



**SHIRE OF ASHBURTON
AUDIT AND RISK MANAGEMENT
COMMITTEE MEETING**

**MINUTES
(Public Document)**

**Council Chambers, Onslow Shire Complex,
Second Avenue, Onslow
8 September 2020
9.30 am**

**PUBLIC MINUTES - AUDIT AND RISK MANAGEMENT COMMITTEE MEETING
8 SEPTEMBER 2020**

SHIRE OF ASHBURTON

AUDIT AND RISK MANAGEMENT COMMITTEE MEETING

The Chief Executive Officer recommends the endorsement of these minutes at the next Ordinary Meeting of Council.



**Mr K Donohoe
CHIEF EXECUTIVE OFFICER**

Date: 16.09 2020

These minutes were confirmed by Council as a true and correct record of proceedings of the Ordinary Meeting of Council on the 8 September 2020.

Presiding Member:



Date: 11/12/2020

DISCLAIMER

The resolutions contained in the Minutes are subject to confirmation by Council. The Shire of Ashburton warns that anyone who has any application lodged with Council must obtain and should only rely on written confirmation of the outcomes of the application following the Council meeting, and any conditions attaching to the decision made by the Council in respect of the application. No responsibility whatsoever is implied or accepted by the Shire of Ashburton for any act, omission or statement or intimation occurring during a Council meeting.

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1. DECLARATION OF OPENING

The Presiding Member declared the meeting open at 9.30 am.

1.1 ACKNOWLEDGEMENT OF COUNTRY

As representatives of the Shire of Ashburton Council, we respectfully acknowledge the local Indigenous people, the traditional custodians of this land where we are meeting upon today and pay our respects to them and all their elders both past, present and emerging.

2. ATTENDANCE

2.1 PRESENT

Members:	Cr P Foster Cr K White Cr L Rumble Cr M Lynch Cr D Diver Cr R de Pledge Cr M Gallanagh Cr D Dias	Tom Price Ward (Presiding Member) Onslow Ward Paraburdoo Ward Tom Price Ward Tom Price Ward Ashburton Ward Pannawonica Ward Paraburdoo Ward
Staff:	Mr K Donohoe Mr J Bingham Mrs C McGurk Mrs K Bartley Mr M Hudson Mrs M Lewis	Chief Executive Officer Director Corporate Services Acting Director Development Services Director Community Services Director Infrastructure Council Liaison Officer
Guests:	Janyce Smith	Senior Administration Officer
Members of Public:	There were no members of the public in attendance at the commencement of the meeting.	
Members of Media:	There were no members of the media in attendance at the commencement of the meeting.	

2.2 APOLOGIES

Cr J Richardson Tablelands Ward

2.3 APPROVED LEAVE OF ABSENCE

There were no Approved Leave of Absence for this meeting.

3. ANNOUNCEMENT OF VISITORS

There were no visitors for this meeting.

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4. DECLARATION BY MEMBERS

4.1 DUE CONSIDERATION BY COUNCILLORS TO THE AGENDA

All Councillors noted that they had given due consideration to all matters contained in the Agenda presently before the meeting.

4.2 DECLARATIONS OF INTEREST

Councillors to Note

A member who has an Impartiality, Proximity or Financial Interest in any matter to be discussed at a Council or Committee Meeting, which will be attended by the member, must disclose the nature of the interest:

- (a) In a written notice given to the Chief Executive Officer before the Meeting or;
- (b) At the Meeting, immediately before the matter is discussed.

A member, who makes a disclosure in respect to an interest, must not:

- (a) Preside at the part of the Meeting, relating to the matter or;
- (b) Participate in, or be present during any discussion or decision-making procedure relative to the matter, unless to the extent that the disclosing member is allowed to do so under Section 5.68 or Section 5.69 of the *Local Government Act 1995*.

NOTES ON DECLARING INTERESTS (FOR YOUR GUIDANCE)

The following notes are a basic guide for Councillors when they are considering whether they have an interest in a matter.

These notes are included in each agenda for the time being so that Councillors may refresh their memory.

