



Special Council Meeting
Agenda
23 March 2017

NOTICE OF MEETING

Notice is hereby given that the

Shire of Exmouth Special Council Meeting

will be held on
23 March 2017
Commencing at 4:00pm

Keith Woodward
Acting Chief Executive Officer

23 March 2017

Disclaimer

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations which have not yet been adopted by Council.

No responsibility whatsoever is implied or accepted by the Shire of Exmouth for any act, omission, statement or intimation occurring during the Council/Committee meetings or during formal/informal conversations with staff. The Shire of Exmouth disclaims any liability for any loss whatsoever and however caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broader disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of Exmouth during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of Exmouth. The Shire of Exmouth warns that anyone who has an application lodged with the Shire of Exmouth must obtain and should only rely on **written confirmation** of the outcome of the application, and any conditions attached to the decision made by the Shire of Exmouth in respect of the application.

SHIRE OF EXMOUTH

DISCLOSURE OF INTEREST

To: Chief Executive Officer

As required by Section 5.65(1)(a) of the Local Government Act 1995, I _____ hereby declare my interest in the following matters included on the Agenda paper for the Council/Committee meeting to be held on _____ (Date).

Item No.	Subject	Details of Interest	*Extent of Interest (see below)

*Extent of Interest only has to be declared if the Councillor also requests to remain present at a meeting, preside, or participate in discussions or the decision making process (see item 6 below)

Councillor / Employee Signature _____ Date _____

NB:

1. This notice must be given to the Chief Executive Officer prior to the meeting or at the meeting immediately before the matter in which you have an interest is discussed, Section 5.65(2)(a) & (b).
2. It remains Councillor's responsibility to make further declarations to the Council if a matter arises during the course of a meeting and no previous declarations have been made.
3. It is a Councillor's responsibility to ensure that the interest is brought to the attention of the Council/Committee when the Agenda item arises and to ensure that it is recorded in the minutes.
4. It remains the Councillor's responsibility to ensure that he/she does not vote on a matter in which a declaration has been made, unless specifically entitled under the Local Government Act 1995. This responsibility also includes the recording of particulars in minutes to ensure they are correct when such minutes are being confirmed.
5. It is recommended that when previewing Agendas, Councillors mark Agendas with items on which an interest is to be declared and complete the declaration form at the same time.
6. Councillors may be allowed to remain at meetings at which they have declared an interest and may also be allowed to preside (if applicable) and participate in discussions and the decision making process upon the declared matter subject to strict compliance with the enabling provisions of the Local Government Act 1995 and appropriately recorded resolutions of the Council. Where Councillor's request consideration of such Council approval the affected Councillor must vacate the Council Chambers in the first instance whilst the Council discusses and decides upon the Councillor's application.
7. Local Governments are required to include in their codes of conduct certain provisions in relation to the disclosure of interests that are perceived to affect the impartiality of elected members or employees. It is the Councillor's responsibility to declare those matters where they perceive they may have an Impartiality Interest – however Councillor's are entitled to stay in the room, participate in the debate and vote on matters where they have declared an Impartiality Interest.

Remember: The responsibility to declare an interest rests with individual Councillors. If Councillor's are in any doubt seek legal opinion or, to be absolutely sure, simply declare in any case.

Office Use Only:

Date/Initial

1. Particulars of declaration given to the meeting _____

2. Particulars recorded in the minutes _____

Signed by the Chief Executive Officer _____

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SPECIAL COUNCIL MEETING AGENDA

Our Vision

To support and develop a vibrant, welcoming community that embraces its past, values its present and plans for a sustainable future

Our Purpose

To responsibly provide governance for the whole community in the best interest of current and future generations

Our Strategic Objectives

- To provide sustainable management of the organisation
- To consistently apply the principles of Good Governance
 - To communicate effectively
 - To promote socioeconomic development
 - To value our environment and heritage

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4. PUBLIC QUESTIONS TIME

In accordance with section 5.24 of the Local Government Act 1995, a 15 minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them.

Council Consideration Towards Public

When public questions necessitate resolutions of Council, out of courtesy and at the President discretion the matter is to be dealt with immediately to allow the public to observe the determination of the matter (obviates the need for the public to wait an undetermined period of time).

When a matter is listed on the Agenda and member/s of the public are in attendance to observe the determination of the matter, out of courtesy and at the discretion of the President the matter is to be brought forward on the agenda and dealt with immediately to allow the public to

observe the determination of the matter (again this obviates the need for the public to wait an indeterminate period of time).

The Deputy Shire President opened public question time. A number of people submitted similar questions in relation to the rate increase issue.

In accordance with section 11 of the *Local Government (Administration) Regulations 1996*:

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 —

- (e) a summary of each question raised by members of the public at the meeting and a summary of the response to the question;***

5. DECLARATIONS OF INTEREST

6. APPLICATIONS FOR LEAVE OF ABSENCE

The Local Government Act 1995 (Section 2.25) provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. A member who is absent, without first obtaining leave of the Council, throughout three consecutive Ordinary meetings of the Council is disqualified from continuing his or her membership of the Council.

Disqualification from membership of the Council for failure to attend Ordinary Meetings of the Council will be avoided so long as the Council grants leave prior to the member being absent. The leave cannot be granted retrospectively. An apology for non-attendance at a meeting is not an application for leave of absence.

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

That the Minutes of the Ordinary Council Meeting of the Shire of Exmouth held on 7 March 2017 be confirmed as a true and correct record of proceedings.

8. ANNOUNCEMENTS BY THE PRESIDING PERSON

9. PETITIONS, DEPUTATION, PRESENTATIONS AND SUBMISSIONS

10. MATTERS ARISING FROM COMMITTEES OF COUNCIL

10.1 2016 COMPLIANCE AUDIT RETURN

File Reference:	FM.AD.1
Responsible Officer:	Chief Executive Officer
Date of Report:	17 February 2016
Applicant/Proponent:	Department of Local Government
Disclosure of Interest:	Nil
Attachment(s):	1. 2016 Compliance Audit Return

PURPOSE

The Annual Compliance Return for the Shire of Exmouth requires Council's Audit Committee consideration and endorsement before being submitted to the Council and Department of Local Government.

