

SHIRE OF KELLERBERRIN

MINUTES

Minutes of the Ordinary Council Meeting held at the Shire of Kellerberrin Council Chamber, 110 Massingham Street Kellerberrin on Tuesday 15th November 2016, commencing at 6:00 pm.

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISTORS:

6.00 pm – President, Cr. Forsyth declared the meeting open.

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

Present:

Cr. Forsyth	President/Presiding Person
Cr. O'Neill	Deputy President
Cr. Leake	Member
Cr. White	Member
Cr. Steber	Member
Cr. Reid	Member
Cr. McNeil	Member
Mr Raymond Griffiths	Chief Executive Officer
Mrs Karen Oborn	Deputy Chief Executive Officer – Minutes
Mr Mick Jones	Manager Works and Services
Mr Garry Tucker	Manager Development Services
Mrs Natasha Giles	Community Development Officer

Apologies:

Leave of Absence: Nil

3. RESPONSE TO PREVIOUS PUBLIC QUESTION TAKEN ON NOTICE: Nil

4. PUBLIC QUESTION TIME: Nil

5. APPLICATIONS FOR LEAVE OF ABSENCE: Nil

6. DECLARATION OF INTEREST:

In accordance with Section 5.65 of the *Local Government Act 1995* the following disclosures of **Financial** interest were made at the Council meeting held on **15th November 2016**.

Date	Name	Item No.	Reason

In accordance with Section 5.65 of the *Local Government Act 1995* the following disclosures of **Closely Association Person and Impartiality** interest were made at the Council meeting held on **15th November 2016**.

Date	Name	Item No.	Reason

In accordance with Section 5.60B and 5.65 of the *Local Government Act 1995* the following disclosures of **Proximity** interest were made at the Council meeting held on **15th November 2016**.

Date	Name	Item No.	Reason

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

7.1 Shire of Kellerberrin Ordinary Council Meeting Minutes, 18th October 2016

COUNCIL RECOMMENDATION

MIN 181/16 MOTION: Moved Cr. Steber 2nd Cr. McNeil

That the minutes of the Shire of Kellerberrin Ordinary Council Meeting held on Tuesday 18th October 2016, be confirmed as a true and accurate record

CARRIED 7/0

8. ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION: Nil

9. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS: Nil

10. REPORTS OF COMMITTEES/COUNCILLORS

10.1 Reports of Committees/Councillors

MIN 182/16 MOTION: Moved Cr. White 2nd Cr. O'Neill

That the President's reports for November 2016 be received

CARRIED 7/0

11.1 CORPORATE SERVICE – AGENDA ITEM

Agenda Reference:	11.1.1
Subject:	Community Requests and Discussion Items
Location:	Shire of Kellerberrin
Applicant:	Shire of Kellerberrin - Council
File Ref:	Various
Disclosure of Interest:	N/A
Date:	7 th November 2016
Author:	Mr Raymond Griffiths, Chief Executive Officer

BACKGROUND

Council during the Performance Appraisal process for the Chief Executive Officer requested time during the meeting to bring forward ideas, thoughts and points raised by the community.

October 2016 Council Meeting

MIN 164/16 MOTION - Moved Cr. White 2nd Cr. Leake

That Council;

- *Look into the requirement for a bin at the Baandee Look Out on Bruce Rock Road and look to incorporate into the upgrade being undertaken for the Pipeline Trail;*
- *Approach the Bruce Rock Shire regarding installing a sign pointing to Kellerberrin from Kokerbin rock;*
- *Develop documented guidelines regarding the conditions for using Council land for fundraising purposes through community ‘cropping’, including an option for Council to lease the properties out commercially, if permissible, in the event there are no community groups wishing to use the land.*

CARRIED 6/0

September 2016 Council Meeting

MIN 151/16 MOTION - Moved Cr. Steber 2nd Cr. Leake

That Council;

- **Write to the CRC regarding the defensive driving training course and future opportunities with RAC withdrawing the course availability, with CDO to follow up.**
- **Request the Manager Works and Services reviews the issues raised by the Doodlakine Community Committee members being;**
 - **Main Street Intersection pot holes**
 - **Tolley Road pot holes**
 - **Mather Road between Quarry and Town**
 - **Town Vacant blocks and roadsides fuel loading and limiting the exposure.**

CARRIED 7/0

August 2016 Council Meeting

MIN 140/16 MOTION - Moved Cr. Reid 2nd Cr. Steber

That Council, on the finalisation of titles for the Skackleton Road re-alignment ensure that all road signs in relation to the realignment, be checked for accuracy and signs are correct.

CARRIED 7/0

COMMENT

October 2016 – MIN 164/16

- 1 – Council has obtained that the cost associated would outweigh the need to place a bin at this look out.
- 2 - Council has contacted Bruce Rock Shire and got approval to install a sign at Kokerbin rock. MW&S is looking into ordering the sign.
- 3 – CEO is currently investigating.

September 2016 – MIN 151/16

Pot hole repairs completed on requested roads.
Mather Road has had tress pruned ready for road works.
Town crew have completed the clean up on vacant blocks and entry in Doodlakine.

August 2016 – MIN 140/16

Council is waiting to receive paperwork from Prompt settlements to finalise this re-alignment. Have followed up with Prompt settlements currently awaiting from responses from purchasers banks to respond to be able to complete settlement.

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

Financial Implications will be applicable depending on requests and decision of Council.

POLICY IMPLICATIONS

Policy Implications will depend on items brought forward by Council. During discussions the Policy Manual will be referred to prior to decision being finalised.

STATUTORY IMPLICATIONS

Local Government Act 1995 (as amended)

Section 2.7. The role of the council

- (1) The council —
 - (a) directs and controls the local government's affairs; and
 - (b) is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the council is to —
 - (a) oversee the allocation of the local government's finances and resources; and
 - (b) determine the local government's policies.

Section 2.8. The role of the mayor or president

- (1) The mayor or president —
 - (a) presides at meetings in accordance with this Act;
 - (b) provides leadership and guidance to the community in the district;
 - (c) carries out civic and ceremonial duties on behalf of the local government;
 - (d) speaks on behalf of the local government;
 - (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
 - (f) liaises with the CEO on the local government's affairs and the performance of its functions.

- (2) Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

Section 2.9. The role of the deputy mayor or deputy president

The deputy mayor or deputy president performs the functions of the mayor or president when authorised to do so under section 5.34.

Section 2.10. The role of councillors

A councillor —

- (a) represents the interests of electors, ratepayers and residents of the district;
- (b) provides leadership and guidance to the community in the district;
- (c) facilitates communication between the community and the council;
- (d) participates in the local government's decision-making processes at council and committee meetings; and
- (e) performs such other functions as are given to a councillor by this Act or any other written law.

5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

- (a) the relevant person; or
- (b) a person with whom the relevant person is closely associated,

has —

- (c) a direct or indirect financial interest in the matter; or
- (d) a proximity interest in the matter.

[Section 5.60 inserted by No. 64 of 1998 s. 30.]

5.60A. Financial interest

For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

[Section 5.60A inserted by No. 64 of 1998 s. 30; amended by No. 49 of 2004 s. 50.]

5.60B. Proximity interest

- (1) For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —
- (a) a proposed change to a planning scheme affecting land that adjoins the person's land;
 - (b) a proposed change to the zoning or use of land that adjoins the person's land; or
 - (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.
- (2) In this section, land (**the proposal land**) adjoins a person's land if —
- (a) the proposal land, not being a thoroughfare, has a common boundary with the person's land;
 - (b) the proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or
 - (c) the proposal land is that part of a thoroughfare that has a common boundary with the person's land.

- (3) In this section a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.

[Section 5.60B inserted by No. 64 of 1998 s. 30.]

5.61. Indirect financial interests

A reference in this Subdivision to an indirect financial interest of a person in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in relation to the matter.