1. A Financial Interest requiring disclosure occurs when a Council decision might advantageously or detrimentally affect the Councillor or a person closely associated with the Councillor and is capable of being measure in money terms. There are exceptions in the *Local Government Act 1995* but they should not be relied on without advice, unless the situation is very clear.
2. If a Councillor is a member of an Association (which is a Body Corporate) with not less than 10 members i.e. sporting, social, religious etc.), and the Councillor is not a holder of office of profit or a guarantor, and has not leased land to or from the club, i.e., if the Councillor is an ordinary member of the Association, the Councillor has a common and not a financial interest in any matter to that Association.
3. If an interest is shared in common with a significant number of electors or ratepayers, then the obligation to disclose that interest does not arise. Each case needs to be considered.

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4. If in doubt declare.
5. As stated in (b) above, if written notice disclosing the interest has not been given to the Chief Executive Officer before the meeting, then it **MUST** be given when the matter arises in the Agenda, and immediately before the matter is discussed.
6. Ordinarily the disclosing Councillor must leave the meeting room before discussion commences. The **only** exceptions are:
 - 6.1 Where the Councillor discloses the **extent** of the interest, and Council carries a motion under s.5.68(1)(b)(ii) or the *Local Government Act*, or
 - 6.2 Where the Minister allows the Councillor to participate under s.5.69 (3) of the *Local Government Act*, with or without conditions.

Declarations of Interest provided:

Item Number/ Name	Type of Interest	Nature/Extent of Interest
There were no Declarations of Interest for this meeting.		

5. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

5.1 AUDIT AND RISK COMMITTEE MEETING HELD ON 9 JUNE 2020

<p>Council Decision</p> <p>MOVED: Cr M Lynch SECONDED: Cr K White</p> <p>That the Unconfirmed Minutes of the Audit and Risk Committee Meeting held on 9 June 2020 (ATTACHMENT 5.1) be confirmed as a true and accurate record.</p> <p style="text-align: right;">CARRIED 8/0</p>
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6. TERMS OF REFERENCE

Audit and Risk Management Committee

Purpose

The Audit Committee's role in accordance with Regulation 15 of the *Local Government (Audit) Regulations 1995* is to provide assistance and guidance to Council on the discharge of its duties under Part 6 and 7 of the *Local Government Act 1995 (the Act)*. The Audit Committee assists Council to monitor the integrity of the Shire's financial statements, risk management, internal controls and compliance with legislative requirements.

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Responsibilities

The Audit Committee is responsible for:

- 1.1 Guiding and assisting Council in carrying out its functions under:
 - (a) Part 6 of the *Act* and its functions relating to other audits and other matters related to financial management; and
 - (b) Part 7 of the *Act* in relating to auditing the Shire's financial accounts.
- 1.2 Reviewing the CEO's report required under regulation 17(3).
- 1.3 Monitoring and advising the CEO when the CEO is carrying out functions in relation to a review under:
 - (a) regulation 17 (1); and
 - (b) the *Local Government (Financial Management) Regulations 1996*, regulation 5(2)(c).
- 1.4 Support the Auditor conducting an audit and carrying out the Auditor's other duties under the *Act*.
- 1.5 Oversee the implementation of any action that Council
 - (a) is required to take, has stated it has taken or intends to take in respect to matters raised by the audit report;
 - (b) has accepted should be taken on receipt of the CEO's report of a review under regulation 17(1); and
 - (c) has accepted should be taken on receipt of the CEO's report under regulation 5(2)(c) of the *Local Government (Financial Management) Regulations 1996*.
- 1.6 The Audit Committee's duties include;
 - (a) considering the Auditor's interim audit of the Shire's accounting and internal control procedures for the financial year;
 - (b) reviewing the audited financial report for the previous financial year;
 - (c) reviewing the interim and final audit reports for the financial year;
 - (d) reviewing the annual Compliance Audit Return;
 - (e) reviewing the CEO's triennial report on the appropriateness and effectiveness of the Shire's systems and procedures regarding risk management, internal controls and legislative compliance;
 - (f) reviewing the CEO's triennial report on the appropriateness and effectiveness of the Shire's financial management systems and procedures; and
 - (g) considering the proposed timeline for Council to adopt the budget and the ten-year financial plan for the following financial year; and providing a report to council on those matters.