BACKGROUND

Pursuant to Regulations 14 & 15 of the *Local Government (Audit) Regulations 1996*, each year Local Governments are required to complete the Compliance Audit Return for Local Government. Part of this process requires the presentation of the Compliance Return to the Audit Committee, previously the ordinary Council meeting, where it is to be formally adopted and returned to the Department of Local Government.

The Compliance Audit Return is one of the tools that allows Council to monitor how the organisation is functioning. The Return places emphasis on highlighting many areas where there may be non-compliance and where appropriate, the required remedial action.

There were a number of non-compliance matters contained within the report (Attachment 1).

COMMENT

A copy of the completed 2016 Compliance Audit Return is provided for consideration (Attachment 1).

There is an error contained in page 6 of 9 of the 2016 Compliance Audit Return. Item No. 2, Reference s5.121 (1) of 'Official Conduct' section states that the organisation has no Register of Complaints, however a Register of Complaints is maintained by the organisation.

CONSULTATION

Senior Managers delegated responsibility for certain functions have completed relevant sections of the Return.

STATUTORY ENVIRONMENT

Pursuant to Regulations 14 & 15 of the *Local Government (Audit) Regulations 1996* requires the 2016 Compliance Audit Return to be completed and returned by the 31 March 2017.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

This item is relevant to the Councils approved Strategic Community Plan 2011-2021 and Corporate Business Plan 2016-2020.

- Leadership:
- 4 To work together as custodians of now and the future.
 - 4.1 *To be a collaborative community with the capacity to manage the current and future direction of Exmouth.*
 - 4.2 *A local government that is respected, professional, trustworthy and accountable.*
 - 4.3 *To be strong advocates representing the region's interests.*

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION**ITEM 10.1**

That Council endorse the completed 2016 Compliance Audit Return, subject to the following amendments to the 'Official Conduct' section of the 2016 Compliance Audit Return:-

- Item No. 2, Reference s5.121 (1) of the 'Official Conduct' section of the Audit Return to note that there is a Register of Complaints that is maintained by the organisation;
- Item No. 3, Reference s5.121 (2)(a) amend response to Yes;
- Item No. 4, Reference s5.121 (2)(b) amend response to Yes;
- Item No. 5, Reference s5.121 (2)(c) amend response to Yes; and
- Item No. 6, Reference s5.121 (2)(d) amend response to Yes.

10.2 EXTERNAL AUDIT CONTRACT

File Reference:	FM.AD.0
Responsible Officer:	Executive Manager Corporate Services
Date of Report:	16 March 2017
Applicant/Proponent:	Nil
Disclosure of Interest:	Nil
Attachment(s):	Nil

PURPOSE

For Council to consider the quotations received for the provision of external audit services for the 2016/17 financial year, with an option of annual extensions not exceeding three years, and to appoint an Auditor for this period.

BACKGROUND

Council's current audit contract with Anderson, Munro & Wyllie expired with the completion of the 2015/16 audit.

The State Government introduced a Bill into Parliament proposing for the Auditor General to undertake the annual financial audits of local government. Department of Local Government and Communities issued Circular No 31-2016 advising Councils of a delay in the Auditor General taking on the responsibility for local government financial audits from 1 July 2017. Local governments were encouraged to extend or renew audit contracts until the 2017/18 audit, with the option of annual extensions.

For this reason, request for quotations were sought from four organisations which included a detailed scope of audit services for 2016/17 financial year with an option of annual extensions not exceeding three years.

COMMENT

A panel made up of the Executive Manager Corporate Services and a Local Government Consultant undertook evaluations of the quotations received against the assessment criteria. The following prices were quoted:

	Quoted Prices (incl Disbursements) \$	Hours
Applicant 1	24,060	150
Applicant 2	21,340	132
Applicant 3	28,900	120
Applicant 4	24,834*	82

*Disbursements were not provided

The following table outlines the results of these evaluations

Assessment Criteria	Weighting	Applicant 1	Applicant 2	Applicant 3	Applicant 4
Quoted Prices	60%	53%	60%	44%	46%
Technical Expertise	10%	10%	10%	10%	10%
Capacity to undertake work	10%	10%	8%	10%	10%
Experience	10%	10%	10%	10%	10%
Proposed Audit Plan	10%	8%	8%	10%	8%
Total Weighting	100%	91%	96%	84%	84%

Each of the organisations has the experience and capability to undertake the audit scope as required by the Shire.

However, Officers consider whilst Applicant 3's quote is the least competitive, overall their weighting in each criteria reflected their experience and knowledge of local government auditing. The benefit in choosing this organisation will be their guidance and over time will see Council continue to improve the quality and standard of financial reporting.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Section 7.3 & 7.6 of the Local Government Act 1995

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The 2016/17 Annual Budget has a provision for audit services of \$18,500. The variance between the allocated budget and the highest quote is \$10,400. A budget amendment will need to be considered at the next Ordinary Council Meeting.

STRATEGIC IMPLICATIONS

This item is relevant to the Councils approved Strategic Community Plan 2011-2021 and Corporate Business Plan 2016-2020.

- Leadership:
- 4 To work together as custodians of now and the future.
 - 4.1 *To be a collaborative community with the capacity to manage the current and future direction of Exmouth.*
 - 4.2 *A local government that is respected, professional, trustworthy and accountable.*
 - 4.3 *To be strong advocates representing the region's interests.*

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION**ITEM 10.2**

That Council:

1. Accept the quotation submitted by Applicant 3, Moore Stephens, and appoint David Tomasi, registered company auditor number 15724, Wen-Shien Chai, registered company auditor number 229761 and Greg Godwin, registered company auditor number 310219 as Auditors for the Provision of External Audit Services for the lump sum fixed price of \$28,900, for the 2016/17 financial year; and
2. Exercise the option of annual extensions for 2017/18 and 2018/19 financial years as submitted by Applicant 3, should the Auditor General not undertake the annual financial audits of local government.

