



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

**MINUTES
(Public Document)**

**Council Chambers, Onslow Shire
Complex, Second Avenue, Onslow
18 December 2018
10.00 am**

MINUTES - AUDIT AND RISK COMMITTEE MEETING 18
DECEMBER 2018

SHIRE OF ASHBURTON
AUDIT AND RISK COMMITTEE MEETING

The Chief Executive Officer recommends the endorsement of these minutes at the next Audit and Risk Committee Meeting.

CEO: 

Date: 18.12.2018

These minutes were confirmed by the Committee as a true and correct record of proceedings of the Audit and Risk Committee Meeting held on 18 December 2018.

Presiding Member: 

Date: 12/03/2019 

DISCLAIMER

The recommendations contained in the Agenda are subject to confirmation by the Committee and endorsement by the 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 10.00 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 future.

2. ATTENDANCE

2.1 PRESENT

Members:	Cr P Foster Cr K White Cr M Lynch Cr D Dias	Tom Price Ward (Presiding Member) Onslow Ward Tom Price Ward Paraburdoo Ward
Staff:	Mr R Paull Mr J Bingham Mr B Cameron Mrs S Johnston Mr A Mccoll Ms J Smith Mrs D Walkington	Chief Executive Officer Director Corporate Services Director Property and Development Services Acting Director Community Services Acting Director Infrastructure Executive Coordinator Administration Officer Community Services
Guests:	Mr Wen Shein Chai Cr L Rumble Cr L Thomas Cr R de Pledge Cr D Diver	Auditor, Moore Stephens (WA) Pty Ltd to report on Agenda Item 7.1 REVIEW OF 2017-18 INDEPENDENT AUDIT REPORT AND MANAGEMENT REPORTS Paraburdoo Ward Tablelands Ward Paraburdoo Ward Tom Price Ward
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

2.3 APPROVED LEAVE OF ABSENCE

3. ANNOUNCEMENT OF VISITORS

4. DECLARATION BY MEMBERS

4.1 DUE CONSIDERATION BY COUNCILLORS TO THE AGENDA

Councillors Foster, White, Dias and Lynch are requested to acknowledge during the meeting that they have given due consideration to all matters contained in the Agenda.

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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, that 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.
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:

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- 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 Declaration of Interests provided.		

5. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

5.1 AUDIT AND RISK COMMITTEE MEETING HELD ON 23 OCTOBER 2018

Officers Recommendation and Committee Decision	
MOVED: Cr K White	SECONDED: Cr M Lynch
That the Minutes of the Audit and Risk Committee Meeting held on 23 October 2018, be confirmed as a true and accurate record. ATTACHMENT 5.1.	
CARRIED 4/0	
Councillors Foster, White, Dias and Lynch voted for the motion	

6. TERMS OF REFERENCE

Under the *Local Government Act 1995* and regulations, local governments are required to appoint an Audit Committee as follows:

Reg.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 Local Government (Audit) Regulations 1996*
 - (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);*

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- (e) to support the auditor of the local government to conduct an audit and carry out the auditor's other duties under the Act in respect of the local government;*
- (f) to oversee the implementation of any action that the local government —*
 - (i) is required to take by section 7.12A(3); and*
 - (ii) has stated it has taken or intends to take in a report prepared under section 7.12A(4)(a); and*
 - (iii) has accepted should be taken following receipt of a report of a review conducted under regulation 17(1); and*
 - (iv) has accepted should be taken following receipt of a report of a review conducted under the Local Government (Financial Management) Regulations 1996 regulation 5(2)(c);*
- (g) to perform any other function conferred on the audit committee by these regulations or another written law.*

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7. AGENDA ITEMS

7.1 REVIEW OF 2017-18 INDEPENDENT AUDIT REPORT AND MANAGEMENT REPORTS

MINUTE: 31/2018

FILE REFERENCE: FM09

AUTHOR'S NAME AND POSITION: John Bingham
Director Corporate Services

AUTHORISING OFFICER AND POSITION: Rob Paull
Chief Executive Officer

NAME OF APPLICANT/RESPONDENT: Not Applicable

DATE REPORT WRITTEN: 3 December 2018

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 Auditors conducted the Annual Financial Audit for 2017/18 during October and November 2018. This report discusses the outcomes of the Audit including the Independent Auditors Report and Management letter.