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7. AGENDA ITEMS

7.1 INTERNAL AUDIT FUNCTION

FILE REFERENCE:	GRO1
AUTHOR'S NAME AND POSITION:	John Bingham Director Corporate Services
AUTHORISING OFFICER AND POSITION:	Kenn Donohoe Chief Executive Officer
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	20 August 2020
DISCLOSURE OF FINANCIAL INTEREST:	The author and the authorising officer have no financial, proximity or impartiality interests in the proposal
PREVIOUS MEETING REFERENCE:	Not Applicable

Summary

The purpose of this report is to inform Council of a proposal for the provision of Internal Audit Services.

Background

The Shire is seeking to improve the effectiveness of its risk management, governance and control processes.

Comment

It is intended an internal audit be performed for the year ended 30 June 2021 with a focus on the following areas:

- Prepare a three year internal audit plan including working with the Audit and Risk Management Committee to develop priorities for the next three years.
- Internal audit to be performed on the following focus areas:
 - Identified matters in the 2019 Financial Management Review;
 - Procurement systems and controls;
 - Risk management practices;
 - Grants applications, payments and acquittals; and
 - Records management compliance with regulations and systems review.

Relevant internal audit reports will be made available to the Audit and Risk Management Committee including audit findings, risk ratings, recommendations, opportunities for improvement, root cause analysis and the status of previous internal audit findings.

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Consultation

Executive Leadership Team
Moore Australia

Statutory Environment

Regulation 5(2)(c) of the *Local Government (Financial Management) Regulations 1996* requires the CEO to undertake reviews of the appropriateness and effectiveness of the financial management systems and procedures of the local government regularly and report to the local government the result of those reviews.

Internal Auditor reports functionally to the Audit and Risk Committee and administratively to the CEO. In accordance with section 5.41 of the *Local Government Act 1995*, the CEO is responsible for the day to day management of council activities which implicitly includes the internal audit function.

Regulation 17 of the *Local Government (Audit) Regulations 1996* requires the CEO to conduct bi-annual reviews of the appropriateness and effectiveness of a Local Governments systems and procedures in relation to risk management, legislative compliance and internal control. Internal audit is an essential function in meeting the requirements of this regulation.

Financial Implications

An estimated cost for a three year scope of work is \$77k plus GST based on experience of other local governments. Annual Corporate Services budgets are adequately provisioned for this engagement.

Strategic Implications

There are no known strategic implications for this matter.

Risk Management

Risk has been assessed on the basis of the Officers Recommendation.

Risk	Risk Likelihood	Risk Impact / Consequence	Risk Rating	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Adequate Internal Controls, risk management and legislative compliance not in place	Possible(3)	Moderate (3)	Moderate (9)	Governance	Internal Audit Plan 2020-2023 with regular updates to the Audit and Risk

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The following Risk Matrix has been applied.

Risk Matrix						
Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Adoption of this item has been evaluated against the Shire of Ashburton’s Risk Management Policy CORP5 Risk Matrix. The perceived level of risk is considered to be “Moderate” risk and can be managed by routine procedures, and is unlikely to need specific application of resources.

Policy Implications

There are no known policy implications for this matter.

Voting Requirement

Simple Majority Required

Officers Recommendation and Committee Decision

MINUTE: 132/2020

MOVED: Cr K White

SECONDED: Cr M Lynch

That with respect to the proposal for Internal Audit Services acknowledge the role of the Audit and Risk Management Committee in preparing a three year internal audit plan and acknowledge the Chief Executive Officer is undertaking a spot audit on the following areas:

- Identified matters in the 2019 Financial Management Review;
- Procurement systems and controls;
- Risk management practices;
- Grants applications, payments and acquittals; and
- Records management compliance with regulations and systems review.

CARRIED 8/0

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7.2 ICT AND DIGITAL STRATEGY 2020-23

FILE REFERENCE:	ITO1
AUTHOR'S NAME AND POSITION:	John Bingham Director Corporate Services
AUTHORISING OFFICER AND POSITION:	Kenn Donohoe Chief Executive Officer
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	25 August 2020
DISCLOSURE OF FINANCIAL INTEREST:	The author and the authorising officer have no financial, proximity or impartiality interests in the proposal
PREVIOUS MEETING REFERENCE:	Not Applicable

Summary

The purpose of this report is to inform the Audit and Risk Management Committee of the updated ICT and Digital Strategy 2020-23 and ICT Action Plan for 2020-21.