11. REPORTS OF COUNCILLORS

12. REPORTS OF OFFICERS

13. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

14. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

15. MATTERS TO BE CONSIDERED BEHIND CLOSED DOORS

16. CLOSURE OF MEETING

Department of Local Government and Communities - Compliance Audit Return



Government of Western Australia
Department of Local Government and Communities

Exmouth - Compliance Audit Return 2016

Commercial Enterprises by Local Governments					
No	Reference	Question	Response	Comments	Respondent
1	s3.59(2)(a)(b)(c) F&G Reg 7,9	Has the local government prepared a business plan for each major trading undertaking in 2016.	N/A		Gary Martin
2	s3.59(2)(a)(b)(c) F&G Reg 7,10	Has the local government prepared a business plan for each major land transaction that was not exempt in 2016.	N/A		Gary Martin
3	s3.59(2)(a)(b)(c) F&G Reg 7,10	Has the local government prepared a business plan before entering into each land transaction that was preparatory to entry into a major land transaction in 2016.	N/A		Gary Martin
4	s3.59(4)	Has the local government given Statewide public notice of each proposal to commence a major trading undertaking or enter into a major land transaction for 2016.	N/A		Gary Martin
5	s3.59(5)	Did the Council, during 2016, resolve to proceed with each major land transaction or trading undertaking by absolute majority.	N/A		Gary Martin
Delegation of Power / Duty					
No	Reference	Question	Response	Comments	Respondent
1	s5.16, 5.17, 5.18	Were all delegations to committees resolved by absolute majority.	N/A	No example of a Committee established in 2016.	Gary Martin
2	s5.16, 5.17, 5.18	Were all delegations to committees in writing.	N/A	No example of a Committee established in 2016.	Gary Martin
3	s5.16, 5.17, 5.18	Were all delegations to committees within the limits specified in section 5.17.	No	Although established in 2015 the Ningaloo Centre Project Management Committee operated in 2016 as a decision and operational committee and involved with contracts in excess of \$150,000 without Tenders. It did not operate as a proper committee of the Council.	Gary Martin
4	s5.16, 5.17, 5.18	Were all delegations to committees recorded in a register of delegations.	No	The Project Management Committee is not recorded.	Gary Martin
5	s5.18	Has Council reviewed delegations to its committees in the 2015/2016 financial year.	No	See above.	Gary Martin



No	Reference	Question	Response	Comments	Respondent
6	s5.42(1),5.43 Admin Reg 18G	Did the powers and duties of the Council delegated to the CEO exclude those as listed in section 5.43 of the Act.	Yes	However the delegations also refer to other legislation and authorities. The Shire's Delegation regime is currently being reviewed.	Gary Martin
7	s5.42(1)(2) Admin Reg 18G	Were all delegations to the CEO resolved by an absolute majority.	Yes		Gary Martin
8	s5.42(1)(2) Admin Reg 18G	Were all delegations to the CEO in writing.	Yes		Gary Martin
9	s5.44(2)	Were all delegations by the CEO to any employee in writing.	Yes		Gary Martin
10	s5.45(1)(b)	Were all decisions by the Council to amend or revoke a delegation made by absolute majority.	N/A		Gary Martin
11	s5.46(1)	Has the CEO kept a register of all delegations made under the Act to him and to other employees.	Yes	The Register does not meet best practice standards and is under review.	Gary Martin
12	s5.46(2)	Were all delegations made under Division 4 of Part 5 of the Act reviewed by the delegator at least once during the 2015/2016 financial year.	Yes	All delegations were reviewed at a Council meeting held 29 June 2016.	Gary Martin
13	s5.46(3) Admin Reg 19	Did all persons exercising a delegated power or duty under the Act keep, on all occasions, a written record as required.	No	There was no evidence sighted that written records were kept. Each delegation should stipulate the record keeping requirements.	Gary Martin

Disclosure of Interest

No	Reference	Question	Response	Comments	Respondent
1	s5.67	If a member disclosed an interest, did he/she ensure that they did not remain present to participate in any discussion or decision-making procedure relating to the matter in which the interest was disclosed (not including participation approvals granted under s5.68).	Yes		Gary Martin
2	s5.68(2)	Were all decisions made under section 5.68(1), and the extent of participation allowed, recorded in the minutes of Council and Committee meetings.	N/A	No example was noted in the Council minutes.	Gary Martin
3	s5.73	Were disclosures under section 5.65 or 5.70 recorded in the minutes of the meeting at which the disclosure was made.	Yes		Gary Martin
4	s5.75(1) Admin Reg 22 Form 2	Was a primary return lodged by all newly elected members within three months of their start day.	Yes		Gary Martin
5	s5.75(1) Admin Reg 22 Form 2	Was a primary return lodged by all newly designated employees within three months of their start day.	N/A		Gary Martin



No	Reference	Question	Response	Comments	Respondent
6	s5.76(1) Admin Reg 23 Form 3	Was an annual return lodged by all continuing elected members by 31 August 2016.	Yes		Gary Martin
7	s5.76(1) Admin Reg 23 Form 3	Was an annual return lodged by all designated employees by 31 August 2016.	Yes		Gary Martin
8	s5.77	On receipt of a primary or annual return, did the CEO, (or the Mayor/ President in the case of the CEO's return) on all occasions, give written acknowledgment of having received the return.	Yes		Gary Martin
9	s5.88(1)(2) Admin Reg 28	Did the CEO keep a register of financial interests which contained the returns lodged under section 5.75 and 5.76	Yes		Gary Martin
10	s5.88(1)(2) Admin Reg 28	Did the CEO keep a register of financial interests which contained a record of disclosures made under sections 5.65, 5.70 and 5.71, in the form prescribed in Administration Regulation 28.	No	The register of financial interests relies upon the notice submitted by members or employees at the commencement of the meeting, and then filed with the annual returns. The notice does not address s5.71 disclosures. A separate register section is required.	Gary Martin
11	s5.88 (3)	Has the CEO removed all returns from the register when a person ceased to be a person required to lodge a return under section 5.75 or 5.76.	No	The returns had been removed in 2017 following the Probity Audit.	Gary Martin
12	s5.88(4)	Have all returns lodged under section 5.75 or 5.76 and removed from the register, been kept for a period of at least five years, after the person who lodged the return ceased to be a council member or designated employee.	Yes		Gary Martin
13	s5.103 Admin Reg 34C & Rules of Conduct Reg 11	Where an elected member or an employee disclosed an interest in a matter discussed at a Council or committee meeting where there was a reasonable belief that the impartiality of the person having the interest would be adversely affected, was it recorded in the minutes.	Yes		Gary Martin
14	s5.70(2)	Where an employee had an interest in any matter in respect of which the employee provided advice or a report directly to the Council or a Committee, did that person disclose the nature of that interest when giving the advice or report.	N/A	No example noted.	Gary Martin
15	s5.70(3)	Where an employee disclosed an interest under s5.70(2), did that person also disclose the extent of that interest when required to do so by the Council or a Committee.	N/A		Gary Martin



