public thoroughfare or land adjoining a public thoroughfare or land adjoining a public thoroughfare.

26. CROSSOVERS

LEGISLATIVE POWER *Local Government Act 1995* Section 5.42 and *Local Government (Uniform Local Provisions) Regulations 1996* Regulation 12 and 13

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to-

1. Approve or refuse an application from an owner of land, to construct a crossover giving access from a public thoroughfare to the land, or a private thoroughfare serving the land, and impose conditions in respect to the approval,

Subject to-

(a) The requirements of Regulation 14(2) of the *Local Government (Uniform Provisions) Regulations 1996*.

2. Issue a notice under Section 3.25(1)(b) to a person who has not complied with a condition imposed on a permission given under (1) above.
3. Do anything that is considered necessary to achieve, so far as is practicable, the purpose for which the notice was given under (2) above.
4. Issue a notice under Regulation 13(1) of the *Local Government (Uniform Provisions) Regulations 1996* to the owner or occupier of private land to construct or repair a crossover from a public thoroughfare to the land, or a private thoroughfare serving the land

Subject to-

(a) The requirements of Regulation 14(2) of the *Local Government (Uniform Provisions) Regulations 1996*.

Recover the cost of anything done under (3) and (4) above as a debt due from the person who failed to comply with the notice issued

Subject to-

(a) Notification being given to Council prior to legal action commencing.

27. PERMISSION TO DEPOSIT MATERIALS ON, OR EXCAVATE ADJACENT TO, A STREET

LEGISLATIVE POWER *Local Government Act 1995, Section 5.42 and Local Government (Uniform Local Provisions) Regulations 1996 Regulation 6*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to exercise each of the functions under regulation 6 of the *Local Government (Uniform Local Provisions) Regulations 1996*, including the power to determine applications for permission to place on a specified part of a public thoroughfare one or more specified things that may obstruct the public thoroughfare.

28. EVENTS ON ROADS

LEGISLATIVE POWER *Local Government Act 1995, Section 5.42*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to give, or refuse to give, the Shire's approval under regulation 4 of the *Road Traffic (Events on Roads) Regulations 1991* in relation to the temporary closure of a road for the purpose of conducting an event.

Note-

In exercising this function, delegates may be required to comply with the requirements of sections 3.50 of the *Local Government Act 1995*.

29. ROAD TRAINS & EXTRA MASS PERMITS

LEGISLATIVE POWER *Local Government Act 1995* Section 5.42

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to determine any application to use road trains and for extra mass permits on any local road within the district, recommending approval or refusal, with or without conditions, for referral to Main Roads WA. Taking regard to any Council policy on the issue that may be established from time to time.

30. TEMPORARY ROAD CLOSURES ** NEW **

LEGISLATIVE POWER *Local Government Act 1995* Section 5.42

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer temporarily close roads for repairs and maintenance in accordance with Subdivision 5 (Certain provisions about thoroughfares) of the *Local Government Act 1995*.

Subdivision 5 - *Local Government Act 1995*:

- s3.50 Closing certain thoroughfares to vehicles
- s3.50A Partial closure of thoroughfares for repairs or maintenance
- s3.51 Affected owners to be notified of certain proposals
- s3.52 Public access to be maintained and plans kept

31. TRAFFIC REGULATORY SIGNS

LEGISLATIVE POWER *Local Government Act 1995 Section 5.42*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to install appropriate traffic regulatory signs at such places as considered necessary.

Conditions-

In exercising this function approval from Main Roads and other Statutory bodies is to be gained where relevant. All signs are to be in accordance with relevant legislation, guidelines and standards.

32. APPOINTMENT OF AUTHORISED PERSONS

LEGISLATIVE POWER *Local Government Act 1995*, Section 3.24, 3.25, 3.26, 3.27, 3.39, 9.10

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to appoint persons or classes of persons pursuant to Section 5.42 and 5.43 of the *Local Government Act 1995* to be authorised for the purpose of fulfilling prescribed functions within the *Local Government Act 1995* and the administration of the Shire's Local Laws.

33. AUDIT (FINANCE AND RISK) COMMITTEE

LEGISLATIVE POWER *Local Government Act 1995, Section 5.18*

DELEGATE Audit (Finance and Risk) Committee

FUNCTION TO BE PERFORMED

Pursuant to Section 7.12A of the *Local Government Act 1995*, the Council provides delegated authority to the Audit (Finance and Risk) Committee to meet annually with the Shire of Wyndham East Kimberley's auditor(s).

STATUTORY DELEGATIONS– OTHER LEGISLATION

34. LOCAL PLANNING SCHEME No. 7

LEGISLATIVE POWER *Local Planning Scheme No. 7*

DELEGATE Chief Executive Officer
 Director Community Development
 Senior Planning Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Clause 12.7.1 and 12.7.3 to:

1. Determine applications for planning approval, including applications, involving;
 - a. the variation of Local Planning Scheme provisions, Local Planning Policy or provisions of the Residential Design Codes; and
 - b. the exercise of discretion under the Local Planning Scheme, Local Planning Policy or the Residential Design Codes; and
 - c. unauthorised existing developments.
2. Advertise an application for planning approval.
3. Refusal of all development applications where;
 - a. the proposed use is not permitted by the Local Planning Scheme; or
 - b. the development does not comply with the non-discretionary provisions of the Residential Design Codes or;
 - c. additional information required is not provided within 21 days of the request.
4. Amend or revoke a planning approval.
5. Grant an extension of development approval for up to two (2) years.
6. Delete or modify conditions of approval, whether imposed under delegated authority or not.
7. Make recommendations to the WA Planning Commission on:
 - a. Applications for subdivision or amalgamation of land;
 - b. Minor variations to approved subdivisions;
 - c. Clearance of conditions of subdivision approval
8. At all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Local Planning Scheme are being served.
9. Issue and serve notices, and take any other enforcement action, against a person who is suspected of committing an offence under the Local Planning Scheme.
10. Recover expenses under Section 11 (4) of the *Planning and Development Act 2005* in a court of competent jurisdiction.

DELEGATE Planning Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Clause 12.7.1 and 12.7.3 to:

1. Determine applications for planning approval where the proposed use is a 'P' or 'IP' use, including applications, involving;
 - a. the variation of Local Planning Scheme provisions, Local Planning Policy or provisions of the Residential Design Codes; and
 - b. the exercise of discretion under the Local Planning Scheme, Local Planning Policy or the Residential Design Codes.

2. Advertise an application for planning approval.
3. Grant an extension of development approval for up to two (2) years.
4. Make recommendations to the WA Planning Commission on:
 - a. Applications for subdivision or amalgamation of land;
 - b. Minor variations to approved subdivisions;
 - c. Clearance of conditions of subdivision approval.
5. At all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Local Planning Scheme are being served.
6. Issue and serve notices, and take any other enforcement action, against a person who is suspected of committing an offence under the Local Planning Scheme.
7. Recover expenses under Section 11 (4) of the *Planning and Development Act 2005* in a court of competent jurisdiction.

35. STRATA TITLES – ISSUE OF LOCAL AUTHORITY CERTIFICATE

LEGISLATIVE POWER *Strata Titles Act 1985* – Section 9 (3), 10 (2) and 24 (2)

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to issue or refuse a local authority certificate pursuant to Section 9 (3) and 10(2) of the *Strata Titles Act 1985* and make preliminary determinations pursuant to Section 24 (2) of the Act.

Subject to the following conditions:

- (a) Applicant being advised of the objection and/or appeal rights

36. PLANNING AND DEVELOPMENT ACT 2005 – ILLEGAL DEVELOPMENT

LEGISLATIVE POWER *Planning and Development Act 2005* Section 214(2), (3) and (5) and Section 215

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 5.42 and 5.43 to the Chief Executive Officer to:

1. Give a written direction to the owner or any other person undertaking an unauthorised development to stop and not recommence the development or that part of the development that is undertaken in contravention of the Local Planning Scheme
2. Give a written direction to the owner or any other person who undertook an unauthorised development:
 - a. to remove, pull down, take up, or later the development; and
 - b. to restore the land as nearly as practicable to its condition immediately before the development stated, to the satisfaction of the responsible authority
3. Give a written direction to the person whose duty it is to execute that work where it appears that delay in the execution of the work to be executed under a Local Planning Scheme would prejudice the effective operation of the Local Planning Scheme.

37. PLANNING AND DEVELOPMENT ACT 2005 – AUTHORISATIONS *NEW*

LEGISLATIVE POWER *Planning and Development Act 2005* Section 234

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 5.42 and 5.43 of the *Local Government Act 1995* to the Chief Executive Officer to appoint designated persons for the purposes of the below listed sections of the *Planning and Development Act 2005*:

- s228 – Giving of infringement notice
- s229 – Content of infringement notice
- s230 – Extending time to pay modified penalty
- s231 – Withdrawal of penalty

38. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 –
DESIGNATE AUTHORISED PERSON

LEGISLATIVE POWER *Building Act 2011* Section 93(2)(d), 96(3), (5) and (6) and
Section 99

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer pursuant to section 27 of the *Building Act 2011* to designate an employee as an authorised person under section 96(3) of the *Building Act 2011* in relation to buildings and incidental structures located or proposed to be located in the district of the local government and for the purpose of section 93(2)(d) and 96 (5)(6).

39. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 - BUILDING ORDERS

LEGISLATIVE POWER *Building Act 2011*, Section 88, 110, 117(1) and (2), 118(2) and (3), 133(1)

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 6(3) of the *Building Act 2011* to the Chief Executive Officer to:

1. Make building orders in respect of one or more of the following:
 - a. particular building work
 - b. particular demolition work
 - c. a particular building or incidental structure, whether completed before or after commencement day
2. Specify the way in which an outward facing side of a particular close wall must be finished
3. Revoke a building order at any time
4. Decide whether the building order has been fully complied with and either revoke the building order or inform each person to whom the order is directed that the building order remains in effect, within 28 days of receiving a notification under section 112(3)(c) and section 117(2)
5. If there is non-compliance with a building order, cause an authorised person to:
 - a. take any action specified in the order; or
 - b. commence or complete any work specified in the order; or
 - c. if any specified action was required by the order to cease, to take such steps as are reasonable in the circumstances to cause the action to cease
6. Take court action to recover as a debt, reasonable costs and expenses incurred in doing anything in regard to non-compliance with a building order
7. Initiate a prosecution pursuant to section 133(1) for non-compliance with a building order made pursuant to section 110 of the *Building Act 2011*.

40. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 – BUILDING AND DEMOLITION PERMITS

LEGISLATIVE POWER *Building Act 2011* Sections 20, 21 and 27(1) and (3)

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 6(3) of the *Building Act 2011* to the Chief Executive Officer to:

1. Grant a building or demolition permit;
2. Refuse a building or demolition permit; and
3. Impose, vary or revoke conditions on a building or demolition permit.

41. BUILDING ACT 2011 AND BUILDING REGULATIONS 2012 –
OCCUPANCY AND BUILDING APPROVAL CERTIFICATES

LEGISLATIVE POWER *Building Act 2011*, Sections 55, 58, 59, 60, 62(1), (3), (4) and (5), 65(4) and *Building Regulations 2012* Regulation 40(2) and (5)

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 6(3) of the *Building Act 2011* to the Chief Executive Officer to:

1. Require the applicant for an occupancy permit or building approval certificate to provide any document or information that it requires to determine the application and to verify the information by statutory declaration
2. Refuse to consider an application
3. Grant or modify the occupancy permit or grant the building approval certificate
4. Refuse to grant or modify the occupancy permit or grant the building approval certificate (including in the circumstances set in section 58(2) and (3))
5. Record the grounds on which a decision to refuse to grant or modify an occupancy permit or grant a building approval certificate is based, and the reasons for the decision and give to the person to whom the decision relates written notice of the decision together with those grounds and reasons and the person's right to review
6. Impose, add, vary or revoke conditions on an occupancy permit
7. Give written notice of the addition, variation or revocation of a condition and ensure that the notice informs the person of the person's right of review
8. Extend the period in which the occupancy permit or modification or the building approval certificate has effect
9. Refuse to accept an application to extend the time during which an occupancy permit or a building approval certificate has effect
10. Refuse to extend the time during which an occupancy permit or a building approval certificate has effect or extend the permit or certificate for shorter period than requested by the applicant and, if so, record the grounds on which a decision is based and the reason for the decision, and give written notice of the decision together with those grounds and reasons, and the person's right of review.

42. BUSH FIRES ACT 1954 - VARIATION TO FIREBREAK ORDERS

LEGISLATIVE POWER *Bush Fires Act 1954, Section 48*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to perform all the functions and duties of the local government under the *Bushfires Act 1954*,

Subject to-

- (a) This power and authority cannot be sub-delegated by virtue of Section 48(3) of the *Bushfires Act 1954*.
- (b) The exclusion of powers and duties prescribed in the Act including those that require a resolution by the local government.
- (c) Where the exercise of authority relates to the determination of firebreaks in alternative positions, or alternative action to abate fire hazards, the Chief Executive Officer shall liaise with the Chief Bushfire Control Officer or Deputy Chief Bushfire Control Officer on each specific variation request.

43. BUSH FIRES ACT 1954 - VARIATION TO PROHIBITED BURNING TIMES

LEGISLATIVE POWER *Bush Fires Act 1954* Section 48

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to-

1. Vary the prohibited burning times within the district of the Shire of Wyndham East Kimberley,

Subject to-

- (a) The appropriate notice being given as required by Section 17(8) of the *Bushfires Act 1954*.
2. Vary the restricted burning times within the district of the Shire of Wyndham East Kimberley,
 - (a) The appropriate notice being given as required by Section 18(5C) of the *Bushfires Act 1954*.

44. FOOD ACT 2008 – PROHIBITION ORDERS, CERTIFICATES OF CLEARANCE

LEGISLATIVE POWER *Food Act 2008*, Sections 65(1), 66 and 67(4)

DELEGATE Chief Executive Officer
 Director, Community Development

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 118(2)(b) and (3) of the *Food Act 2008* to the Chief Executive Officer and Director, Community Development to:

1. Serve a Prohibition Order on the proprietor of a food business
2. Give a Certificate of Clearance, where inspection demonstrates compliance with a Prohibition Order and any Improvement Notices
3. Give written notice to the proprietor of a food business on whom a Prohibition Order has been served of the decision not to give a certificate of clearance after an inspection.

45. LIQUOR CONTROL ACT 1988 - CERTIFICATION

LEGISLATIVE POWER *Liquor Control Act 1988*, Sections 39 and 40

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 5.42 of the *Local Government Act 1995* to the Chief Executive Officer to sign and issue Local Authority Certificates of compliance with respect to requests for *Liquor Control Act 1988* Section 39 (Health) and Section 40 (Town Planning) Certificates.

46. GAMING AND WAGERING COMMISSION ACT 1987 – GAMING

LEGISLATIVE POWER *Gaming and Wagering Commission Act 1987, Section 44*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 5.42 of the *Local Government Act 1995* to the Chief Executive Officer to provide a report certifying that premises conform, or if not conforming in what respect they do not conform in respect of requests for Section 44 of the *Gaming and Wagering Commission Act 1987* reports.

47. CAT ACT 2011 – POWERS, DUTIES AND FUNCTIONS

LEGISLATIVE POWER *Cat Act 2011, Cat (Uniform Local Provisions) Regulations 2013 and Cat Regulations 2012*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to perform all the functions and duties of the local government under the *Cat Act 2011*.

48. CAT ACT 2011 – APPOINTMENT OF AUTHORISED PERSONS

LEGISLATIVE POWER *Cat Act 2011*, Section 48

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to:

- 1) Appoint persons or classes of persons to be authorised for the purposes of performing particular functions under the *Cat Act 2011*
- 2) Determine conditions on any authorisation
- 3) Cancel or vary an authorisation

49. DOG ACT 1976 – POWERS, DUTIES AND FUNCTIONS

LEGISLATIVE POWER *Dog Act 1976 and Dog Regulations 2013*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to perform all the functions and duties of the local government under the *Dog Act 1976* and to further delegate powers and duties under the *Dog act 1976* and associated Regulations.

50. DOG ACT 1976 – APPOINTMENT OF AUTHORISED PERSONS

LEGISLATIVE POWER *Dog Act 1976 and Dog Regulations 2013*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to:

- 1) Appoint persons or classes of persons to be authorised for the purposes of performing particular functions under the *Dog Act 1976*.
- 2) Appoint persons or classes of persons to be authorised as registration officers.
- 3) Determine conditions on any authorization.
- 4) Cancel or vary an authorization.

51. POUNDKEEPERS – APPOINTMENT OF RANGERS

LEGISLATIVE POWER *Local Government (Miscellaneous Provisions) Act 1960*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power to the Chief Executive Officer to:

- 1) Appoint persons or classes of persons to be authorised as rangers for the purpose of being a poundkeeper as per the *Local Government (Miscellaneous Provisions) Act 1960*.
- 2) Determine conditions on any authorisation
- 3) Cancel or vary an authorisation

Subject to-

1. The local government having the care, control, and management of a public pound shall cause public notice to be given of the appointment or removal of poundkeepers and rangers, and a notice so given is *prima facie* evidence a poundkeeper or ranger has been lawfully appointed or removed, as the case may be.

COUNCIL APPOINTED AUTHORISED PERSONS AND OFFICERS

52. HEALTH ACT 1911 – APPOINTMENT OF DEPUTY

LEGISLATIVE POWER *Health Act 1911, Section 26*

DELEGATE Director Community Development
 Environmental Health Officers

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Section 26 of the *Health Act 1911* to exercise and discharge all or any of the powers and functions of the local government.

53. FOOD ACT 2008 – APPOINTMENT OF AUTHORISED OFFICERS

LEGISLATIVE POWER *Food Act 2008*, Part 5, Divisions 1 and 2

DELEGATE Director Community Development
 Environmental Health Officers

FUNCTION TO BE PERFORMED

The Council pursuant to Section 122(1) of the *Food Act 2008* appoint a person to be an authorised officer for the purposes of the *Food Act 2008*.

LEGISLATIVE POWER *Food Act 2008*, Section 126(13)

DELEGATE Chief Executive Officer
 Director Community Development
 Environmental Health Officers

FUNCTION TO BE PERFORMED

The Council pursuant to Section 122(1) of the *Food Act 2008* delegates its authority and power to undertake the powers of a 'designated person' as prescribed in the *Food Act 2008* and regulations.

Under the provisions of Section 126(2) of the *Food Act 2008*, the Council designates the Shire's "Authorised Officers" to be "designated officers" for the purpose of issuing infringement notices.

Under the provisions of Section 126(6) and 126(7) of the *Food Act 2008*, Council designates the Director of Community Development to be a "designated officer" to extend and revoke infringement notices.

Under the provisions of Section 126(3) of the *Food Act 2008*, Council designates the Chief Executive Officer as the "designated officer" to receive payment from infringement notices.

55. CARAVAN PARKS AND CAMPING GROUNDS ACT 1995 –
APPOINTMENT OF AUTHORISED PERSON **NEW **

LEGISLATIVE POWER *Caravan Park and Camping Grounds Act 1995, Caravan Parks and Camping Grounds Regulations 1997, Regulation 6*

DELEGATE Director Community Development
 Environmental Health Officer

FUNCTION TO BE PERFORMED

The Council appoint a person pursuant to Section 17 of the *Caravan Parks and Camping Grounds Act 1995* to undertake the powers of an 'authorised person' as prescribed in the *Caravan Parks and Camping Grounds Act 1995* and regulations.

56. CARAVAN PARKS AND CAMPING GROUNDS ACT 1995 – INFRINGEMENT NOTICES **NEW **

LEGISLATIVE POWER *Caravan Park and Camping Grounds Act 1995, Section 23.*

DELEGATE Environmental Health Officers

Pursuant to the provisions of Section 23(11) of the *Caravan Park and Camping Grounds Act 1995*, Council authorizes Environmental Health Officers for the purpose of subsection:

(2) issue an infringement.

Pursuant to the provision of Section 23(11) of the *Caravan Park and Camping Grounds Act 1995* Council authorizes it Chief Executive Officer and Director Community Development for the purpose of subsections:

- (3) payment of infringements;
- (5) extend time for payment of infringement; and
- (7) withdraw infringement.

57. CONTROL OF VEHICLES (OFF-ROAD AREAS) ACT – AUTHORISED OFFICER

LEGISLATIVE POWER *Control of Vehicles (Off-Road Areas) Act 1978, Section 38(3). Control of Vehicles (Off-Road Areas) Regulations 1979*

DELEGATE Director Infrastructure
Senior Ranger & Emergency Services Coordinator
Ranger/s

FUNCTION TO BE PERFORMED

Council delegates its authority and power to the Director Infrastructure, Senior Ranger & Emergency Services Coordinator and Ranger/s to perform the duties of an authorised officer under the *Control of Vehicles (Off-road Areas) Act 1978*, for the whole of the district of the Shire of Wyndham East Kimberley,

Subject to-

1. The Officers and/or Employees exercising the Delegation, keeping a written record of details of how the Delegation was exercised, when the delegation was exercised, the persons or classes of person's directly affected by the exercise of the power on the discharge of the duty.

Delegations

Local Government Operational Guidelines - **Number 17** January 2007



Department of Local Government
and Regional Development
Government of Western Australia

www.dlgrd.wa.gov.au

Delegations

1. Introduction

1. This guideline has been developed in response to enquiries from local governments regarding the nature of delegations, how to go about determining whether to use delegations and other related matters.

2. Within the context of government administration and administrative law, this guideline:

- Explains the concept of delegation;
- Explains how delegations relate to or are derived from legislation;
- Explains and illustrates the associated concept of "acting through";
- Provides guidance on determining which powers and duties should be delegated;
- Explains the procedure for making delegations; and
- Provides examples of delegations from selected powers and duties set out in the *Local Government Act 1995*.

3. This guideline also contains a listing of various powers and duties in the *Local Government Act 1995* and its associated regulations, and identifies powers and duties capable of delegation and to whom.

2. Definition of "Delegate"

4. The *Macquarie Dictionary Second Edition* (1991), The Macquarie Library Pty Ltd, Macquarie University, New South Wales (Australia), p. 469, defines "delegate" as follows:

- To send or appoint (a person) as deputy or representative;
- To commit (powers, duties, etc.) to another as agent or deputy; and
- To commit powers or duties to others.

5. The *Oxford Shorter English Dictionary Third Edition* (1978), Oxford University Press, Oxford (England), p. 511, defines "delegate" as follows:

- A person sent or deputed to act for or represent another or others; a deputy, commissioner;

- To send or commission (a person) as a deputy or representative, with power to act for another; and
- To entrust or commit (authority, etc.) to another as an agent or deputy.

6. Justice Wills in *Huth v Clarke* (1890) 25 QBD 391, at 395 stated:

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to a conferring of an authority to do things which otherwise the person would have to do himself...[It] is never used by legal writers...as implying that the delegating person parts with his power in such a manner as to denude himself of his rights...[The] word "delegate" means little more than an agent".