5.62. Closely associated persons

- (1) For the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if —
- (a) the person is in partnership with the relevant person; or
 - (b) the person is an employer of the relevant person; or
 - (c) the person is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee; or
 - (ca) the person belongs to a class of persons that is prescribed; or
 - (d) the person is a body corporate —
 - (i) of which the relevant person is a director, secretary or executive officer; or
 - (ii) in which the relevant person holds shares having a total value exceeding —
 - (I) the prescribed amount; or
 - (II) the prescribed percentage of the total value of the issued share capital of the company,whichever is less;
- or
- (e) the person is the spouse, de facto partner or child of the relevant person and is living with the relevant person; or
 - (ea) the relevant person is a council member and the person —
 - (i) gave a notifiable gift to the relevant person in relation to the election at which the relevant person was last elected; or
 - (ii) has given a notifiable gift to the relevant person since the relevant person was last elected;
- or
- (eb) the relevant person is a council member and since the relevant person was last elected the person —
 - (i) gave to the relevant person a gift that section 5.82 requires the relevant person to disclose; or
 - (ii) made a contribution to travel undertaken by the relevant person that section 5.83 requires the relevant person to disclose;
- or
- (f) the person has a relationship specified in any of paragraphs (a) to (d) in respect of the relevant person's spouse or de facto partner if the spouse or de facto partner is living with the relevant person.

- (2) In subsection (1) —

notifiable gift means a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election;

value, in relation to shares, means the value of the shares calculated in the prescribed manner or using the prescribed method.

5.63. Some interests need not be disclosed

- (1) Sections 5.65, 5.70 and 5.71 do not apply to a relevant person who has any of the following interests in a matter —
- (a) an interest common to a significant number of electors or ratepayers;
 - (b) an interest in the imposition of any rate, charge or fee by the local government;
 - (c) an interest relating to a fee, reimbursement of an expense or an allowance to which section 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.101(2) refers;
 - (d) an interest relating to the pay, terms or conditions of an employee unless —
 - (i) the relevant person is the employee; or
 - (ii) either the relevant person's spouse, de facto partner or child is the employee if the spouse, de facto partner or child is living with the relevant person;
 - [(e) *deleted*]
 - (f) an interest arising only because the relevant person is, or intends to become, a member or office bearer of a body with non-profit making objects;
 - (g) an interest arising only because the relevant person is, or intends to become, a member, office bearer, officer or employee of a department of the Public Service of the State or Commonwealth or a body established under this Act or any other written law; or
 - (h) a prescribed interest.
- (2) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —
- (a) any proposed change to a planning scheme for any area in the district;
 - (b) any proposed change to the zoning or use of land in the district; or
 - (c) the proposed development of land in the district,
- then, subject to subsection (3) and (4), the person is not to be treated as having an interest in a matter for the purposes of sections 5.65, 5.70 and 5.71.
- (3) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —
- (a) any proposed change to a planning scheme for that land or any land adjacent to that land;
 - (b) any proposed change to the zoning or use of that land or any land adjacent to that land; or
 - (c) the proposed development of that land or any land adjacent to that land,
- then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.
- (4) If a relevant person has a financial interest because any land in which the person has any interest other than an interest relating to the valuation of that land or any land adjacent to that land may be affected by —
- (a) any proposed change to a planning scheme for any area in the district;
 - (b) any proposed change to the zoning or use of land in the district; or
 - (c) the proposed development of land in the district,

then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.

- (5) A reference in subsection (2), (3) or (4) to the development of land is a reference to the development, maintenance or management of the land or of services or facilities on the land.

[Section 5.63 amended by No. 1 of 1998 s. 15; No. 64 of 1998 s. 32; No. 28 of 2003 s. 111; No. 49 of 2004 s. 52; No. 17 of 2009 s. 27.]

[5.64. Deleted by No. 28 of 2003 s. 112.]

5.65. Members' interests in matters to be discussed at meetings to be disclosed

- (1) A member who has an 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 CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- Penalty: \$10 000 or imprisonment for 2 years.
- (2) It is a defence to a prosecution under this section if the member proves that he or she did not know —
- (a) that he or she had an interest in the matter; or
 - (b) that the matter in which he or she had an interest would be discussed at the meeting.
- (3) This section does not apply to a person who is a member of a committee referred to in section 5.9(2)(f).

5.66. Meeting to be informed of disclosures

If a member has disclosed an interest in a written notice given to the CEO before a meeting then —

- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matters to which the disclosure relates are discussed.

[Section 5.66 amended by No. 1 of 1998 s. 16; No. 64 of 1998 s. 33.]

5.67. Disclosing members not to participate in meetings

A member who makes a disclosure under section 5.65 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 relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under section 5.68 or 5.69.

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

5.68. Councils and committees may allow members disclosing interests to participate etc. in meetings

- (1) If a member has disclosed, under section 5.65, an interest in a matter, the members present at the meeting who are entitled to vote on the matter —
- (a) may allow the disclosing member to be present during any discussion or decision making procedure relating to the matter; and
 - (b) may allow, to the extent decided by those members, the disclosing member to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision making procedures relating to the matter if —
 - (i) the disclosing member also discloses the extent of the interest; and
 - (ii) those members decide that the interest —

- (I) is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct in relation to the matter; or
 - (II) is common to a significant number of electors or ratepayers.
- (2) A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with the extent of any participation allowed by the council or committee.
- (3) This section does not prevent the disclosing member from discussing, or participating in the decision making process on, the question of whether an application should be made to the Minister under section 5.69.

5.69. Minister may allow members disclosing interests to participate etc. in meetings

- (1) If a member has disclosed, under section 5.65, an interest in a matter, the council or the CEO may apply to the Minister to allow the disclosing member to participate in the part of the meeting, and any subsequent meeting, relating to the matter.
- (2) An application made under subsection (1) is to include —
 - (a) details of the nature of the interest disclosed and the extent of the interest; and
 - (b) any other information required by the Minister for the purposes of the application.
- (3) On an application under this section the Minister may allow, on any condition determined by the Minister, the disclosing member to preside at the meeting, and at any subsequent meeting, (if otherwise qualified to preside) or to participate in discussions or the decision making procedures relating to the matter if —
 - (a) there would not otherwise be a sufficient number of members to deal with the matter; or
 - (b) the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.
- (4) A person must not contravene a condition imposed by the Minister under this section.
Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.69 amended by No. 49 of 2004 s. 53.]

5.69A. Minister may exempt committee members from disclosure requirements

- (1) A council or a CEO may apply to the Minister to exempt the members of a committee from some or all of the provisions of this Subdivision relating to the disclosure of interests by committee members.
- (2) An application under subsection (1) is to include —
 - (a) the name of the committee, details of the function of the committee and the reasons why the exemption is sought; and
 - (b) any other information required by the Minister for the purposes of the application.
- (3) On an application under this section the Minister may grant the exemption, on any conditions determined by the Minister, if the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.
- (4) A person must not contravene a condition imposed by the Minister under this section.
Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.69A inserted by No. 64 of 1998 s. 34(1).]

5.70. Employees to disclose interests relating to advice or reports

- (1) In this section —
employee includes a person who, under a contract for services with the local government, provides advice or a report on a matter.

- (2) An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.
- (3) An employee who discloses an interest under this section must, if required to do so by the council or committee, as the case may be, disclose the extent of the interest.
- Penalty: \$10 000 or imprisonment for 2 years.

5.71. Employees to disclose interests relating to delegated functions

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

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

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

STRATEGIC PLAN IMPLICATIONS:

The Strategic Plan will be the driver and provide Guidance for Council in their decision making process for the community requests.

**CORPORATE BUSINESS PLAN IMPLICATIONS
(Including Workforce Plan and Asset Management Plan Implications)**

LONG TERM PLAN IMPLICATIONS: Nil (not applicable at this date and therefore unknown)

COMMUNITY CONSULTATION:

Council
Community Members.

STAFF RECOMMENDATION

That Council note that no requests or ideas to be actioned.

COUNCIL RECOMMENDATION

MIN 183/16 MOTION - Moved Cr. McNeil 2nd Cr. Reid

That Council note that no requests or ideas to be actioned.

CARRIED 7/0

Agenda Reference:	11.1.2
Subject:	Acting Chief Executive Officer
Location:	Shire of Kellerberrin
Applicant:	Shire of Kellerberrin
File Ref:	Personal
Disclosure of Interest:	N/A
Date:	8 th November 2016
Author:	Mr Raymond Griffiths, Chief Executive Officer

BACKGROUND

Councils Chief Executive Officer is looking to take Annual Leave over the January/February 2016 period though the official dates or timeframe are flexible as to leave arrangements being finalised.

In accordance with the provisions of the Local Government Act 1995, Council is required to appoint an Acting CEO for this period.

COMMENT

I don't foresee any issues in relation to me taking Annual Leave and appointing the Deputy Chief Executive Officer to Acting Chief Executive Officer as current projects and works have all been discussed.