No	Reference	Question	Response	Comments	Respondent
16	s5.103(3) Admin Reg 34B	Has the CEO kept a register of all notifiable gifts received by Council members and employees.	No	The register had been non compliant but this was rectified in early 2017 following the Probity Audit.	Gary Martin

Disposal of Property

No	Reference	Question	Response	Comments	Respondent
1	s3.58(3)	Was local public notice given prior to disposal for any property not disposed of by public auction or tender (except where excluded by Section 3.58(5)).	N/A	No example was noted.	Gary Martin
2	s3.58(4)	Where the local government disposed of property under section 3.58(3), did it provide details, as prescribed by section 3.58(4), in the required local public notice for each disposal of property.	N/A		Gary Martin

Elections

No	Reference	Question	Response	Comments	Respondent
1	Elect Reg 30G (1)	Did the CEO establish and maintain an electoral gift register and ensure that all 'disclosure of gifts' forms completed by candidates and received by the CEO were placed on the electoral gift register at the time of receipt by the CEO and in a manner that clearly identifies and distinguishes the candidates.	No	The register was non compliant as identified in the Probity Report.	Gary Martin

Finance

No	Reference	Question	Response	Comments	Respondent
1	s7.1A	Has the local government established an audit committee and appointed members by absolute majority in accordance with section 7.1A of the Act.	N/A	Not relevant in 2016	Gary Martin
2	s7.1B	Where a local government determined to delegate to its audit committee any powers or duties under Part 7 of the Act, did it do so by absolute majority.	N/A		Gary Martin
3	s7.3	Was the person(s) appointed by the local government to be its auditor, a registered company auditor.	N/A	Refer Probity Report. The Shire is currently dealing with an EOI to appoint an Auditor.	Gary Martin
4	s7.3, 7.6(3)	Was the person or persons appointed by the local government to be its auditor, appointed by an absolute majority decision of Council.	N/A		Gary Martin
5	Audit Reg 10	Was the Auditor's report for the financial year ended 30 June 2016 received by the local government within 30 days of completion of the audit.	Yes		Gary Martin



No	Reference	Question	Response	Comments	Respondent
6	s7.9(1)	Was the Auditor's report for the financial year ended 30 June 2016 received by the local government by 31 December 2016.	Yes	8 December 2016	Gary Martin
7	S7.12A(3)	Where the local government determined that matters raised in the auditor's report prepared under s7.9 (1) of the Act required action to be taken by the local government, was that action undertaken.	N/A		Gary Martin
8	S7.12A (4)	Where the local government determined that matters raised in the auditor's report (prepared under s7.9 (1) of the Act) required action to be taken by the local government, was a report prepared on any actions undertaken.	N/A		Gary Martin
9	S7.12A (4)	Where the local government determined that matters raised in the auditor's report (prepared under s7.9 (1) of the Act) required action to be taken by the local government, was a copy of the report forwarded to the Minister by the end of the financial year or 6 months after the last report prepared under s7.9 was received by the local government whichever was the latest in time.	N/A		Gary Martin
10	Audit Reg 7	Did the agreement between the local government and its auditor include the objectives of the audit.	N/A	No action in 2016. The Probity Audit identified issues with the appointment of the Auditor.	Gary Martin
11	Audit Reg 7	Did the agreement between the local government and its auditor include the scope of the audit.	N/A	See above	Gary Martin
12	Audit Reg 7	Did the agreement between the local government and its auditor include a plan for the audit.	N/A		Gary Martin
13	Audit Reg 7	Did the agreement between the local government and its auditor include details of the remuneration and expenses to be paid to the auditor.	N/A		Gary Martin
14	Audit Reg 7	Did the agreement between the local government and its auditor include the method to be used by the local government to communicate with, and supply information to, the auditor.	N/A		Gary Martin



Local Government Employees					
No	Reference	Question	Response	Comments	Respondent
1	Admin Reg 18C	Did the local government approve the process to be used for the selection and appointment of the CEO before the position of CEO was advertised.	N/A	Process underway in 2017	Gary Martin
2	s5.36(4) s5.37(3), Admin Reg 18A	Were all vacancies for the position of CEO and other designated senior employees advertised and did the advertising comply with s.5.36(4), 5.37(3) and Admin Reg 18A.	N/A	No designated senior employees	Gary Martin
3	Admin Reg 18F	Was the remuneration and other benefits paid to a CEO on appointment the same remuneration and benefits advertised for the position of CEO under section 5.36(4).	N/A		Gary Martin
4	Admin Regs 18E	Did the local government ensure checks were carried out to confirm that the information in an application for employment was true (applicable to CEO only).	N/A		Gary Martin
5	s5.37(2)	Did the CEO inform council of each proposal to employ or dismiss a designated senior employee.	N/A		Gary Martin