Background

The Auditors completed their fieldwork during a visit to Tom Price in late October. At a de-brief meeting prior to departure the Auditors confirmed there were no compliance issues in relation to the *Local Government Act 1995* ("the Act") and the *Local Government (Financial Management) Regulations 2011* ("the Financial Regulations"). A list of outstanding information required by the Auditors plus completion of work papers by Finance Officers was finalised in November resulting in the Financial Report for the year ended 30 June 2018 being completed and signed off on Monday 10 December 2018.

Comment

The following reports have been presented by the Auditors:

- Independent Auditors Report to the Electors of the Shire of Ashburton for the year ended 30 June 2018 (**ATTACHMENT 7.1A** - "Auditors Report"); and
- Management Report for the year ended 30 June 2018 (**ATTACHMENT 7.1B** - "Management Report").

ATTACHMENT 7.1A
ATTACHMENT 7.1B

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The opinion on the Audit of the Financial Report can be summarised as follows:

“The Financial report of the Shire of Ashburton is in accordance with the Act and the Financial Regulations including giving a true and fair view of the Shire’s financial position as of 30 June 2018 and its financial performance and its cash-flows for the year ended on that date and complies with Australian Accounting Standards”.

Additionally the Audit opinion reports:

- There are no matters indicating adverse trends in the financial position or financial management practices of the Shire;
- No matters indicating non-compliance with Part 6 – Financial Management of *the Act* or *the Financial Regulations* or applicable financial controls of any other written law;
- In relation to the Supplementary Ratio information the calculations were supported by verifiable information and reasonable assumptions;
- All necessary information and explanations were obtained from Shire officers; and
- All audit procedures satisfactorily completed during the conduct of the audit.

The Annual Financial Report includes a Statement of Financial Position as at 30 June 2018, a Statement of Comprehensive Income, a Statement of Changes in Equity, a Statement of Cash-flows and a Statement of Rate Setting Statement for the year ended 30 June 2018 inclusive of accounting policies and other explanatory notes and statements. The Annual Financial Report has been audited by Moore Stephens and this year they provided an unqualified opinion.

The 2017/18 Annual Financial Statements are presented in **ATTACHMENT 7.1C**

An Audit Concluding Memorandum is also attached (**CONFIDENTIAL ATTACHMENT 7.1D**) and should be reviewed prior to the Audit and Risk Committee Meeting. The Audit and Risk Committee will be provided the opportunity to meet and discuss the Audit Report and Management Reports with the Auditor at the meeting.

Consultation

Executive Management Team
Finance Team and Manager
Moore Stephens (Auditor)

Statutory Environment

The Shire is required to prepare an Annual Report for each financial year in accordance with Part 5 Division 5 of *the Act*. The Report is to be accepted no later than 31 December by an absolute majority in accordance with section 5.54 of *the Act*. Section 7.12 of the *Act* also applies:

7.12A. Duties of local government with respect to audits

- (1) *A local government is to do everything in its power to —*
 - (a) *assist the auditor of the local government to conduct an audit and carry out his or her other duties under this Act in respect of the local government; and*
 - (b) *ensure that audits are conducted successfully and expeditiously.*
- (2) *Without limiting the generality of subsection (1), a local government is to meet with the auditor of the local government at least once in every year.*
- (3) *A local government is to examine the report of the auditor prepared under section 7.9(1), and any report prepared under section 7.9(3) forwarded to it, and is to —*

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- (a) *determine if any matters raised by the report, or reports, require action to be taken by the local government; and*
- (b) *ensure that appropriate action is taken in respect of those matters.*
- (4) *A local government is to —*
 - (a) *prepare a report on any actions under subsection (3) in respect of an audit conducted in respect of a financial year; and*
 - (b) *forward a copy of that report to the Minister, by the end of the next financial year, or 6 months after the last report prepared under section 7.9 is received by the local government, whichever is the latest in time*

Financial Implications

Outcomes of the Report will influence the current Budget as well as the Long Term Financial Plan.