In addition the Deputy Chief Executive Officer has the responsibility written into her position description.

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

Council within its 2016/2017 Salaries and Wages Budget has an allocation for higher duties for the Deputy Chief Executive Officer.

This Budget allocation is based on the Chief Executive Officer taking 5 weeks of Annual Leave.

POLICY IMPLICATIONS

STATUTORY IMPLICATIONS

LOCAL GOVERNMENT ACT 1995 (as amended)

5.36. Local government employees

- (1) A local government is to employ —
 - (a) a person to be the CEO of the local government; and
 - (b) such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.
- (2) A person is not to be employed in the position of CEO unless the council —
 - (a) believes that the person is suitably qualified for the position; and
 - (b) is satisfied* with the provisions of the proposed employment contract.

** Absolute majority required.*

- (3) A person is not to be employed by a local government in any other position unless the CEO —
 - (a) believes that the person is suitably qualified for the position; and
 - (b) is satisfied with the proposed arrangements relating to the person's employment.
- (4) Unless subsection (5A) applies, if the position of CEO of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.

- (5A) Subsection (4) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.
- (5) For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.

[Section 5.36 amended by No. 49 of 2004 s. 44; No. 17 of 2009 s. 21.]

5.37. Senior employees

- (1) A local government may designate employees or persons belonging to a class of employee to be senior employees.
- (2) The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.
- (3) Unless subsection (4A) applies, if the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.
- (4A) Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.
- (4) For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.

[Section 5.37 amended by No. 49 of 2004 s. 45 and 46(4); No. 17 of 2009 s. 22.]

5.38. Annual review of certain employees' performances

The performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.

5.39. Contracts for CEO and senior employees

- (1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.
- (1a) Despite subsection (1) —
 - (a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and
 - (b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.
- (2) A contract under this section —
 - (a) in the case of an acting or temporary position, cannot be for a term exceeding one year;
 - (b) in every other case, cannot be for a term exceeding 5 years.
- (3) A contract under this section is of no effect unless —
 - (a) the expiry date is specified in the contract;
 - (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and
 - (c) any other matter that has been prescribed as a matter to be included in the contract has been included.
- (4) A contract under this section is to be renewable and subject to subsection (5), may be varied.

- (5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.
- (6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b) from being terminated within that period on the happening of an event specified in the contract.
- (7) A report made by the Salaries and Allowances Tribunal, under section 7A of the *Salaries and Allowances Act 1975*, containing recommendations as to the remuneration to be paid or provided to a CEO is to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.

[Section 5.39 amended by No. 49 of 2004 s. 46(1)-(3).]

5.40. Principles affecting employment by local governments

The following principles apply to a local government in respect of its employees —

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity;
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage;
- (c) employees are to be treated fairly and consistently;
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the *Equal Opportunity Act 1984* or on any other ground;
- (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Safety and Health Act 1984*; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.

5.41. Functions of CEO

The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;
- (b) ensure that advice and information is available to the council so that informed decisions can be made;
- (c) cause council decisions to be implemented;
- (d) manage the day to day operations of the local government;
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- (f) speak on behalf of the local government if the mayor or president agrees;
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

* *Absolute majority required.*

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

[Section 5.42 amended by No. 1 of 1998 s. 13.]

5.43. Limits on delegations to CEO

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

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

[Section 5.43 amended by No. 49 of 2004 s. 16(3) and 47; No. 17 of 2009 s. 23.]

5.44. CEO may delegate powers and duties to other employees

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

[Section 5.44 amended by No. 1 of 1998 s. 14(1).]

5.45. Other matters relevant to delegations under this Division

- (1) Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984* —
 - (a) a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and
 - (b) any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.

- (2) Nothing in this Division is to be read as preventing —
 - (a) a local government from performing any of its functions by acting through a person other than the CEO; or
 - (b) a CEO from performing any of his or her functions by acting through another person.

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

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

SALARIES AND ALLOWANCES ACT 1975

Section 7A. Recommendations as to remuneration of local government CEOs

- (1) The Tribunal shall, from time to time, inquire into and make a report containing recommendations as to the remuneration to be paid or provided to chief executive officers of local governments.
- (2) A report of the Tribunal made under this section shall be —
 - (a) in writing; and
 - (b) signed by the members.
- (3) A copy of every report made by the Tribunal under this section shall be published in the *Gazette*.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS 1996

Part 4 — Local government employees

[Heading inserted in Gazette 26 Aug 2011 p. 3482.]

18A. Vacancy in position of CEO or senior employee to be advertised (Act s. 5.36(4) and 5.37(3))

- (1) If a position of CEO, or of a senior employee, of a local government becomes vacant, the local government is to advertise the position in a newspaper circulating generally throughout the State unless it is proposed that the position be filled by —
 - (a) a person who is, and will continue to be, employed by another local government and who will fill the position on a contract or contracts for a total period not exceeding 5 years; or
 - (b) a person who will be acting in the position for a term not exceeding one year.
- (2) An advertisement referred to in subregulation (1) is to contain —
 - (a) the details of the remuneration and benefits offered; and
 - (b) details of the place where applications for the position are to be submitted; and
 - (c) the date and time for the closing of applications for the position; and
 - (d) the duration of the proposed contract; and
 - (e) contact details for a person who can provide further information about the position; and
 - (f) any other information that the local government considers is relevant.

[Regulation 18A inserted in Gazette 31 Mar 2005 p. 1037-8; amended in Gazette 19 Aug 2005 p. 3872; 3 May 2011 p. 1594.]

18B. Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))

For the purposes of section 5.39(3)(c), a contract governing the employment of a person who is a CEO, or a senior employee, of a local government is to provide for a maximum amount of money (or a method of calculating such an amount) to which the person is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of —

- (a) the value of one year's remuneration under the contract; or
- (b) the value of the remuneration that the person would have been entitled to had the contract not been terminated.

[Regulation 18B inserted in Gazette 13 May 2005 p. 2086.]

18C. Selection and appointment process for CEOs

The local government is to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

[Regulation 18C inserted in Gazette 31 Mar 2005 p. 1038.]

18D. Performance review of CEO, local government's duties as to

A local government is to consider each review on the performance of the CEO carried out under section 5.38 and is to accept the review, with or without modification, or to reject the review.

[Regulation 18D inserted in Gazette 31 Mar 2005 p. 1038.]

18E. False information in application for CEO position, offence

A person must not, in connection with an application for the position of CEO of a local government —

- (a) make a statement, or give any information, as to academic, or other tertiary level, qualifications held by the applicant that the person knows is false in a material particular; or
- (b) make a statement, or give any information, as to academic, or other tertiary level, qualifications held by the applicant which is false or misleading in a material particular, with reckless disregard as to whether or not the statement or information is false or misleading in a material particular.

Penalty: \$5 000.

[Regulation 18E inserted in Gazette 31 Mar 2005 p. 1038-9; amended in Gazette 19 Aug 2005 p. 3872.]

18F. Remuneration and benefits of CEO to be as advertised

The remuneration and other benefits paid to a CEO on the appointment of the CEO are not to differ from the remuneration and benefits advertised for the position under section 5.36(4).

[Regulation 18F inserted in Gazette 31 Mar 2005 p. 1039.]

18G. Delegations to CEOs, limits on (Act s. 5.43)

Powers and duties of a local government exercised under the following provisions are prescribed under section 5.43(i) as powers and duties that a local government cannot delegate to a CEO —

- (a) section 7.12A(2), (3)(a) or (4); and
- (b) regulations 18C and 18D.

[Regulation 18G inserted in Gazette 31 Mar 2005 p. 1039.]

19. Delegates to keep certain records (Act s. 5.46(3))

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

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

19A. Payments in addition to contract or award, limits of (Act s. 5.50(3))

- (1) The value of a payment or payments made under section 5.50(1) and (2) to an employee whose employment with a local government finishes after 1 January 2010 is not to exceed in total —
 - (a) if the person accepts voluntary severance by resigning as an employee, the value of the person's final annual remuneration; or
 - (b) in all other cases, \$5 000.

- (2) In this regulation —

final annual remuneration in respect of a person, means the value of the annual remuneration paid, or payable, to the person by the local government which employed that person immediately before the person's employment with the local government finished.

[Regulation 19A inserted in Gazette 31 Mar 2005 p. 1032.]