Official Conduct					
No	Reference	Question	Response	Comments	Respondent
1	s5.120	Where the CEO is not the complaints officer, has the local government designated a senior employee, as defined under s5.37, to be its complaints officer.	N/A	CEO is the Complaints Officer	Gary Martin
2	s5.121(1)	Has the complaints officer for the local government maintained a register of complaints which records all complaints that result in action under s5.110(6)(b) or (c).	No	A Register of Complaints could not be produced. A compliant register is being put in place.	Gary Martin
3	s5.121(2)(a)	Does the complaints register maintained by the complaints officer include provision for recording of the name of the council member about whom the complaint is made.	No		Gary Martin
4	s5.121(2)(b)	Does the complaints register maintained by the complaints officer include provision for recording the name of the person who makes the complaint.	No		Gary Martin
5	s5.121(2)(c)	Does the complaints register maintained by the complaints officer include provision for recording a description of the minor breach that the standards panel finds has occurred.	No		Gary Martin
6	s5.121(2)(d)	Does the complaints register maintained by the complaints officer include the provision to record details of the action taken under s5.110(6)(b) or (c).	No		Gary Martin



Tenders for Providing Goods and Services						
No	Reference	Question	Response	Comments	Respondent	
1	s3.57 F&G Reg 11	Did the local government invite tenders on all occasions (before entering into contracts for the supply of goods or services) where the consideration under the contract was, or was expected to be, worth more than the consideration stated in Regulation 11 (1) of the Local Government (Functions & General) Regulations (Subject to Functions and General Regulation 11 (2)).	No	At the July 2016 Council meeting two significant contracts were entered into without a public tender process.	Gary Martin	
2	F&G Reg 12	Did the local government comply with F&G Reg 12 when deciding to enter into multiple contracts rather than inviting tenders for a single contract.	No	Compliance could not be established from the records available. However the Shire is currently undertaking a comprehensive review of its purchasing processes to ensure compliance in future.	Gary Martin	
3	F&G Reg 14(1) & (3)	Did the local government invite tenders via Statewide public notice.	No	It appears that one tender notice was only placed in a local newspaper.	Gary Martin	
4	F&G Reg 14 & 15	Did the local government's advertising and tender documentation comply with F&G Regs 14, 15 & 16.	Yes		Gary Martin	
5	F&G Reg 14(5)	If the local government sought to vary the information supplied to tenderers, was every reasonable step taken to give each person who sought copies of the tender documents or each acceptable tenderer, notice of the variation.	N/A	No example noted.	Gary Martin	
6	F&G Reg 16	Did the local government's procedure for receiving and opening tenders comply with the requirements of F&G Reg 16.	Yes		Gary Martin	
7	F&G Reg 18(1)	Did the local government reject the tenders that were not submitted at the place, and within the time specified in the invitation to tender.	N/A	No example noted.	Gary Martin	
8	F&G Reg 18 (4)	In relation to the tenders that were not rejected, did the local government assess which tender to accept and which tender was most advantageous to the local government to accept, by means of written evaluation criteria.	Yes		Gary Martin	
9	F&G Reg 17	Did the information recorded in the local government's tender register comply with the requirements of F&G Reg 17.	No	The register format is inconsistent and requires review. Not all information was recorded.	Gary Martin	



No	Reference	Question	Response	Comments	Respondent
10	F&G Reg 19	Was each tenderer sent written notice advising particulars of the successful tender or advising that no tender was accepted.	No	It was difficult to ascertain compliance with this requirement from the records provided. However the whole purchasing process requires review.	Gary Martin
11	F&G Reg 21 & 22	Did the local governments's advertising and expression of interest documentation comply with the requirements of F&G Regs 21 and 22.	Yes		Gary Martin
12	F&G Reg 23(1)	Did the local government reject the expressions of interest that were not submitted at the place and within the time specified in the notice.	N/A	No example noted.	Gary Martin
13	F&G Reg 23(4)	After the local government considered expressions of interest, did the CEO list each person considered capable of satisfactorily supplying goods or services.	No	Compliance was not established from the records available but indications that this had happened for one EOI mentioned in the Register of Tenders.	Gary Martin
14	F&G Reg 24	Was each person who submitted an expression of interest, given a notice in writing in accordance with Functions & General Regulation 24.	No	Compliance was not established from the records available. It is likely that the Register (file) produced was not complete.	Gary Martin
15	F&G Reg 24AD(2)	Did the local government invite applicants for a panel of pre-qualified suppliers via Statewide public notice.	N/A	No example noted.	Gary Martin
16	F&G Reg 24AD(4) & 24AE	Did the local government's advertising and panel documentation comply with F&G Regs 24AD(4) & 24AE.	N/A		Gary Martin
17	F&G Reg 24AF	Did the local government's procedure for receiving and opening applications to join a panel of pre-qualified suppliers comply with the requirements of F&G Reg 16 as if the reference in that regulation to a tender were a reference to a panel application.	N/A		Gary Martin
18	F&G Reg 24AD(6)	If the local government to sought to vary the information supplied to the panel, was every reasonable step taken to give each person who sought detailed information about the proposed panel or each person who submitted an application, notice of the variation.	N/A	No example noted for the records available.	Gary Martin
19	F&G Reg 24AH(1)	Did the local government reject the applications to join a panel of pre-qualified suppliers that were not submitted at the place, and within the time specified in the invitation for applications.	N/A		Gary Martin



No	Reference	Question	Response	Comments	Respondent
20	F&G Reg 24AH(3)	In relation to the applications that were not rejected, did the local government assess which application (s) to accept and which application(s) were most advantageous to the local government to accept, by means of written evaluation criteria.	N/A		Gary Martin
21	F&G Reg 24AG	Did the information recorded in the local government's tender register about panels of pre-qualified suppliers, comply with the requirements of F&G Reg 24AG.	N/A		Gary Martin
22	F&G Reg 24AI	Did the local government send each person who submitted an application, written notice advising if the person's application was accepted and they are to be part of a panel of pre-qualified suppliers, or, that the application was not accepted.	N/A		Gary Martin
23	F&G Reg 24E	Where the local government gave a regional price preference in relation to a tender process, did the local government comply with the requirements of F&G Reg 24E in relation to the preparation of a regional price preference policy (only if a policy had not been previously adopted by Council).	N/A		Gary Martin
24	F&G Reg 24F	Did the local government comply with the requirements of F&G Reg 24F in relation to an adopted regional price preference policy.	N/A		Gary Martin
25	F&G Reg 11A	Does the local government have a current purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$150,000 or less.	Yes	Policy in place but not always followed. The CCC report is expected to reveal this issue, and the Shire is undertaking a comprehensive review of its purchasing processes and compliance.	Gary Martin

NOTES TO THE REVIEW OF THE COMPLIANCE AUDIT RETURN SHIRE OF EXMOUTH 2016

Disclosure.