Strategic Implications

Shire of Ashburton 10 Year Community Strategic Plan 2017-2027

Goal 4 – Quality Services and Partnerships

Objective 01 – Quality public infrastructure

Risk Management

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 "Low" 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

Committee Decision

MOVED: Cr P Foster

SECONDED: Cr M Lynch

That the Committee close the meeting to the public at 10.02 am.

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

Committee Decision

MOVED: Cr K White

SECONDED: Cr M Lynch

That the Committee suspend standing orders at 10.03 am.

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

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Committee Decision

MOVED: Cr K White

SECONDED: Cr M Lynch

That the Committee re-instate standing orders at 10.32 am.

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

Committee Decision

MOVED: Cr M Lynch

SECONDED: Cr K White

That the Committee open the meeting to the public at 10.33 am.

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

Officers Recommendation

That with respect to the Review of the 2017-18 Independent Audit Report and the Management Reports, that the Audit and Risk Committee note receipt of the Management Report for the year ended 30 June 2018 and recommend that Council:

1. Note the presentation by the Auditor to the Committee;
2. Accept the 2017/18 Annual Financial Report **ATTACHMENT 7.1A**;
3. Accept the Independent Auditors Report to the Electors of the Shire of Ashburton for the year ended 30 June 2018 **ATTACHMENT 7.1B**; and
4. Review the Audit Concluding Memorandum **CONFIDENTIAL ATTACHMENT 7.1D**, prior to the Audit and Risk Committee Meeting and request the CEO to provide an update as required in relation to the Key Audit Risks and Focus Areas.

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Committee Decision

MOVED: Cr K White

SECONDED: Cr M Lynch

That with respect to the Review of the 2017-18 Independent Audit Report and the Management Reports, that the Audit and Risk Committee note receipt of the Management Report for the year ended 30 June 2018 and recommend that Council:

- 1. Note the presentation by the Auditor to the Committee;**
- 2. Accept the 2017/18 Annual Financial Report ATTACHMENT 7.1A;**
- 3. Accept the Independent Auditors Report to the Electors of the Shire of Ashburton for the year ended 30 June 2018 ATTACHMENT 7.1B; and**
- 4. Review the Audit Concluding Memorandum CONFIDENTIAL ATTACHMENT 7.1D, prior to the Audit and Risk Committee Meeting and request the CEO to provide an update as required in relation to the Key Audit Risks and Focus Areas.**

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

Reason for change:

To ensure that the asset sustainability ratios are reviewed as required.

John Bingham & Wen Shein Chai left the meeting at 10.34 am.

John Bingham re-entered the meeting at 10.35 am.

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7.2 REGULATION 17 - RISK AUDIT PROGRESS REPORT DECEMBER 2018

MINUTE: 32/2018

FILE REFERENCE: FM14.16.17

AUTHOR'S NAME AND POSITION: Nicky Tyson
Manager Governance & Corporate Strategy

AUTHORISING OFFICER AND POSITION: Rob Paull
Chief Executive Officer

NAME OF APPLICANT/RESPONDENT: Not Applicable

DATE REPORT WRITTEN: 3 December 2018

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. 22/2018) – Audit and Risk Committee Meeting 19 September 2018

Summary

The Shire's contracted Auditors, Moore Stephens Pty Ltd (MS) conducted the most recent Risk Audit and review process in late 2016. Its report contains a list of improvements / opportunities. At the September 2018 Audit and Risk Committee meeting it was reported that a number of suggestions and opportunities had already been completed and planning had commenced and / or systems had been put in place to address the remaining. The Committee is now informed that the remaining two items have been completed.

Background

Local Government (Audit) Regulations 1996 includes 'Local Government Operational Guideline – 9 – Audit in Local Governments'. Regulation 17 prescribes a number of matters that are to be reviewed by local government Audit Committees. These functions now include reviewing the appropriateness and effectiveness of the local government's systems in regard to risk management, internal control and legislative compliance; and reporting the results of the Committee's consideration of that review, to the Council.

This Risk Audit and review process is now to occur at least once every three calendar years. The latest review / audit was conducted onsite, 24 – 25 October 2016, by MS and a report was presented to the Audit and Risk Committee in December 2016. Further progress reports were presented to the committee each quarter with the most recent being September 2018.