STRATEGIC COMMUNITY PLAN IMPLICATIONS - Nil

CORPORATE BUSINESS PLAN IMPLICATIONS - Nil
(Including Workforce Plan and Asset Management Plan Implications)

TEN YEAR FINANCIAL PLAN IMPLICATIONS - Nil

COMMUNITY CONSULTATION

Chief Executive Officer

ABSOLUTE MAJORITY REQUIRED – YES/NO

STAFF RECOMMENDATION

That Council

1. *Delegates authority to the Chief Executive Officer to appoint an Acting Chief Executive Officer during the continued absence of the Chief Executive Officer when on leave for more than 5 continuous working days.*
2. *Delegates the authority to the Chief Executive Officer to approve a rate of higher duties for the duration of the period as Acting CEO.*

COUNCIL RECOMMENDATION

MIN 184/16 MOTION - Moved Cr. Steber 2nd Cr. White

That Council

1. ***Delegates authority to the Chief Executive Officer to appoint an Acting Chief Executive Officer during the continued absence of the Chief Executive Officer when on leave for more than 5 continuous working days.***
2. ***Delegates the authority to the Chief Executive Officer to approve a rate of higher duties for the duration of the period as Acting CEO.***

CARRIED 7/0

Agenda Reference:	11.1.3
Subject:	Delegated Authority review to CEO
Location:	Shire of Kellerberrin
Applicant:	Shire of Kellerberrin - Administration
File Ref:	Delegations File (SAFE)
Record Ref:	MIN 118/16
Disclosure of Interest:	
Date:	8 th November 2016
Author:	Mr Raymond Griffiths, Chief Executive Officer

BACKGROUND

The Local Government Act 1995 as amended, the associated Regulations and the Compliance Audit Return requires the Local Government to review its delegation of Powers/Authority to the Chief Executive Officer, at least once in every twelve (12) months and then for the Chief Executive Officer to review his Delegation of Authority to identified Senior Staff and Management Staff within the same review period.

July 2016 Council Meeting

MIN 118/16 MOTION - Moved Cr. O'Neill 2nd Cr. Steber

- 1. That in accordance with section 5.42 of the Local Government Act 1995 as amended and in accordance with sections 10, 14, 17, 48 and 50 of the Bush Fires Act 1954, the defined delegations as per the attached Delegations Schedule to the Chief Executive Officer, be made to the Chief Executive Officer and remain in place until the next Delegations Review has been completed.*
- 2. That all previous Delegations to the Chief Executive Officer be cancelled.*

CARRIED 7/0
BY ABSOLUTE MAJORITY

June 2015 Council Meeting

MIN 97/15 MOTION - Moved Cr. McNeil 2nd Cr. O'Neill

- 1. That in accordance with section 5.42 of the Local Government Act 1995 as amended and in accordance with sections 10, 14, 17, 48 and 50 of the Bush Fires Act 1954, the defined delegations as per the attached Delegations Schedule to the Chief Executive Officer, be made to the Chief Executive Officer and remain in place until the next Delegations Review has been completed.*
- 2. That all previous Delegations to the Chief Executive Officer be cancelled.*

CARRIED 6/0
BY ABSOLUTE MAJORITY

June 2014 Council Meeting

MIN 73/14 MOTION - Moved Cr. O'Neill 2nd Cr. Bee

- 1. That in accordance with section 5.42 of the Local Government Act 1995 as amended and in accordance with sections 10, 14, 17, 48 and 50 of the Bush Fires Act 1954, the defined delegations as per the attached Delegations Schedule to the Chief Executive Officer, be made to the Chief Executive Officer and remain in place until the next Delegations Review has been completed.*
- 2. That all previous Delegations to the Chief Executive Officer be cancelled.*

CARRIED 7/0
BY ABSOLUTE MAJORITY

MIN 101/13 MOTION - Moved Cr. Clarke 2nd Cr. O'Neill

- 1. That in accordance with section 5.42 of the Local Government Act 1995 as amended and in accordance with sections 10, 14, 17, 48 and 50 of the Bush Fires Act 1954, the defined delegations as per the attached Delegations Schedule to the Chief Executive Officer, be made to the Chief Executive Officer and remain in place until the next Delegations Review has been completed.**
- 2. That all previous Delegations to the Chief Executive Officer be cancelled.**

CARRIED 5/0
BY ABSOLUTE MAJORITY

COMMENT

The proposed delegations are summarised as per the enclosed Delegations Schedule and has been presented on the basis of;

1. Statutory Requirement to do so under the Local Government Act 1995 associated Regulations of the Local Government Act 1995, the Bush Fires Act 1954 and the Compulsory Annual Compliance Audit Return.
2. For continued and efficient Management of daily Functions of the Staff to completing Business and Administrative requirements of the Council.
3. The proposed Delegations are in accordance with Local Government Industry Standards of a Local Government Operation of this size.
4. The attached Delegations Schedule has been amended to include Local Government Act changes and associated Regulations changes to keep the list at a minimum standard for efficient and effective management of Councils daily business requirements and in accordance with the statutory functions of the Council and that of the Chief Executive Officer.

Council has been advised my Peter Gillett from McLeods Barristers and Solicitors that the Shire requires specific delegation to the CEO or any other employee of the Shire to commence a prosecution under s.133 of the Building Act.

The delegations register as per the attachment has been updated to include this requirement.

FINANCIAL IMPLICATIONS: Nil (not known at this time)

POLICY IMPLICATIONS: Nil (not known at this time)

STATUTORY IMPLICATIONS

Local Government Act 1995 (as amended)

5.41. Functions of CEO

The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;
- (b) ensure that advice and information is available to the council so that informed decisions can be made;
- (c) cause council decisions to be implemented;
- (d) manage the day to day operations of the local government;
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- (f) speak on behalf of the local government if the mayor or president agrees;

- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

** Absolute majority required.*

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

[Section 5.42 amended by No. 1 of 1998 s. 13.]

5.43. Limits on delegations to CEO

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

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

[Section 5.43 amended by No. 49 of 2004 s. 16(3) and 47; No. 17 of 2009 s. 23.]

5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
 - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and
 - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,
 are subject to any conditions imposed by the local government on its delegation to the CEO.

- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.
- (5) In subsections (3) and (4) —
conditions includes qualifications, limitations or exceptions.
[Section 5.44 amended by No. 1 of 1998 s. 14(1).]

5.45. Other matters relevant to delegations under this Division

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

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

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Bush Fires Act 1954

7. Interpretation

- (1) In this Act unless the context otherwise indicates or requires —
adjoining, when used with respect to 2 or more pieces of land, extends to pieces of land which are separated only by a road or roads or by a railway or by a water-course;
authorised CALM Act officer means a wildlife officer, forest officer, ranger or conservation and land management officer who is authorised for the purposes of section 45(3a) of the *Conservation and Land Management Act 1984*;
Authority means the Fire and Emergency Services Authority of Western Australia established by section 4 of the FESA Act;
bush includes trees, bushes, plants, stubble, scrub, and undergrowth of all kinds whatsoever whether alive or dead and whether standing or not standing and also a part of a tree, bush, plant, or undergrowth, and whether severed therefrom or not so severed. The term does not include sawdust, and other waste timber resulting from the sawmilling of timber in a sawmill whilst the sawdust and other waste timber remains upon the premises of the sawmill in which the sawmilling is carried on;
bush fire brigade means a bush fire brigade for the time being registered in a register kept pursuant to section 41;
CALM Act CEO has the meaning given to "CEO" by section 3 of the *Conservation and Land Management Act 1984*;
CALM Act Department has the meaning given to "Department" by section 3 of the *Conservation and Land Management Act 1984*;

Chief Executive Officer means the person holding, acting in, or otherwise discharging the duties of, the office of chief executive officer of the Authority, as referred to in section 19 of the FESA Act;

forest land means State forest and timber reserves within the meaning of the *Conservation and Land Management Act 1984* and any land to which section 131 of that Act applies;

member of the Authority means a member of the board of management referred to in section 6 of the FESA Act;

occupier of land means, subject to subsection (2), a person residing on the land or having charge or control of it, whether the person is the owner or tenant or a bailiff, servant, caretaker, or other person residing or having charge or control of the land and includes a person who as mortgagee in possession has possession of the land, while the land is unoccupied, and also a person who has the charge or control of 2 or more separate parcels of land, although the person resides on only one of the parcels;

prohibited burning times means the times of the year during which it is declared by the Minister under section 17 to be unlawful to set fire to the bush within a zone of the State and, in relation to any land in such a zone —

- (a) includes any extension of those times made, or any further times imposed, under that section in respect of the whole of that zone or in respect of the part of that zone, or the district or part of a district, in which that land is situated; but
- (b) does not include any period by which those times are reduced, or for which those times are suspended, under that section in respect of the whole of that zone or in respect of the part of that zone, or the district or part of a district, in which that land is situated or in respect of that land in particular;

restricted burning times means the times of the year during which it is declared by the Authority under section 18 to be unlawful to set fire to the bush within a zone of the State except in accordance with a permit obtained under that section and with the conditions prescribed for the purposes of that section and, in relation to land in such a zone —

- (a) includes any extension of those times made, or any further times imposed, under that section in respect of the whole of that zone or in respect of the part of that zone, or the district or part of a district, in which that land is situated; but
- (b) does not include any period by which those times are reduced, or for which those times are suspended, under that section in respect of the whole of that zone or in respect of that part of that zone, or the district or part of a district, in which that land is situated;

the FESA Act means the *Fire and Emergency Services Authority of Western Australia Act 1998*.