For the purposes of s5.70 I disclose that I am a Local Government Consultant involved with a wide range of local governments in the State and with associated industry issues. I am not aware of any specific matter that may create an interest that would require a financial or impartiality interest disclosure to the Council.

Background

The CEO engaged me to conduct an independent review of the Shire's Compliance Audit Return for 2016. The review was carried out on-site between the 1st and 17th March 2017 in conjunction with other governance work.

An important objective of the Compliance Return process is to assist local governments to enhance or develop their internal control processes to ensure compliance with statutory requirements and improve operational management control by using "best practice" procedures. Importantly, the compliance review provides the CEO with an independent overview of the status of his internal management processes, and the Council with an overview of the state of the Shire's administration.

The review involved the CAR, records of the Shire and information and advice from relevant Shire employees and consisted of an examination, on a test basis, of evidence supporting the status of compliance. The process included a comprehensive audit test check of significant items such as the primary and annual return registers, financial interest disclosures, and other registers. Other items in the Return were the subject of examination based upon a sample check of relevant records and/or discussion with relevant officers to ascertain compliance. I have accepted the Officer response in cases where documentary records are not readily available and for items where the response is "Not Applicable".

The CAR is an electronic document on the Department of Local Government and Communities Smart hub (DLGC) website. The Shire is responsible for the completion and submission of the final statutory Compliance Return for 2016. The completed CAR needs to be submitted to the Audit Committee before consideration by the Council (Commissioner).

The review procedures undertaken enabled the determination of a reasonable opinion, whether in all material respects, compliance, or partial compliance was achieved and consistent based upon the records and information presented. Where compliance could not be readily proved it has been recorded as non-compliant.

This review was impacted to some degree by a Compliance Probity Audit conducted by the Department of Local Government and Communities (DLGC) in January 2017. It appears that Audit identified shortcomings in regards to some elements of compliance, such as a notifiable gifts register, which had since been acted on by the Shire. This Compliance review is for the 2016 calendar year and therefore, as far as possible, reflects the situation at that time. It is also noted that the Probity Audit recommended that the 2016 CAR be undertaken by a suitable external consultant.

It is relevant that the CEO is responsible for the final preparation and submission of the CAR, and, normally, the Council itself is required to provide additional scrutiny, including the essential element of local first-hand knowledge of some matters, prior to its adoption as the accepted Return. In the circumstances that exist, the responsible CEO is no longer employed and the Commissioner had no role or involvement with the Shire during the review period. That creates a vacuum of corporate knowledge.

NOTES TO THE REVIEW OF THE COMPLIANCE AUDIT RETURN SHIRE OF EXMOUTH 2016

The compliance review process provides both the CEO and the Council with an additional element of accountability through an independent check on internal management systems, procedures and record keeping and this demonstrates the Shire's current emphasis on improving its good governance, compliance, and best practice through voluntary exposure to external scrutiny.

The Acting CEO and Shire staff provided all necessary assistance and explanations required during the review.

REVIEW OUTCOME

The standard of compliance overall is poor. It is likely that previous returns were inaccurate and possibly reflect the lack of any real scrutiny of the items in the CAR.

Although the various records and registers were generally kept, and which provided a veneer of compliance, closer inspection revealed shortcomings that illustrated a lack of knowledge or awareness of the specific legislative requirements. The Register of Complaints could not be produced despite being a public document.

There were 20 items of non-compliance or partial non-compliance noted in the total 87 items included in the Compliance Return. It is possible some matters could have been clarified if the responsible officer or records had been sighted.

In some areas the Shire lacked sound management systems and procedures, and/or these have not been subject to regular review, particularly in the case of recent legislative amendments and changing best practice. The matters noted below reflect inconsistent or incomplete compliance and human error, but also an element of inadequate oversight by the (then) CEO.

It is important to note that the actual compliance audit process is a detached, retrospective examination of minute, multifaceted, and ambiguous statutory detail specified by the *Local Government Act 1995* and associated regulations. Significantly, the CAR excludes the actual working environment and pressures of the day-by-day operational circumstances, and other community priorities that exist in the pragmatic management of the wide range of functions and issues experienced in a local government such as the Shire.

The overall compliance requirement to observe "all written law" places an onerous responsibility on the CEO, however not only is that a statutory obligation, it forms the firm base on which the Shire operates. The apparent lack of emphasis on governance and compliance has contributed significantly to the problems confronting the Shire.

The level of compliance is a significant indicator in respect of the standard of management of the Shire.

The notes and advisory recommendations below are to support the Compliance Return and for the Acting CEO's management consideration.

NOTES TO THE REVIEW OF THE COMPLIANCE AUDIT RETURN SHIRE OF EXMOUTH 2016

Delegations of Power/Duty

The register of delegations was “reviewed” in June 2016 however the register, delegation and further sub delegation to various Officers, of various Parts/Sections of the *Local Government Act 1995* and subsidiary regulations is deficient in several areas and requires a complete review.

There is no separate Register of Committees or evidence of appointments in writing or review of the committees.

The register of delegations only makes mention of a “Management Review Committee” and an “Audit Committee”. These two delegations are listed in with the delegations to the CEO and employees and not in a separate register or section of a register. However, during 2016 the Council had at least two other committees – a Project Steering Committee and Project Management Committee (PMC). Both were related to the Ningaloo Centre Project and seem to have been established in 2015.