7. The definitions in paragraphs 4 & 5 above and the judicial commentary in paragraph 6 above illustrate that:

- To delegate is to appoint another person to exercise a power or discharge a duty; and
- A delegation does not strip the person making the delegation of the right to exercise the delegated power or discharge the delegated duty.

3. The Nature of Delegation - Decision Making

8. Delegations are most commonly used in organisations where:

- A particular person has authority to exercise a discretion to enforce a right or discharge a duty on behalf of the organisation;
- That person or officer has either:
 - (i) a multitude of authorities to exercise a discretion to enforce rights or discharge powers; or
 - (ii) many circumstances in which they have authority to exercise a discretion to enforce rights or discharge duties;
- The business of the organisation could not be efficiently carried on if that person were to personally exercise their discretion to enforce all the rights or discharge all the duties; and

- Through practical administration, that person needs to appoint other persons to exercise their discretion to exercise powers or discharge duties on behalf of the organisation.

9. Whilst there is a requirement for local government delegations to be authorised by statute (as is explained in paragraph 19 below), there is no limitation (unless expressly stated to the contrary by statute) on appointing a person to act on behalf of the local government or the CEO, provided that appointment does not include the power of delegation (paragraph 45 refers).

10. There is a legal distinction between:

- the delegation to a person to exercise a right or discharge a duty on behalf of an organisation; and
- appointing a person to act on behalf of an organisation or another employee of that organisation.

11. In most circumstances, where a person:

- Is appointed only to carry out the express instructions of an employee or the governing body of an organisation; and
- Is provided with only limited discretion in carrying out those instructions,

that appointment does not constitute a delegation and does not need to be formally delegated. Please see paragraphs 13 – 17 which explain the concept of “acting through”.

12. Paragraphs 8 to 11 above illustrate that when determining whether an appointment is a delegation or simply an appointment to act on behalf of another person, it is critical to consider whether or not the person is appointed to exercise a broad discretion to exercise a power or discharge a duty.

4. The Concept of “Acting Through”

13. In addition to covering delegations, the *Local Government Act 1995* introduces the concept of “acting through”. Section 5.45 of the Act states that in relation to delegations, nothing prevents a “local government from performing any of its functions by acting through a person other than the CEO” or “a CEO from performing any of his or her functions by acting through another person”. The Act does not specifically define the meaning of the term “acting through”. However, the key difference between a delegation and “acting through” is that a delegate exercises the delegated decision making function in his or her own right. The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the “acting through” concept. Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority.

14. For administrative purposes, a person may sign a letter in his or her name on behalf of the CEO while, with delegated powers, the person would sign a letter in his or her own name, in accordance with the delegated authority.

15. An appropriate method for a council of a local government to make a decision which will be implemented by its officers, is for it to make a policy about particular functions that it performs. In that case there is no need for a delegation as it will be the role of the organisation to implement those policy decisions.

16. It is critical in understanding the types of functions that are appropriate for “acting through” another person in preference to delegation. This can be demonstrated through the following example. In this case, the Council gives the CEO the power to call tenders subject to certain cost parameters. If that power is delegated, the CEO could call tenders if the CEO believed the cost parameters had been satisfied (even if the Council’s opinion was different to the CEO’s opinion). However, under an “acting through” arrangement, the CEO could only call tenders if the Council was satisfied about the cost parameters.

17. There are several advantages in using "acting through" rather than delegation which include:

- it will better suit particular operational processes;
- it may decrease bureaucratic arrangements;
- it will reduce additional recording; and
- it will reduce reporting requirements placed on employees who are given delegated authority.

5. Legislative Powers for Delegations in Local Government

18. The legislation authorising the delegation of certain local government powers or duties and requiring records to be maintained in respect of such delegations, includes the:

- *Local Government Act 1995*;
- *Local Government (Miscellaneous Provisions) Act 1960*; (*Strata Titles Act 1985*);
- *Bush Fires Act 1954*; and
- *Planning and Development Act 2005*.

6. Local Government Act 1995

19. The provisions of the *Local Government Act 1995* which provide for delegations by a local government or its CEO are as follows:

- Section 5.16(1), states:
"Under and subject to section 5.17, a local government may delegate to a committee any of its powers and duties other than this power of delegation."
- Section 5.42(1), states:
"A local government may delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43."
- Section 5.44(1), states:
"A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation."

20. The Act has been framed in a way that determines whether powers and duties can be delegated or not. If the term "council" is used then it is the council itself which must carry out that function. If the term "local government" is used then it may be possible to use delegation, subject to any other express powers against delegation or the desirability in using "acting through" where it may be a better way of carrying out the power or duty.

7. Local Government (Miscellaneous Provisions) Act 1960; Strata Titles Act 1995

21. Section 2 of the *Local Government (Miscellaneous Provisions) Act 1960* effectively incorporates the provisions of that Act into the *Local Government Act 1995*, and therefore the delegation provisions of the *Local Government Act 1995* apply to the *Local Government (Miscellaneous Provisions) Act 1960*.

Section 2 states that:

"The *Local Government Act 1995* applies as if the provisions of this Act were in that Act but in construing the provisions of this Act account is to be taken of the meanings they had before the *Local Government Act 1995* commenced."

22. In addition to the delegation powers of the *Local Government Act 1995* which apply to the *Local Government (Miscellaneous Provisions) Act 1960*, section 374(1b) of the *Local Government (Miscellaneous Provisions) Act 1960* provides for a local government to delegate the authority to approve certain plans to its building surveyor, stating that:

"The authority to approve or refuse to approve plans and specifications submitted under [section 374] may be delegated by a local government to a person appointed to the office of building surveyor...."

23. Reference also needs to be made to section 23 of the *Strata Titles Act 1985* which provides for particular delegations to employees.

8. *Bush Fires Act 1954*

24. Section 48 of the *Bush Fires Act 1954* provides for a local government to delegate powers to its CEO, stating that:

"A local government may, in writing, delegate to its chief executive officer the performance of any of its functions under this Act."

9. *Planning and Development Act 2005*

25. *The Planning and Development Act 2005* provides for a system through the Model Scheme Text as a set of general provisions for carrying out the general objects of town planning schemes.

26. Item 11.3.1 of the Model Scheme Text provides for a local government to delegate powers to a committee or its CEO, stating that:

"The local government may...delegate to a committee or the CEO...the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation."

27. Item 11.3.2 of the Model Scheme Text provides for a local government CEO to delegate their powers and duties to another employee, stating that:

"The CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 11.3.1."

10. Legislative Powers to Delegate Relate Only to the Act In Which They Are Contained

28. Some local governments have mistakenly attempted to use the legislative powers of delegation contained in one Act to delegate a power or duty contained in another Act.

29. Unless expressly stated to the contrary, a legislative power to delegate only relates to the powers or duties under the Act in which the delegation power is located.

30. It is not possible to, for example, rely on section 5.42(1) of the *Local Government Act 1995* to delegate any of a local government's powers under the *Bush Fires Act 1954* to a CEO. Any delegation by a local government of its powers under the *Bush Fires Act 1954* can only be delegated by the delegation provisions of that Act.

p05.

11. The Rule Against Sub-delegation

31. Notwithstanding that only some of the relevant legislation expressly prohibits sub-delegation, the common law prohibits sub-delegation unless it is expressly provided for by legislation.

32. For the avoidance of doubt, an example of sub-delegation is where person A is delegated to exercise a power and they attempt to delegate to person B to exercise the power which was originally delegated to person A.

33. Another example is the *Bush Fires Act 1954*. Unlike the *Local Government Act 1995*, the *Bush Fires Act 1954* does not provide for a CEO to delegate to another employee to exercise the powers delegated by council to the CEO under section 48 of that Act. Therefore, only the CEO may exercise the powers delegated by council to the CEO under that Act.

12. Statutory Limitations on Delegations

34. There are limitations on all of the above legislative provisions which provide for the delegation of powers and duties.

35. Many of the limitations relate to sub-delegation. Other limitations include whether the delegation must be in writing, what types of powers and duties can be delegated and what type of majority decision is required to delegate a power or duty.

36. Not all of the limitations can be addressed in this operational guideline, due to their number and detail. However, the majority of the limitation provisions are located close to the provisions which provide for the delegations.

37. As the *Local Government Act 1995* is the Act under which most delegations will be made by local government, this guideline will discuss the limitations on delegations contained within that Act.

13. Delegations to Committees

38. Section 5.17 of the *Local Government Act 1995* provides limitations on what powers and duties a local government can delegate to its committees.

39. Section 5.17(1) limits the powers and duties which can be delegated to committees, according to the types of members which constitute the committees eg:

- Council members only;
- Council members and employees only;
- Council members, employees and other persons; or
- Employees and other persons only.

40. Section 5.17(2) prohibits absolutely the delegation of any powers or duties to committees comprised of only persons other than local government council members or employees.

14. Delegations to the CEO

41. Sections 5.43(a) to 5.43(h) of the *Local Government Act 1995* provide limitations on what powers and duties a local government can delegate to its CEO, stating that:

"A local government cannot delegate to a CEO any of the following powers or duties:

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;
- (f) borrowing money on behalf of the local government;
- (g) hearing or determining an objection of a kind referred in section 9.5;
- (h) any power or duty that requires the approval of the Minister or the Governor; or
- (i) such other powers or duties as may be prescribed."

42. Section 5.43(i) of the Act provides for regulations to prescribe further powers or duties which cannot be delegated to the CEO.

43. The following regulations prescribe powers and duties which cannot be delegated to a CEO:

- (a) Regulation 18G of the *Local Government (Administration) Regulations 1996* prohibits the delegation to a CEO of the powers and duties under:
 - (i) Sections 7.12A(2), 7.12A(3)(a) and 7.12A(4) of the *Local Government Act 1995* (relating to meetings with auditors); and
 - (ii) Regulations 18C and 18D (relating to the selection and appointment of CEOs and reviews of their performance).
- (b) Regulation 6 of the *Local Government (Financial Management) Regulations 1996* prohibits the delegation of the duty to conduct an internal audit to an employee (including a CEO) who has been delegated the duty of maintaining the local government's day to day accounts or financial management operations.

15. Delegations to Other Local Government Employees

44. Section 5.44(1) of the *Local Government Act 1995* provides for the CEO to make delegations to other employees.

45. The obvious main limitation of section 5.44(1) is that it expressly prohibits any sub-delegation of the power to delegate. This means that once the CEO has delegated a power or duty to an employee or employees, that power or duty cannot be on-delegated to other employees.

46. Just as a delegation to a CEO by a council may be done with conditions attached, when delegating to another employee a CEO may attach conditions to the delegation, provided that the CEO does not purport to delegate more powers or duties to the other employee than were delegated to the CEO.

16. Powers Under the *Interpretation Act 1984*

47. Section 59 of the *Interpretation Act 1984* explains the particular elements of the power to delegate when it appears in various Acts. It states:

“Construction of Power to Delegate

- (1) Where a written law confers power upon a person to delegate the exercise of any power or the performance of any duty conferred or imposed upon him under a written law –
- (a) such a delegation shall not preclude a person so delegating from exercising or performing at any time a power or duty so delegated;
 - (b) such a delegation may be made subject to such conditions, qualifications, limitations or exceptions as the person so delegating may specify;
 - (c) if the delegation may be made only with the approval of some person, such delegation, and any amendment of the delegation, may be made subject to such conditions, qualifications, limitations or exceptions as the person whose approval is required may specify;
 - (d) such a delegation may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of office;
 - (e) such a delegation may be amended or revoked by instrument in writing signed by the person so delegating;
 - (f) in the case of a power conferred upon a person by reference to the term designating an office, such a delegation shall not cease to have effect by reason only of a change in the person lawfully acting in or performing the functions of that office.
- (2) The delegation of a power shall be deemed to include the delegation of any duty incidental thereto or connected therewith and the delegation of a duty shall be deemed to include the delegation of any power incidental thereto or connected therewith.

- (3) Where under a written law an act or thing may or is required to be done to, by reference to or in relation to, a person and that person has under a written law delegated a relevant function conferred or imposed on him with respect to or in consequence of the doing of that act or thing, the act or thing shall be regarded as effectually done if done to, by reference to or in relation to the person to whom the function has been delegated.”

48. It is important to be aware that under these provisions, the delegator retains the power to make decisions if need be, despite the fact that a delegation has occurred.

49. Also, in situations when a number of people occupy a particular office throughout either the day or week (eg ranger officers), a delegation by office enables an employee who occupies that office for the time being, to exercise the powers and duties delegated to that office.

50. A delegation by office will also enable an employee who temporarily occupies an office, say in an acting role whilst the normal occupier of the office is sick, to efficiently exercise the powers and duties delegated to that office, without the need to go through the delegation process again. Care needs to be taken in ensuring that the person has the appropriate qualifications where required.

51. When delegating by office, it is essential to ensure that the office described is a distinctly identifiable office (eg Manager, Corporate Services).

17. Records of Delegations

52. The major requirements to keep records of delegations to committees, CEOs and other employees are contained in sections 5.18 and 5.46 of the *Local Government Act 1995*.

53. In relation to delegations to committees, section 5.18 states that:

“A local government is to keep a register of the delegations made [to committees] under this Division and review the delegations at least once every financial year.”

54. In relation to delegations to CEOs and other employees, section 5.46 states that:

- (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.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty."

55. The Registers of delegations to committees and CEOs should include a copy of the minutes which record the delegation (and any conditions) and can be kept in an electronic or paper format. In the case of a delegation from the CEO to an officer the register should also contain a copy of the memorandum of delegation.

56. Obligations are imposed on the recipients of delegated powers and duties. Under section 5.46 of the *Local Government Act 1995*, regulation 19 of the *Local Government (Administration) Regulations 1996* requires delegates to keep a record of each occasion on which they exercise the powers or discharge the duties delegated to them, stating that:

"Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is to keep a written record of:

- (a) how the person exercised the power or discharged the duty;
- (b) when the person exercised the power or discharged the duty; and
- (c) the persons or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty."

57. This provision does not necessarily require the keeping of a register and other efficient record keeping practices would be sufficient. However, it is recommended that such systems provide for accessible accountability of the performance of these tasks.

p08.

18. DELEGATES TO DISCLOSE INTERESTS AND LODGE RETURNS

58. Part 5 Division 6 of the *Local Government Act 1995* (disclosure of financial interests) also applies to delegates of powers and duties.

59. Section 5.71 states that:

"If, under Division 4, an employee has been delegated a power or duty relating to a matter and the employee has an interest in the matter, the employee must not exercise the power or discharge the duty and:

- (a) in the case of the CEO, must disclose to the mayor or president the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter; and
- (b) in the case of any other employee, must disclose to the CEO the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter.

Penalty: \$10,000 or imprisonment for 2 years."

60. In circumstances where the employee is carrying out a delegated function and the matter relates to his or her own projects, then another officer will need to have the authority to deal with the matter. In addition to the prohibition on delegates exercising the powers or performing the duties delegated to them, sections 5.75 and 5.76 of the *Local Government Act 1995* require employees who have been delegated powers or duties to lodge primary and annual returns. Sections 5.75 and 5.76 state:-

"5.75 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.

Penalty: \$10,000 or imprisonment for 2 years.

5.76 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.

Penalty applicable to subsections (1) and (2): \$10,000 or imprisonment for 2 years.

'Relevant person' includes a "designated employee" who has been delegated a power or duty.

61. Section 5.78 of the *Local Government Act 1995* prescribes the information which must be included in the primary and annual returns.
62. Where an officer acts temporarily in a position with delegated power, that person will need to complete a financial interest return unless they have only acted in that position for less than 3 months.

19. Determining What Should Be Delegated

63. A decision to delegate a power or duty should be made by local governments only after thorough consideration of whether the delegation will facilitate the effective operation of the local government. This will therefore depend on the particular circumstances of each local government.
64. A local government council is unable to deal with all of the numerous issues and duties concerning its local government. As far as is possible and reasonable, councils should be predominantly concerned with dealing with higher level policy matters for their local governments.
65. Duties and powers which are operational in nature, but exercise a discretion should be delegated to the CEO.

66. Powers and duties can be delegated to CEOs with comprehensive conditions attached. The conditions limit the exercise of powers or discharge of duties to circumstances prescribed by the council. For example, a permit application which does not satisfy the conditions attached to a delegation, must be referred to the council for determination.

67. The Local Laws Manual (2005), Local Laws WA, Western Australian Local Government Association, Western Australia (Australia) at Section 2 - Page 10 provides a useful example of a recommendation to council for the delegation of certain powers with conditions attached, as follows:

"That the administration of this Local Law including any enforcement action and collection of the annual licence fee be delegated to the CEO, but that the exercise of the following powers be reserved to the Council:

- (a) issue or refusal of a licence under clause...;
- (b) determination of a licence period under clause...;
- (c) cancellation of a licence under clause...;
- (d) renewal or refusal to renew a licence under clause...; and
- (e) determination of any security under clause..."

68. Delegations with conditions are also frequently made in relation to employees other than the CEO for acquiring assets on behalf of a local government. An example is where the CEO delegates an employee with the power to purchase goods and services to a value of \$10,000 - any proposed purchases which would exceed this limit would need to be referred to the CEO for approval.

69. Many local laws provide for the appointment of employees as "authorised persons" for the purpose of the relevant local law. Once an employee is appointed as an "authorised person", it is not necessary for the CEO or council to delegate any powers to that employee in order for that employee to, say, enforce the relevant local law.

70. It is important to again note the difference between a delegation of a power or duty and the implementation of a council or CEO decision – see paragraphs 13 - 17 above, in relation to “acting through”.

71. An example of carrying out a council decision (compared to exercising a delegated power or duty) is where a council approves an annual budget which includes the expenditure of \$40,000 for particular road maintenance to be carried out by employees. Employees do not need to be delegated the power to carry out their operational functions.

72. In the example in paragraph 71 above, if the relevant employees believe it is necessary to spend more funds than approved in the budget, they must refer that matter to the council for its approval – the adoption of an annual budget can only be done by an absolute majority of council, which under section 5.43(a) of the *Local Government Act 1995* cannot be delegated to the CEO or any other employee.

73. The principal consideration for a local government when deciding if it should delegate a power or duty, is whether the delegation will improve the efficiency of the local government’s operations whilst ensuring that its policies are consistently implemented. See the attached schedule which lists those items where acting through would be a suitable mechanism for achieving that efficiency. Local governments also need to consider the content of their local laws and whether delegation may be necessary, in some circumstances. However, “authorised persons” can normally carry out the ‘policing’ powers in local laws.

20. Procedure for Delegations by Council

74. Paragraphs 63 - 73 of this guideline considered how a local government can determine whether it should delegate particular powers and duties. This part considers the procedure for council to make a delegation.

75. When CEOs identify a duty or power of the local government which can be delegated and they believe that if it is delegated it will provide better efficiency, they should put the proposed delegation to their council, for approval.

76. As the earlier example from the Local Laws Manual (in paragraph 67 above) demonstrates, a recommendation to council for a delegation is relatively straightforward. The essential elements of a delegation recommendation are:

- (a) Correct and accurate identification of the power or duty to be delegated;
- (b) Correct and accurate identification of the person or office to whom or which the power or duty is to be delegated;
- (c) Correct and accurate definition of the circumstances (if any) in which the power or duty can be exercised or discharged; and
- (d) Conditions on the exercise of the power or discharge of the duty.

77. It is important to note again that all delegations by council require an absolute majority decision.

78. Once a delegation has been made by council, the delegation must be recorded in the delegation register.

79. Under regulation 19 of the *Local Government (Administration) Regulations 1996*, the delegate must keep written records of when and how they exercise the delegated power or discharge the delegated duty, and the persons or classes of persons affected by the exercise of the power or discharge of the duty.

21. Procedure for Delegations by CEO

80. Similarly to delegations by councils, delegations by CEOs must accurately and correctly identify all elements of the delegation.

81. Employee proposals for delegations (for themselves or for other employees) should be provided to the CEO. The recommendations should be in a format similar to the recommendations for delegations by councils.

82. As with delegations by council, written records of delegations by the CEO must be kept in the delegations register and delegates must keep records of their exercise of delegated powers or discharge of delegated duties.

22. Schedule of Powers and Duties

83. The attached schedule lists the powers and duties under the *Local Government Act 1995* (with associated regulations) which cannot be delegated, those that can be delegated, and to whom the powers and duties can be delegated. It also lists those matters where "acting through" may be the most practical way of carrying out those functions.
84. It is not suggested that all of the powers and duties which can be delegated should be delegated – the schedule is provided only as an indication of what can be delegated if it is appropriate for a particular local government.

EXAMPLES OF DELEGATIONS

23. Issuing Notices to Owners or Occupiers of Land

85. Section 3.25(1) of the *Local Government Act 1995* provides for a local government to provide notice to a person requiring that person to do certain things in relation to land, stating that:
- "A local government may give a person who is the owner ... of land a notice in writing relating to the land requiring the person to do anything specified in the notice that:
- (a) is prescribed in Schedule 3.1, Division 1; or
 - (b) is for the purpose of remedying or mitigating the effects of any offence against a provision prescribed in Schedule 3.1, Division 2."
86. If a council determines that the efficiency of its local government operations will be improved if its CEO is delegated to exercise the powers under section 3.25(1), the council may so delegate to the CEO either with or without any conditions.
87. The following is an example of a recommendation for such a delegation:
- "That, under section 5.42 of the *Local Government Act 1995*, the Chief Executive Officer be delegated to exercise the powers under section 3.25(1) of the *Local Government Act 1995*."

p11.

88. As with all delegations by council:
- (a) any delegation to a CEO to exercise the powers under section 3.25 must be:
 - (i) by way of absolute majority decision; and
 - (ii) recorded in the delegations register;
 - (b) the CEO must keep records of the exercise of the delegated power or discharge of the delegated duty.
89. For reasons of policy and/or to maintain uniformity, it may be inappropriate for a CEO to delegate to other employees to exercise any section 3.25(1) powers which have been delegated to the CEO. However, other employees can be appointed to carry out a CEO's exercise of powers delegated to the CEO, without those other employees needing to be delegated.
90. By way of example, in times when a cyclone is approaching a district, if the CEO is delegated to exercise section 3.25(1) powers, the CEO may decide that certain items must be tied down to prevent them from causing a hazard when the cyclone hits the district, and that section 3.25(1) notices must be issued in relation to those items. Once the CEO has decided this, the CEO may then appoint any number of employees to survey the district and, when they identify items which the CEO has decided must be tied down, complete the section 3.25(1) notices and issue them to the relevant person, on behalf of the CEO.

24. Calling for and Accepting Tenders

91. Section 3.57(1) of the *Local Government Act 1995* states that:
- "A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services."
92. Section 5.43 of that Act states that:
- "A local government cannot delegate to a CEO any of the following powers or duties:
- (a) ...
 - (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph."