Background

In June 2018 the Shire developed an ICT Strategy describing how it can align its investment with its business objectives while ensuring its community expectations are met. Its aim was to drive improved customer service (internal and external) by delivering ICT services that increase efficiencies while maximising effectiveness and minimising costs. Overall the document was baseline in its development and application and a more comprehensive plan was always forecast in the not too distant future.

Comment

The purpose of the updated ICT Strategy is to facilitate the objectives within the Strategic Corporate Plan (SCP) by following the Department's ICT Strategic Framework.

These include the following SCP goals:

- Vibrant and Active Communities
- Economic Prosperity
- Unique Heritage and Environment
- Quality Services and Infrastructure
- Inspiring Governance

And Departments ICT Strategic Framework strategic key components:

- Governance – guiding strategies, principles and practices.
- Emerging Trends and Technologies – maximising value from ICT investment.
- Business Systems and Applications – enhanced service delivery.
- Infrastructure and Technology – hardware and network.
- IT Business Continuity – performance in all circumstances.

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- Security – protecting data, information, systems from unauthorised access.
- Project Management – planning, organising, controlling, and managing resources.

These strategies represent the key elements, and their relationships, that might be expected in an ‘ideal’ operating environment. The goal moving forward therefore is integration, efficiency and innovation to improve engagement with Council and Community, reduce staff workloads and comply with legislative requirements.

The ICT and Digital Strategy 2020-23 as well as Action Plan for 2020-21 is attached.

ATTACHMENT 7.2

Consultation

Executive Leadership Team
ICT Specialist - West
ICT Administrator
Fourier Technologies

Statutory Environment

Local Government Act 1995

Section 5.56 Planning for the Future

(1) A local government is to plan for the future of the district.

(2) A local government is to ensure that plans made under subsection (1) are in accordance with any regulations made about planning for the future of the district.

Financial Implications

Investments made into ICT will be used to populate the Shire’s ICT Asset Management Plan and Long Term Financial Plan.

Strategic Implications

There are no known strategic implications for this matter.

Risk Management

Risk has been assessed on the basis of the Officers Recommendation.

Risk	Risk Likelihood	Risk Impact / Consequence	Risk Rating	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Council not receive strategy.	Low(1)	Minor(2)	Low(2)	Governance	Receive the strategy.

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The following Risk Matrix has been applied.

Risk Matrix						
Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Adoption of this item has been evaluated against the Shire of Ashburton’s Risk Management Policy CORP5 Risk Matrix. The perceived level of risk is considered to be “Moderate” risk and can be managed by routine procedures, and is unlikely to need specific application of resources.

Policy Implications

There are no known policy implications for this matter.

Voting Requirement

Simple Majority Required

Officers Recommendation and Committee Decision

MINUTE: 133/2020

MOVED: Cr K White

SECONDED: Cr D Diver

That with respect to the ICT and Digital Strategy 2020-23, the Audit and Risk Management Committee recommend Council receive the report for the ICT and Digital Strategy 2020-23 (ATTACHMENT 7.2) as an informing strategy of the Shire’s Integrated Planning and Reporting Framework.

CARRIED 8/0

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7.3 REGULATION 17 REVIEW

FILE REFERENCE:	GV04
AUTHOR'S NAME AND POSITION:	Danielle Hurstfield Manager Governance
AUTHORISING OFFICER AND POSITION:	John Bingham Director Corporate Services
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	26 August 2020
DISCLOSURE OF FINANCIAL INTEREST:	The author and the authorising officer have no financial, proximity or impartiality interests in the proposal
PREVIOUS MEETING REFERENCE:	Agenda Item 7.1 (Minute No. 97) Ordinary Meeting of Council 17 January 2017

Summary

This report sets out the findings of the Chief Executive Officer's review of systems and procedures relating to legislative compliance, risk management and internal controls as required by Regulation 17 of the *Local Government (Audit) Regulations*.