Comment

The attached report from the Chief Executive Officer is referred to the Audit and Risk Committee and contains progress of action taken on the recommendations from MS in the Regulation 17 Audit for the Shire of Ashburton's consideration in the areas covered by the audit, that being:

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- Risk Management;
- Internal Controls; and
- Legislative Compliance.

There were no critical (i.e. legislative compliance) issues raised in the MS Regulation 17 Audit and attached is the CEO's report to the Audit and Risk Committee (which contains updated officer status / progress comments) outlining how the Shire's Governance propose to see the improvements recommended, progressed and finalised.

ATTACHMENT 7.2

As the attached report outlines, all 43 improvement opportunities suggested in the report have now been completed through new or existing actions, upon review and approval from the committee and Council.

Consultation

Executive Management Team
Manager Governance & Corporate Strategy
Moore Stephens Australia Pty Ltd

Statutory Environment

Recent audit reforms have now been implemented with changes to the reporting period. This review is now only required once every three financial years.

Regulation 17 Local Government Audit Regulations 1996 requires the following:

A suitable allocation has been made in the budget for future reviews, with the next review due late 2019.

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

Financial Implications

Implementing the recommendations of the Report that have financial impacts will be processed through normal budgetary processes.

Strategic Implications

Shire of Ashburton 10 Year Community Strategic Plan 2017-2027
Goal 5 – Inspiring Governance
Objective 4 – Exemplary Team & Work Environment

Risk Management

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 "Medium" risk (largely due to the costs of developing / implementing new procedures, etc.) but can be managed by routine procedures and monitoring.

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Policy Implications

There are no known policy implications for this matter.

Voting Requirement

Simple Majority Required

Officers Recommendation and Committee Decision

MOVED: Cr K White

SECONDED: Cr D Dias

That with respect to the *Review of Risk Management, Legislative Compliance and Internal Controls*, the Audit and Risk Committee recommend that Council:

- 1. Note the updated and final Chief Executive Officer Report (as per ATTACHMENT 7.2) which describes how the suggested 43 improvements/opportunities have been implemented.**

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

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7.3 CORPORATE BUSINESS PLAN – QUARTERLY PROGRESS REPORT

MINUTE: 33/2018

FILE REFERENCE:	CM03
AUTHOR'S NAME AND POSITION:	Nicky Tyson Manager Governance & Corporate Strategy
AUTHORISING OFFICER AND POSITION:	Rob Paull Chief Executive Officer
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	3 December 2018
DISCLOSURE OF FINANCIAL INTEREST:	The author and the authorising officer have no financial, proximity or impartiality interests in the proposal.
PREVIOUS MEETING REFERENCE:	Audit and Risk Committee Meeting (Minute No: 23/2018) 19 September 2018

Summary

Council adopted its latest iteration of the Shire of Ashburton Corporate Business Plan (CBP) 2018 – 2022 on 18 June 2018.

While formal reporting of progress in relation to the CBP is to occur annually, via the Shire's Annual Report, it was recommended that progress reports are presented to Council on a more regular basis.

The intention is to provide progress reports to Council on a three monthly basis with the first report presented at the 19 September 2018 Audit & Risk Committee Meeting. This is the second status report of the CBP, showing further progress of how we are meeting our Goals and Objectives.

Background

The CBP outlines the strategic and operational objectives to be achieved in the four year period. The CBP demonstrates activities and projects that are fully resourced and have appropriate timelines and performance measures.

This is underpinned by a series of informing strategies and plans which include:

- our 15 year Long-Term Financial Plan;
- our Workforce Plan that is reviewed every four years in conjunction with the CBP;
- our Asset Management Plans for the life cycle of all assets including maintenance and replacement programs;
- Our adopted Annual Budget; and
- Any relevant issue specific strategies and plans for major projects or key developments.

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Comment

The Corporate Business Plan identifies five Focus Areas in line with our Strategic Community Plan, as shown below:

1. Vibrant and Active Communities;
2. Economic Prosperity;
3. Unique Heritage and Environment;
4. Quality Services and Infrastructure; and
5. Inspiring Governance

The attached document is a condensed version of the adopted CBP that reports directly on each project included in the priority areas for the 2018/19 financial year, with commentary on the relevant projects status.