- (2) Subject to section 33(9), a reference in this Act to an owner or occupier of land does not include a reference to a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.

10. Powers of Authority

- (1) The Authority shall —
 - (a) report to the Minister as often as it thinks expedient so to do on the best means to be taken for preventing or extinguishing bush fires;
 - (b) perform and undertake such powers and duties as may be entrusted to it by the Minister;
 - (c) subject to the general control of and direction by the Minister, be responsible for the administration of this Act;
 - (d) recommend to the Minister the prohibited burning times to be declared for the whole or any part of the State;

- (e) carry out such fire prevention measures as it considers necessary;
 - (f) carry out research in connection with fire prevention and control and matters pertaining to fire prevention and control;
 - (g) conduct publicity campaigns for the purpose of improving fire prevention measures.
- (2) The Authority may —
- (a) recommend that the Chief Executive Officer appoint and employ such persons as the Authority considers necessary for carrying out the provisions of this Act;
 - (b) organise and conduct bush fire brigade demonstrations and competitions and provide prizes and certificates for presentation to bush fire brigades and competitors;
 - (c) pay the expenses of bush fire brigades attending bush fire brigade demonstrations.

[Section 10 amended by No. 65 of 1977 s. 7; No. 42 of 1998 s. 8 and 16.]

12. Appointment of bush fire liaison officers

- (1) The Chief Executive Officer may, on the recommendation of the Authority and with the approval of the Minister, appoint persons under section 20 of the FESA Act to be bush fire liaison officers for the purposes of this Act.
- (2) Any person who was a bush fire warden immediately before the coming into operation of section 9 of the *Bush Fires Act Amendment Act 1977*¹ shall be deemed to have been appointed to be a bush fire liaison officer under subsection (1).

[Section 12 inserted by No. 65 of 1977 s. 9; amended by No. 42 of 1998 s. 10.]

14. Members of the Authority and other persons may enter land or buildings for purposes of the Act

- (1) A member of the Authority, an officer who is authorised by the Authority so to do, a bush fire liaison officer and a bush fire control officer, appointed in accordance with the provisions of this Act, and, subject to the proviso to this section, a member of the Police Force, is empowered to enter any land or building at any time to —
 - (a) examine a fire which he has reason to believe has been lit, or maintained, or used in contravention of this Act;
 - (b) examine a fire which he believes is not under proper control;
 - (c) examine fire-breaks on the land;
 - (d) examine anything which he considers to be a fire hazard existing on the land;
 - (e) investigate the cause and origin of a fire which has been burning on the land or building;
 - (f) inspect fire precaution measures taken on the land;
 - (g) investigate and examine the equipment of a bush fire brigade;
 - (h) do all things necessary for the purpose of giving effect to this Act.

Provided that a member of the Police Force is not empowered under this section to enter any land or building for any purpose other than those specified in paragraphs (a), (b) and (e).

- (2) A bush fire liaison officer or a member of the Police Force exercising the power conferred by subsection (1)(e) may remove from the land or building, and keep possession of, anything which may tend to prove the origin of the fire.

[Section 14 amended by No. 11 of 1963 s. 5; No. 65 of 1977 s. 11 and 47; No. 60 of 1992 s. 8; No. 42 of 1998 s. 16; No. 38 of 2002 s. 20.]

[Divisions 3 and 4 (s. 15-16E) deleted by No. 42 of 1998 s. 11(1).]

Part III — Prevention of bush fires

[Division 1 deleted by No. 65 of 1977 s. 12.]

Division 2 — Prohibited burning times

17. Prohibited burning times may be declared by Minister

- (1) The Minister may, by declaration published in the *Gazette*, declare the times of the year during which it is unlawful to set fire to the bush within a zone of the State mentioned in the declaration and may, by subsequent declaration so published, vary that declaration or revoke that declaration either absolutely or for the purpose of substituting another declaration for the declaration so revoked.
- (2) Where by declaration made under subsection (1) prohibited burning times have been declared in respect of a zone of the State then, subject to such variations (if any) as are made under that subsection from time to time, those prohibited burning times shall have effect in respect of that zone in each year until that declaration is revoked.
- (3) A copy of the *Gazette* containing a declaration published under subsection (1) shall be received in all courts as evidence of the matters set out in the declaration.
- (4) Where the Authority considers that burning should be carried out on any land, the Authority may suspend the operation of a declaration made under subsection (1), so far as the declaration extends to that land, for such period as it thinks fit and specifies and subject to such conditions as may be prescribed or as it thinks fit and specifies.
- (5) The Authority may authorise a person appointed by it to regulate, permit or define the class of burning that may be carried out, and the times when and conditions under which a fire may be lit, on the land referred to in subsection (4) during the period of suspension granted under that subsection.
- (6) In any year in which the Authority considers that seasonal conditions warrant a variation of the prohibited burning times in a zone of the State the Authority may, by notice published in the *Gazette*, vary the prohibited burning times in respect of that year in the zone or a part of the zone by —
 - (a) shortening, extending, suspending or reimposing a period of prohibited burning times; or
 - (b) imposing a further period of prohibited burning times.
- (7)(a) Subject to paragraph (b), in any year in which a local government considers that seasonal conditions warrant a variation of the prohibited burning times in its district the local government may, after consultation with an authorised CALM Act officer if forest land is situated in the district, vary the prohibited burning times in respect of that year in the district or a part of the district by —
 - (i) shortening, extending, suspending or reimposing a period of prohibited burning times; or
 - (ii) imposing a further period of prohibited burning times.
- (b) A variation of prohibited burning times shall not be made under this subsection if that variation would have the effect of shortening or suspending those prohibited burning times by, or for, more than 14 successive days.
- (8) Where, under subsection (7), a local government makes a variation to the prohibited burning times in respect of its district or a part of its district the following provisions shall apply —
 - (a) the local government —
 - (i) shall, by the quickest means available to it and not later than 2 days before the first day affected by the variation, give notice of the variation to any local government whose district adjoins that district;

- (ii) shall, by the quickest means available to it, give particulars of the variation to the Authority and to any Government department or instrumentality which has land in that district under its care, control and management and which has requested the local government to notify it of all variations made from time to time by the local government under this section or section 18;
 - (iii) shall, as soon as is practicable publish particulars of the variation in that district;
 - (b) the Minister, on the recommendation of the Authority, may give notice in writing to the local government directing it —
 - (i) to rescind the variation; or
 - (ii) to modify the variation in such manner as is specified in the notice;
 - (c) on receipt of a notice given under paragraph (b) the local government shall forthwith —
 - (i) rescind or modify the variation as directed in the notice; and
 - (ii) publish in that district notice of the rescission or particulars of the modification, as the case may require.
- (9) For the purposes of subsections (7) and (8) **publish** means to publish in a newspaper circulating in the district of the local government, to broadcast from a radio broadcasting station that gives radio broadcasting coverage to that district, to place notices in prominent positions in that district, or to publish by such other method as the Authority may specify in writing.
- (10) A local government may by resolution delegate to its mayor, or president, and its Chief Bush Fire Control Officer, jointly its powers and duties under subsections (7) and (8).
- (11) A local government may by resolution revoke a delegation it has given under subsection (10) and no delegation so given prevents the exercise and discharge by the local government of its powers and duties under subsections (7) and (8).
- (12) Subject to this Act a person who sets fire to the bush on land within a zone of the State during the prohibited burning times for that zone is guilty of an offence.
- Penalty: \$10 000 or 12 months' imprisonment or both.