93. Part 4 of the *Local Government (Functions and General) Regulations 1996* regulates and provides the procedures for local government tenders for providing goods or services.
94. A council may delegate to its CEO to invite tenders under section 3.57 of the *Local Government Act 1995* and Part 4 of the *Local Government (Functions and General) Regulations 1996*, without the necessity of setting a maximum limit on the tenders which the CEO may invite.
95. However, the effect of section 5.43(b) is that if a council wishes to delegate to its CEO to accept tenders under section 3.57 of the *Local Government Act 1995* and Part 4 of the *Local Government (Functions and General) Regulations 1996*, it may attach a condition to the delegation that specifies the maximum limit of the tenders which the CEO may accept.
96. Following is an example of a recommendation to council to delegate to its CEO to invite any tenders (in accordance with council's selection criteria) and accept tenders up to a limit of \$200,000 under section 3.57 of the *Local Government Act 1995* and Part 4 of the *Local Government (Functions and General) Regulations 1996*:
- "That, under section 5.42 of the *Local Government Act 1995*, the Chief Executive Officer be delegated to:
- (a) Invite any tenders; and
 - (b) Accept tenders up to an amount of \$200,000 in total value,
- under section 3.57 of the *Local Government Act 1995* and Part 4 of the *Local Government (Functions and General) Regulations 1996*."

25. FURTHER INFORMATION

For more information about this and other guidelines, contact the Local Government Support and Development Branch of the Department of Local Government and Regional Development on 9217 1500 or email lgsd@dlgrd.wa.gov.au.

These guidelines are also available on the Department's website at <http://www.dlgrd.wa.gov.au>.

Local Government Act 1995

Relevant Exercisable Powers and Dischargeable Duties of a Local Government

(Refer to each section of the Act or Regulations for the full details of each power or duty to be exercised by the local government)

- This table sets out the Powers and Duties relevant to delegation and also identifies when "acting through" the staff of the organisation may be appropriate.
- The table also indicates where delegation is not permitted and the Council is to perform that power or duty.
- See a ✓ where applicable.
- The decision to delegate will be a policy matter for each local government.
- The column headed "Suitable for Acting Through" covers the situations where either the council has made a policy about the matter and the staff of the organisation implement that particular function or where the organisation may carry out the function administratively.

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2) (a) Ctte	To a 5.9(2) (b) Ctte	To a 5.9(2) (c) - (e) Ctte	To The CEO
2.11(2)	Part 2 - Constitution of local government						
2.12A(1)(b)	A local government may change the method of filling the office of mayor or president		✓				
2.12A(1)(c)	Council, by motion passed by it, proposes to change method of filling office of mayor or president		✓				
2.17(3)	Local government to give public notice (of proposal to change method of filling office of mayor or president)	✓					
2.25(1)	A council with 15 councillors may retain those 15 even if a decision is made to elect the mayor/president by the electors		✓				
	A council may by resolution grant leave of absence to a member		✓				

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Applicable Delegation					
		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2) (a) Cffe	To a 5.9(2) (b) Cffe	To a 5.9(2) (c) - (e) Cffe	To The CEO
3.5	A local government may make local laws to perform any of its functions under the Act		✓				
3.6(1)	With the Governor's approval, a local government can apply a local law to an area that is not in a district		✓				
3.12(3)	Local government must give Statewide public notice (in relation to proposed local laws)	✓					
3.12(4)	Local government may adopt a local law		✓				
3.12(5)	Local government must publish (adopted local law in the Government Gazette)	✓					
3.12(6)	Local government must give local public notice (that a local law has been adopted)	✓					
3.15	A local government must ensure that people of its district are informed (of the purpose and effect of all its local laws)	✓					
3.16(1)	Within 8 years from the day a local law commences, a local government must review the operation of each local law following the process set out in section 3.16	✓					
3.16(2)	Local government must give Statewide public notice (in relation to the review of its local laws)	✓					
3.16(3)	After the last day for submissions in relation to the review of its local laws, a local government must consider submissions and cause a report to be submitted to council	✓					
3.16(4)	Local government may determine whether or not it considers that any of its local laws should be repealed or amended	✓	✓				
3.21	In performing its executive function, the local government must ensure that the obligations set out in section 3.21 are complied with	✓					
3.22(1)	A local government that causes damage through the performance of its function must pay compensation to the owner or occupier						✓
3.25(1)	A local government may give an occupier a notice requiring them to do something to the land if it is specified in Schedule 3.1. The local government must also inform the owner if the occupier is not the owner						✓
3.26(2)	In order to make a person comply with a notice, a local government may do anything it considers necessary to achieve the purpose for which the notice was given	✓					✓
3.26(3)	A local government may continue to undertake works that are not carried out by the owner or occupier and recover the costs as a debt	✓					✓
3.27(1)	A local government may go onto private land in the circumstances prescribed in Schedule 3.2 and carry out works, even if it does not have the consent of the owner	✓					✓
3.31(2)	After a local government has given notice, it may authorise a person to enter land, premises or thing without consent, unless the owner or occupier has objected to the entry	✓					✓

Section / Regulation		RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT			Applicable Delegation			
		Part 3 – Functions of local government	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Cffe	To a 5.9(2)(b) Cffe	To a 5.9(2)(c) - (e) Cffe	To The CEO
3.34(1)		A local government may enter land in an emergency without notice or consent	✓					✓
3.34(5)		A local government must give notice (to the owner or occupier of an intended entry in an emergency whenever it is practical)	✓					
3.36(3)		A local government may make an opening in a fence to do works on property subject to providing the owner or occupier with 3 days written notice	✓					✓
3.39		Local government may authorise an employee to remove and impound any goods	✓					✓
3.40(2)		If a local government impounds a vehicle to remove and impound goods, it must allow the offender to resume control of the vehicle as soon as practicable after the goods have been removed	✓					
3.40(3)		If the person entitled to resume control of the vehicle is not present, the local government must give notice (to the holder of a licence in respect of the vehicle, stating from where and when the vehicle may be collected)	✓					
3.40A(1)		Local government may authorise a person to remove and impound an abandoned vehicle wreck	✓					✓
3.40A(2)		Local government to provide notice (to the owner of a removed abandoned vehicle wreck, advising that the vehicle may be collected)	✓					
3.40A(4)		Local government may declare that a vehicle is an abandoned vehicle wreck	✓					✓
3.42(1)		If a local government impounds non-perishable goods, it must either begin a prosecution against the offender or give them a notice stating from where and when the goods may be collected	✓					
3.44		Where non-perishable goods have been removed and impounded and a prosecution instituted, if the offender is not convicted or is convicted but it is not ordered that the goods be confiscated, the local government must give the alleged offender notice stating from where and when the goods may be collected	✓					
3.46(1)		A local government may refuse to allow goods impounded under sections 3.39 or 3.40A to be collected until the costs of removing, impounding and keeping them have been paid	✓					
3.46(2)		A local government may refuse to allow goods removed under sections 3.40 or 3.40A to be collected until the costs of removing and keeping them have been paid	✓					
3.47(1)		The local government may sell or otherwise dispose of any goods that have been ordered to be confiscated under section 3.43	✓					✓
3.47(2)		The local government may sell or otherwise dispose of any vehicle that has not been collected within 2 months of a notice having been given under section 3.40(3) or 7 days of a declaration being made that a vehicle is an abandoned vehicle wreck	✓					✓

Section / Regulation		RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT		Applicable Delegation					
		Part 3 – Functions of local government		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Ctte	To a 5.9(2)(b) Ctte	To a 5.9(2)(c) - (e) Ctte	To The CEO
3.47(2a)		The local government may sell or otherwise dispose of impounded goods that have not been collected within the period specified in section 3.47(2b) of the date a notice is given under sections 3.42(1)(b) or 3.44		✓					✓
3.47A(1)		If an impounded animal is ill or injured to such an extent that treating it is not practicable, the local government may humanely destroy the animal and dispose of the carcass		✓					✓
3.48		If goods are removed or impounded under section 3.39 and the offender is convicted, the local government may recover any expenses incurred in removing and impounding the goods		✓					✓
3.50(1)		A local government may close a thoroughfare to vehicles, wholly or partially, for a period not exceeding 4 weeks		✓					✓
3.50(1a) and 3.50(4)		A local government may, after providing public notice of its intention and reasons, inviting submissions and then considering submissions, order a thoroughfare to be wholly or partially closed to vehicles for a period exceeding 4 weeks							✓
3.50(6)		An order to close a thoroughfare may be revoked by the local government		✓					✓
3.50(8)		If a thoroughfare is closed without local public notice, the local government must give such notice as soon as practicable after its closure		✓					✓
3.50A		A local government may partially and temporarily close a thoroughfare, without giving local public notice, if the closure is for the purpose of carrying out repairs or maintenance and is unlikely to have a significant adverse effect on users of the thoroughfare		✓					✓
Functions & General Reg 6(3)		A local government may, by local public notice, revoke an order under regulation 6(1) that closed a thoroughfare or alter it to make it less restrictive		✓					✓
3.51(3)		Before fixing, altering or realigning a public thoroughfare or draining water onto adjoining land, the local government must give notice of its proposal, invite submissions and consider those submissions		✓					✓
3.52(2)		Except if they are closed or have restricted use, local governments are to ensure that public thoroughfares are kept open for public use		✓					✓
3.52(3)		When fixing, altering or realigning a public thoroughfare, the local government must ensure vehicle access to adjoining land is provided		✓					✓
3.53(3)		If an unvested facility lies within 2 or more districts, the local governments concerned can agree on its control and management				✓	✓		✓

RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT		Applicable Delegation					
Section / Regulation		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) CHe	To a 5.9(2)(b) CHe	To a 5.9(2)(c) - (e) CHe	To The CEO
3.54(1)	Part 3 - Functions of local government A local government may do anything it could do under the Parks and Reserves Act 1895 if it were a Board appointed under that Act, to control and manage any land reserved under the Land Act 1933 and vested in or placed under the control and management of the local government	✓		✓	✓	✓	✓
3.57(1)	A local government must invite tenders before it enters into a contract for goods or services with a value of \$100,000 or more (Functions and General Reg 11)			✓	✓	✓	✓
Functions & General Reg 14(2a)	Where a local government is inviting tenders, the local government must determine in writing the criteria for accepted tenders			✓	✓		✓
Functions & General Reg 11(2)(d)	Tenders do not have to be publicly invited if the contract is to be entered into by auction after being expressly authorised by a resolution of the council		✓				
Functions & General Reg 14(4)(a)	Such information as a local government decides should be disclosed to those interested in submitting a tender		✓				
Functions & General Reg 18(4) & (5)	A local government must consider any tender that has not been rejected and decide which one to accept. It may decline to accept any tender			✓	✓	✓	✓
Functions & General Reg 19	The local government must give each tenderer written notice stating the successful tender or advising that no tender was accepted	✓					
Functions & General Reg 20	A local government may, with the approval of the tenderer, make a minor variation in a contract for goods or services before it enters the contract with the successful tenderer	✓		✓	✓	✓	✓
Functions & General Reg 20(2)	If the successful tenderer does not want to accept the contract with the variation or the local government and the tenderer cannot reach agreement, the local government can select the next most appropriate tenderer			✓	✓	✓	✓
Functions & General Reg 21(1)	A local government may seek expressions of interest before entering the tender process			✓	✓	✓	✓
Functions & General Reg 21(3)	A local government must give Statewide public notice (that it seeks expressions of interest before entering the tender process)	✓					

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	Applicable Delegation			
				To a 5.9(2) (a) CHe	To a 5.9(2) (b) CHe	To a 5.9(2) (c) - (e) CHe	To The CEO
Functions & Gen Reg 23(3)	Part 3 – Functions of local government A local government must consider any submissions of interest that have not been rejected and decide which ones could satisfactorily supply the goods or services			✓	✓	✓	Limited
Functions & General Reg 24	A local government must give each person who submitted an expression of interest written notice (of the outcome of its decision)	✓		Limited	Limited		Limited
Functions & General Reg 24E(1)	Where a local government intends to give a regional price preference the local government is to prepare a regional price preference policy	✓		✓	✓		✓
Functions & General Reg 24E(4)	A local government cannot adopt a regional price policy until the local government has considered submissions received	✓		✓	✓		✓
3.58(2)	A local government can only dispose of property to the highest bidder at public auction or the most suitable public tender			✓	✓		Limited
3.58(3)	A local government can dispose of property by private treaty but must follow the process set out in section 3.58(3)			Limited	✓		Limited
Functions & General Reg 30(2)(a)(ii)	A disposition of land is an exempt of disposition if the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee	✓					✓
3.59(2)	A local government must prepare a business plan before it enters into a major trading undertaking, a major land transaction or a land transaction that is preparatory to a major land transaction	✓					
3.59(4)	A local government must give Statewide public notice (stating its proposal to enter into a major trading undertaking, a major land transaction or a land transaction that is preparatory to a major land transaction, where the plan may be inspected or obtained, and call for submissions on the plan within 6 weeks)	✓					
3.59(5)	The local government must consider submissions and then decide whether to proceed with the major trading undertaking, major land transaction or land transaction that is preparatory to a major land transaction		✓				

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Applicable Delegation					
		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2) (a) CHe	To a 5.9(2) (b) CHe	To a 5.9(2) (c) - (e) CHe	To The CEO
4.9(1)	Part 4 - Elections and other polls If the mayor or president has not already done so, the council must fix the day on which a poll is held for an extraordinary election		✓				
4.16(4)	The council may decide, with the Electoral Commissioner's approval, that the election day for a vacancy that has occurred under section 2.32 before the first Saturday in August in the year prior to an ordinary election but after the first Saturday in February in an ordinary election year, is to be on the ordinary election day for that year		✓				
4.17(2)	The council may decide, with the Electoral Commissioner's approval, that a vacancy may remain unfilled if it occurred under section 2.32 before the first Saturday in August in the year prior to the election year in which the term would have ended under the Table to section 2.28, but after the first Saturday in February in that election year		✓				
4.20(2)	A local government may, with the approval of the person concerned and the Electoral Commissioner, appoint a person as the returning officer instead of the CEO		✓				
4.20(4)	A local government may, with the Electoral Commissioner's agreement, declare the Electoral Commission to be responsible for the conduct of an election		✓				
4.57(3)	A local government may appoint an eligible person (who is willing to accept the appointment) to any unfilled office if, at the close of nominations for an extraordinary election, under section 4.57(1) or (2), the number of candidates is less than the number of offices		✓				
4.51(2)	Local government may decide to use postal voting for an election		✓				
Elections Reg 9(1)	The fees to be paid to an electoral officer for conducting an election are those agreed between the local government and the electoral officer	✓					
Elections Reg 28(1b)(b)	If a candidate's deposit has not been refunded within 28 days after notice is given of the result of the election, the local government is to credit that amount to a fund of the local government	✓					

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2) (a) CHe	To a 5.9(2) (b) CHe	To a 5.9(2) (c) - (e) CHe	To The CEO
5.2	Part 5 – Administration The council of a local government must ensure there is an appropriate structure for administering the local government		✓				
5.3(1)	The council must hold ordinary meetings and may hold special meetings		✓				
5.4	The council may decide to hold an ordinary or special meeting		✓				
5.8	A local government may establish committees of 3 or more people to assist the council in exercising its powers and duties		✓				
5.15	A local government may reduce the quorum for a committee meeting		✓				
5.16(1)	A local government may delegate to a committee, under and subject to section 5.17, any of its powers and duties other than this power of delegation		✓				
5.18	A local government must keep a register of all delegations made to a committee (at least once each financial year)	✓		✓			✓
5.18	A local government must review all delegations made to a committee	✓		✓			✓
Admin Reg 12(1)	At least once every year a local government must give local public notice (of the date, time and place of all its ordinary council meetings and any committee meetings that must or are proposed to be open to the public, that are to be held in the next 12 months)	✓					
Admin Reg 12(2)	A local government must give local public notice (if any of the dates, times or places in the notice under regulation 12(1) change)	✓					
Admin Reg 12(3)	A local government must give local public notice (of the date, time and place of a special meetings of council that must be open to the public)	✓					
Admin Reg 14(1)	A local government is to ensure that notice papers and agenda relating to any council or committee meeting and reports and other documents tabled at the meeting or which have been produced for presentation at the meeting are made available to the public at the same time as they are available to council and committee members	✓					✓
Admin Reg 14A(1)(c)	A person who is not physically present at a meeting of a council or committee is to be taken to be present at the meeting if the council has approved of the arrangement by absolute majority		✓				
5.27(2)	General meeting of electors to be held on a day selected by a local government but not more than 56 days after the local government accepts the annual report for the previous financial year	✓					✓
5.36(1)	A local government must employ a CEO		✓				
5.36(4)	If the position of CEO becomes vacant, a local government must advertise the position in the manner and containing such information as prescribed	✓					
5.37(1)	A local government may designate any employee to be a senior employee			✓	✓		✓

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT		Applicable Delegation				
	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2) (a) Ctte	To a 5.9(2) (b) Ctte	To a 5.9(2) (c) - (e) Ctte	To The CEO	
	Part 5 – Administration						
5.37(2)	The council may reject or accept a recommendation by the CEO to employ or dismiss a senior employee. If it rejects a recommendation it must provide the CEO with its reasons	✓					
5.37(3)	If the position of a senior employee becomes vacant, a local government must advertise the position in the manner and containing such information as prescribed	✓				✓	
5.38	The performance of each employee employed more than 1 year, needs to be reviewed.	✓					
Admin Reg 18(c)	A local government is to approve a process for selection and appointment of the CEO		✓	✓			
Admin Reg 18(0)	A local government is to consider, accept or reject a review of the CEO's performance		✓	✓			
5.42(1) & 5.43	A local government may delegate to the CEO any of its powers and duties under this Act except those in section 5.43 and this power of delegation	✓					
5.50(1)	A local government must prepare a policy for employees whose employment is finishing, setting out the circumstances in which the local government would pay a gratuity and how that gratuity would be assessed, and give local public notice of the policy		✓	✓		✓	
5.50(2)	A local government may make a payment to an employee whose employment is finishing, that is in addition to the amount set out in its policy, provided that local public notice of the payment is given		✓	✓		✓	
5.53(1)	A local government must prepare an annual report for each financial year	✓					
5.54(1)	A local government must accept the annual report by 31 August after that financial year	✓					
5.56	A local government is to prepare a plan for the future	✓	✓	✓		✓	
Admin Reg 19C(4)	A local government is to review its current plan for the future every 2 years		✓	✓		✓	
Admin Reg 19C(7)	A local government is to ensure that the electors and ratepayers of its district are consulted during the development of a plan for the future and when preparing any modifications of a plan	✓					
Admin Reg 19D(1)	After a plan for the future, or modifications to a plan, are adopted a local government is to give local public notice	✓					
Admin Reg 19D(5)	A Council is to adopt the plan for the future	✓					

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Applicable Delegation					
		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Ctte	To a 5.9(2)(b) Ctte	To a 5.9(2)(c) - (e) Ctte	To The CEO
	Part 5 – Administration						
Admin Reg 29A(2)	Information prescribed as confidential but that, under 5.95(7), may be available for inspection if a local government so resolves			✓	✓	✓	✓
5.98(1)(b)	A local government may set a fee, within the prescribed range, to be paid to a council member who attends a council or committee meeting	✓					
5.98(2)(b)	A local government may approve expenses which are to be reimbursed to its councillors, provided that the expenses are of the kind prescribed as those which the local government can approve for reimbursement [subject to section 5.98(3)]			✓	✓	✓	✓
5.98(4)	A local government may approve the reimbursement to a council member of an approved expense, either generally or in a particular case			✓	✓	✓	✓
5.98A	A local government may decide to pay its deputy mayor or deputy president an allowance of up to the prescribed percentage of the annual local government allowance to which the mayor or president is entitled under section 5.98(5)	✓					
5.99	The local government may decide to pay council members attending council and committee meetings an annual meeting fee instead of an individual meeting fee	✓					
5.99A	A local government may decide that instead of reimbursing council members, under section 5.98(2), for all of a particular type of expense, it will instead pay all council members an allowance for that type of expense	✓					
5.100(2)	A local government may decide to reimburse expenses to committee members who are not council members or employees			✓	✓	✓	✓
5.101(2)	A local government may reimburse an employee for an expense that was incurred in relation to a matter affecting the local government			✓	✓	✓	✓
5.102	A local government may make a cash advance to a person for an expense which can be reimbursed			✓	✓	✓	✓
5.103(1)	A local government must prepare or adopt a code of conduct to be observed by council members, committee members and employees			✓	✓	✓	✓
5.103(2)	A local government must review its code of conduct within 12 months of every ordinary elections day			✓	✓	✓	✓

Section / Regulation		RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT		Applicable Delegation					
		Part 6 – Financial Management		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Cffe	To a 5.9(2)(b) Cffe	To a 5.9(2)(c) - (e) Cffe	To The CEO
Financial M'gmt Reg 8(1)		A local government must maintain separate accounts for monies required to be held in the municipal fund, the trust fund, the reserve accounts, or monies relating to major land or major trading undertakings that will or are expected to span more than 2 financial years	✓						
Financial M'gmt Reg 11(1)		A local government must develop procedures for cheques, credit cards, computer encryption devices and passwords, purchasing cards and petty cash systems	✓						
Financial M'gmt Reg 11(2)		A local government must develop procedures for the approval of accounts	✓						
Financial M'gmt Reg 13(2)		A list of accounts for approval to be paid must be prepared for each month, including the date of the meeting of council to which the list is to be presented	✓						
Financial M'gmt Reg 19(1)		A local government must establish and document internal control procedures to ensure control over investments	✓			✓	✓		✓
6.2(1)		A local government must prepare by 31 August in each financial year, an annual budget for its municipal fund for the next financial year	✓						
6.2(1)		A local government must adopt the budget prepared		✓					
6.3		A local government must prepare a budget if a general valuation or a rate or service charge is quashed by a court or the State Administrative Tribunal, or if it intends to impose supplementary general rate or specified area rate for the remainder of a financial year	✓						
6.3		A local government must adopt the budget prepared (Budget for other circumstances)		✓					
6.4(1)		A local government must prepare an annual financial report for the preceding financial year and such other reports as are required	✓						
6.4(3)		By 30 September following each financial year or such extended time as the Minister allows, a local government is to submit to its auditor the accounts of the local government and the annual financial report	✓						
Financial M'gmt Reg 33A(3)		A council is to consider a budget review submitted to it and is to determine by absolute majority whether or not to adopt the review, any parts of the review on any recommendations made in the review		✓					