Background

Regulation 16(c) of the *Local Government (Audit) Regulations 1996* states the Audit and Risk Management Committee (ARMC) is to review a report given to it by the Chief Executive Officer (CEO) under Regulation 17 (3) of the *Local Government (Audit) Regulations 1996*.

That regulation states the CEO is to review the appropriateness and effectiveness of the local governments systems and procedures in relation to risk management, internal control and legislative compliance.

The ARMC is also required to report to Council the results of that review and give a copy of the CEO's report to the Council. This is to be done on a triennial basis. The last Review of risk management, internal controls and legislative compliance was presented on 17 January 2017.

Comment

The attached report (**ATTACHMENT 7.3**) from AMD Chartered Accountants (AMD) is referred to the ARMC and contains "improvement opportunities" for the Shire.

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Risk Management

Two issues were identified as significant in the area of risk management:

Risk management	
Risk Register	
2.3.1 The Shire's risk register was last updated in April 2019, however has not subsequently been reviewed or updated.	Significant
Tendering	
2.3.2 No formal risk assessment process conducted prior to tendering, no formal post tender/ project reviews; and tender opening of submission for RFT 06.19 was only undertaken by one person, as opposed to Shire guideline requiring two people.	Significant

Management comments are as follows:

2.3.1 - Review of Shire's risk register to be undertaken and presented at the 15 December 2020 Audit and Risk Management Committee meeting with quarterly updates to follow. Also the recent organisation restructure has created an organisational risk officer position to specifically review this risk management area. Lastly ongoing education and training with officers will implement standardised documentation and ensure updated registers are maintained.

2.3.2 - A formal risk assessment is usually undertaken by the project officer. The newly created Project Control Group has now introduced business cases as a requirement when projects are submitted for budget consideration. These business cases incorporate risk assessments for tendering purposes.

Further to this the business cases can be developed to incorporate a post tender / project review.

A review of Shire documentation indicates RFT 06.19 did in fact have two persons present at the tender opening – this finding is disputed. Lastly ongoing education and training with Shire officers will seek to implement standardised documentation and ensure processes are maintained as required.

Internal Control

One issue was identified as significant in the area of internal control:

Internal controls	
3.3.1 Non-compliance with Local Government Act	
October and December 2019 Monthly Statements of Financial Activity were not presented to Council.	Significant

Management comment is as follows:

The Shire acknowledges that the October Statement of Financial Activity was omitted from the report that was presented to December 2019. It should have been presented with the November report and as such was an oversight.

Given that Council Meetings occur relatively early in the month, the Shire has acknowledged that it is not possible to finalise the monthly Statement of Financial Activity in time for the agenda close. Therefore it is now presenting each monthly statement to the Council Meeting 60 days in arrears (i.e. February report presented to April meeting, March report to May meeting etc.)

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Legislative Compliance

There were no critical (i.e. legislative compliance) issues raised in the review.

Limitations of Scope

The review identified a number of areas not assessed by AMD due to information not being provided by the Shire by the due date of 31 July 2020. Officers recommend policy development being undertaken where required as well as the proposed upcoming internal audit include in its scope of work these limitation areas.

Consultation

Executive Leadership Team
Manager Governance

Statutory Environment

Local Government (Audit) Regulations 1996

16. *Functions of audit committee*

An audit committee has the following functions —

- (a) to guide and assist the local government in carrying out —
 - (i) its functions under Part 6 of the Act; and*
 - (ii) its functions relating to other audits and other matters related to financial management;**
- (b) to guide and assist the local government in carrying out the local government's functions in relation to audits conducted under Part 7 of the Act;*
- (c) to review a report given to it by the CEO under regulation 17(3) (the CEO's report) and is to
 - (i) report to the council the results of that review; and*
 - (ii) give a copy of the CEO's report to the council;**
- (d) to monitor and advise the CEO when the CEO is carrying out functions in relation to a review under —
 - (i) regulation 17(1); and*
 - (ii) the Local Government (Financial Management) Regulations 1996 regulation 5(2)(c);**

17. *CEO to review certain systems and procedures*

- (1) The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to —
 - (a) risk management; and*
 - (b) internal control; and*
 - (c) legislative compliance.**
- (2) The review may relate to any or all of the matters referred to in subregulation (1)(a), (b) and (c), but each of those matters is to be the subject of a review not less than once in every 3 financial years.*
- (3) The CEO is to report to the audit committee the results of that review.*

Financial Implications

The review was undertaken at a cost of \$9,900 (ex GST). Improvement costs will be absorbed via existing budget provisions.