[Section 17 inserted by No. 65 of 1977 s. 13; amended by No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 21 and 40(1).]

Division 3 — Restricted burning times

18. Restricted burning times may be declared by Authority

- (1) Nothing contained in this section authorises the burning of bush during the prohibited burning times.
- (2) The Authority may, by notice published in the *Gazette*, declare the times of the year during which it is unlawful to set fire to the bush within a zone of the State mentioned in the notice except in accordance with a permit obtained under this section and with the conditions prescribed for the purposes of this section, and may, by subsequent notice so published, vary that declaration or revoke that declaration either wholly or for the purpose of substituting another declaration for the declaration so revoked.
- (3) Where by declaration made under subsection (2) restricted burning times have been declared in respect of a zone of the State then, subject to such variations (if any) as are made under that subsection from time to time, those restricted burning times shall have effect in respect of that zone in each year until that declaration is revoked.
- (4) A copy of the *Gazette* containing a declaration published under subsection (2) shall be received in all courts as evidence of the matters set out in the declaration.

- (4a) In any year in which the Authority considers that seasonal conditions warrant a variation of the restricted burning times in a zone, or part of a zone, of the State the Authority may, by notice published in the *Gazette*, vary the restricted burning times in respect of that year in the zone or part of the zone by —
- (a) shortening, extending, suspending or reimposing a period of restricted burning times; or
 - (b) imposing a further period of restricted burning times.
- (5)(a) Subject to paragraph (b) in any year in which a local government considers that seasonal conditions so warrant the local government may, after consultation with an authorised CALM Act officer if forest land is situated in its district —
- (i) vary the restricted burning times in respect of that year in the district or a part of the district by —
 - (A) shortening, extending, suspending or reimposing a period of restricted burning times; or
 - (B) imposing a further period of restricted burning times;
 - or
 - (ii) vary the prescribed conditions by modifying or suspending all or any of those conditions.
- (b) A variation shall not be made under this subsection if that variation would have the effect of —
- (i) shortening the restricted burning times by; or
 - (ii) suspending the restricted burning times, or any prescribed condition, for, more than 14 successive days during a period that would, in the absence of the variation under this subsection, be part of the restricted burning times for that zone in that year.
- (c) The provisions of section 17(8), (9), (10) and (11), with the necessary adaptations and modifications, apply to and in relation to the variation of restricted burning times or prescribed conditions by a local government, as if those provisions were expressly incorporated in this section.
- (d) For the purposes of this subsection **prescribed condition** includes the requirement of subsection (6)(a).
- (6) Subject to this Act a person shall not set fire to the bush on land within a zone of the State during the restricted burning times for that zone of the State unless —
- (a) he has obtained a permit in writing to burn the bush from a bush fire control officer of the local government in whose district the land upon which the bush proposed to be burnt is situated, or from the chief executive officer of the local government if a bush fire control officer is not available; and
 - (b) the conditions prescribed for the purposes of this section are complied with in relation to the burning of the bush.
- (7) The person issuing a permit to burn under this section may, by endorsement on the permit —
- (a) incorporate therein any additional requirements and directions considered necessary by him relative to the burning; or
 - (b) modify or dispense with any of the conditions prescribed for the purposes of this section in so far as those conditions are applicable to the burning.
- (8) The holder of a permit to burn under this section —
- (a) shall observe and carry out any requirement or direction incorporated therein pursuant to subsection (7)(a);

- (b) shall, where any prescribed condition is modified pursuant to subsection (5) or subsection (7)(b), comply with that condition as so modified;
 - (c) need not comply with any prescribed condition that is suspended or dispensed with pursuant to subsection (5) or (7)(b).
- (9) A permit issued under this section may authorise the owner or occupier of land to burn the bush on a road reserve adjoining that land.
- (10)(a) Subject to the regulations a local government may by resolution declare that within its district bush may be burnt only on such dates and by such persons as are prescribed by a schedule of burning times adopted by the local government.
- (b) A person desiring to set fire to bush within the district of the local government that has so resolved shall, by such date as may be determined by the local government, apply to the local government for permission to set fire to the bush, and the local government shall allocate a day or days on which the burning may take place.
 - (c) The burning shall be done only on the day or days and in the manner specified by the local government and subject to the conditions prescribed for the purposes of this section except that any prescribed period of notice may be varied by the local government in order to enable the schedule of burning times adopted by it to be given effect to.
- (11) Where a person starts a fire on land, if the fire escapes from the land or if the fire is in the opinion of a bush fire control officer or an officer of a bush fire brigade out of control on the land, the person shall be liable to pay to the local government on the request of and for recoup to its bush fire brigade, any expenses up to a maximum amount of \$10 000 incurred by it in preventing the extension of or extinguishing the fire, and such expenses may be recovered in any court of competent jurisdiction.
- (12) A person who commits a breach of this section other than subsection (11) is guilty of an offence.
 Penalty: For a first offence \$4 500.
 For a second or subsequent offence \$10 000.
[Section 18 inserted by No. 65 of 1977 s. 14; amended by No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 22, 39 and 40(1).]

Part V — Miscellaneous

48. Delegation by local governments

- (1) A local government may, in writing, delegate to its chief executive officer the performance of any of its functions under this Act.
- (2) Performance by the chief executive officer of a local government of a function delegated under subsection (1) —
 - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the local government.
- (3) A delegation under this section does not include the power to subdelegate.
- (4) Nothing in this section is to be read as limiting the ability of a local government to act through its council, members of staff or agents in the normal course of business.

[Section 48 inserted by No. 38 of 2002 s. 35.]

50. Records to be maintained by local governments

- (1) A local government shall maintain records containing the following information —
 - (a) the names, addresses, and usual occupations of all the bush fire control officers and bush fire brigade officers appointed by or holding office under the local government;

- (b) where a bush fire control officer holds office in respect of part only of the district of the local government, descriptive particulars of that part of the district in respect of which the bush fire control officer holds office;
 - (c) particulars of the nature, quantity, and quality of the bush fire fighting equipment and appliances which are generally available within the district of the local government for use in controlling and extinguishing bush fires.
- (2) The Governor may make regulations —
- (a) requiring an owner or occupier of land to notify the local government in whose district the land is situated of the occurrence of any bush fire on the land;
 - (b) requiring a local government to send to the Authority particulars of losses caused by bush fires in its district;
 - (c) prescribing the times at or within which, and the manner in which, the requirements of the regulations shall be complied with;
 - (d) imposing a maximum penalty of \$1 000 for any breach of the regulations.

[Section 50 amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 39; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39.]

Compliance Audit Report

Annual endorsement and certification, that the process of Council and CEO has reviewed its delegated authority respectively.

STRATEGIC PLAN IMPLICATIONS: Nil (not known at this time)

FUTURE PLAN IMPLICATIONS: Nil (not known at this time)

COMMUNITY CONSULTATION: Nil (not required – a statutory function of the Council and of the Chief Executive Officer)

ABSOLUTE MAJORITY – YES

STAFF RECOMMENDATION

1. That in accordance with section 5.42 of the Local Government Act 1995 as amended and in accordance with sections 10, 14, 17, 48 and 50 of the Bush Fires Act 1954, the defined delegations as per the attached Delegations Schedule to the Chief Executive Officer, be made to the Chief Executive Officer and remain in place until the next Delegations Review has been completed.
2. That all previous Delegations to the Chief Executive Officer be cancelled.