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	Applicable Delegation			
				To a 5.9(2) (a) Ctte	To a 5.9(2) (b) Ctte	To a 5.9(2) (c) - (e) Ctte	To The CEO
Financial M'gmt Reg 34(2)(c)	Part 6 – Financial Management Each statement of financial activity is to be accompanied by documents containing such other supporting information as is considered relevant by the local government	✓					
Financial M'gmt Reg 34(1)	A local government must prepare monthly financial reports	✓					
6.9(3)	A local government must pay or deliver to the person entitled to it any money and its interest and any property	✓					
6.9(4)	A local government may transfer money held in trust for 10 years to its municipal fund, but must repay it to a person who establishes a right to the repayment, together with any interest earned on the investment	✓					✓
6.11(1)	A local government must establish and maintain a reserve account for each purpose for which it wishes to set aside money	✓					
6.11(2)	A local government may change the purpose of a reserve account or use money held in a reserve account for another purpose	✓	✓				
6.11(2)	A local government must give one month local public notice of a proposal to change the purpose of a reserve account or use money held in a reserve account for another purpose	✓					
6.12(1)(a)	A local government may, when adopting the annual budget, grant a discount or incentive for early payment of any money [subject to section 6.12(2)]	✓	✓				
6.12(1)(b)	A local government may waive or grant concessions in relation to any amount of money or write off any amount of money that it is owed to the local government [subject to section 6.12(2)]			✓	✓		✓
6.12(3)	The local government may determine what conditions apply to the granting of a concession			✓	✓		✓
6.13(1)	A local government may resolve to apply interest to any money that it has been owed [subject to section 6.13(6)], other than for rates and service charges		✓				
6.14(1)	A local government may invest money in its municipal or trust funds that is not being used, in accordance with Part III of the Trustees Act 1962	✓		✓	✓		✓
6.16(1)	A local government may impose a fee or charge for any goods or services it provides, except for a service for which a service charge has been imposed		✓				
6.16(3)	As well as imposing fees and charges when adopting the annual budget, a local government may impose fees and charges during the year or amend, from time to time, fees and charges throughout the year		✓				
6.19	If a local government wishes to impose a fee or charge under Part 6 Division 5 Subdivision 2 after the annual budget has been adopted, it must provide local public notice of its intention to do so and the date from which the amended fees or charges will be imposed	✓					

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT			Applicable Delegation			
	Part 6 – Financial Management	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Cffe	To a 5.9(2)(b) Cffe	To a 5.9(2)(c) - (e) Cffe	To The CEO
6.20(1)	A local government may borrow or re-borrow money, obtain credit or extend its financial accommodation in other ways		✓				
6.20(2)	If a local government proposes to exercise its power to borrow but it is not budgeted for, unless the proposal is of a prescribed kind, it must give one month public notice of the proposal	✓					
6.20(2)	If a local government proposes to exercise its power to borrow but it is not budgeted for, it must make the resolution to do so by absolute majority		✓				
6.20(3)(a)	If a local government exercises its power to borrow and then decides not to proceed with the proposal or it does not use all of the money, credit or financial accommodation, after giving one month local public notice it may resolve to use it for another purpose		✓				
6.20(3)(b)	If a local government exercises its power to borrow and then decides not to proceed with the proposal or it does not use all of the money, credit or financial accommodation, it may resolve to use it for another purpose		✓				
6.20(3)	One month public "notice" must be given	✓					
6.26(3)	If Co-operative Bulk Handling Ltd and a local government cannot reach an agreement, under section 6.26(2)(i), the local government may refer the matter to the Minister for determination			✓	✓		✓
6.29(2)	A local government must impose a rate on the basis of unimproved value to any tenement, licence or permit that is located in a district for which only rates on the basis of gross rental value apply		✓				
6.32(1)	When adopting the annual budget, a local government may, in order to make up a budget deficiency, impose a general rate on rateable land within its district, and may impose a specified area rate or a minimum payment on rateable land within its district, and may impose a service charge on land within its district		✓				
6.32(3)	A local government may, in an emergency after rates in a financial year have been imposed, impose a supplementary general rate or specified area rate for the unexpired portion of the current financial year, and is to impose a new general rate, specified area rate or services charge if a court or the State Administrative Tribunal quashes a general valuation, rate or service charge		✓				
6.33(1)	Local government may impose differential general rates		✓				
6.35(1)	Local government may impose on any rateable land in its district a minimum payment		✓				
6.36(1)	A local government must give local public notice (of its intention to impose any differential general rates or minimum payment applying to a differential rate category under section 6.35(6)(c))	✓					
6.37(1)	Local government may impose a specified area rate on rateable land		✓				

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	Applicable Delegation			
				To a 5.9(2) (a) Ctte	To a 5.9(2) (b) Ctte	To a 5.9(2) (c) - (e) Ctte	To The CEO
6.38(1) Financial M'gmt Reg 54	Part 6 – Financial Management A local government may impose a service charge on owners or occupiers to meet the cost of providing television and radio rebroadcasting, volunteer bush fire brigades, underground electricity etc	✓	✓				
6.39(1)	As soon as practicable after a local government resolves to impose rates, it must compile a record of all rateable land in the district and all land which has a service charge imposed	✓					
6.39(2)	A local government must, from time to time, amend the current rate record to ensure it is accurate and correct and may amend the rate record for the 5 years preceding the current financial year	✓					
6.40(1)	If the rateable value, rateability or the rate imposed on any land is amended in the rate record, under section 6.39(2), the local government must reassess the rates payable and give notice to the owner of the land of any change in the amount of rates payable	✓					
6.40(2)	If a service charge on any land is amended in the rate record, under section 6.39(2), the local government must reassess the service charge and give notice to the owner of the land of any change of the amount of service charge payable	✓					
6.40(3)	If rates are reduced, under section 6.40(1), a local government must refund the owner of the land on request or credit the amount for rates or service charges	✓					
6.40(4)	If a service charge is reduced, under section 6.40(2), and the service charge had already been paid by the owner, the owner may request and then the local government must pay the overpaid amount to the owner or, alternatively, the overpaid portion is credited against any future amounts payable. If the service charge was paid by the occupier, the local government must pay the overcharged portion to the person who paid it	✓					
6.41(1)	A local government must give a rate notice to the owner of rateable land and the owner or occupier (as the case requires) of land on which a service charge is imposed, containing the particulars required	✓					
6.45(1) Financial M'gmt Reg 64(2)	When adopting its annual budget, a local government must determine the due date for payment of instalments after the first instalment	✓	✓				
6.45(3) & Financial M'gmt Reg 67	A local government may impose an additional charge (including by way of interest) where payment of a rate or service is by instalments and that additional charge is taken to be a rate or service charge	✓	✓				

Section / Regulation		RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT				Applicable Delegation			
		Part 6 – Financial Management	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Cffe	To a 5.9(2)(b) Cffe	To a 5.9(2)(c) - (e) Cffe	To The CEO	
6.45		A local government may, when imposing a rate or service charge, resolve to grant a discount or incentive for its early payment	✓	✓					
6.47		A local government may, at the time of imposing rates and service charges, resolve to waive a rate or service charge or grant a concession	✓	✓					
6.49		A local government may make an agreement with a person to pay their rates and service charges	✓					✓	
Financial M'gmt Reg 66(2)		If an instalment remains unpaid after the day on which the next instalment becomes due the local government may revoke the ratepayer's right to pay by instalments	✓						
Financial M'gmt Reg 66(3)(b)		The local government must in writing immediately notify the ratepayer of the revocation	✓						
6.50(1) and 6.50(2)		A local government may determine the due date that rates and charges become due, but which date cannot be sooner than 35 days after the date noted on the rate notice	✓					✓	
6.51(1) & Financial M'gmt Reg 70		A local government may resolve to impose interest (not to exceed 13%) on a rate, service charge and any costs of recovery that remains unpaid	✓	✓					
6.56(1)		A local government may recover an unpaid rate or service charge and the cost of proceedings in court of competent jurisdiction	✓					✓	
6.60(2)		A local government may give notice (to a lessee of land in respect of which there is an unpaid rate or service charge, requiring the lessee to pay its rent to the local government in satisfaction of the rate or service charge)	✓					✓	
6.60(3)		If a local government gives notice to a lessee, under section 6.60(2), the local government must give a copy of the notice to the lessor	✓					✓	
6.60(4)		If a local government gives notice to a lessee, under section 6.60(2), and the lessee fails to pay rent to the local government, the local government may recover the rate or service charge as a debt from the lessee	✓					✓	
6.61(1)		A local government may request an occupier, an agent or the person who receives the rent of a property, to give the name and address of the owner to the local government	✓						
6.64(1)		If any rates or service charges have remained unpaid for at least 3 years, a local government may take possession of the land and hold the land against a person having an estate or interest in the land, and may lease or sell the land or transfer it to the Crown or itself	✓					✓	
6.64(2)		A local government that takes possession of land, under section 6.64(1), must give the owner such notice as prescribed and then affix the notice to a conspicuous part of the land in the form prescribed	✓					subject to 5.43(d)	

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT		Applicable Delegation				
	Part 6 – Financial Management	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Ctte	To a 5.9(2)(b) Ctte	To a 5.9(2)(c) - (e) Ctte	To The CEO
6.64(3)	A local government may lodge a caveat in respect of any land for which rates and service charges are outstanding	✓					✓
6.69(2)	A local government may accept payment of any outstanding rates or service charges on such terms and conditions as are agreed between the parties, up to the time of actual sale of the relevant land but not more than 7 days prior to same	✓					
6.69(3)	If a local government accepts payment of outstanding rates or service charges, under sections 6.69(1) or 6.69(2), the local government is required to make such notifications and take such measures as are prescribed to cancel the proposed sale	✓					✓
6.71(1)	If a local government is unable to sell land under Part 6 Division 6 Subdivision 6 within 12 months, it may transfer the land to the Crown or itself			✓	✓		✓ subject to 5.43(d)
6.71(3)	If a local government transfers land to itself, under section 6.71(1)(b), it must pay any sum owed under a mortgage, lease, tenancy, encumbrance or charge in favour of the Crown in right of the State or a department, agency or instrumentality of the Crown	✓					
6.74(1)	A local government may apply in the prescribed form to the Minister to have land revested in the Crown if it is rateable vacant land and rates or service charges in respect of it have remained unpaid for at least 3 years			✓	✓		✓
Financial M'gmt Reg 77(1)	Before applying to have land revested under section 6.74, a local government must give notice to the owner of the land and any other interested persons and publish the notice in the Gazette	✓					
Financial M'gmt Reg 77(3)	A local government must consider any objections it receives in relation to a revestment under regulation 77			✓	✓		✓
6.76(4)	A local government may extend the time for a person to make an objection in relation to the rate record	✓					✓
6.76(5)	The local government must consider any objections to the rates record and may disallow or allow the objection either wholly or in part			✓	✓		✓
6.76(6)	The local government is to provide the person with notice of its decision	✓					

Section / Regulation		RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT			Applicable Delegation			
		Part 7 – Audit	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) CHe	To a 5.9(2)(b) CHe	To a 5.9(2)(c) - (e) CHe	To The CEO
7.1A(1) & 7.1A(2)		Local government to establish an audit committee, appoint members to the committee with a minimum of 3 members and a majority of which are council members		✓				
7.1B		Despite section 5.16, a local government can delegate to an audit committee only those powers and duties contained in Part 7		✓				
7.3(1) & (2)		A local government must appoint one or more persons, on the recommendation of the audit committee, to be its auditor		✓				
7.5(2)(f)		A local government may terminate the appointment of an auditor by written notice			✓	Audit CHe		
Audit Reg 8(1)		Where a local government has terminated an agreement with its auditor, it must give notice and reasons for the termination to the Executive Director within 30 days	✓					
7.6(3)		If the auditor's registration as a company auditor is suspended or the auditor is unable or unwilling to carry out their duties, a local government must appoint a person to conduct or complete its audit		✓				
7.12A(2)		A local government must meet with its auditor at least once a year			✓	Audit CHe		
7.12A(3)		A local government is to examine the auditor's report, under section 7.9(1) and any report under section 7.9(3), and must determine if any matters raised by the report require action and ensure that appropriate action is taken			✓	Audit CHe		
7.12A(4)		A local government must prepare a report on any action taken in response to an auditor's or section 7.9(3) report, and provide it to the Minister			✓	Audit CHe		
Audit Reg 14(1)		A local government must carry out a compliance audit for the period 1 January to 31 December in each year	✓					
Audit Reg 14(3)		A compliance audit return must be presented to the council at a meeting of the council, adopted by the council and recorded in the minutes of the meeting at which it is adopted		✓				

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	Applicable Delegation			
	Part 8 – Scrutiny of the affairs of local governments			To a 5.9(2) (a) Ctte	To a 5.9(2) (b) Ctte	To a 5.9(2) (c) - (e) Ctte	To The CEO
8.2(2)	Upon receiving a request from the Minister for information, a local government must provide the information to the Minister within the specified time of the notice	✓					✓
8.14(3)	A local government must give the Minister advice of what things it has done or will do to comply with an enquiry report from the Minister or a person authorised by the Minister, within 35 days of receiving the report			✓	✓		✓
8.23(4)	A local government must give the Minister advice of what things it has done, or will do, to comply with an Inquiry Panel's report within 35 days of receiving the report, or give its comment on a recommendation to dismiss the council			✓	✓		✓

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	Applicable Delegation			
	Part 9 – Miscellaneous provisions			To a 5.9(2) (a) Ctte	To a 5.9(2) (b) Ctte	To a 5.9(2) (c) - (e) Ctte	To The CEO
9.6(1)	An objection under Part 9 is to be dealt with by the council or a committee authorised by council to deal with it		✓				
9.6(5)	The local government must give the person who made the objection notice of how it was disposed of and reasons why	✓					✓
9.9(3)	As soon as a decision under section 9.9(1)(b) is made, the local government must give the affected person written notice stating the reasons for the decision	✓					✓
9.10(1) & (2)	The local government may appoint persons or classes of persons to be authorised to perform certain functions and must issue them with a certificate stating they are authorised	✓		✓	✓		✓
9.60(4)	A local government is to administer any regulation made under section 9.60 as if it were a local law	✓					
9.63(1)	If a dispute has arisen between 2 or more local governments, a local government may refer the matter to the Minister to resolve			✓	✓		✓
9.68(5)	A local government may recover accruing rates from a principal or agent who has failed to give a notice to the local government in accordance with section 9.68	✓					✓

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Applicable Delegation					
		Suitable For Acting Through	Delegation Prohibited	To a 5.9(2) (a) CHe	To a 5.9(2) (b) CHe	To a 5.9(2) (c) - (e) CHe	To The CEO
11(2)	<p>Schedule 2.1 – Provisions about creating, changing the boundaries of, and abolishing districts</p> <p>Any local governments affected by an order made under clause 2.1 are to negotiate any adjustment or transfer between them of property, rights and liabilities</p>			✓	✓		✓
	<p>Schedule 2.2 – Provisions about wards and representation</p>						
4(1)	A local government must consider any submissions made under clause 3			✓	✓		✓
4(2)	If a council believes that a submission is of a minor nature or one which would not require public submissions, it may either propose to the Advisory Board that a submission be rejected or itself deal with it under clause 5(b)		✓				
4(3)	If it is a council's opinion that a submission is substantially similar to a submission in respect of which the local government made a decision in the last 2 years, or the majority of affected electors who made the submission no longer support it, the local government may reject the submission		✓				
4(4)	Unless a local government decides to deal with a submission under clause 5(b) or rejects it or proposes to reject it under clauses 4(1) or 4(2), the local government must carry out a review as to whether or not the order sought should, in the council's opinion, be made		✓				
5	Whether or not it has received a submission, a local government may carry out a review as to whether or not an order under clauses 2.2, 2.3(3) or 2.18, should, in the council's opinion, be made, or propose to the Advisory Board the making of an order under clauses 2.2(1), 2.3(3) or 2.18(3), if, in the opinion of the council, the proposal is of a minor nature or one which would not require public submissions, or propose to the Minister the making of an order changing the name of a district		✓				
6	A local government must carry out a review of its ward boundaries and the number of councillors per ward every 8 years or as directed by the Advisory Board	✓		✓	✓		✓
7	A local government is to provide local public notice (advising that it is about to review its wards and inviting submissions)	✓					
8	The council must have regard to community of interests, physical and topographical features, demographic trends, economic factors and the ratio of councillors to electors in respect of considerations about wards			✓			
9	When a ward review is complete, the local government must prepare a report for the Advisory Board and may propose the making of an order under clauses 2.2(1), 2.3(3) or 2.18(3)			✓			✓

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT	Suitable For Acting Through	Delegation Prohibited	Applicable Delegation			
				To a 5.9(2) (a) Cfte	To a 5.9(2) (b) Cfte	To a 5.9(2) (c) - (e) Cfte	To The CEO
1(1)	Schedule 6.1 – Provisions relating to the phasing – in of valuation When imposing general rates, a local government may resolve that a general valuation, which results in an increase, can be phased in over 3 years	✓	✓				
1(5)	If a local government makes a resolution, under clause 1(1), it must request the Valuer General, at the same time as the Valuer General determines an interim valuation that will come into force in the district during the first 2 years of the phasing in period, to determine a valuation under subclause (6). The local government must give the Valuer General immediate written notice when the valuation is no longer required	✓					
2(1)	When imposing general rates, a local government may resolve that gross rental valuations can be phased in over 3 years		✓				
2(5)	If a local government makes a resolution under clause 2(1), it must request the Valuer General, at the same time as the Valuer General determines an interim valuation that will come into force in the district during the first 2 years of the phasing in period, to determine a valuation under subclause (6). The local government must give the Valuer General immediate written notice when the valuation is no longer required	✓					
				To a 5.9(2) (a) Cfte	To a 5.9(2) (b) Cfte	To a 5.9(2) (c) - (e) Cfte	To The CEO
1(1)	Schedule 6.2 – Provisions relating to lease of land where rates or service charges unpaid A local government may lease the land with any conditions for a term that does not exceed 7 years	✓	Delegation Prohibited	✓	✓	✓	subject to 5.43(d) ✓

Section / Regulation	RELEVANT EXERCISABLE POWER or DISCHARGEABLE DUTY OF LOCAL GOVERNMENT		Applicable Delegation			
	Suitable For Acting Through	Delegation Prohibited	To a 5.9(2)(a) Ctte	To a 5.9(2)(b) Ctte	To a 5.9(2)(c) - (e) Ctte	To The CEO
	Schedule 6.3 – Provisions relating to the sale or transfer of land where rates or service charges unpaid					
1(1)	Before exercising its power of sale, a local government must give the owner, or any other person who has a recorded interest in the land, opportunity to pay the rates or service charges. It must send them notice by certified mail and place a notice [with the contents prescribed in clause 1(2)] on its notice board for a minimum of 35 days	✓				
1(3)	A local government must give local public notice [if the owner or other interested parties do not have a recorded address]	✓				
1(4)	The local government must appoint a time at which the land may be offered for sale by public auction, not less than 3 months and not more than 12 months from the service of the notice under clauses 1(1) or 1(2)		✓	✓		✓
2(1)	The local government must give [Statewide public notice of the sale]	✓				
2(3)	The local government must give the Registrar of Titles or the Registrar of Deeds a memorial of the Statewide notice	✓				
4(1)	A local government may transfer or convey to the purchaser of the land an indefeasible estate in fee simple		✓	✓		✓ subject to 5.43(d)
7(2)	If the land has not been sold within 12 months, the local government may begin the process again in accordance with this Schedule	✓				



Department of Local Government
and Regional Development
Government of Western Australia

www.dlgrd.wa.gov.au

FURTHER INFORMATION

For more information about this and other guidelines, contact the Local Government Support and Development Branch of the Department of Local Government and Regional Development on:

Tel: (08) 9217 1500

Fax: (08) 9217 1555

Freecall: 1800 620 511 (Country Only)

These guidelines are also available on the Department's website at www.dlgrd.wa.gov.au

ABOUT THE GUIDELINE SERIES

This document and others in the series are intended as a guide to good practice and should not be taken as a compliance requirement. The content is based on Departmental officers' knowledge, understanding, observation of, and appropriate consultation on contemporary good practice in local government. Guidelines may also involve the Department's views on the intent and interpretation of relevant legislation.

All guidelines are subject to review, amendment and re-publishing as required. Therefore, comments on any aspect of the guideline are welcome. Advice of methods of improvement in the area of the guideline topic that can be reported to other local governments will be especially beneficial.

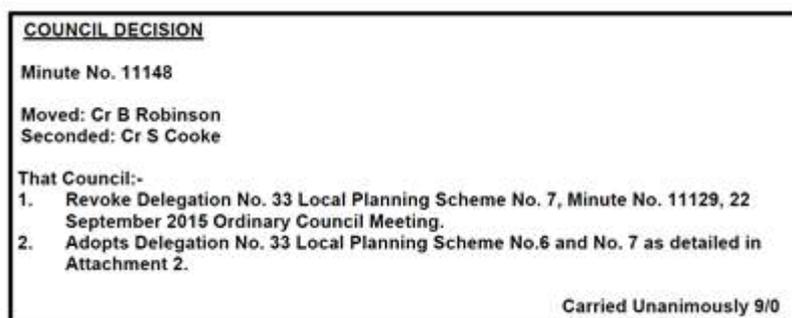
Meagan LeRiche

Subject: FW: MINOR ADJUSTMENT TO DELEGATIONS REGISTER
Attachments: ADOPTED 33 STAT DELEGATION.pdf

From: Lisa Hannagan
Sent: Tuesday, 30 August 2016 2:57 PM
To: SWEK Councillors <Councillors@swek.wa.gov.au>
Cc: SWEK Directors <SWEKDirectors@swek.wa.gov.au>
Subject: MINOR ADJUSTMENT TO DELEGATIONS REGISTER

Hi All,

Please find attached Delegation 33 which was adopted by Council on 27 October 2015 (Minute No. 11148).



Unfortunately the adopted version was not incorporated in the current review and the Draft Delegation Register you have in your agenda **contains the previous version**.

The minor change therefore is to replace what is now Delegation #34 (because there is a new delegation hence a different number) with the attached previously approved delegation.

I will have a hard copy for each of you at tonight's meeting.

Don't hesitate to contact me if you have any queries.

Regards

Lisa Hannagan
Senior Risk and Governance Officer

SHIRE of WYNDHAM | EAST KIMBERLEY
20 Coolibah Drive, PO BOX 614 Kununurra WA 6743 | T: (08) 9168 4100 | F: (08) 9168 1798 | www.swek.wa.gov.au

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STATUTORY DELEGATIONS – OTHER LEGISLATION

33. LOCAL PLANNING SCHEME No. 6 and No. 7

LEGISLATIVE POWER *Local Planning Scheme No. 6 and No. 7*

DELEGATE Chief Executive Officer

FUNCTION TO BE PERFORMED

The Council delegates its authority and power pursuant to Clause 82.1 to:-

1. Determine applications for planning approval, including applications, involving;
 - a. the variation of Local Planning Scheme provisions, Local Planning Policy or provisions of the Residential Design Codes; and
 - b. the exercise of discretion under the Local Planning Scheme, Local Planning Policy or the Residential Design Codes; and
 - c. unauthorised existing developments.
2. Advertise an application for planning approval.
3. Refusal of all development applications where;
 - a. the proposed use is not permitted by the Local Planning Scheme; or
 - b. the development does not comply with the non-discretionary provisions of the Residential Design Codes or;
 - c. additional information required is not provided within 21 days of the request.
4. Amend or revoke a planning approval.
5. Grant an extension of development approval for up to two (2) years.
6. Delete or modify conditions of approval, whether imposed under delegated authority or not.
7. Make recommendations to the WA Planning Commission on:
 - a. Applications for subdivision or amalgamation of land;
 - b. Minor variations to approved subdivisions;
 - c. Clearance of conditions of subdivision approval
8. Issue and serve notices, and take any other enforcement action, against a person who is suspected of committing an offence under the Local Planning Scheme.
9. Recover expenses under Section 11 (4) of the *Planning and Development Act 2005* in a court of competent jurisdiction.