Any projects or priorities not allocated or achieved within this financial year will be the focus of the following annual budget review for the subsequent years of the plan.

Each action links to our Strategic Community Plan and allows us to ensure we are meeting our requirements for the 'Plan for the Future'.

ATTACHMENT 7.3

Consultation

Executive Management Team
Manager Governance & Corporate Strategy

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

Local Government (Administration) Regulations 1996

Section 19DA Corporate Business Plans, requirements for (Act s 5.56)

Section 19DB (5) Corporate Business Plans, requirements for (Act s 5.56).

Financial Implications

All items as per the adopted 2018/19 budget.

Strategic Implications

Shire of Ashburton 10 Year Community Strategic Plan 2017-2027

Multiple Goals and Objectives will be achieved over the course of the financial year.

ATTACHMENT 7.3 references actions linked to the relevant Goal and Objective.

Risk Management

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 that will be managed by policy, procedures and monitoring by Governance and the CEO. There is a level of reputational risk to the organisation in not achieving the proposed projects, this will be closely managed by the Chief Executive Officer, Manager Governance & Corporate Strategy along with the individual responsible owners of each linked project.

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Policy Implications

There are no known policy implications for this matter.

Voting Requirement

Simple Majority Required

Officers Recommendation and Committee Decision

MOVED: Cr M Lynch

SECONDED: Cr D Dias

That with respect to the Corporate Business Plan – Quarterly Progress Report, the Audit and Risk Committee recommend that Council:

- 1. Accept the second quarterly report for the 2018/19 Financial Year of the Shire of Ashburton Corporate Business Plan 2018 -2022; ATTACHMENT 7.3; and**
- 2. Request the Chief Executive Officer to continue providing Corporate Business Plan – Quarterly Progress Reports, with the next meeting to be the 12 March 2019 Audit & Risk Committee.**

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

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**7.4 OMBUDSMAN WESTERN AUSTRALIA - LOCAL GOVERNMENT
COLLECTION OF OVERDUE RATES FOR PEOPLE IN SITUATIONS OF
VULNERABILITY - GOOD PRACTICE GUIDANCE**

MINUTE: 34/2018

FILE REFERENCE:	FM09
AUTHOR'S NAME AND POSITION:	John Bingham Director Corporate Services
AUTHORISING OFFICER AND POSITION:	Rob Paull Chief Executive Officer
NAME OF APPLICANT/RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	9 December 2018
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

Committee is requested to take note of the office of the Ombudsman Western Australia's ("the Ombudsman" Good Practice Guidance for Local governments regarding the collection of overdue rates for people in situations of vulnerability.

Background

The office of the Ombudsman Western Australia has released a Good Practice Guidance (**ATTACHMENT 7.4**) identifying four principles reflecting contemporary good practice in the collection of overdue rates for people in situations of vulnerability. These principles were identified after the Ombudsman's investigation into relevant legislation and regulatory requirements, a review of relevant literature and analysis of good practice and consultation with local governments.

Comment

Key points from the Ombudsman's report are as follows:

The Good Practice Guidance is designed to assist local governments to:

- Consider their own policies and practice for the collection of rates and overdue rates in respect to people in situations of vulnerability; and
- Identify any aspects of these policies and practices that may present opportunities for improvement to ensure that the process is efficient and effective for local governments and is fair and equitable for all ratepayers, subject to two overarching principles.

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1. Overdue rates must be paid, nonetheless, fair, reasonable and flexible approaches to payment are beneficial.
2. Good Practice Guidance should not impose unreasonable regulatory cost burdens on local governments and should be fit for size and circumstance.

The four principles reflecting contemporary good practice in the collection of overdue rates for people in situations of vulnerability are:

- I. Good Culture – a culture of achieving positive outcomes in the collection of overdue rates from people in situations of vulnerability is embedded throughout the organisation and the subject of leadership;
- II. Good Decisions – Decisions in respect to overdue rates from people in situations of vulnerability are lawful, reasonable, transparent, result in proportionate outcomes, reflect contemporary practice and are capable of being reviewed;
- III. Good Support – Staff are supported in all of their interactions with people in situations of vulnerability; and
- IV. Good Service – Accessible and flexible service provision supports the early identification and provision of support to people in situations of vulnerability.