COUNCIL RECOMMENDATION

MIN 185/16 MOTION - Moved Cr. Leake 2nd Cr. Reid

1. ***That in accordance with section 5.42 of the Local Government Act 1995 as amended and in accordance with sections 10, 14, 17, 48 and 50 of the Bush Fires Act 1954, the defined delegations as per the attached Delegations Schedule to the Chief Executive Officer, be made to the Chief Executive Officer and remain in place until the next Delegations Review has been completed.***
2. ***That all previous Delegations to the Chief Executive Officer be cancelled.***

CARRIED 7/0
BY ABSOLUTE MAJORITY

Agenda Reference:	11.1.4
Subject:	October 2016 Cheque List
Location:	Shire of Kellerberrin
Applicant:	N/A
File Ref:	N/A
Record Ref:	N/A
Disclosure of Interest:	N/A
Date:	7 th November 2016
Author:	Miss Codi Mullen, Administration Officer

BACKGROUND

Accounts for payment from 1st October 2016 – 31st October 2016

Trust Fund

EFT & CHQ

TRUST TOTAL	\$ 1,600.00
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Municipal Fund

Cheque Payments

34112 - 34137	\$ 58,036.36
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EFT Payments

6407 - 6493	\$ 213,872.63
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Direct Debit Payments	\$ 112,184.30
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TOTAL MUNICIPAL	\$ 384,093.29
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COMMENT

During the month of October 2016, the Shire of Kellerberrin made the following significant purchases:

Department of Transport - TRUST DIRECT DEBITS Licensing CRC	\$ 75,922.73
LICENSING PAYMENTS - OCTOBER 2016	
CE and H Smith	\$ 56,287.00
Hire of grader and side tipper - September 2016	
Great Southern Fuel Supplies	\$ 17,166.95
Fuel Purchase for August 2016	
CE and H Smith	\$ 16,901.50
Truck and Trailer Hire July 16	
Avon Waste	\$ 16,751.46
Domestic & Commercial Refuse August & September 16	
Merredin Refrigeration & Gas	\$ 13,490.00
Supply and Install 2 x Mitsubishi Electric 10.4kw Reverse cycle inverter ceiling cassette	
Synergy	\$ 8,611.40
Power consumption from 11/08/2016 - 11/10/2016	
Brooks Hire Service Pty Ltd	\$ 8,571.42
Hire of 20t excavator for Glenluce Road – August 2016	
Shire of Brookton	\$ 8,400.00
Long Service Leave Reimbursement	
Western Australian Treasury Corporation	\$ 8,171.09
Loan No. 116A	
Kellerberrin & Districts Club	\$ 8,065.15
Quarterly Payment Wages & Solar Panels October 16	
REST Superannuation	\$ 7,771.40
Payroll deductions & Superannuation contributions	
Alleasing Pty Ltd	\$ 7,610.77
Lease Gym Equipment	
WA Local Government Superannuation Plan Pty Ltd	\$ 6,738.55
Payroll deductions & Superannuation contributions	

WA Local Government Superannuation Plan Pty Ltd	\$	6,632.86
Payroll deductions & Superannuation contributions		
Octave Holdings Pty Ltd t/a Great Southern Toyota	\$	6,150.00
Supply of New 2016 Prado		
Synergy	\$	5,947.90
Street light Traffis Charge July - August & Power consumption		
Western Australian Local Government Association	\$	5,442.99
2016 WA Local Government Convention		
Hydreco Hydraulics (WA) Pty Ltd	\$	5,060.00
R285-2-060 - hydraulic hoist		
Buttco Fencing	\$	5,005.00
Supply, erect and repair fencing on quarry boundary		
Key2Creative	\$	4,922.50
Website design and development		
Synergy	\$	4,410.11
Power consumption & Streetlight Charge from August - September 2016		

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

Shire of Kellerberrin 2016/2017 Operating Budget

POLICY IMPLICATIONS - Nil

STATUTORY IMPLICATIONS

Local Government (Financial Management) Regulations 1996

11. Payment of accounts

- (1) A local government is to develop procedures for the authorisation of, and the payment of, accounts to ensure that there is effective security for, and properly authorised use of —
 - (a) cheques, credit cards, computer encryption devices and passwords, purchasing cards and any other devices or methods by which goods, services, money or other benefits may be obtained; and
 - (b) Petty cash systems.
- (2) A local government is to develop procedures for the approval of accounts to ensure that before payment of an account a determination is made that the relevant debt was incurred by a person who was properly authorised to do so.
- (3) Payments made by a local government —
 - (a) Subject to sub-regulation (4), are not to be made in cash; and
 - (b) Are to be made in a manner which allows identification of —
 - (i) The method of payment;
 - (ii) The authority for the payment; and
 - (iii) The identity of the person who authorised the payment.
- (4) Nothing in sub-regulation (3) (a) prevents a local government from making payments in cash from a petty cash system.

[Regulation 11 amended in Gazette 31 Mar 2005 p. 1048.]

12. Payments from municipal fund or trust fund

- (1) A payment may only be made from the municipal fund or the trust fund —
 - (a) If the local government has delegated to the CEO the exercise of its power to make payments from those funds — by the CEO; or
 - (b) Otherwise, if the payment is authorised in advance by a resolution of the council.
- (2) The council must not authorise a payment from those funds until a list prepared under regulation 13(2) containing details of the accounts to be paid has been presented to the council.

[Regulation 12 inserted in Gazette 20 Jun 1997 p. 2838.]

13. Lists of accounts

- (1) If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared —
 - (a) The payee's name;
 - (b) The amount of the payment;
 - (c) The date of the payment; and
 - (d) Sufficient information to identify the transaction.
- (2) A list of accounts for approval to be paid is to be prepared each month showing —
 - (a) For each account which requires council authorisation in that month —
 - (i) The payee's name;
 - (ii) The amount of the payment; and
 - (iii) Sufficient information to identify the transaction;And
 - (b) The date of the meeting of the council to which the list is to be presented.
- (3) A list prepared under sub-regulation (1) or (2) is to be —
 - (a) Presented to the council at the next ordinary meeting of the council after the list is prepared; and
 - (b) Recorded in the minutes of that meeting.

STRATEGIC COMMUNITY PLAN IMPLICATIONS - Nil

CORPORATE BUSINESS PLAN IMPLICATIONS - Nil

(Including Workforce Plan and Asset Management Plan Implications)

TEN YEAR FINANCIAL PLAN IMPLICATIONS - Nil

COMMUNITY CONSULTATION - Nil

ABSOLUTE MAJORITY REQUIRED – NO

STAFF RECOMMENDATION

That Council notes that during the month of October 2016, the Chief Executive Officer has made the following payments under council's delegated authority as listed in appendix A to the minutes.

1. *Municipal Fund payments totalling **\$384,093.29** on vouchers EFT , CHQ, Direct payments*
2. *Trust Fund payments totalling **\$1,600.00** on vouchers EFT, CHQ, Direct payments*

COUNCIL RECOMMENDATION

MIN 186/16 MOTION - Moved Cr. Steber 2nd Cr. McNeil

That Council notes that during the month of October 2016, the Chief Executive Officer has made the following payments under council's delegated authority as listed in appendix A to the minutes.

1. ***Municipal Fund payments totalling **\$384,093.29** on vouchers EFT , CHQ, Direct payments***
2. ***Trust Fund payments totalling **\$1,600.00** on vouchers EFT, CHQ, Direct payments***

CARRIED 7/0

Agenda Reference:	11.1.5
Subject:	Financial Management Report, Direct Debit List and Visa Card Transactions for the month October 2016
Location:	Shire of Kellerberrin
Applicant:	Shire of Kellerberrin
File Ref:	N/A
Record Ref:	N/A
Disclosure of Interest:	N/A
Date:	7 November 2016
Author:	Jennine Ashby, Senior Finance Officer

BACKGROUND

Please see below the Direct Debit List and Visa Card Transactions for the month of October 2016.

Enclosed is the Monthly Financial Report for the month of October 2016.