12.2.2. Standing Item - Outstanding Actions from Council Resolutions

DATE:	30 August 2016
AUTHOR:	Meagan Le Riche, Executive Assistant
RESPONSIBLE OFFICER:	Carl Askew, Chief Executive Officer
DISCLOSURE OF INTERESTS:	Nil

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That Council notes the report - Outstanding Actions from Council Resolutions.

COUNCIL DECISION

Minute No: 11455

Moved: Cr B Robinson

Seconded: Cr K Wright

That Council notes the report - Outstanding Actions from Council Resolutions.

Carried 9/0

PURPOSE

To report to the Council on the progress and provide comment on outstanding actions from Council resolutions.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Leader - plan and provide direction through policy and practices

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

At each meeting of Council, resolutions are made which require actions to be taken by officers to implement those resolutions. This monthly update advises the Council as to the status of the implementation of resolutions.

STATUTORY IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Not applicable as referenced in individual reports presented to the Council.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved services

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

RISK IMPLICATIONS

Nil

COMMUNITY ENGAGEMENT

No community engagement is required.

COMMENTS

This report includes actions from July resolutions (Attachment 1). Attachment 2 summarises all other actions that are outstanding from previous Council resolutions.

ATTACHMENTS – Item 12.2.2

Attachment 1 - Council Actions Register - July

Attachment 2 - Outstanding Actions from Previous Council Resolutions

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 26/07/16	Carl Askew	Request to attend OCM 30 August 2016 via Electronic Means	That Council approve Cr Cooke's participation in the OCM to be held 30 August 2016 via simultaneous communications (telephone) from the location of 51 Mottram Road CARMEL, WA 6076.	Liaising with Cr Cooke	22-Aug-16	In progress
OCM 26/07/16	Louise Gee	Applicant for Grant of Caravan Park Licence - Kununurra Agricultural Society	<p>1. Grant a Caravan Park licence to Kununurra Agricultural Society Inc. for 1 long stay site and 23 short stay sites, subject to compliance with the Caravan Parks and Camping Grounds Regulations 1997.</p> <p>2. Request the Chief Executive Officer to advise Kununurra Agricultural Society that in accordance with Clause 8.4, Change of Authorised Use of the lease between Kununurra Agricultural Society Inc. and the Shire of Wyndham East Kimberley that prior to the operation of the caravan park the Kununurra Agricultural Society Inc. are to seek the Shire's approval to amend the Authorised Use as stated in the existing lease to include "caravan park and camping ground". This will require the variation of the lease terms and rental, and is subject to the Minister of Lands consent.</p>	<p>Awaiting change of authorised use of the lease before licence can be issued. Deed of Variation completed, awaiting approval from Kununurra Agricultural Society to engage valuer to set lease fee.</p>	27-Jul-16	In progress
OCM 26/07/16	Louise Gee	Development Application - Lot 501 Victoria Hwy - Temporary Workers Accommodation (Camp)	<p>That Council grant development approval for the use of a 232 person Temporary Workers Accommodation Camp at Lot 501 Victoria Highway Kununurra, subject to the following:</p> <p>Conditions:</p> <ol style="list-style-type: none"> Use and Development shall be in accordance with the approved plans and subject to any modifications required as a consequence of any conditions of this approval. The endorsed plans shall not be modified or altered without written consent of local government. This approval authorises the use as Temporary Workers Accommodation for a period of 3 years only from the date of this notice, unless otherwise approved by the local government. The Temporary Workers Accommodation shall be occupied by workers associated with Project Sea Dragon and any associated road upgrade/ construction projects. The Temporary Workers Accommodation shall provide and maintain the following communal facilities: <ol style="list-style-type: none"> An uncovered outdoor activity area, of which part may be shaded; Commercial kitchen and dining with ablution facilities; A recreation/games/activity room with ablution facilities; Laundry and associated facilities; A designated hardstand/compound area for parking of boats and other larger vehicles as required; and The internal road network and carrieways shall be maintained to a minimum compact gravel standard to the satisfaction of the local government. A designated bus parking and collection/drop off area to accommodate a minimum of three 13 metre buses shall be maintained to a minimum compact gravel standard to the satisfaction of the local government. A minimum of 70 car parking bays shall be provided on-site to a minimum compact gravel standard and maintained to the satisfaction of the local government. The proponent is to ensure a maximum speed limit of 20km/hour within the facility is adhered to and appropriate measures are taken to ensure dust suppression. External lighting shall be provided and maintained for all internal roads, pathways, parking areas and outdoor communal areas to provide for adequate safety and security of patrons. A detailed landscaping plan shall be submitted showing the location of communal lawn areas and soft/hard landscaping (types/species of native plants) around buildings and infrastructure, access and parking areas, and forming a buffer to the Mirima National Park, with the plan to be endorsed by the local government prior to initial occupation. 	Development Approval DA41/16 has been issued.	09-Jul-16	Completed
OCM 26/07/16	Louise Gee	Lot 107 (No. 14) Nutwood Crescent - Home Business (Retail Trade by Appointment) renewal	<p>That Council grants planning consent for a Home Business (Retail Trade by Appointment) at Lot 107 (No. 14) Nutwood Crescent, Kununurra, subject to the following conditions:</p> <ol style="list-style-type: none"> The use shall be in accordance with the attached approved plan(s) and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government. Retail trade must be by appointment only and any advertising associated with the business must not include the address of the property. Appointments must only occur between 7am and 7pm. Any change of use shall be subject to further Council consent. Does not employ any person not a member of the occupier's household except with the consent of the Shire. The use shall not cause injury to or prejudicially affect the amenity of the neighbourhood. The use shall not occupy an area greater than 20m². In regards to vehicles and parking, does not result in the requirement of a greater number of parking facilities than normally required for a single dwelling or an increase in traffic volume in the neighbourhood, does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight, and does not include provision for the fuelling, repair or maintenance of motor vehicles. Does not involve the use of an essential service of greater capacity than normally required in the zone. Approval is granted until 30 June 2017 with any such renewal to be brought forward to Council for re-approval. 	Development Approval DA27/16 has been issued.	15-Aug-16	Completed
OCM 26/07/16	Louise Gee	Development Levels - Lake Kununurra	That Council repeal Development Control Policy DC5 - Development Levels - Lake Kununurra	Policy to be removed for Policy Register.	24-Aug-16	In Progress

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 26/07/16	Natalie Octoman	2016/17 Budget - Differential General Rates and Minimum Payments - Consideration of Public Submissions	<p>That Council:</p> <ol style="list-style-type: none"> Notes the submissions received in relation to the draft Corporate Business Plan 2016/17 to 2019/20 along with the draft 2016/17 Budget including the proposed Differential General Rates and Minimum Payments and Strategic Rating Policy, and thanks the community for their input; Endorse the revised Council Policy CP/FIN-3200 Strategic Rating including the 2016/17 Rating Model as follows, with the intention of striking the rates as part of the 2016/17 Budget adoption, subject to receiving Ministerial approval where required by legislation: <p>Rating Category Total Rateable Value of Properties Proposed Minimum Payment Rate in the Dollar (cents) % of Properties on Minimum Payments Proposed Rates Revenue Budget 2016/17</p> <p>GRV - Residential 1,677,48,374.914 1,099.9,4201 2.68% \$4,570,442</p> <p>GRV - Other Vacant 131,872,950 1,099 14,1302 77.86% \$182,226</p> <p>GRV - Commercial 175,14,742,454 1,099 12,2461 9.71% \$1,813,859</p> <p>GRV - Industrial 178,9,022,110 1,099 11,3041 3.93% \$1,024,073</p> <p>UV - Rural Residential 185,51,149,000 1,099 0,9922 0.00% \$507,500</p> <p>UV - Pastoral 24,6,188,271 1,099 5,3747 4.17% \$332,761</p> <p>UV - Commercial/Industrial 61,14,368,840 1,099 0,6806 39.34% \$119,893</p> <p>UV - Rural Agriculture 1,80,75,530,309 1,099 0,9626 1.25% \$728,057</p> <p>UV - Rural Agriculture 2,109,57,381,000 1,099 0,6806 0.00% \$390,535</p> <p>UV - Mining 68,1,681,422 1,099 27,8824 45.59% \$489,742</p> <p>UV - Mining Vacant 44,300,068,550 13,9412 61.36% \$51,664</p> <p>UV - Other 2,526,000 1,099 0,6384 0.00% \$3,358</p> <p>TOTALS 2,734,280,137,338 \$10,214,112</p> <p>Less Concessions \$(66,620)</p> <p>Add Ex-Gratia Rates \$5,355</p> <p>\$10,162,846</p>	Applications sent to Minister for approval. Recommended changes given clarification received from DLGC which is being considered at 23 August Special Council Meeting.	02-Aug-16	In progress
OCM 26/07/16	Natalie Octoman	2016/17 Budget - Differential General Rates and Minimum Payments - Consideration of Public Submissions	<ol style="list-style-type: none"> Request the CEO, or their delegate to seek approval from the Minister for Local Government and Communities to approve the Shire of Wyndham East Kimberley's application to: <ol style="list-style-type: none"> impose minimum payments for vacant land which will result in more than 50% of the properties in the GRV Other Vacant and UV Mining Vacant rating categories subject to minimum payments in accordance with section 6.35(5) of the Local Government Act 1995; and impose a rate in the dollar which will result in it being more than twice the lowest differential general rate imposed for UV Mining, UV Mining Vacant and UV Pastoral rating categories, in accordance with section 6.33(3) of the Local Government Act 1995. 	Applications sent to Minister for approval. Recommended changes given clarification received from DLGC which is being considered at 23 August Special Council Meeting.	02-Aug-16	In progress
OCM 26/07/16	David Klye	Directional Signage	<p>That Council:</p> <ol style="list-style-type: none"> Establish and maintain a business directional signage register to: <ul style="list-style-type: none"> ensure that business directional signage is up to date and accurate. ensure that business directional signage is maintained in an acceptable and safe condition in accordance with the Shire's policy CP/OPS-3655 Directional Signage. In accordance with section 6.19 of the Local Government Act 1995, give local public notice of its intention to apply a fee to process an application, purchase and install business directional signage. In accordance with section 6.16 of the Local Government Act 1995, apply an annual fee to cover the cost of managing signage and maintaining the business directional signage register; <ul style="list-style-type: none"> The annual fee to cover the cost of managing signage and maintaining the register shall be included in the Shire's 2016/17 Fees and Charges schedule at \$85.00 per annum per sign. Note that the fee to process an application, purchase and install directional signage is identified in the Shire's 2016/17 Fees and Charges schedule as a "Full Cost Recovery" item. Accept existing business directional signs onto the business directional signage register and accept an annual fee for the signage. 	Establishment of database commenced	15-Aug-16	In progress
OCM 26/07/16	David Klye	Loan of Can Crushing Machine to a Community Group	That Council approve the request for the loan of the Shire's can crushing and baling machine to Anglicare Halls Creek for use in its community aluminium recycling project, on the condition that Anglicare Halls Creek agree to guarantee in writing that the can crushing and baling machine is returned to the Shire when requested and in the same condition in which it was loaned.	Machine collected on 8 Aug. All conditions adhered to.	01-Aug-16	Completed

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 26/07/16	David Klye	Dedication of Kalumburu Road	<p>That Council;</p> <ol style="list-style-type: none"> 1. Authorises the Chief Executive Officer to provide an indemnification from the Shire to the Minister for Lands (Government of Western Australia) against any claim for compensation in an amount equal to the amount of all costs and expenses reasonably incurred by the Minister in considering and granting the dedication of the Gibb River - Kalumburu Road in accordance with Section 56(4) of the Land Administration Act 1997, and 2. Directs that the indemnification exclude costs associated with survey. 3. That the road reserve is as indicated in the June 2014 resolution minute number 10453 	Indemnification provided to the Minister for Lands	02-Aug-16	Completed

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
Aug-12	Louise Gee	Matters arising from committees of council	That the Audit (Finance and Risk) Committee recommends to Council to require A501 to: 1. Either a. meet their outstanding rates debt on assessment A501 within 60 days; or b. enter into a suitable payment plan approved by the Chief Executive Officer; and 2. Formalise the lease of Lot 472 Great Northern Highway, Wyndham with the Shire within 90 Days	Correspondence provided to A501 and a suitable payment plan has been entered into, with payments commenced. Lease discussions may now commence as the payment plan is in place.	Ongoing	In progress
OCM 24/02/15	Louise Gee	Management of Proposed Reserve - Packsaddle Creek	That item 13.4.7 Management of Proposed Reserve – Packsaddle Creek be deferred to a briefing session.	Matter was discussed at March Briefing Session. Subsequent information has been sought from Department of Lands and Department of Parks and Wildlife (DPaW). Further information to be presented to Council at a future 2016 briefing session.	20-Jun-16	In progress
OCM 24/03/15	Louise Gee	Unnamed Creek Crossing - Victoria Highway	That Council: 1. Directs the Acting Chief Executive Officer to write to the MG Corporation to seek advice from the relevant Traditional Owners on the proposed formal naming of 'Philichowski Crossing', and potential indigenous naming of the creek. 2. Directs the Acting Chief Executive Officer to undertake research and compile supporting documentation to demonstrate Philichowski's contribution to the community or historical significance. 3. Endorses the proposed formal naming of 'Philichowski Crossing', and advises the Geographic Names Committee of its endorsement, subject to adequate supporting documentation being compiled and no objection being received from Traditional Owners.	Letter sent to MG Corporation dated 20 April to seek advice from relevant Traditional Owners. MG Corporation have acknowledged receipt of this letter and advised that the matter will be referred to the relevant MG Entity and Traditional Owner for comment, and a response will be provided in due course. Correspondence received from MG Corporation dated 1 March 2016 advising that the board does not support the formal naming of "Philichowski Crossing", and have nominated an alternative name. Report presented to the August 2016 Council Briefing. Officers are undertaking further research, prior to the matter being considered at a future OCM.	19-Apr-16	In progress
OCM 28/04/15	David Klye	Confidential - Legal Claim	That Council: 1. Notes the officer's confidential report and the progress of the General Procedure Claim, 2. Directs the CEO, or their delegate, to legally defend the matter on behalf of the Shire in the abovementioned General Procedure Claim, 3. Approves sufficient provision in the budget to allow for associated legal fees, and 4. Directs the CEO, or their delegate, to provide a report to Council on the status of the matter at the earliest opportunity.	Point 2 is still in progress. Issue listed for Hearing on 1 & 2 November 2016.	26-Jun-15	In Progress
OCM 23/06/15	David Klye	East Kimberley Regional Airport Proposed Runway Extension Business Case	That Council notes the Chief Executive Officer's intention to appoint GHD Consulting Engineers for the Lump Sum price of \$140,740.00 ex GST in accordance with the current budget to: 1. Prepare a Business Case to support grant opportunities including an application to a future round of the National Stronger Regions Fund; 2. Investigate the ground soil conditions for the proposed runway extension and associated taxiways and passenger terminal apron at East Kimberley Regional Airport to determine their structural adequacy to accommodate B737 and A320 aircraft.	Report to be presented to Council for endorsement at the August 2016 Ordinary Council Meeting.	25-Jun-15	In progress
OCM 28/07/15	Louise Gee	Request for Lease – Kimberley Action Sports Inc.	That Council request the Chief Executive Officer to commence negotiations with Kimberley Action Sports Inc. for a 10 year lease over a portion of Reserve 30290, Lot 707 Drivers Road Kununurra, subject to the approval of the Minister of Lands.	Letter has been forwarded to Kimberley Action Sports Inc. advising of Council resolution. Draft Lease sent to Kimberley Action Sports 10 February 2016.	17-Aug-15	In progress
OCM 28/07/15	Louise Gee	Request for Lease – Kununurra Dragon Boat Club Inc.	That Council request the Chief Executive Officer to enter into negotiations with the Kununurra Dragon Boat Club Inc. for a 10 year lease over a portion of Reserve 41812, Lot 2371 Old Darwin Road Kununurra, subject to the approval of the Minister of Lands.	Letter has been forwarded to Kununurra Dragon Boat Club Inc. advising of Council resolution. Draft Lease sent to Dragon Boat Club 10 February 2016.	17-Aug-15	In progress

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 28/07/15	Carl Askew	Mediterranean Fruit Fly Eradication Program	That Council consider entering into a Memorandum of Understanding with DAFWA and industry on the following basis: 1. DAFWA continues to fund and maintain the current medfly surveillance program. 2. SWEK will fund medfly eradication programs from its biosecurity reserve, with a maximum exposure being those funds available in the reserve in excess of \$200,000 i.e. currently approximately \$67,000. 3. If an eradication program reduces the reserve balance to below \$200,000, industry will make good the difference to restore the reserve to a balance of \$200,000 (mechanism yet to be determined). 4. The biosecurity reserve be maintained with a balance for now of a minimum \$200,000, to serve as a form of insurance against future pest or disease incursions. 5. A reference group to be established with members from SWEK, DAFWA and industry. The role of the group, would be to recommend expenditure from the reserve and to formulate policy in the event of future pest crises. SWEK Council approval would still be required before the reserve could be accessed for response to threats other than medfly.	Letter sent to DAFWA advising of the decision and requesting advice on how to proceed with the eradication program, including indicative cost, and an invoice. Advice also given that SWEK will be in contact shortly to commence the consideration of entering into a MOU. The baiting program is complete and area freedom was reinstated for the area on 5th October. Industry has been notified. Invoice has been paid. In relation to the MOU, DAFWA have requested for an interim group to be formed to progress this feedback from industry has been minimal. ORDCO are interested in assisting where possible and have volunteered to talk with growers to get some industry participation. Incident debrief was held 19 November 2015. Discussions continue to occur regarding the biosecurity reference group	24-Aug-16	In progress
OCM 25/08/15	Louise Gee	Proposed Gravel Reserves	That Council: 1. Requests the Chief Executive Officer to consult with the Darwuluh Aboriginal Corporation to obtain written consent for the surrender of the proposed 'King River' gravel area from Lease 1837493, and support the realignment of the dedicated road reserve to correspond with the physical location of the constructed King River Road. 2. Requests the Chief Executive Officer to advise the Department of Lands that the Shire of Wyndham East Kimberley: a. agrees to proceed with a future act process to facilitate the creation of reserves for the purpose of gravel supply for road building purposes over the sites identified as 'Afghan Cemetery', 'Mount Albany' and 'Parry Creek', and proposed easement to provide legal access to the 'Afghan Cemetery'. b. indemnifies the Minister for Lands against any costs arising from the future act process. 3. Requests the Chief Executive Officer to advise the Department of Lands that the Shire of Wyndham East Kimberley agrees to pay survey costs associated with: a. the creation of 'Gravel' reserves over the four areas referred to as 'King River', 'Afghan Cemetery', 'Mt Albany' and 'Parry Creek', b. the creation of an easement to provide access to the area referred to as 'Afghan Cemetery'; and c. the realignment of the dedicated road reserve to correspond with the physical location of the constructed King River Road. d. that the estimated total survey costs be acknowledged as \$19,600.	Correspondence sent to DoL advising of Council resolution. Correspondence also sent to Darwuluh Aboriginal Corporation in relation to the gravel source along King River Road and the proposed realignment of the dedicated road reserve. The Senior Planning Officer met with Darwuluh representatives on 6 October 2015 to discuss the matter. The Senior Planning Officer and Director Infrastructure met again with representatives of the Darwuluh Aboriginal Corporation on 18 March 2016. Darwuluh Aboriginal Corporation have requested another meeting with the Senior Planning Officer and Shire President.	01-Jun-16	In progress
OCM 25/08/15	Louise Gee	Transient Accommodation - Lot 411 Minijiljirga Lane, Kununurra	That Council request the Chief Executive Officer to undertake further investigation as part of the Local Planning Scheme review, to consider the introduction of a new or amended use class to appropriately provide for rural workers accommodation and preparation of a subsequent Local Planning Policy.	Officers have commenced desktop audit of accommodation on rural properties.	15-Jan-16	In progress
OCM 22/09/15	Louise Gee	Request for Community Lease - Kununurra Bushmen's Rodeo Association	That Council request the Chief Executive Officer to enter into negotiations with the Kununurra Bushmen's Rodeo Association for a lease over a portion of Reserve 30290, Lot 707 Drovers Road Kununurra, subject to the approval of the Minister of Lands.	KBRA have been notified of the intent to commence negotiations. Draft Lease sent to KBRA 10 February 2016.	01-Oct-15	In progress
OCM 22/09/15	Louise Gee	Request for Community Lease - Ord Pistol Club	That Council request the Chief Executive Officer to enter into negotiations with the Ord Pistol Club for a lease over a portion of Reserve 31780, Lot 375 Drovers Road Kununurra, subject to the approval of the Minister of Lands.	OPC have been notified of the intent to commence negotiations. Draft Lease has been sent to the Pistol Club (18 January 2016).	01-Oct-15	In progress
OCM 15/12/15	Carl Askew	Notice of Motion from Cr D Spackman: That every Shire vehicle display a standard design, Shire Council approved decal of approximate size 400mm x 300mm (or other council approved size) of which clearly illustrates the Shire logo. Decals are to be on both left and right hand doors or panels where it is appropriate for that type of machinery. Decals are not to be magnetic or removable.	That Council defers the motion from Cr D Spackman to 2016, to be considered prior to budget considerations.	incorporated into Draft 2016/17 Budget discussions.	15-Aug-16	In progress