Consultation

Executive Management Team

Statutory Environment

The collection of rates is set out in the following sections of the *Local Government Act 1995*:

6.44. Liability for rates or service charges -

- (1) *The owner for the time being of land on which a rate or service charge has been imposed is liable to pay the rate or service charge to the local government.*

6.45. Options for payment of rates or service charges -

- (1) *A rate or service charge is ordinarily payable to a local government by a single payment but the person liable for the payment of a rate or service charge may elect to make that payment to a local government, subject to subsection (3), by —*
 - (a) *4 equal or nearly equal instalments; or*
 - (b) *such other method of payment by instalments as is set forth in the local Government's annual budget.*
- (3) *A local government may impose an additional charge (including an amount by way of interest) where payment of a rate or service charge is made by instalments and that additional charge is, for the purpose of its recovery, taken to be a rate or service charge, as the case requires, that is due and payable.*

6.49. Agreement as to payment of rates and service charges -

A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.

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Overdue rates are set out on the following sections of the *Local Government Act 1995*:

6.50. Rates or service charges due and payable -

- (1) *Subject to —*
 - (a) *subsections (2) and (3); and*
 - (b) *any concession granted under section 6.47; and*
 - (c) *the Rates and Charges (Rebates and Deferments) Act 1992, a rate or service charge becomes due and payable on such date as is determined by the local government.*
- (2) *The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.*

6.51. Accrual of interest on overdue rates or service charges

- (1) *A local government may at the time of imposing a rate or service charge resolve* to impose interest (at the rate set in its annual budget) on —*
 - (a) *a rate or service charge (or any instalment of a rate or service charge); and*
 - (b) *any costs of proceedings to recover any such charge that remains unpaid after becoming due and payable.*

** Absolute majority required.*

- (2) *The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.*
- (3) *Accrued interest is, for the purpose of its recovery, taken to be a rate or service charge, as the case requires, that is due and payable.*
- (4) *If a person is entitled under the Rates and Charges (Rebates and Deferments) Act 1992 or under this Act (if the local government in a particular case so resolves) to a rebate or deferment in respect of a rate or service charge —*
 - (a) *no interest is to accrue in respect of that rate or service charge payable by that person; and*
 - (b) *no additional charge is to be imposed under section 6.45(3) on that person.*
- (5) *Regulations may provide for the method of calculation of interest.*

[Section 6.51 amended by No. 1 of 1998 s. 21(1); No. 49 of 2004 s. 62.]

The means of collecting overdue rates is set out in the following sections of the *Local Government Act 1995*:

6.60. Local government may require lessee to pay rent -

- (1) *In this section —*
lease includes an agreement whether made orally or in writing for the leasing or subleasing of land and includes a licence or arrangement for the use of land;
lessor and lessee mean the parties to a lease and their respective successors in title.

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- (2) *If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.*
- (3) *The local government is to give to the lessor a copy of the notice with an endorsement that the original of it has been given to the lessee.*
- (4) *The local government may recover the amount of the rate or service charge as a debt from the lessee if rent is not paid in accordance with the notice.*
- (5) *Where an amount is paid under this section to the local government —*
 - (a) *the payment discharges the payer from any liability to any person to pay that amount as rent; and*
 - (b) *whereas between a lessor and lessee the lessor is liable to pay the rate or service charge, the amount paid may be set off by the lessee against the rent payable to the lessor; and*
 - (c) *if the amount exceeds the rent due, or if there is no rent due, the amount may be set off by the lessee against accruing rent, or the balance recovered from the lessor in a court of competent jurisdiction.*
- (6) *To the extent that an agreement purports to preclude a lessee from setting off or recovering payments made to a local government under this section, the agreement is of no effect.*

6.56. Rates or service charges recoverable in court -

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.*
- (2) *Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.*

[Section 6.56 amended by No. 84 of 2004 s. 80.]

6.64. Actions to be taken

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —*
 - (a) *from time to time lease the land; or*
 - (b) *sell the land; or*
 - (c) *cause the land to be transferred to the Crown; or*
 - (d) *cause the land to be transferred to itself.*
- (2) *On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.*

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(3) Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.