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Strategic Implications

Shire of Ashburton 10 Year Strategic Community Plan 2017-2027 (Desktop Review 2019)

Goal 05 Inspiring Governance
Objective 4 Exemplary team and work environment

Risk Management

Risk has been assessed on the basis of the Officers Recommendation.

Risk	Risk Likelihood	Risk Impact / Consequence	Risk Rating	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Compliance Failure to address areas for improvement identified in the Regulation 17 report	Possible (3)	Minor (2)	Moderate (6)	Some temporary non compliances	Adopt Officer recommendation.

The following Risk Matrix has been applied.

Risk Matrix						
Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Adoption of this item has been evaluated against the Shire of Ashburton's Risk Management Policy CORP5 Risk Matrix. The perceived level of risk is considered to be Moderate. A plan will be developed and regular monitoring and reporting will be undertaken with quarterly reporting to the Audit and Risk Committee.

Policy Implications

Various policies may need to be amended to support implementation of improvements as a result of this review. This will take place over the coming months though the policy review process.

Voting Requirement

Simple Majority Required

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Officers Recommendation and Committee Decision

MINUTE: 134/2020

MOVED: Cr D Diver

SECONDED: Cr M Lynch

That with respect to the Regulation 17 Review, the Audit and Risk Management Committee recommends Council:

- 1. Note the Regulation 17 Risk Audit ATTACHMENT 7.3 and its suggested improvements / opportunities;**
- 2. Note that a further report will be provided to the Audit and Risk Management Committee for its consideration, outlining recommended positions on those improvement opportunities offered in the Internal Audit; and**
- 3. Request a review of the Risk Register is to be presented to the 15 December 2020 Audit and Risk Management Committee.**

CARRIED 8/0

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7.4 AWARD OF RFQ 20.20 LEGAL SERVICES - WITTENOOM CLAIMS

FILE REFERENCE:	CMQ20.20
AUTHOR'S NAME AND POSITION:	Janyce Smith Senior Administration Officer
AUTHORISING OFFICER AND POSITION:	John Bingham Direction Corporate Services
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	28 August 2020
DISCLOSURE OF FINANCIAL INTEREST:	The author and the authorising officer have no financial, proximity or impartiality interests in the proposal
PREVIOUS MEETING REFERENCE:	Not Applicable

Summary

A request for Quote (RFQ) 20.20 Legal Services – Wittenoom Claim was issued via the WALGA eQuotes on the 13 August 2020 to 28 August 2020.

Quotes were sought from three legal firms on WALGA Panel C046-17 – Legal and Debt Management Services with only one response received. The evaluation panel has now completed its assessment of the submission and makes their recommendation.

Due to the value of the request for quote, Delegation DA06-1 was not utilised by the Chief Executive Officer.

Background

The Shire has, for many years, been exposed to financial risk of litigation as a result of asbestos mining in Wittenoom. New claims continue to be made against the Shire at regular intervals and these are expected to continue into the future, at an unknown rate.

Civic Legal Pty Ltd was awarded a contract under Request for Quotation CMQ 36.18. On the 13 August 2020 the Shire exercised the final 12 month extension to the contract. The Scope of Services for this extension is the provision of legal services for all current and closed Wittenoom claims in which they have provided legal services. As of 25 August 2020 Civic Legal provide legal services to six claims.

With claims expected to continue, the Shire seeks to establish a suitable and qualified firm for an ongoing period and has undertaken a new Request for Quotation process for legal services relating to new Wittenoom claims.

The Shire invited suitably experienced and qualified organisations to quote on providing professional services of legal representation for all future Wittenoom related claims against the Shire of Ashburton. The Shire seeks to engage the consultant for a period of one year with the option of a further one year plus one year (potentially three years in total) at the sole discretion of the Shire.

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The WALGA eQuotes suppliers panel was utilised and have been pre-qualified and appointed by WALGA to supply the goods or services to Local Governments.