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 27/01/16	Louise Gee	Western Australian Housing Authority Utilisation of Wyndham Administration Centre	That Council:- 1. Requests the Chief Executive Officer to advise the Western Australia Housing Authority that it accepts its offer of \$5,000,000 per annum to utilise the Wyndham Administration Centre as outlined in Attachment 1. 2. Requests the Chief Executive Officer to advise the Western Australia Housing Authority that the Shire will not contribute any direct costs towards the placement of the Authority's officer and service within the Wyndham Administration Centre i.e. additional furniture, technology and communication equipment, display stands, signage.	Draft MoU forwarded to WA Housing Authority. Letter and MoU forwarded to WA Housing for execution.	12-Feb-16	In progress
OCM 23/02/16	Louise Gee	Wyndham CRC	That Council: 1. Continue to provide Community Resource Network services in accordance with its agreement with the Department of Regional Development. This agreement is for the provision of Community Resource Network services for a period of three years from 1 July 2014 to 30 June 2017. 2. Request the CEO to call for Expressions Of Interest from the Wyndham community for the production of the Community Newsletter - The Bastion Bulletin.	Expression of Interest being drafted.	21-Apr-16	In progress
OCM 23/02/16	Louise Gee	Dual Naming - Barnett River Gorge	That Council resolve to undertake community consultation in relation to the proposal for dual naming or renaming of the Barnett River Gorge.	Community Consultation commenced 22 April 2016. Comment from relevant organisations also being sought.	19-Apr-16	In progress
OCM 23/02/16	David Kyle	Wyndham Reticulation	That Council request the Chief Executive Officer to provide a report to Council on the Wyndham reticulation system for inclusion in the 2016/17 budget considerations. The report shall include details on the cost to replace the aging public open space reticulation system with an integrated, automatic system. The report should provide budget estimates for the project to be undertaken in stages of between approximately \$100,000 and \$150,000 per annum for consideration in the forthcoming budget deliberations.	Report being prepared.	24-Feb-16	In progress
OCM 29/03/16	David Kyle	Airport Sculpture	That Council: 1. That the sculpture be placed airside at a site determined by the CEO in accordance with the discussion at Council on 29 March 2016. 2. Note that on completion of the associated signage the sculpture be installed and a formal unveiling organised that includes representatives from Wairingarri Aboriginal Arts and local Aboriginal groups.	The sculpture has been installed airside. The artist has been contacted with a request to supply the sign.	26-May-16	In progress
OCM 29/03/16	Louise Gee	Request for Lease - Old River Magpies	That Council request the Chief Executive Officer to enter into negotiations with the Old River Magpies for a lease over a portion of Lot 504 on Reserve 29799, Kununurra, subject to approval of the Minister of Lands	Awaiting outcomes of lease policy review	21-Apr-16	In progress
OCM 29/03/16	Louise Gee	Request for extension of Development Approval - Lot 507 Chestnut Ave - 1	That Council: 1. Extend the Kununurra Neighbourhood House Development Approval (DA) 6/14 at Lot 507, Chestnut Drive Kununurra for a further two years. 2. Request the Chief Executive Officer to enter into lease negotiations with Kununurra Neighbourhood House; the lease to include agreed development milestones and timeframes.	1) DA06/14 extension sent. 2) Letter drafted 20/04/16. 3) Draft Lease developed and forwarded to Neighbourhood House. Comment received from Neighbourhood House 1 July. 4) Lawyers engaged to review KNH comment on Agreement for Lease and Lease document 18 August 2016.	21-Apr-16	In progress

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 29/03/16	Louise Gee	Request for extension of Development Approval - Lot 507 Chestnut Ave - 2	That Council: 3. Request the Chief Executive Officer to investigate alternate options for expansion of the Child Care facility on lot 506, Chestnut Drive; and 4. Request the Chief Executive Officer to investigate alternate options for the construction of a new Kununurra Neighbourhood House facility. 5. Request the Chief Executive Officer to bring the report on future expansion of child care facilities to Council at a future Briefing Session.	Priority focus has been given to the finalisation of lease negotiations with Kununurra Neighbourhood House.	21-Apr-16	In progress
OCM 29/03/16	Carl Askew	Annual General/Electors Motions 2	That Council note that a Regional Price Preference Policy is currently being prepared for consideration by Council.	Policy going to August Council Meeting	15-Aug-16	In progress
OCM 29/03/16	Carl Askew	Annual General/Electors Motions 4	That Council note that an Indigenous Employment Organisational Directive will be drafted.	Organisational Directive is currently being researched.	21-Apr-16	In progress
OCM 26/04/16	Carl Askew	Intent to Review Local Laws	That Council undertake a review of all of its Local Laws in accordance with the Local Government Act 1995 s.3.16 and give statewide and local public notice of its intent to undertake a review.	Advertising has taken place and review is under way.	26-May-16	In progress
OCM 26/04/16	Carl Askew	Meeting Procedures Local Law 2016	That Council, pursuant to Section 3.12 of the Local Government Act 1995, give statewide public notice that it intends to make the Shire of Wyndham East Kimberley Meeting Procedures Local Law 2016 as contained in the attachment to this item, with the amendment to section 17.1 (3) (b) replacing the words "Absolute Majority" to "Simple Majority", the purpose of which is to provide procedures which apply to the conduct of meetings of Council, its committees and to meetings of electors. The effect of the Local Law is to control the operation of Council, committee and electors meetings.	Advertising has taken place and review is complete. Local law is going to August 2016 Ordinary Council Meeting.	23-Aug-16	In progress
OCM 31/05/16	Natalie Octoman	Our Town Television Show	That Council refer for consideration in the 2016/17 Budget an allocation of \$20,000 as a contribution towards the production of an episode of Our Town, subject to financial support from other organisations within the Shire of Wyndham East Kimberley.	Presented to Council as part of the Draft 2016/17 Budget. Will be incorporated in final budget for adoption given support from other organisations has been confirmed.	21-Jun-16	In progress
OCM 31/05/16	Louise Gee	Request for Approval to Sublease - Ord River Sports Club	That Council grants approval for the Ord River Sports Club Inc. Sublease of the caretaker dwelling at Lot 2313 Chestnut Avenue, Kununurra with the following conditions: 1. The execution of the Lease between the Shire of Wyndham East Kimberley and the Ord River Sports Club Inc. 2. All terms of the relevant sublease clause within the executed lease are to be met. 3. Approval from the Minister of Lands.	Awaiting execution of the lease.	01-Jun-16	In progress
OCM 31/05/16	Louise Gee	Request to Sublease Wyndham Childcare Centre	That Council: 1. Authorises an amendment to the Lease for Reserve 28976, 44 Koolama St, Wyndham. This amendment is to remove "for non-profit making community purposes" from clause 24.3 (a), subject to approval from One Tree Community Services and the Minister for Lands. 2. Requests the Chief Executive Officer to write to the Department of Lands to seek consent on behalf of the Minister for Lands for the sub lease of Reserve 28976, 44 Koolama St, Wyndham for the purposes of providing long day care child care services.	All parties notified of the Ordinary Council Meeting outcome. Sublease has been received for approval (minus specifics of dates and fees) and this has been forwarded to Department of Lands. Terms of the sublease still to be agreed upon by all parties (23 August 2016)	20-Jun-16	In progress
OCM 31/05/16	Natalie Octoman	Draft Council Policy CP/FIN-3217 Regional Price Preference for Community Engagement	That the Council: 1. Endorses the Draft CP/FIN 3217 Regional Price Preference Policy for public comment; 2. Endorses statewide public notice of the Shire's intention to adopt a regional price preference policy and invite comment on the draft policy for a four (4) week public comment period; and 3. Endorses public consultation in accordance with the community engagement plan.	Policy incorporated into August Ordinary Council Meeting for consideration.	30-Aug-16	In progress
OCM 31/05/16	David Klye	Weero Road Speed Limit Review	That Council request the CEO to contact Main Roads Western Australia seeking a change in road speed limits as follows: 1) Change the speed limit to 60 km/h for approximately the first 850 m of Weero Road from Victoria Highway; 2) Change the speed limit to 80 km/h for the remainder of the sealed section of Weero Road; 3) The unsealed section of Weero Road to remain unchanged at 110 km/h (drive as per the conditions of the road); 4) Change the speed limit to 80 km/h for Chamberlain Drive from Weero Road almost to the intersection of Berkeley Court; and 5) Change the speed limit to 60 km/h for the remainder of Chamberlain Drive, Pentecost Elbow, Berkeley Crescent and Drysdale Approach.	Letter sent to Main Roads Western Australia awaiting response.	08-Jun-16	In progress

Meeting	Responsible Officer	Item	Resolution	Progress Comment	Date Actioned	Completed
OCM 28/06/16	Carl Askew	Bush Fire Brigade Local Law	That Council, pursuant to Section 3.12 of the Local Government Act 1995, give state-wide public notice that it intends to make the Shire of Wyndham East Kimberley Bush Fire Brigade Local Law 2016 as contained in the attachment to this item, the purpose of which is to make provisions about the organisation, establishment, maintenance and equipment of bush fire brigades. The effect of this Local Law is to align existing local laws with changes in law and operational processes. That Council, pursuant to Section 3.12 of the Local Government Act 1995, give state-wide public notice that intends to make the Shire of Wyndham East Kimberley Fencing Local Law 2016 as contained in the attachment to this item, the purpose of which is to prescribe a sufficient fence and the standard for the construction of fences throughout the district. The effect of this Local Law is to establish the minimum requirements for fencing within the district.	Advertising is in progress and review is under way.	23-Aug-16	In progress
OCM 28/06/16	Carl Askew	Fencing Local Law	That Council, pursuant to Section 3.12 of the Local Government Act 1995, give state-wide public notice that intends to make the Shire of Wyndham East Kimberley Fencing Local Law 2016 as contained in the attachment to this item, the purpose of which is to prescribe a sufficient fence and the standard for the construction of fences throughout the district. The effect of this Local Law is to establish the minimum requirements for fencing within the district.	Advertising is in progress and review is under way.	23-Aug-16	In progress
OCM 28/06/16	Carl Askew	Recording of Council Committee and Elector Meetings	That Council: 1. Adopt the draft policy (as per Attachment 1) for Recording of Council, Committee and Electors Meetings for public advertising for a period of 28 days; 2. Subject to the feedback received in the public advertising period proceed with the acquisition of a wireless audio recording system at a cost of approximately \$35,000 with the inclusion video recording	Public advertising in progress. Seeking quotes for audio and video recording systems	19-Jul-16	In progress
OCM 28/06/16	Louise Gee	Draft Kununurra Civic and East Lily Creek Precinct Structure Plans	That Council requests the Chief Executive Officer to advertise the draft Kununurra Civic Precinct and East Lily Creek Structure Plans in accordance with Schedule 2, Part 4, Clause 18 of the Planning and Development (Local Planning Schemes) Regulation 2015.	The draft Structure Plans are on public exhibition until 3 August 2016. Review of submissions be undertaken.	07-Jul-16	In progress
OCM 28/06/16	Louise Gee	Review of Council Policy CP/COM 3582 Community Grant Scheme	That Council endorse the reviewed CP/COM 3582 Community Grant Scheme to be advertised for public comment for a minimum of 28 days.	Policy has been advertised with the closing date for feedback 11 August. No feedback received - to be presented to the August Ordinary Council Meeting.	01-Aug-16	In progress
OCM 28/06/16	Louise Gee	Community Engagement Policy Review	That Council endorse the draft reviewed CP/GOV-3100 Community Engagement Policy to be advertised for public comment for a period of 28 days.	Policy has been advertised with the closing date for feedback 11 August. No feedback received - to be presented to August Ordinary Council Meeting.	01-Aug-16	In progress
OCM 28/06/16	Louise Gee	Council Policy Review - Radio Masts, Antennae & Satellite Dishes	That Council advertise draft Policy CP/PMG-3783 - Communication Antennae for public comment for a period of 28 days.	Draft policy to be advertised in the Kimberley Echo for comment for a period of 28 days.	20-Jul-16	In progress
OCM 28/06/16	David Klye	Ivanhoe Crossing	That Council; 1. Request a regulatory review of the crossing by Main Roads Western Australia with a view to implementing: a. A speed limit of 10 km/h on the crossing. b. The installation of 'Give Way' signs on the crossing. c. Prohibition of stopping on the crossing other than for stopping at the passing bay to allow the passage of oncoming vehicles. 2. Notes that establishment of the speed limit referred to in the decision above may necessitate the establishment of step down limits on both sides of Ivanhoe Crossing. 3. Prohibit the use of the crossing by pedestrians. 4. Prohibit the public from alighting from vehicles on the crossing. 5. Designate Ivanhoe crossing as a single lane crossing. 6. Install signage advising of risks associated with, fast flowing water and strong currents, a slippery or slippery when wet road surface, unprotected edges and drop offs and to drive into the water slowly. 7. Erect appropriate signage to advise and manage the implementation of decisions 1, 3, 4, 5, 6 and 7 above including the meaning and use of the depth markers on the crossing, at an estimated cost of \$6,500 which shall be charged to the Ivanhoe Crossing Reconstruct account. 8. Notes that the additional signage referred to in decisions 1, 3, 4, 5, 6 and 7 above will cost an estimated \$6,500 which shall be funded from the 2015/16 forecast budget surplus. 9. Request the CEO to formally acknowledge and thank the representatives from Water Corporation, Department of Parks and Wildlife and Main Roads Western Australia for their attendance at the public forum and for assisting the Shire in its community consultation.	Awaiting Main Roads Western Australia response to a request for speed limit assessment of the crossing. Acknowledgement and thank you letters sent to representatives from Water Corporation, Department of Parks and Wildlife and Main Roads Western Australia for their attendance at the public forum and for assisting the Shire in its community consultation.	29-Jun-16	In progress
OCM 28/06/16	David Klye	Disposal of Asset: Weed Harvester	That Council authorise the disposal of the Shire's Weed Harvester (Boat Licence C1471, Plant Number P485) by tender in accordance with the Local Government Act 1995, Section 3.58 with the funds going into the Foreshore Reserve.	Disposal documentation being prepared	29-Jun-16	In progress
OCM 28/06/16	David Klye	Roadwise	That Council; 1. Approve the installation of two (2) Headlights Save Lives signs on each of the following roads: ● Kalumburu Road, ● Parry Creek Road, and ● Duncan Road. 2. Note that the cost of the sign boards will be met by the Roadwise program. 3. Note that the cost of the posts, hardware, installation and ongoing maintenance of the signs will be funded by the Shire from the appropriate maintenance accounts. 4. Elects not to install Roadwise Entry signage at this time.	Roadwise coordinator notified of Council's decision. Awaiting delivery of signs for installation.	29-Jun-16	In progress
OCM 28/06/16	Carl Askew	CEO Performance Review	That Council appoint John Phillips Consulting to assist Council complete the CEO Performance Review, assist Council to establish a formal process including comprehensive guidelines and detailed Terms of Reference documentation and refer for consideration in the 2016/17, and future budgets, a recurrent allocation of \$10,000 per annum in order to appoint an independent facilitator to undertake the CEO's annual performance review.	Flights booked for Consultant to attend Kununurra	19-Jul-16	In progress

12.2.3. Meeting Procedures Local Law 2016

DATE:	30 August 2016
AUTHOR:	Lisa Hannagan, Senior Governance and Risk Officer
RESPONSIBLE OFFICER:	Louise Gee, Acting Chief Executive Officer
FILE NO:	LE.08
DISCLOSURE OF INTERESTS:	Nil

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That Council gives state-wide public notice that it intends to make the Shire of Wyndham East Kimberley Meeting Procedures Local Law 2016, as detailed in Attachment 1.

COUNCIL DECISION

Minute No: 11456

Moved: Cr B Robinson

Seconded: Cr N Perry

That Council gives state-wide public notice that it intends to make the Shire of Wyndham East Kimberley Meeting Procedures Local Law 2016, as detailed in Attachment 1.

Carried 8/1

**For: Cr J Parker, Cr S Rushby, Cr A Petherick, Cr D Spackman, Cr E Bolto,
Cr N Perry, Cr S Cooke, Cr B Robinson**

Against: Cr K Wright

PURPOSE

Section 3.5 of the *Local Government Act 1995* provides the power for local governments to make local laws and prescribing all matters that are required or permitted to be prescribed by the local law, or are necessary and convenient for it to perform any of its functions.

The Shire of Wyndham East Kimberley Meeting Procedures Local Law 2016, formerly referred to as Standing Orders, are a key component of how the Council conducts its

business at a political and officer level. The Meeting Procedures are subsidiary legislation to the Act and are considered enforceable procedures.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Leader - plan and provide direction through policy and practices

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

The Standing Orders Local Law was adopted by Council on 21 October 2003 and Gazetted 3 December 2003, with the primary objective of providing rules and guidelines which apply to the conduct of meetings of Council and Council committee meetings convened under the provisions of the *Local Government Act 1995*. In its current format, this local law contains inconsistencies with the *Local Government Act 1995* and therefore requires change.

At the Council Meeting held 26 April 2016, Council resolved to undertake a review of this (and all other) local law. The WALGA model Meeting Procedures Local Law was used and has been reviewed by both staff and Council.

As required by the *Local Government Act 1995*, the community was invited to comment on the Council's proposed Meeting Procedures Local Law. Public consultation was undertaken as part of the advertising process required by Section 3.12(3), for a minimum of 42 days. The review was advertised on 7 May 2016 (state-wide in the West Australian) and 12 May 2016 (locally in the Kimberley Echo) with a closing date for submissions on 30 June 2016. No public submissions were received.

In line with the legislated requirement, the proposed Meeting Procedures Local Law 2016 was also submitted to the Legislation Section of the Department of Local Government and Communities for review, to ensure legislative compliance.

A number of minor changes were suggested by the Department of Local Government and Communities and these have been incorporated into the final document attached to this item.

STATUTORY IMPLICATIONS

Section 3.12 of the *Local Government Act 1995* specifies the procedures to be followed when making a local law. Section 3.12 states:

3.12 Procedure for making a local law

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2) *At a council meeting the person presiding is to give notice to the meeting the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *The local government is to:*

- (a) Give statewide public notice stating that;
 - (i) The local government proposes to make a local law, the purpose and effect of which is summarised in the notice;
 - (ii) A copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) Submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
 - (b) As soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that Minister; and
 - (c) Provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.
- (3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.
- (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed to make a local law* that is not significantly different from what was proposed.
- * Absolute majority required.
- (5) After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister, and if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
- (6) After the local law has been published in the Gazette the local government is to give local public notice -
- (a) stating the title of the local law;
 - (b) summarising the purpose and effect of the local law (specifying the day it comes into operation); and
 - (c) advising that copies of the local law may be inspected or obtained from the local government's office.
- (7) The Minister may give directions to the local government requiring them to provide to the Parliament copies of the local laws they have made and any explanatory or other material relating to them.
- (8) In this section -
- Making** in relation to a local law, includes to amend the text of, or repeal, a local law.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Advertising costs for state-wide notice and gazettal.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved services

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

RISK IMPLICATIONS

Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

COMMUNITY ENGAGEMENT

Engagement has taken place in accordance with Section 3.12(3) of the *Local Government Act 1995* with both statewide and local advertising and a public submission period open for a minimum of 42 days.

COMMENTS

The purpose of the Meeting Procedures Local Law is to provide procedures which apply to the conduct of meetings of the Council, its committees and to meetings of electors.

The effect of the Local Law is to control the operation of Council, committee and electors meetings.

Up to date and relevant local laws are an important cornerstone of good governance. Local Government has a statutory and moral obligation to ensure that the regulation of local matters is conducted in a fair, efficient and reasonable manner. To comply with the provision of Section 3.12 of the *Local Government Act 1995*, when proposing to make a local law, the presiding person is required to give notice of the purpose and effect of the proposed local law at the Council meeting where the local law is being considered. This is achieved by:

- (a) Ensuring that the purpose and effect of the local law is included in the agenda for that meeting; and
- (b) Ensuring that the minutes of the meeting of the council include the purpose and effect of the proposed local law.

ATTACHMENTS - Item 12.2.3

Attachment 1 - Shire of Wyndham East Kimberley Meeting Procedures Local Law 2016

Local Government Act 1995

Shire of Wyndham East Kimberley

Meeting Procedures Local Law 2016

CONTENTS

Table of Contents

Part 1 - Preliminary	5
1.1 Citation	5
1.2 Commencement	5
1.3 Application and intent	5
1.4 Interpretation	5
1.5 Repeal	6
Part 2 – Establishment and membership of committees	6
2.1 Establishment of committees	6
2.2 Types of committees.....	6
2.3 Delegation of some powers and duties to certain committees.....	6
2.4 Limits on delegation of powers and duties to certain committees.....	7
2.5 Appointment of committee members	7
2.6 Tenure of committee membership.....	7
2.7 Resignation of committee members	7
2.8 Register of delegations to committees.....	7
2.9 Committees to report	7
Part 3 - Calling and convening meetings	7
3.1 Ordinary and special Council meetings.....	7
3.2 Calling Council meetings	7
3.3 Convening Council meetings.....	7
3.4 Calling committee meetings	7
3.5 Public notice of meetings	7
Part 4 – Presiding Member and quorum	8
<i>Division 1: Who presides</i>	8
4.1 Who presides	8
4.2 When the Deputy President can act.....	8
4.3 Who acts if no President.....	8
4.4 Election of Presiding Members of committees.....	8
4.5 Election of Deputy Presiding Members of committees.....	8
4.6 Functions of Deputy Presiding Members	8
4.7 Who acts if no Presiding Member	8
<i>Division 2 – Quorum</i>	8
4.8 Quorum for meetings.....	8
4.9 Reduction of quorum for Council meetings	8
4.10 Reduction of quorum for committee meetings	8
4.11 Procedure where no quorum to begin a meeting	8
4.12 Procedure where quorum not present during a meeting	8

4.13	Names to be recorded	8
Part 5 - Business of a meeting.....		9
5.1	Business to be specified.....	9
5.2	Order of business	9
5.3	Motions of which previous notice has been given.....	9
5.4	New business of an urgent nature.....	10
5.5	Adoption by exception resolution.....	10
Part 6 - Public participation		10
6.1	Meetings generally open to the public.....	10
6.2	Meetings not open to the public	10
6.3	Question time for the public	11
6.4	Question time for the public at certain meetings	11
6.5	Minimum question time for the public	11
6.6	Procedures for question time for the public.....	11
6.7	Other procedures for question time for the public.....	11
6.8	Distinguished visitors	12
6.9	Deputations.....	12
6.10	Petitions	12
6.11	Presentations.....	12
6.12	Participation at committee meetings.....	13
6.13	Council may meet to hear public submissions	13
6.14	Public inspection of agenda materials	13
6.15	Confidentiality of information withheld.....	14
6.16	Recording of proceedings.....	14
6.17	Prevention of disturbance	14
Part 7 - Questions by Members		14
7.1	Questions by Members	14
Part 8 – Conduct of Members		15
8.1	Members to be in their proper places	15
8.2	Respect to the Presiding Member	15
8.3	Titles to be used.....	15
8.4	Advice of entry or departure.....	15
8.5	Members to indicate their intention to speak.....	15
8.6	Priority of speaking	15
8.7	Presiding Member may take part in debates.....	15
8.8	Relevance	15
8.9	Speaking twice.....	16
8.10	Duration of speeches	16
8.11	No speaking after conclusion of debate.....	16
8.12	No interruption	16
8.13	Personal explanations	16
8.14	No reopening of discussion	16
8.15	Adverse reflection	16
8.16	Withdrawal of offensive language.....	17
Part 9 - Preserving order		17
9.1	Presiding Member to preserve order	17
9.2	Point of order.....	17
9.3	Procedures on a point of order.....	17
9.4	Calling attention to breach.....	17
9.5	Ruling by the Presiding Member.....	17
9.6	Continued breach of order	18
9.7	Right of Presiding Member to adjourn	18
Part 10 - Debate of substantive motions		18

10.1	Motions to be stated and in writing	18
10.2	Motions to be supported	18
10.3	Unopposed business	18
10.4	Only 1 substantive motion at a time	19
10.6	Limit of debate	19
10.7	Member may require question to be read	19
10.8	Consent of seconder required for alteration.....	19
10.9	Order of amendments	19
10.10	Form of an amendment.....	19
10.11	Amendment must not negate original motion	19
10.12	Relevance of amendments	19
10.13	Mover of motion may speak on amendment	19
10.14	Effect of an amendment.....	19
10.15	Withdrawal of motion or amendment.....	19
10.16	Right of reply.....	20
10.17	Foreshadowing alternative motions.....	20
Part 11	- Procedural motions.....	20
11.1	Permissible procedural motions.....	20
11.2	No debate.....	20
11.3	Who may move.....	21
11.4	Procedural motions - right of reply on substantive motion	21
11.5	Meeting to proceed to the next business.....	21
11.6	Debate to be adjourned.....	21
11.7	Meeting now adjourn.....	21
11.8	Question to be put.....	21
11.9	Member to be no longer heard.....	21
11.10	Ruling of the Presiding Member to be disagreed with	22
Part 12	- Disclosure of interests.....	22
12.1	Disclosure of interests	22
Part 13	- Voting.....	22
13.1	Question - when put.....	22
13.2	Voting.....	22
13.3	Majorities required for decisions	22
13.4	Method of taking vote.....	22
Part 14	- Minutes of meetings	22
14.1	Keeping of minutes.....	22
14.2	Content of minutes	22
14.3	Public inspection of unconfirmed minutes	23
14.4	Confirmation of minutes.....	23
Part 15	- Adjournment of meeting	23
15.1	Meeting may be adjourned	23
15.2	Effect of adjournment.....	23
Part 16	- Revoking or changing decisions.....	23
16.1	Requirements to revoke or change decisions.....	23
16.2	Limitations on powers to revoke or change decisions	23
16.3	Implementing a decision.....	23
Part 17	- Suspension of Local Law	24
17.1	Suspension of local law	24
17.2	Where local law do not apply	24
17.3	Cases not provided for in local law	25
Part 18	- Meetings of electors	25
18.1	Electors’ general meetings	25

18.2	Matters for discussion at electors’ general meetings	25
18.3	Electors’ special meetings.....	25
18.4	Requests for electors’ special meetings	25
18.5	Convening electors’ meetings	25
18.6	Who presides at electors’ meetings.....	25
18.7	Procedure for electors’ meetings.....	25
18.8	Participation of non-electors.....	25
18.9	Voting at electors’ meetings.....	25
18.10	Minutes of electors’ meetings	25
18.11	Decisions made at electors’ meetings	25
Part 19	- Enforcement	26
19.1	Penalty for breach.....	26
19.2	Who can prosecute	26

LOCAL GOVERNMENT ACT 1995

Shire of Wyndham East Kimberley

Meeting Procedures Local Law 2016

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers enabling it, the Shire of Wyndham East Kimberley resolved on [*INSERT DATE*] to make the following local law.