6.12. Power to defer, grant discounts, waive or write off debts

- (1) *Subject to subsection (2) and any other written law, a local government may —*
- (a) *when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) *waive or grant concessions in relation to any amount of money; or*
 - (c) *write off any amount of money, which is owed to the local government.*

** Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*
- (4) *Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.*

[Section 6.12 amended by No. 64 of 1998 s. 39.]

Financial Implications

There are no direct financial implications to this item.

Strategic Implications

Shire of Ashburton 10 Year Community Strategic Plan 2017-2027

Goal 4 – Quality Services and Partnerships

Objective 01 – Quality public infrastructure

Risk Management

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 "Low" and can be managed by routine procedures, and is unlikely to need specific application of resources.

Policy Implications

There are no policy implications for this matter.

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Voting Requirement
Simple Majority Required

Officers Recommendation and Committee Decision

MOVED: Cr M Lynch

SECONDED: Cr D Dias

That with respect to the office of the Ombudsman Western Australia's Good Practice Guidance for Local governments regarding the collection of overdue rates for people in situations of vulnerability that Committee recommend Council note the Good Practice Guidance and ATTACHMENT 7.4.

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

8. CONFIDENTIAL MATTERS

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

1. 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;

(b) the personal affairs of any person;

(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;

(e) a matter that if disclosed, would reveal:

(I) a trade secret;

(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.

(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;

(II) Endanger the security of the local government's property; or

(III) Prejudice the maintenance or enforcement of any 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 1981; and

(h) such other matters as may be prescribed.

Committee Decision

MOVED: Cr K White

SECONDED: Cr M Lynch

That the Committee close the meeting to the public at 10.38 am pursuant to sub section 5.23 (2) (b) and (d) of the Local Government Act 1995.

CARRIED 4/0

Councillors Foster, White, Dias and Lynch voted for the motion

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8.1 CONFIDENTIAL ITEM - UPDATE ON WITTENOOM LITIGATION

MINUTE: 35/2018

FILE REFERENCE: LS34

AUTHOR'S NAME AND POSITION: Keith Pearson
Special Projects Advisor

Janyce Smith
Executive Officer

AUTHORISING OFFICER AND POSITION: Rob Paull
Chief Executive Officer

NAME OF APPLICANT/RESPONDENT: Not Applicable

DATE REPORT WRITTEN: 3 December 2018

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. 17/2018) – Audit and Risk Committee Meeting 19 June 2018

REASON FOR CONFIDENTIALITY

The Chief Executive Officer's 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.*

Committee Decision

MOVED: Cr M Lynch

SECONDED: Cr K White

That with respect to the Confidential Item – Update on Wittenoom Litigation and Appointment of Delegate on the Wittenoom Steering Committee, the Audit and Risk Committee recommend that Council:

1. Receive the Confidential Item – Update on Wittenoom Litigation report and remain confidential in accordance s5.23 (2)(b) & (d) of the *Local Government Act 1995*;
2. In the case of Lee -v- CSR Limited & Ors, authorise the Chief Executive Officer in consultation with the President to accept a claim to a value greater than that provided in delegation **DA04-1 WITTENOOM CLAIMS – LEGAL** provided that the portion not greater than percent of the claim defined in **DA04-1**.

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3. Ensure that the Shire management continue to provide Wittenoom Litigation Progress Reports to the Audit and Risk Committee.
4. That Council note that the minutes of the Wittenoom Steering Committee of 24 October 2018.

CARRIED BY ABSOLUTE MAJORITY 4/0
Councillors Foster, White, Dias and Lynch voted for the motion

Reason for change:

Committee felt that it was appropriate to note the minutes of the Wittenoom Steering Committee of 24 October 2018.

Committee Decision

MOVED: Cr K White

SECONDED: Cr M Lynch

That the Committee re-open the meeting to the public at 10.53 am.

CARRIED 4/0
Councillors Foster, White, Dias and Lynch voted for the motion

9. NEXT MEETING

The next Audit and Risk Committee Meeting will be held on Tuesday 12 March 2019 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 10.54 am.