The advertised selection criteria were:

Criteria		Weighting
(a)	Relevant Experience	40%
(b)	Capacity & Personnel	20%
(e)	Price	40%

The Evaluation and Recommendation Report, including the schedule of rates, overall evaluation scores and rankings, and is attached as a confidential item.

**CONFIDENTIAL ATTACHMENT 7.4
(Provided Under Separate Cover)**

Comment

The submission have been assessed with the below scores and rankings. Complete details of the assessment are provided in **CONFIDENTIAL ATTACHMENT 7.4**.

Rank	Tenderer	Score (/100)
1	Castledine Gregory	Advised under separate cover

Consultation

Executive Leadership Group
Manager Governance
Acting Senior Procurement Officer

Statutory Environment

Local Government Act 1995

3.57. *Tenders for providing goods or services*

- (1) *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.*
- (2) *Regulations may make provision about tenders.*

Local Government (Functions and General) Regulation 1996 Pt.2 Div.2

Division 2 — Tenders for providing goods or services (s. 3.57)

11. When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.*

Wittenoom Asbestos Claims are the subject to Australian Common Law and the procedures of the Western Australian Supreme Court.

Financial Implications

The budgeted provision for legal expenses for Wittenoom is \$1,350,000 in the 2020/21 budget, which includes money allocated for legal service on current claims, budget allocation for legal services for future claims, and the Shire's contribution to these claims.

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Litigation generated by asbestos related, Wittenoom damages claims has cost the Shire a significant amount of money. These claims will continue to have a serious, but unknown impact on the Shire's financial resources well into the future.

On many occasions asbestos related diseases do not show up for 40 to 50 years and so although the mine closed in late 1966, claims continue to come before the court. Furthermore, because ready public access is still available to the contaminated areas, claims are expected to continue for many years to come.

Strategic Implications

Shire of Ashburton 10 Year Strategic Community Plan 2017-2027 (Desktop Review 2019)

Goal 05 Inspiring Governance
Objective 4 Quality public infrastructure

Risk Management

Risk has been assessed on the basis of the Officers Recommendation.

Risk	Risk Likelihood	Risk Impact / Consequence	Risk Rating	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Financial Impact	Almost Certain (5)	Moderate (3)	High (15)	\$100,001 to \$1,000,000	Quarterly reporting to the Audit & Risk Committee.

The following Risk Matrix has been applied.

Risk Matrix						
Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

This item has been evaluated against the Shire of Ashburton's Risk Management Policy CORP5 Risk Matrix. The perceived level of risk is considered to be "Moderate to High" risk due to the financial implications and will be managed by specific monitoring and consistently reviewed.

Policy Implications

FIN12 Purchasing and Tender Policy

Voting Requirement

Absolute Majority Required

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Officers Recommendation and Committee Decision

MINUTE: 135/2020

MOVED: Cr D Diver

SECONDED: Cr K White

That with respect to the Award of RFQ 20.20 Legal Services – Wittenoom Claims, the Audit and Risk Management Committee recommend Council:

- 1. Resolve that Report CONFIDENTIAL ATTACHMENT 7.4 (provided under separate cover) is confidential in accordance with s5.23 (2) of the *Local Government Act 1995* because it deals with matters affecting s5.23 (2)(c);**

“A contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.”
- 2. Note the attached Evaluation Report, CONFIDENTIAL ATTACHMENT 7.4 (provided under separate cover);**
- 3. Award the contract for RFQ 20.20 to Castledine Gregory at the schedule of rates provided for an initial period of one year with option of a further one year plus one year (potentially three years in total);**
- 4. Authorise the Chief Executive Officer to enter into a contract with Castledine Gregory; and**
- 5. Authorise the Chief Executive Officer to manage the Contract, including the provision of possible extensions as outlined in RFQ 20.20 at the discretion of the Shire.**

CARRIED BY ABSOLUTE MAJORITY 8/0

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8. CONFIDENTIAL MATTERS

Under the Local Government Act 1995, Part 5, and Section 5.23, states in part:

- (2) *If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —*
- (a) *a matter affecting an employee or employees; and*
 - (b) *the personal affairs of any person; and*
 - (c) *a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;*
 - (d) *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and*
 - (e) *a matter that if disclosed, would reveal —*
 - (i) *a trade secret; or*
 - (ii) *information that has a commercial value to a person; or*
 - (iii) *information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government; and*
 - (f) *a matter that if disclosed, could be reasonably expected to —*
 - (i) *impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or*
 - (ii) *endanger the security of the local government's property; or*
 - (iii) *prejudice the maintenance or enforcement of a lawful measure for protecting public safety;*
 - (g) *information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971; and*
 - (h) *such other matters as may be prescribed.*

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Council Decision

MOVED: Cr D Diver

SECONDED: Cr M Lynch

That Council move behind closed doors at 9.36 am to consider the following Confidential Items.

8.1 CONFIDENTIAL ITEM - UPDATE ON WITTENOOM LITIGATION, USE OF DELEGATION, WITTENOOM STEERING COMMITTEE, SENIOR COUNSEL LEGAL ADVICE AND ROEBOURNE - WITTENOOM ROAD

pursuant to sub section 5.23 (2) (a) (b) (c) and (d) of the *Local Government Act 1995* which provides:

- (b) the personal affairs of any person;
- (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
 - (I) a matter that if disclosed, would reveal;
 - (II) a trade secret;
 - (III) information that has a commercial value to a person; or
 - (IV) information about the business, professional, commercial or financial affairs of a person.

CARRIED 8/0

8.1 CONFIDENTIAL ITEM - UPDATE ON WITTENOOM LITIGATION, USE OF DELEGATION, WITTENOOM STEERING COMMITTEE, SENIOR COUNSEL LEGAL BRIEF AND ADVICE AND ROEBOURNE - WITTENOOM ROAD

FILE REFERENCE:	LS34
AUTHOR'S NAME AND POSITION:	Keith Pearson Special Projects Advisor
	Janyce Smith Senior Administration Officer
	Mike Hudson Director Infrastructure Services
AUTHORISING OFFICER AND POSITION:	John Bingham Director Corporate Services
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	24 August 2020

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DISCLOSURE OF FINANCIAL INTEREST: The authors and the authorising officer have no financial proximity or impartiality interests in the proposal

PREVIOUS MEETING REFERENCE: Confidential Agenda Item 8.1 (Minute No. 81/2020)
Audit and Risk Committee Meeting 9 June 2020

REASON FOR CONFIDENTIALITY

The Director Corporate Services Report is confidential in accordance with s5.23 (2) *the Local Government Act 1995* because it deals with matters affecting s5.23 (2):

- (b) *the personal affairs of any person;*
- (d) *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.*

Officers Recommendation and Committee Decision

MINUTE: 136/2020

MOVED: Cr D Diver

SECONDED: Cr M Gallanagh

That with respect to the Confidential Item – Update on Wittenoom Litigation, Use of Delegation, Wittenoom Steering Committee, Senior Counsel Legal Advice and Roebourne - Wittenoom Road, the Audit and Risk Management Committee recommend Council:

1. Receive the Confidential Item – Update on Wittenoom Litigation, Use of Delegation, Wittenoom Steering Committee, Senior Counsel Brief and Advice and Roebourne - Wittenoom Road (CONFIDENTIAL ATTACHMENT 8.1) and remain confidential in accordance s5.23 (2)(b) & (d) of the *Local Government Act 1995*; and
2. Ensure that the Shire management continue to provide Wittenoom related reports to the Audit and Risk Management Committee.

CARRIED 8/0

Council Decision

MOVED: Cr M Lynch

SECONDED: Cr D Dias

That Council re-open the meeting to the public at 9.48 am pursuant to sub section 5.23 (2) (a) and (b) of the *Local Government Act 1995*.

CARRIED 8/0

**PUBLIC MINUTES - AUDIT AND RISK MANAGEMENT COMMITTEE MEETING
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9. NEXT MEETING

The next Audit and Risk Committee Meeting will be held on Tuesday 15 December 2020 at the Council Chambers, Onslow Shire Complex, Second Avenue, Onslow at a time to be advised.

10. CLOSURE OF MEETING

The Presiding Member closed the meeting at 9.48 am.