Part 1 - Preliminary

1.1 Citation

This local law may be cited as the Shire of Wyndham East Kimberley Meeting Procedures Local Law 2016.

1.2 Commencement

This Local Law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application and intent

- (1) This Local Law provides rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and this Local Law.
- (3) This Local Law is intended to result in:
 - (a) better decision-making by the Council and committees;
 - (b) the orderly conduct of meetings dealing with Council business;
 - (c) better understanding of the process of conducting meetings; and
 - (d) the more efficient and effective use of time at meetings.

1.4 Interpretation

- (1) In this Local Law unless the context otherwise requires:

75% majority has the meaning given to it in the Act;

Act means the *Local Government Act 1995*;

CEO means the Chief Executive Officer of the local government;

committee means a committee of the Council established under section 5.8 of the Act;

committee meeting means a meeting of a committee;

Council means the Council of Wyndham East Kimberley;

Deputy President means the Deputy President of the local government;

local government means the Shire of Wyndham East Kimberley;

Mayor/President means the Mayor/President of the local government or other Presiding Member at a Council meeting under section 5.6 of the Act;

meeting means a meeting of the Council or a committee, as the context requires;

Member has the meaning given to it in the Act;

Officer means an officer of the local government;

Original motion means primary or substantive motion, or the original motion as amended, but does not include an amendment or a procedural motion;

Presiding Member means:

- (a) in respect of the Council, the person presiding under section 5.6 of the Act; and
- (b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;

Regulations means the *Local Government (Administration) Regulations 1996*;

simple majority means more than 50% of the members present and voting; and

special majority has the meaning given to it in the Act;

substantive motion means an original motion or an original motion as amended, but does not include an amendment or a procedural motion.

- (2) Unless otherwise defined in this Local Law, the terms and expressions used in this Local Law are to have the meaning given to them in the Act and Regulations.

1.5 Repeal

The *Shire of Wyndham East Kimberley – Standing Orders Local Law 2003* as published in the Government Gazette on 3 December 2003 is repealed.

Part 2 – Establishment and membership of committees

2.1 Establishment of committees

- (1) The establishment of committees is dealt with in the Act.
- (2) A Council resolution to establish a committee under section 5.8 of the Act is to include:
 - (a) the terms of reference of the committee;
 - (b) the number of council members, officers and other persons to be appointed to the committee;
 - (c) the names or titles of the council members and officers to be appointed to the committee;
 - (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
 - (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.
- (3) This Local Law is to apply to the conduct of committee meetings.

2.2 Types of committees

The types of committees are dealt with in the Act.

2.3 Delegation of some powers and duties to certain committees

The delegation of some powers and duties to certain committees is dealt with in the Act.

- 2.4 Limits on delegation of powers and duties to certain committees**
The limits on the delegation of powers and duties to certain committees are dealt with in the Act.
- 2.5 Appointment of committee members**
The appointment of committee members is dealt with in the Act.
- 2.6 Tenure of committee membership**
Tenure of committee membership is dealt with in the Act.
- 2.7 Resignation of committee members**
The resignation of committee members is dealt with in the Regulations.
- 2.8 Register of delegations to committees**
The register of delegations to committees is dealt with in the Act.
- 2.9 Committees to report**
A committee:
(a) is answerable to the Council; and
(b) is to report on its activities when, and to the extent, required by the Council.

Part 3 - Calling and convening meetings

- 3.1 Ordinary and special Council meetings**
(1) Ordinary and special Council meetings are dealt with in the Act.
(2) An ordinary meeting of the Council, held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.
(3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.
- 3.2 Calling Council meetings**
The calling of Council meetings is dealt with in the Act.
- 3.3 Convening Council meetings**
(1) The convening of a Council meeting is dealt with in the Act.
(2) Subject to subclause (3), the CEO is to give at least 72 hours notice, for the purposes of section 5.5, in convening a special meeting of the Council.
(3) Where, in the opinion of the Mayor/President or at least 1 third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.
- 3.4 Calling committee meetings**
The CEO is to call a meeting of any committee when requested by the Mayor/President, the Presiding Member of a committee or any 2 members of that committee.
- 3.5 Public notice of meetings**
Public notice of meetings is dealt with in the Regulations.

Part 4 – Presiding Member and quorum

Division 1: Who presides

- 4.1 Who presides**
Who presides at a Council meeting is dealt with in the Act.
- 4.2 When the Deputy President can act**
When the Deputy President can act is dealt with in the Act.
- 4.3 Who acts if no President**
Who acts if there is no President is dealt with in the Act.
- 4.4 Election of Presiding Members of committees**
The election of Presiding Members of committees and their deputies is dealt with in the Act.
- 4.5 Election of Deputy Presiding Members of committees**
The election of Deputy Presiding Members of committees is dealt with in the Act.
- 4.6 Functions of Deputy Presiding Members**
The functions of Deputy Presiding Members are dealt with in the Act.
- 4.7 Who acts if no Presiding Member**
Who acts if no Presiding Member is dealt with in the Act.

Division 2 – Quorum

- 4.8 Quorum for meetings**
The quorum for meetings is dealt with in the Act.
- 4.9 Reduction of quorum for Council meetings**
The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.
- 4.10 Reduction of quorum for committee meetings**
The reduction of a quorum for committee meetings is dealt with in the Act.
- 4.11 Procedure where no quorum to begin a meeting**
The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.
- 4.12 Procedure where quorum not present during a meeting**
If at any time during a meeting a quorum is not present, the Presiding Member is:
(a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
(b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.
- 4.13 Names to be recorded**
At any meeting:
(a) at which there is not a quorum present; or
(b) which is adjourned for want of a quorum,
the names of the Members then present are to be recorded in the minutes.

Part 5 - Business of a meeting

5.1 Business to be specified

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the Presiding Member or the Council.
- (2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.
- (3) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that:
 - (a) specified in the notice of the meeting which had been adjourned; and
 - (b) which remains unresolved.
- (4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 9) at that ordinary meeting.

5.2 Order of business

- (1) Unless otherwise decided by the Council, the order of business at any ordinary meeting of the Council is to be as follows:
 1. Declaration of Opening/Announcement of Visitors
 2. Announcements from the Presiding Member
 3. Attendance
 - 3.1 Apologies
 - 3.2 Approved leave of absence
 4. Declaration of interest
 5. Public question time
 - 5.1 Response to previous public questions taken on notice
 - 5.2 Public question time
 6. Confirmation of minutes
 7. Presentations
 - 7.1 Petitions
 - 7.2 Presentations
 - 7.3 Deputations
 8. Method of dealing with agenda business
 9. Reports
 10. Applications for leave of absence
 11. Motions of which previous notice has been given
 12. Questions from Members without notice
 13. New business of an urgent nature introduced by decision of the meeting
 14. Meeting closed to public
 - 14.1 Matters for which the meeting may be closed
 - 14.2 Public reading of resolutions that may be made public
 15. Closure
- (2) Unless otherwise decided by the Council, the order of business at any special meeting of the Council is to be the order in which that business stands in the agenda of the meeting.

5.3 Motions of which previous notice has been given

- (1) Unless the Act, Regulations or this Local Law otherwise provide, a Member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included on the agenda.
- (2) A notice of motion under subclause (1) is to be given at least 7 clear working days before the meeting at which the motion is moved.
- (3) A notice of motion is to relate to the good government of the district.

- (4) The CEO -
 - (a) may, with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of this Local Law or any other written law;
 - (b) will inform Members on each occasion that a notice has been excluded and the reasons for that exclusion;
 - (c) may, after consultation with the Member where this is practicable, make such amendments to the form but not the substance as will bring the notice of motion into due form; and
 - (d) may provide to the Council relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.
- (5) A motion of which notice has been given is to lapse unless:
 - (a) the Member who gave notice of it, or some other Member authorised by the originating Member in writing, moves the motion when called on; or
 - (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.
- (6) If a notice of motion is given and lapses under subclause (5), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

5.4 New business of an urgent nature

- (1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting.
- (2) In subclause (1), “cases of extreme urgency or other special circumstances” means matters that have arisen after the preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the local government and must be considered and dealt with by the Council before the next meeting.

5.5 Adoption by exception resolution

- (1) In this clause, “adoption by exception resolution”, means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the officer recommendation as the Council resolution.
- (2) Subject to subclause (3), the local government may pass an adoption by exception resolution.
- (3) An adoption by exception resolution may not be used for a matter:
 - (a) that requires a 75% majority or a special majority;
 - (b) in which an interest has been disclosed;
 - (c) that has been the subject of a petition or deputation;
 - (d) that is a matter on which a Member wishes to make a statement; or
 - (e) that is a matter on which a Member wishes to move a motion that is different to the recommendation.

Part 6 - Public participation

6.1 Meetings generally open to the public

Meetings being generally open to the public is dealt with in the Act.

6.2 Meetings not open to the public

- (1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.
- (2) The Council or a committee, in 1 or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.
- (3) If a resolution under subclause (2) is carried:

- (a) the Presiding Member is to direct everyone to leave the meeting except:
 - (i) the Members;
 - (ii) the CEO; and
 - (iii) any Officer specified by the Presiding Member; and
 - (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the committee, by resolution, decides otherwise.
- (4) A person who fails to comply with a direction under subclause (3)(a) may, by order of the Presiding Member, be removed from the meeting.
 - (5) While the resolution under subclause (2) remains in force, the operation of clause 8.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.
 - (6) A resolution under this clause may be made without notice.
 - (7) Unless the Council resolves otherwise, once the meeting is reopened to members of the public, the Presiding Member is to ensure that any resolution of the Council made while the meeting was closed is to be read out including a vote of a Member to be included in the minutes.

6.3 Question time for the public

Question time for the public is dealt with in the Act.

6.4 Question time for the public at certain meetings

Question time for the public at certain meetings is dealt with in the Regulations.

6.5 Minimum question time for the public

Minimum question time for the public is dealt with in the Regulations.

6.6 Procedures for question time for the public

Procedures for question time for the public are dealt with in the Regulations.

6.7 Other procedures for question time for the public

- (1) A member of the public who raises a question during question time is to state his or her name and address.
- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that:
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to:
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where:
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or

- (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have 2 minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

6.8 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.9 Deputations

- (1) Any person or group wishing to be received as a deputation by the Council is to either:
 - (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the Presiding Member, at the meeting, address the Council.
- (2) The CEO may either:
 - (a) approve the request and invite the deputation to attend a meeting of the Council; or
 - (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.
- (3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting:
 - (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from Members;
 - (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council; and
 - (c) additional members of the deputation may be allowed to speak with the leave of the Presiding Member.
- (4) Any matter which is the subject of a deputation to the Council is not to be decided by the Council until the deputation has completed its presentation.

6.10 Petitions

- (1) A petition is to -
 - (a) be addressed to the President;
 - (b) be made by electors of the district;
 - (c) state the request on each page of the petition;
 - (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
 - (e) contain a summary of the reasons for the request; and
 - (f) state the name of the person to whom, and an address at which, notice to the petitioners can be given.
- (2) Upon receiving a petition, the local government is to submit the petition to the relevant officer to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to sub clause(3).
- (3) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless:
 - (a) the matter is the subject of a report included in the agenda; and
 - (b) the Council has considered the issues raised in the petition.

6.11 Presentations

- (1) In this clause, “presentation” means the acceptance of a gift or an award by the Council on behalf of the local government or the community.

- (2) A presentation may be made to the Council at a meeting only with the prior approval of the CEO.

6.12 Participation at committee meetings

- (1) In this clause a reference to a person is to a person who:
 - (a) is entitled to attend a committee meeting;
 - (b) attends a committee meeting; and
 - (c) is not a member of that committee.
- (2) Without the consent of the Presiding Member, no person is to address a committee meeting.
- (3) The Presiding Member of a committee may allow a person to make an oral submission to the committee for up to 3 minutes.
- (4) A person addressing the committee with the consent of the Presiding Member is to cease that address immediately after being directed to do so by the Presiding Member.
- (5) A person who fails to comply with a direction of the Presiding Member under subclause (4) may, by order of the Presiding Member, be removed from the committee room.
- (6) The Council may make a policy dealing with the circumstances in which a person may be given consent to address a committee meeting.

6.13 Council may meet to hear public submissions

- (1) Where an item on the agenda at a Council meeting is contentious and is likely be the subject of a number of deputations, the Council may resolve to meet at another time to provide a greater opportunity to be heard.
- (2) The CEO and the President shall set the time and date of the meeting to provide the opportunity to be heard.
- (3) Where the Council resolves to meet to provide the opportunity to be heard under subclause (1), the Presiding Member shall:
 - (a) instruct the CEO to provide local public notice of the time and date when the Council will meet to provide an opportunity to be heard;
 - (b) provide a written invitation to attend the meeting to provide the opportunity to be heard to all members of the public who have applied under clause 6.9 to make a deputation on the issue; and
 - (c) cause minutes to be kept of the meeting to provide the opportunity to be heard.
- (4) A meeting held under subclause (1) shall be conducted only to hear submissions. The council shall not make resolutions at a meeting to provide the opportunity to be heard.
- (5) At a meeting held under subclause (1), each person making a submission shall be provided with the opportunity to fully state his or her case.
- (6) A member of the public shall be limited to 10 minutes in making an oral submission, but this period may be extended at the discretion of the Presiding Member.
- (7) Once every member of the public has had the opportunity to make a submission the Presiding Member is to close the meeting.
- (8) The CEO is to ensure that a report is included on the agenda of the next Council meeting summarising each submission made at the meeting.
- (9) The Council must not resolve on the matter that is the subject of a meeting to provide the opportunity to be heard until it has received the CEO's report under subclause (8).

6.14 Public inspection of agenda materials

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations, may be exercised at Administration Office, 20

Coolibah Drive, Kununurra between 0800 and 1600, Monday to Friday and on the local government's website.

6.15 Confidentiality of information withheld

- (1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations is to be:
 - (a) identified in the agenda of a Council meeting under the item "Matters for which meeting may be closed";
 - (b) marked "*Confidential*" in the agenda; and
 - (c) kept confidential by Officers and Members until the Council resolves otherwise.
- (2) A member or an officer in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an officer to the extent necessary for the purpose of carrying out his or her duties.
- (3) Subclause (2) does not apply where a member or officer discloses the information to his or her lawyer or government officer for the purpose of seeking advice in order to lawfully fulfil his or her role and responsibilities.

6.16 Recording of proceedings

A person is not to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council without the permission of the Presiding Member.

If the Presiding Member gives permission under subclause (1), the Presiding Member is to advise the meeting, immediately before the recording is commenced, that such permission has been given and the nature and extent of that permission.

6.17 Prevention of disturbance

- (1) A reference in this clause to a person is to a person other than a member.
- (2) A person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the Presiding Member.
- (3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.
- (4) A person shall ensure that his or her mobile telephone or audible pager are made inaudible during any meeting of the Council.
- (5) A person shall not behave in a manner that is contrary to section 75 of the Criminal Code.

Part 7 - Questions by Members

7.1 Questions by Members

- (1) Members may ask questions relating to an item on the notice paper or on matters related to the good government of persons in the district.
- (2) A Member requesting general information from an Officer at a Council meeting may ask a question without notice and, with the consent of the Presiding Member, may ask 1 or more further questions of that Officer or another Officer present at the meeting.
- (3) Where possible, the Officer shall endeavour to answer the question to the best of his or her knowledge and ability; however, if the information is unavailable or the answer requires research or investigation, the Officer may ask that -
 - (i) the question be placed on notice for the next meeting of Council; and

- (ii) the answer to the question be given to the Member who asked it within 14 days.
- (4) Every question and answer -
 - (i) is to be brief and concise; and
 - (ii) is not to be accompanied by argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer.
- (5) In answering any question, an Officer may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.

Part 8 – Conduct of Members

8.1 Members to be in their proper places

- (1) At the first meeting held after each election day, the CEO is to allot, alphabetically by ward, a position at the Council table to each Member.
- (2) Each Member is to occupy his or her allotted position at each Council meeting.

8.2 Respect to the Presiding Member

After the business of a Council meeting has been commenced, a Member is not to enter or leave the meeting without first paying due respect to the Presiding Member.

8.3 Titles to be used

A speaker, when referring to the President, Deputy President or Presiding Member, or a Member or Officer, is to use the title of that person's office.

8.4 Advice of entry or departure

During the course of a meeting of the Council, a Member is not to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time of entry or departure.

8.5 Members to indicate their intention to speak

A Member who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the Council.

8.6 Priority of speaking

- (1) Where 2 or more Members indicate, at the same time, their intention to speak, the Presiding Member is to decide which Member is entitled to be heard first.
- (2) A decision of the Presiding Member under subclause (1) is not open to discussion or dissent.
- (3) A Member is to cease speaking immediately after being asked to do so by the Presiding Member.

8.7 Presiding Member may take part in debates

The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with this Local Law.

8.8 Relevance

- (1) A Member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) The Presiding Member, at any time, may:
 - (a) call the attention of the meeting to:
 - (i) any irrelevant, repetitious, offensive or insulting language by a Member; or
 - (ii) any breach of order by a Member; and

- (b) direct that Member, if speaking, to discontinue his or her speech.
- (3) A Member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.

8.9 Speaking twice

A Member is not to address the Council more than once on any motion or amendment except:

- (a) as the mover of a substantive motion, to exercise a right of reply;
- (b) to raise a point of order; or
- (c) to make a personal explanation.

8.10 Duration of speeches

- (1) A Member is not to speak on any matter for more than 5 minutes without the consent of the Council which, if given, is to be given without debate.
- (2) An extension under this clause cannot be given to allow a Member's total speaking time to exceed 10 minutes.

8.11 No speaking after conclusion of debate

A Member is not to speak on any motion or amendment:

- (a) after the mover has replied; or
- (b) after the question has been put.

8.12 No interruption

A Member is not to interrupt another Member who is speaking unless:

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 8.13; or
- (d) to move a procedural motion that the Member be no longer heard (see clause 11(1)(e)).

8.13 Personal explanations

- (1) A Member who wishes to make a personal explanation relating to a matter referred to by another Member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation by stating "personal explanation".
- (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other Member.
- (3) A Member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.

8.14 No reopening of discussion

A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 16).

8.15 Adverse reflection

- (1) A Member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 16).
- (2) A Member is not:
 - (a) to reflect adversely on the character or actions of another Member or Officer; or
 - (b) to impute any motive to a Member or Officer unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.
- (3) A Member is not to use offensive or objectionable expressions in reference to any Member, Officer or other person.
- (4) If a Member specifically requests, immediately after their use, that any particular words used by a Member be recorded in the minutes:

- (a) the Presiding Member is to cause the words used to be taken down and read to the meeting for verification; and
- (b) the Council may, by resolution, decide to record those words in the minutes.

8.16 Withdrawal of offensive language

- (1) A Member who, in the opinion of the Presiding Member, uses an expression which:
 - (a) in the absence of a resolution under clause 8.15:
 - (i) reflects adversely on the character or actions of another Member or Officer; or
 - (ii) imputes any motive to a Member or Officer; or
 - (b) is offensive or insulting,
 must, when directed by the Presiding Member, withdraw the expression and make a satisfactory apology.
- (2) If a Member fails to comply with a direction of the Presiding Member under subclause (1), the Presiding Member may refuse to hear the Member further on the matter then under discussion and call on the next speaker.

Part 9 - Preserving order

9.1 Presiding Member to preserve order

- (1) The Presiding Member is to preserve order, and, whenever he or she considers necessary, may call any Member to order.
- (2) When the Presiding Member speaks during a debate, any Member then speaking, or indicating that he or she wishes to speak, is immediately to sit down and every Member present is to preserve strict silence so that the Presiding Member may be heard without interruption.
- (3) Subclause (2) is not to be used by the Presiding Member to exercise the right provided in clause 8.7, but to preserve order.

9.2 Point of order

- (1) A Member may object, by way of a point of order, only to a breach of:
 - (a) any of this Local Law; or
 - (b) any other written law.
- (2) Despite anything in this Local Law to the contrary, a point of order:
 - (a) takes precedence over any discussion; and
 - (b) until determined, suspends the consideration or discussion of any other matter.

9.3 Procedures on a point of order

- (1) A Member who is addressing the Presiding Member is not to be interrupted except on a point of order.
- (2) A Member interrupted on a point of order is to resume his or her seat until:
 - (a) the Member raising the point of order has been heard; and
 - (b) the Presiding Member has ruled on the point of order, and, if permitted, the Member who has been interrupted may then proceed.