The Project Management Committee comprised of the Shire President, Councillors, the CEO, Special Projects Officer (SPO) and two Executive Managers. This PMC committee was apparently an “operational and decision-making” committee that operated independently of the Steering Committee, and is the type of committee envisaged by LGA s5.9(2)(b) comprising council members and employees. The committee basically managed the \$32M Ningaloo Centre Project on behalf of the Council, including significant expenditure decisions.

The Council meeting minutes for much of 2015 and 2016 do not record the involvement of the Council in the Ningaloo Centre Project until two major (deficient) decisions in July 2016.

However, any delegation to such a committee is limited by s5.17(1)(b) to the powers and duties that can be delegated to the CEO. That is particularly relevant in limiting any purchasing or expenditure decisions by the committee.

Of particular concern is that, despite this committee operating for all of 2016, it is not recorded in the Register of Delegations and it appears that it did not meet any of the various legislative requirements for statutory committees. This includes the requirements concerning meetings and public minutes. Minutes of the committee have been sighted and indicate significant decisions were made and implemented.

The committee acted more as a working group but under a veneer of being a formal Council committee. It lacked accountability and was not a statutory committee of the Council.

The register of delegations contains a mix of delegations and authorisations under various Acts, not just the *Local Government Act 1995*. These various delegations and authorisations need to be separately recorded and differentiated within the one register file. Each delegation requires review and identify the head of power to delegate or authorise, and the details of the power or duty being delegated, along with any conditions or policy implications.

A review of delegations is currently underway but should include consideration of the DLGC Guideline No 17 – Delegations.

NOTES TO THE REVIEW OF THE COMPLIANCE AUDIT RETURN SHIRE OF EXMOUTH 2016

The delegation triggers the requirement for that person to make a primary and annual return, as well as the prohibition on exercising the delegation and disclosure requirements under s5.71 where a conflict of interest exists. The written notice should notify the person of these two obligations.

Although the minutes record that the Register of Delegations was reviewed by the Council in June 2016, it is important that there is a record that the CEO also reviewed each delegation made to employees.

There is evidence of persons exercising a delegation keeping a record of the exercise of the delegation. This is a difficult matter to check. It is suggested that each delegation identify the record keeping requirements.

It is recommended that the Shire review its delegations with reference to Local Government Operational Guideline No.17 – Delegations, and including the concept of “acting through” be considered. A modified version of the Schedule included in the Guideline reflecting the requirements of the Shire may assist to identify the exact power or duty being delegated, and who to. The concept of “acting through” can reduce the number of delegations required, with subordinate officers preparing the documentation for the formal exercise of the delegation.

Good governance requires a person exercising a power or duty to be able to demonstrate that they have that power or duty. That needs to be properly recorded.

Disclosure of Interest

A comprehensive review was undertaken of the various registers required by the Act.

The minutes for 2016 were checked for disclosures at meetings and the process includes written notice, a record in the minutes of the disclosures received and of the person leaving the meeting, if necessary, while the item was considered. Most disclosures recorded related to impartiality interests.

One impartiality disclosure records the interest arising from being a partner to the existing tenancy proprietor. The actual detail of the interest is not known. One other financial disclosure of an indirect financial interest related to an “adjoining/adjacent to my home residence”, which is more likely to be a Proximity interest.

It is recommended that following the October 2017 election, the Shire arrange training for all members and employees on the disclosure requirements. **It is also recommended** that, each year in June, a workshop be held on the requirements of the Annual Financial returns to ensure awareness of the statutory requirements before the returns are circulated for attention.

The “register of financial disclosures” made under s5.65, 5.70 and 5.71 is included within the “register of financial interests” of the returns lodged under s5.75 and 5.76. It appears that the Shire has previously relied upon the individual written notice of disclosure submitted to the meeting under s5.65(1)(a) and filed in the “Register of Primary and Annual Returns” for each individual. These notices do generally contain the information required by the form of register under Admin Reg. 28, but do not refer to disclosures under s5.70 or s5.71, and are filed under each individual rather than as a collated register.

A problem with the use of the notice of disclosure form as the “register” is that the form can be easily lost or removed, or inserted later.

NOTES TO THE REVIEW OF THE COMPLIANCE AUDIT RETURN SHIRE OF EXMOUTH 2016

It was found that a disclosure required by s5.71 had previously not been made or recorded in the register and is the subject of a separate report.

It is recommended that the disclosure notice form submitted at meetings be amended to provide for disclosures under s5.70 and s5.71, and if the individual disclosure notice forms are to be filed for each individual with their primary and annual returns, the details of the disclosures should then be consolidated into a table or schedule recording the requirements of the register required by Administration Regulation 28. The register of financial interests is to be in a form that sets out —

(a) in relation to each disclosure made under section 5.65, 5.70 or 5.71 —

(i) the date of the disclosure; and

(ii) the nature of the interest disclosed; and

(b) in relation to each disclosure made under section 5.65 or 5.70 where the extent of the interest has also been disclosed, the extent of the interest; and

(c) in relation to each disclosure made under section 5.65 or 5.70 —

(i) the date of the meeting at which the matter will be or was discussed; and

(ii) the number and details of the matter's agenda item at the meeting.

Although all annual returns were lodged within the prescribed time for eligible elected members and employees, it was noted that in some instances not all sections of the individual returns were fully completed as required by the legislation and were left blank. Local Government Operational Guideline No.21 includes the following:

"It is important that you complete each question on both the primary and annual returns. If you have no interests to disclose under a question, indicate on the return that the question is not applicable or was answered in a previous return. Failure to complete a question can lead to claims of non-disclosure that have to be investigated."

It is recommended that the Officer responsible for the task of accepting the returns be required to carry out the following steps when a return is received:

- Stamp the return with the received date.
- Check that the return is for the correct period (i.e. to the 30 June just past).
- Check each section of the return is completed by either personal detail, answered in a previous return, Nil or N/A.
- Check that the return is signed and dated (on or before the received date).
- Check that the receipt of the return is acknowledged in writing.
- Record the return in the register and the schedule.