9.4 Calling attention to breach

A Member may, at any time, draw the attention of the Presiding Member to any breach of this Local Law.

9.5 Ruling by the Presiding Member

- (1) The Presiding Member is to rule on any point of order which is raised by either upholding or rejecting the point of order.
- (2) A ruling by the Presiding Member on a point of order:

- (a) is to be final unless the majority of Members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.
- (3) Subject to a motion of dissent being carried under subclause (2), if the Presiding Member rules that:
 - (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
 - (b) a statement made or act done by a Member is out of order, the Presiding Member may require the Member to make an explanation, retraction or apology.

9.6 Continued breach of order

If a Member:

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
- (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),

the Presiding Member may direct the Member to refrain from taking any further part in the debate of the matter under discussion, other than by voting, and the Member is to comply with that direction.

9.7 Right of Presiding Member to adjourn

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any 1 meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.

Part 10 - Debate of substantive motions

10.1 Motions to be stated and in writing

Any Member who wishes to move a substantive motion or an amendment to a substantive motion:

- (a) is to state the substance of the motion before speaking to it; and
- (b) if required by the Presiding Member, is to put the motion or amendment in writing.

10.2 Motions to be supported

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.

10.3 Unopposed business

- (1) Immediately after a substantive motion has been moved and seconded, the Presiding Member may ask the meeting if any Member opposes it.
- (2) If no Member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the Council.
- (4) If a Member opposes a motion, the motion is to be dealt with under this Part.
- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a Council meeting (see Part 16).

10.4 Only 1 substantive motion at a time

When a substantive motion is under debate at a meeting of the Council, no further substantive motion is to be accepted. The Council is not to consider more than 1 substantive motion at any time.

10.5 Order of call in debate

The Presiding Member is to call speakers to a substantive motion in the following order:

- (a) the mover to state the motion;
- (b) a seconder to the motion;
- (c) the mover to speak to the motion;
- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating where possible; and
- (h) mover takes right of reply which closes debate.

10.6 Limit of debate

The Presiding Member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all Members may not have spoken.

10.7 Member may require question to be read

A Member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other Member who is speaking.

10.8 Consent of seconder required for alteration

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

10.9 Order of amendments

Any number of amendments may be proposed to a substantive motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn, carried or lost.

10.10 Form of an amendment

An amendment must add, delete, or substitute words to the substantive motion.

10.11 Amendment must not negate original motion

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

10.12 Relevance of amendments

Each amendment is to be relevant to the motion in respect of which it is moved.

10.13 Mover of motion may speak on amendment

Any Member may speak during debate on an amendment.

10.14 Effect of an amendment

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any Member may speak and any further amendment may be moved.

10.15 Withdrawal of motion or amendment

- (1) Subject to subclause (2), the Council may, without debate, grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder.

- (2) Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of Members present, until the amendment proposed has been withdrawn or lost.

10.16 Right of reply

- (1) The mover of a substantive motion has the right of reply.
- (2) The mover of any amendment to a substantive motion has a right of reply.
- (3) The right of reply may only be exercised:
 - (a) where no amendment is moved to the substantive motion – at the conclusion of the discussion on the motion; or
 - (b) where 1 or more amendments have been moved to the substantive motion – at the conclusion of the discussion on the substantive motion and any amendments.
- (4) After the mover of the substantive motion has commenced the reply:
 - (a) no other Member is to speak on the question; and
 - (b) there is to be no further discussion on, or any further amendment to, the motion.
- (5) The right of reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.
- (6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

10.17 Foreshadowing alternative motions

- (1) Should a Member wish to negate a substantive motion and have Council consider a new substantive motion on the matter with different intent, the Member must foreshadow the new substantive motion prior to the right of reply.
- (2) Should a substantive motion be lost, the Presiding Member will call upon the Member who foreshadowed the new substantive motion to move the proposed motion.
- (3) Once moved and seconded, the foreshadowed motion becomes the substantive motion and the same procedures and rules of debate apply to this motion as any other motion.
- (4) If more than 1 foreshadowed motion is proposed for any item before the Council, the Presiding Member shall deal with them in the order in which they were presented.

Part 11 - Procedural motions

11.1 Permissible procedural motions

In addition to the right to move an amendment to a substantive motion (under Part 10), a Member may move the following procedural motions:

- (a) that the meeting proceed to the next item of business;
- (b) that the debate be adjourned;
- (c) that the meeting now adjourn;
- (d) that the question be now put;
- (e) that the Member be no longer heard;
- (f) that the ruling of the Presiding Member be disagreed with; or
- (g) that the meeting be closed to the public (see clause 6.2).

11.2 No debate

- (1) The mover of a motion specified in paragraph (a), (b), (c), (f) or (g) of clause 11.1 may speak to the motion for not more than 5 minutes, the seconder is not

to speak other than to formally second the motion, and there is to be no debate on the motion.

- (2) The mover of a motion specified in paragraph (d) or (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

11.3 Who may move

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment to the substantive motion, may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

11.4 Procedural motions - right of reply on substantive motion

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

11.5 Meeting to proceed to the next business

The motion “that the meeting proceed to the next business”, if carried, has the effect that:

- (a) the debate on the substantive motion or amendment ceases immediately;
- (b) no decision is made on the substantive motion;
- (c) the Council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

11.6 Debate to be adjourned

A motion “that the debate be adjourned”:

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

11.7 Meeting now adjourn

- (1) A Member is not to move or second more than 1 motion of adjournment during the same sitting of the Council.
- (2) Before putting the motion for the adjournment of the Council, the Presiding Member may seek leave of the Council to deal first with matters that may be the subject of an adoption by exception resolution (see clause 5.5).
- (3) A motion “that the meeting now adjourn”:
 - (a) is to state the time and date to which the meeting is to be adjourned; and
 - (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.
- (4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned, unless the Presiding Member or the Council determines otherwise.

11.8 Question to be put

- (1) If the motion “that the question be now put”, is carried during debate on a substantive motion without amendment, the Presiding Member is to offer the right of reply and then put the motion to the vote without further debate.
- (2) If the motion “that the question be now put” is carried during discussion of an amendment, the Presiding Member is to put the amendment to the vote without further debate.
- (3) This motion, if lost, causes debate to continue.

11.9 Member to be no longer heard

If the motion “that the member be no longer heard”, is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive

motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

11.10 Ruling of the Presiding Member to be disagreed with

If the motion “that the ruling of the Presiding Member be disagreed with”, is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

Part 12 - Disclosure of interests

12.1 Disclosure of interests

Disclosure of interests is dealt with in the Act.

Part 13 - Voting

13.1 Question - when put

- (1) Immediately after the debate on any question is concluded and the right of reply has been exercised, the Presiding Member -
 - (a) is to put the question to the Council; and
 - (b) if requested by any Member, is to again state the terms of the question.
- (2) A Member is not to leave the meeting when the Presiding Member is putting any question.

13.2 Voting

Voting is dealt with in the Act and the Regulations.

13.3 Majorities required for decisions

The majorities required for decisions of the Council and committees are dealt with in the Act.

13.4 Method of taking vote

- (1) In taking the vote on any motion or amendment the Presiding Member:
 - (a) is to put the question, first in the affirmative, and then in the negative;
 - (b) may put the question in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
 - (c) may accept a vote on the voices or may require a show of hands; and
 - (d) is, subject to this clause, to declare the result.
- (2) If a Member calls for a show of hands, the result of the vote is to be determined on the count of raised hands.
- (3) The vote of each individual member present is to be recorded in full at all times.

Part 14 – Minutes of meetings

14.1 Keeping of minutes

The keeping and confirmation of minutes are dealt with in the Act.

14.2 Content of minutes

- (1) The content of minutes is dealt with in the Regulations.
- (2) In addition to the matters required by regulation 11, the minutes of a Council meeting are to include, where an application for approval is refused or the authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

14.3 Public inspection of unconfirmed minutes

The public inspection of unconfirmed minutes is dealt with in the Regulations.

14.4 Confirmation of minutes

- (1) When minutes of an ordinary meeting of the Council are distributed for consideration prior to their confirmation at the next meeting, if a Member is dissatisfied with the accuracy of the minutes, the Member may provide the local government with a written copy of the alternative wording to amend the minutes no later than 7 clear working days before the next ordinary meeting of the Council.
- (2) At the next ordinary meeting of the Council, the Member who provided the alternative wording shall, at the time for confirmation of minutes -
 - (a) state the item or items with which he or she is dissatisfied; and
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (3) Members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

Part 15 - Adjournment of meeting

15.1 Meeting may be adjourned

The Council may adjourn any meeting:

- (a) to a later time on the same day; or
- (b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event.

15.2 Effect of adjournment

Where any matter, motion, debate or meeting is adjourned under this Local Law:

- (a) the names of Members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 8.9 apply when the debate is resumed.

Part 16 – Revoking or changing decisions

16.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

16.2 Limitations on powers to revoke or change decisions

- (1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision:
 - (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or
 - (b) where the decision is procedural in its form or effect.
- (2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

16.3 Implementing a decision

- (1) In this clause:
 - (a) "authorisation" means a licence, permit, approval or other means of authorising a person to do anything;

- (b) "implement", in relation to a decision, includes to:
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
- (c) "valid notice of revocation motion" means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Local Laws and may be considered, but has not yet been considered, by the Council or a committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.
- (3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person:
 - (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
 - (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.
- (5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation:
 - (a) is to take effect only in accordance with this clause; and
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

Part 17 - Suspension of Local Law

17.1 Suspension of local law

- (1) A Member may at any time move that the operation of 1 or more of the provisions of this Local Law be suspended.
- (2) A Member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.
- (3) A motion under subclause (1) which is:
 - (a) seconded; and
 - (b) carried by a simple majority,
 is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

17.2 Where local law do not apply

- (1) In situations where:
 - (a) 1 or more provisions of this Local Law have been suspended; or
 - (b) a matter is not regulated by the Act, the Regulations or this local law,
 the Presiding Member is to decide questions relating to the conduct of the meeting.
- (2) The decision of the Presiding Member under subclause (1) is final, except where a motion is moved and carried under clause 11.10.

17.3 Cases not provided for in local law

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where this Local Law, the Act or the Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion is moved and carried under clause 11.10.

Part 18 - Meetings of electors

18.1 Electors' general meetings

Electors' general meetings are dealt with in the Act.

18.2 Matters for discussion at electors' general meetings

The matters to be discussed at electors' general meetings are dealt with in the Regulations.

18.3 Electors' special meetings

Electors' special meetings are dealt with in the Act.

18.4 Requests for electors' special meetings

Requests for electors' special meetings are dealt with in the Regulations.

18.5 Convening electors' meetings

Convening electors' meetings is dealt with in the Act.

18.6 Who presides at electors' meetings

Who presides at electors' meetings is dealt with in the Act.

18.7 Procedure for electors' meetings

- (1) The procedure for electors' meetings is dealt with in the Act and the Regulations.
- (2) In exercising his or her discretion to determine the procedure to be followed at an electors' meeting, the Presiding Member is to have regard to this Local Law.

18.8 Participation of non-electors

A person who is not an elector of the local government shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits the person do so.

18.9 Voting at electors' meetings

Voting at electors' meetings is dealt with in the Regulations.

18.10 Minutes of electors' meetings

Minutes of electors' meetings are dealt with in the Act.

18.11 Decisions made at electors' meetings

Decisions made at electors' meetings are dealt with in the Act.

Part 19 - Enforcement

19.1 Penalty for breach

A person who breaches a provision of this Local Law commits an offence.

Penalty: \$1,000.00 and a daily penalty of \$50.00.

19.2 Who can prosecute

Who can prosecute is dealt with in the Act.

Dated: [INSERT DATE]

The Common Seal of the SHIRE OF WYNDHAM EAST KIMBERLEY
was affixed by the authority of
a resolution of Council in the presence of:

[INSERT NAME OF PRESIDENT]
President

[INSERT NAME OF CEO]
Chief Executive Officer

12.2.4. Standing Item - Use of the Common Seal

DATE:	30 August 2016
AUTHOR:	Meagan Le Riche, Executive Assistant
RESPONSIBLE OFFICER:	Carl Askew, Chief Executive Officer
DISCLOSURE OF INTERESTS:	Nil

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That Council receives the report on the application of the Shire of Wyndham East Kimberley Common Seal for the period 26 July 2016 to 30 August 2016.

COUNCIL DECISION

Minute No: 11457

Moved: Cr K Wright

Seconded: Cr N Perry

That Council receives the report on the application of the Shire of Wyndham East Kimberley Common Seal for the period 26 July 2016 to 30 August 2016.

Carried 9/0

PURPOSE

For Council to receive this report on the application of the Shire of East Kimberley Common Seal for the period 26 July 2016 to 30 August 2016.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Regulator - enforce state legislation and local laws

STATUTORY IMPLICATIONS

Local Government Act 1995

9.49A. Execution of documents

- (1) *A document is duly executed by a local government if —*
 - (a) *the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or*
 - (b) *it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.*
- (2) *The common seal of a local government is not to be affixed to any document except as authorised by the local government.*
- (3) *The common seal of the local government is to be affixed to a document in the presence of —*
 - (a) *the mayor or president; and*
 - (b) *the chief executive officer or a senior employee authorised by the chief executive officer, each of whom is to sign the document to attest that the common seal was so affixed.*
- (4) *A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.*
- (5) *A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.*
- (6) *A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.*
- (7) *When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved services

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

RISK IMPLICATIONS

Nil

COMMUNITY ENGAGEMENT

No community engagement is required.

COMMENTS

The following documents have had the Shire of Wyndham East Kimberley Common Seal applied:

Date of Use	Document
23/08/2016	Withdrawal of Caveat for Lot 5000 on deposited plan 56715
23/08/2016	Deed of Covenant in respect to Carlton Hill Station

ATTACHMENTS

Nil

Cr S Rushby declares an impartiality interest as the item pertains to her.

12.2.5. Request to attend OCM 27 September 2016 via Electronic Means

DATE:	30 August 2016
AUTHOR:	Lisa Hannagan, Senior Governance and Risk Officer
RESPONSIBLE OFFICER:	Louise Gee, Acting Chief Executive Officer
FILE NO:	GN.06.7
DISCLOSURE OF INTERESTS:	Nil

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That Council approve Cr Rushby's participation in the Ordinary Meeting of Council to be held 27 September 2016 via simultaneous communications (video conferencing) from the Council Chambers, Shire of Derby West Kimberley, 68 Clarendon Road, Derby 6728.

COUNCIL DECISION

Minute No: 11458

Moved: Cr J Parker

Seconded: Cr E Bolto

That Council approve Cr Rushby's participation in the Ordinary Meeting of Council to be held 27 September 2016 via simultaneous communications (video conferencing) from the Council Chambers, Shire of Derby West Kimberley, 68 Clarendon Road, Derby 6728.

Carried 9/0

PURPOSE

Cr Rushby has advised the Acting Chief Executive Officer that she will be in Derby at the time of the September Ordinary Council Meeting (27 September 2016) and that she will therefore need to participate via simultaneous communications - video conferencing.

Cr Rushby will participate for the entire Ordinary Council Meeting.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Leader - plan and provide direction through policy and practices

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

Cr Rushby has not previously sought to participate in a Council meeting via instantaneous communication.

Cr Rushby has provided the current request in the correct format (writing) and included required details (clearly identified location) as Council Chambers, Shire of Derby West Kimberley, 68 Clarendon Road, Derby 6728.

STATUTORY IMPLICATIONS

Local Government Act 1995 Section 5.25(1)(ba) and 5.25(2)

5.25. Regulations about council and committee meetings and committees

- (1) *Without limiting the generality of section 9.59, regulations may make provision in relation to*
 - (a) *the matters to be dealt with at ordinary or at special meetings of councils; and*
 - (b) *the functions of committees or types of committee; and*
 - (ba) *the holding of council or committee meetings by telephone, video conference or other electronic means; and*
 - (c) *the procedure to be followed at, and in respect of, council or committee meetings; and*
 - (d) *methods of voting at council or committee meetings; and*
 - (e) *the circumstances and manner in which a decision made at a council or a committee meeting may be revoked or changed (which may differ from the manner in which the decision was made); and*
 - (f) *the content and confirmation of minutes of council or committee meetings and the keeping and preserving of the minutes and any documents relating to meetings; and*
 - (g) *the giving of public notice of the date and agenda for council or committee meetings; and*
 - (h) *the exclusion from meetings of persons whose conduct is not conducive to the proper conduct of the meetings and the steps to be taken in the event of persons refusing to leave meetings; and*
 - (i) *the circumstances and time in which the unconfirmed minutes of council or committee meetings are to be made available for inspection by members of the public; and*
 - (j) *the circumstances and time in which notice papers and agenda relating to any council or committee meeting and reports and other documents which could be —*
 - (i) *tabled at a council or committee meeting; or*

- (ii) *produced by the local government or a committee for presentation at a council or committee meeting, are to be made available for inspection by members of the public.*

(2) *Regulations providing for meetings to be held by telephone, video conference or other electronic means may modify the application of this Act in relation to those meetings to the extent necessary or convenient to facilitate the holding of those meetings in that way.*

[Section 5.25 amended by No. 64 of 1998 s. 28.]

Local Government (Administration) Regulations 11(a) and 14A

11. Minutes, content of (Act s. 5.25(1)(f))

The content of minutes of a meeting of a council or a committee is to include —

- (a) *the names of the members present at the meeting; and*
- (b) *where a member enters or leaves the meeting during the course of the meeting, the time of entry or departure, as the case requires, in the chronological sequence of the business of the meeting; and*
- (c) *details of each motion moved at the meeting, the mover and the outcome of the motion; and*
- (d) *details of each decision made at the meeting; and*
- (da) *written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration); and*
- (e) *a summary of each question raised by members of the public at the meeting and a summary of the response to the question; and*
- (f) *in relation to each disclosure made under section 5.65 or 5.70 in relation to the meeting, where the extent of the interest has also been disclosed, the extent of the interest.*

[Regulation 11 amended in Gazette 23 Apr 1999 p. 1717.]

14A. Attendance by telephone etc. (Act s. 5.25(1)(ba))

(1) *A person who is not physically present at a meeting of a council or committee is to be taken to be present at the meeting if —*

- (a) *the person is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting; and*
- (b) *the person is in a suitable place; and*
- (c) *the council has approved* of the arrangement.*

(2) *A council cannot give approval under subregulation (1)(c) if to do so would mean that at more than half of the meetings of the council, or committee, as the case may be, in that financial year, a person who was not physically present was taken to be present in accordance with this regulation.*

(3) *A person referred to in this regulation is no longer to be taken to be present at a meeting if the person ceases to be in instantaneous communication with each other person present at the meeting.*

(4) *In this regulation —*

suitable place means a place that the council has approved* as a suitable place for the purpose of this regulation and that is located —

- (a) in a townsite or other residential area; and
- (b) 150 km or further from the place at which the meeting is to be held under regulation 12, measured along the shortest road route ordinarily used for travelling;

townsite has the same meaning given to that term in the Land Administration Act 1997 section 3(1).

* Absolute majority required.

[Regulation 14A inserted in Gazette 31 Mar 2005 p. 1031.]

Land Administration Act 1997 - section 3 (1)

3. Terms used

- (1) In this Act, unless the contrary intention appears —

townsite means townsite referred to in section 26(1);

26. Land districts and townsites, constitution etc. of

- (1) In this section —

townsite —

- (a) means townsite constituted under subsection (2); and
 - (b) except in subsection (2)(a), includes land referred to in clause 37 of Schedule 9.3 to the Local Government Act 1995.
- (2) Subject to section 26A, the Minister may by order —
 - (a) constitute land districts and townsites; and
 - (b) define and redefine the boundaries of, name, rename and cancel the names of, and, subject to this section, abolish land districts and townsites; and
 - (c) name, rename and cancel the name of any topographical feature, road or reserve.
 - (3) An order made under subsection (2) may include such matters enabled to be effected under an order made under another provision of this Act as the Minister thinks fit.

[Section 26 amended by No. 38 of 2005 s. 8.]

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved services

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

RISK IMPLICATIONS

Risk: Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

COMMUNITY ENGAGEMENT

No community engagement is required.

COMMENTS

Section 5.25(ba) of the Local Government Act provides for the holding of council or committee meetings by telephone, video conference or other electronic means. The record of meeting attendance must contain the name and other required details of any member not physically present who has been approved by council (absolute majority required) to attend a council or committee meeting by telephone, video conference or by other electronic means (*Administration Regulations 11(a) and 14A*).

For the purposes of *Administration Regulation 14A*, a person who is not physically present at a council or committee meeting is to be taken to be present if;

- the person is simultaneously in audio contact with each other person present at the meeting by telephone or other instantaneous communication means;
- the person is in a suitable place (approved by absolute majority); and
- the council has approved (by absolute majority) of the arrangement.

For a person to not physically attend a council or a committee meeting, the council has to approve (by absolute majority) a suitable place for the person to be physically present at during the course of the specific meeting. A suitable place prescribed by *Administration Regulation 14A(4)*, is one that is located;

- in a townsite (as defined under *section 3(1) of the Land Administration Act 1997*) or other residential area; and
- 150 km or further from the place at which the meeting is to be held, in accordance with the notice calling the meeting.

The minutes of a meeting, where an approval is granted relating to a member's attendance at a council or committee meeting by telephone, video conference or other electronic means,

must clearly show that the council has approved of the arrangement and clearly identify the approved suitable place. The minutes must also confirm that such approval was adopted by absolute majority.

ATTACHMENTS - Item 12.2.5

Attachment 1 - Written application by Cr Rushby.

Lisa Hannagan

From: Louise Gee
Sent: Tuesday, 23 August 2016 4:05 PM
To: Lisa Hannagan
Cc: Cr Simone Rushby
Subject: FW: Attendance of the September OCM by electronic means

Hi Lisa,

Could you please prepare a report for consideration at the August OCM for approval for Simone to teleconference for the September OCM.

Thanks

Regards

Louise Gee
Director Community Development

SHIRE of WYNDHAM | EAST KIMBERLEY
20 Coolibah Drive, PO BOX 614 Kununurra WA 6743 | T: (08) 9168 4100 | M: 0408261882 | F: (08) 9168 1798 | www.swek.wa.gov.au

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From: Cr Simone Rushby
Sent: Tuesday, 23 August 2016 3:46 PM
To: Louise Gee <Louise.Gee@swek.wa.gov.au>
Subject: Attendance of the September OCM by electronic means

Good Afternoon Louise,

I would like to apply to attend the 27th of September 2016 by electronic means.

I will be at the Ellendale - Kimberley Diamond Mine which is located on the Gibb River Road Derby. I have the facilities to do video conferencing and if this fails will be able to use Tele- conferencing. I will be utilising the site security office for privacy and confidentiality.

Could you please include this for Council resolution next week at the August 30 OCM and advise if there is anything further required.

Regards
Cr S Rushby

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