It is noted that the acknowledgement letter is now filed electronically. Sampling confirmed that this was happening.

It is not possible to check the details of the information disclosed in the individual returns, however it was noted that one annual return contained inconsistent detail from previous years relating to "real property".

The conduct of this CAR review for 2016 was affected by the recent Probity Audit conducted by the Department of Local Government and Communities, which had identified some shortcomings in mid-

NOTES TO THE REVIEW OF THE COMPLIANCE AUDIT RETURN SHIRE OF EXMOUTH 2016

January 2017 that had subsequently been rectified. Therefore, where possible, it has been necessary to report on compliance at the time in 2016. An example is whether all returns lodged under s5.75 or s5.76 and been removed from the register after the person ceased to be a member or designated employee. The relevant returns had been removed at the time of this review.

Similarly, the Probity Audit found that at the time of its audit did not contain provision for “notifiable” gifts in accordance with regulation 12(5) of the *Local Government Rules of Conduct regulations 2007* and regulation 34B(5) of the *Local Government (Administration) regulations 1996*, and that the “Electoral Gift Register was out of date and did not strictly comply with the format of Form 9A Disclosure of Gifts in the electoral regulations.

It is recommended that the Shire revise all of its statutory registers to ensure that they meet the necessary requirements set out in the Act or regulations. **It is also recommended** that the Shire develop a series of checklists based on the regulations to allow regular internal audits. That can be achieved by “cutting and pasting” from the relevant regulation and converting that information into a checklist format.

No example was noted of any employee providing advice or report to the Council requiring disclosure or the nature or extent of the interest as required by s5.70(2) and (3).

Finance

The 2016 Compliance Return items 1 to 4, and items 10 to 14 relating to the establishment of an Audit Committee and the appointment of an Auditor are not applicable for the 2016 period. However, the Probity Audit identified issues relating to the appointment of the Auditor in 2013.

The Shire is currently in the process of conducting a RFQ for Audit Services to rectify the problems identified.

Local Government Employees

The Shire is currently conducting a CEO recruitment process in 2017.

The Shire has no designated senior employees and there was no movement during 2016.

Official Conduct

A Register of Complaints required by s5.121(1) was not able to be produced.

Tenders for Providing Goods and Services

The records available for review may not have been all the relevant records and there may well be other relevant files or supporting information, however in view of the serious breakdown in respect of tendering, where any doubt exists it has been marked as non-compliant on the basis that the Shire is conducting a major review of its purchasing processes.

The Shire has failed to invite tenders on all occasions as required by s3.57 and F&G Reg 11. The scale of non-compliance in regards to purchasing in respect of significant contracts makes a review of the tendering process difficult.

The Council entered into two major contracts at the meeting held 27 July 2016 for projects in excess of \$1,000,000 without any form of competitive bid or value for money considerations.

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The “tender register” is unsuitable and inadequate for the purpose and consists of a lever arch file that contains not only the required tender information, but also other documents and records better suited to be filed separately in a supporting tender file. The register itself is a public document but that should only relate to the specified tender register detail and not risk the disclosure of other non-public information.

The register records only one RFT for 2015 and three RFT’s for the 2016 period:

- RFT 01/2016 – Demolition of Old Centrecare Building
- RFT 02/2016 – Exmouth Aerodrome Perimeter Fence
- RFT 03/2016 – Airport Shuttlebus

The records of previous RFT’s are not in the “register”.

RFT 01/2016 did not proceed and reverted to a simple quotation process for some reason. There is a “Tender Register” form partially completed to the tender opening stage. The form is outdated and requires review to meet current regulation requirements. The tender documentation and process comply.

RFT 02/2016 is recorded in a different format of the “Tender Register”. It appears that this may relate to the fact that the tender documentation is prepared by the different work units but again the format is outdated and requires review to meet current requirements. It appears that the RFT was not advertised Statewide in a Newspaper. The tender documentation and process comply. However, it appears that there was a Tender Addendum issued without an apparent record of that being provided to all tenderers.

RFT 03/2016 appears to have been subject to a prior EOI process (EOI 01-2016) which was considered at the Council meeting held 29 September 2016, when a decision was made to proceed to invite the shortlisted applicants to tender for RFT 03/2016. There is no information recorded in the Tender Register relating to any EOI process or the applicants received.

The tender documentation for RFT 03/2016 is comprehensive and complies.

The outcome of the tender process is not recorded in the “Tender Register”.

Discussions with Shire officers revealed that the Shire had also been involved in purchasing through the WALGA Procurement service that did not require tenders to be called. However, that creates the situation whereby there may be major contracts entered into for goods or services without any consolidated record.

It is recommended that, in the interests of best practice, the Register of Tenders contain a separate section (non-statutory) that records basic details of the contracts entered into through the WALGA Purchasing arrangements that record the date, what was purchased, the supplier and the consideration.

It was noted that the RFT 01/2017 also includes a “Tender Checklist”. That is recommended best practice however it is essential that the checking and certification process is carried out immediately after the completion of the tender process.

It is also noted that the Probity Audit raised issues in respect of purchasing and made recommendations in that regard.

General

The October 2016 Corruption and Crime Commission “*Report on a matter of Governance at the Shire of Dowerin*” included the following:

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“Independent review of compliance audit reports

Mr Jolly stated that whilst not required by the legislation, Mr Jolly would favour independent preparation of a local government’s mandatory annual compliance audit report. Mr Jolly noted that independent verification would improve confidence and rigour around the process.”

The Shire can take some comfort that it has now had its CAR independently checked.

The report relating to the Shire of Dowerin makes a compelling case for greater accountability and governance control and is recommended reading to ensure that it is not considered as a unique situation that cannot occur anywhere else. This is particularly relevant to the use of Shire Credit Cards.

The matters raised in the CCC Shire of Dowerin report should have been considered and addressed by the Council as a matter of due diligence and good governance as it had significant lessons for all local governments. It appears that the report was ignored.

Gary Martin
Local Government Consultant
17 March 2017