Municipal Fund – Direct Debit List

Date	Name	Details	\$	Amount
3-Oct-16	Westnet	Monthly Charge Static IP address	\$	4.99
4-Oct-16	Shire of Kellerberrin	EFT Payment	\$	1,264.23
4-Oct-16	National Australia Bank	VISA Transactions	\$	1,449.39
5-Oct-16	Alleasing	Lease Gym Equipment	\$	7,610.77
5-Oct-16	Shire of Kellerberrin	EFT Payment	\$	19,113.77
6-Oct-16	Shire of Kellerberrin	Payroll	\$	50,592.70
6-Oct-16	Shire of Kellerberrin	Payroll - Click Super	\$	8,359.57
13-Oct-16	Shire of Kellerberrin	EFT Payment	\$	1,250.00
14-Oct-16	DLL Group	Monthly Photocopier Lease	\$	265.21
17-Oct-16	SG Fleet	Monthly Lease Payment	\$	3,752.07
20-Oct-16	Shire of Kellerberrin	Payroll	\$	50,922.75
20-Oct-16	Shire of Kellerberrin	Payroll - Click Super	\$	15,084.78
20-Oct-16	National Australia Bank	Connect Fee Access and Usage	\$	55.49
24-Oct-16	Australian Taxation Office	BAS September 2016	\$	20,814.00
24-Oct-16	Shire of Kellerberrin	EFT Payment	\$	54,289.58
28-Oct-16	Shire of Kellerberrin	EFT Payment	\$	140,555.05
31-Oct-16	National Australia Bank	BPAY Charges	\$	24.84
31-Oct-16	National Australia Bank	Account Fees - Municipal	\$	51.20
31-Oct-16	National Australia Bank	Account Fees - Trust	\$	69.80
TOTAL			\$	375,530.19

Trust Fund – Direct Debit List

Date	Name	Details	\$	Amount
31-Oct-16	Department Transport	Direct Debit-Licensing Payments Oct 16	\$	77,522.73
TOTAL			\$	77,522.73

Visa Card Transactions

Date	Name	Details	\$	Amount
30-Sep-16	Tiles Expo Midland	Purchases 22 Gregory Street	\$	61.60
30-Sep-16	Cunderdin Roadhouse	Diesel Fuel - KE001	\$	135.03
07-Oct-16	Braille Tactile Signs	Changeroom Signs - Recreation Centre	\$	1,349.30
11-Oct-16	BP Kellerberrin	Diesel Fuel - KE001		79.60
14-Oct-16	Beyond Power Pty Ltd	Diesel Fuel - KE001		143.05
28-Oct-16	Good Guys Midland	iRobot, iphone and ipad	\$	2,491.00
28-Jan-16	National Australia Bank	Card Fee	\$	9.00
TOTAL - CEO			\$	4,268.58

29-Sep-16	St John Ambulance	First Aid Course - P Arthur	\$	144.00
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06-Oct-16	Kellerberrin Pie Shop	Staff Consumables	\$	40.50
10-Oct-16	Tammin Roadhouse	Unleaded Fuel - KE002	\$	66.00
12-Oct-16	Tammin Roadhouse	Unleaded Fuel - KE002	\$	47.09
28-Oct-16	National Australia Bank	Card Fee	\$	9.00
TOTAL - DCEO			\$	306.59
TOTAL VISA TRANSACTIONS			\$	4,575.17

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

➤ Financial Management of 2016/2017

POLICY IMPLICATIONS - Nil

STATUTORY IMPLICATIONS

Local Government (Financial Management) Regulations 1996

34. Financial activity statement report — s. 6.4

(1A) In this regulation —

committed assets means revenue unspent but set aside under the annual budget for a specific purpose.

- (1) A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —
 - (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);
 - (b) budget estimates to the end of the month to which the statement relates;
 - (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;
 - (d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and
 - (e) the net current assets at the end of the month to which the statement relates.
- (2) Each statement of financial activity is to be accompanied by documents containing —
 - (a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;
 - (b) an explanation of each of the material variances referred to in subregulation (1)(d); and
 - (c) such other supporting information as is considered relevant by the local government.
- (3) The information in a statement of financial activity December be shown —
 - (a) according to nature and type classification; or
 - (b) by program; or
 - (c) by business unit.
- (4) A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be —
 - (a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and
 - (b) recorded in the minutes of the meeting at which it is presented.

- (5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.

STRATEGIC PLAN IMPLICATIONS - Nil

CORPORATE BUSINESS PLAN IMPLICATIONS - Nil

TEN YEAR FINANCIAL PLAN IMPLICATIONS - Nil

COMMUNITY CONSULTATION – Nil

ABSOLUTE MAJORITY REQUIRED – No

STAFF RECOMMENDATION

- 1) *That the Financial Report for the month of October 2016 comprising;*
 - (a) *Statement of Financial Activity*
 - (b) *Note 1 to Note 9*
- 2) *That the Direct Debit List for the month of October 2016 comprising;*
 - (a) *Municipal Fund – Direct Debit List*
 - (b) *Trust Fund – Direct Debit List*
 - (c) *Visa Card Transactions*

Be adopted.

COUNCIL RECOMMENDATION

MIN 187/16 MOTIONS - Moved Cr. O'Neill 2nd Cr. White

- 1) ***That the Financial Report for the month of October 2016 comprising;***
 - (a) Statement of Financial Activity***
 - (b) Note 1 to Note 9***
- 2) ***That the Direct Debit List for the month of October 2016 comprising;***
 - (a) Municipal Fund – Direct Debit List***
 - (b) Trust Fund – Direct Debit List***
 - (c) Visa Card Transactions***

Be adopted.

CARRIED 7/0

11.2 DEVELOPMENT SERVICES – AGENDA ITEM

Agenda Reference:	11.2.1
Subject:	Building Returns: October 2016
Location:	Shire of Kellerberrin
Applicant:	Various
File Ref:	BUILD06
Disclosure of Interest:	Nil
Date:	4 th November 2016.
Author:	Mr Garry Tucker, Manager Development Services

BACKGROUND

Council has provided delegated authority to the Chief Executive Officer, which has been delegated to the Building Surveyor to approve of proposed building works which are compliant with the Building Act 2011, Building Code of Australia and the requirements of the Shire of Kellerberrin Town Planning Scheme No.4.

COMMENT

1. One application was received for a "Building Permit" during the October 2016 period. A copy of the "Australian Bureau of Statistics appends.
2. One "Building Permit" was issued in the October 2016 period. See attached form "Return of Building Permits Issued".

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

There is income from Building fees and a percentage of the levies paid to other agencies. ie: "Building Services Levy" and "Construction Industry Training Fund" (when construction cost exceeds \$20,000)

POLICY IMPLICATIONS - Nil

STATUTORY IMPLICATIONS

- Building Act 2011
- Shire of Kellerberrin Town Planning Scheme 4

STRATEGIC COMMUNITY PLAN IMPLICATIONS - Nil

CORPORATE BUSINESS PLAN IMPLICATIONS - Nil (Including Workforce Plan and Asset Management Plan Implications)

TEN YEAR FINANCIAL PLAN IMPLICATIONS - Nil

COMMUNITY CONSULTATION

Building Surveyor
Owners
Building Contractors

ABSOLUTE MAJORITY REQUIRED – NO

STAFF RECOMMENDATION

That Council

1. *Acknowledge the "Return of Proposed Building Operations" for the October 2016 period.*
2. *Acknowledge the "Return of Building Permits Issued" for the October 2016 period.*

COUNCIL RECOMMENDATION

MIN 188/16 MOTION - Moved Cr. McNeil 2nd Cr. O'Neill

That Council

- 1. Acknowledge the "Return of Proposed Building Operations" for the October 2016 period.***
- 2. Acknowledge the "Return of Building Permits Issued" for the October 2016 period***

CARRIED 7/0

Agenda Reference:	11.2.2
Subject:	Waste Management Strategy & Business Plan 2016 - 2026
Location:	Shire of Kellerberrin
Applicant:	Shire of Kellerberrin
File Ref:	ENVH 16, ENVH 48
Record #:	MIN 104/16
Disclosure of Interest:	N/A
Date:	30 th May 2016
Author:	Karen Oborn, Deputy Chief Executive Officer

BACKGROUND

In 2007 all local government were advised that it must prepare Zero Waste Plans. These later became "Towards Zero Waste Plans" and officially became Strategic Waste Management Plans pursuant to the Waste Avoidance and Resource Recovery Act 2007. The Shires of Merredin, Bruce Rock, Kellerberrin, Merredin, Nungarin, Tammin, Westonia and Yilgarn, developed a Strategic Waste Plan 2009-2013 through We-Roc with a \$20,000 grant. This plan has now expired.

Current regulations require Local Government agencies to have a Waste Management Strategy.

COMMENT

The Waste Management Strategy & Business Plan 2016 - 2026 (WMSBP) is a condensed document outlining the Shire of Kellerberrin services and programs undertaken to deliver appropriate affordable levels of waste management in the Shire. The plan also provides a summary of the costs and revenue linked to the provision of waste management services.

The document includes an action plan designed to deliver some new community initiatives, explore different business models to improve efficiency and review Shire policy to deliver improved waste management outcomes.

MIN 104/16 MOTION - Moved Cr. Steber 2nd Cr. White

That Council;

- 1. Adopts the Waste Management Strategy & Business Plan 2016 - 2026 including its appendices.***
- 2. Advertise the document for 28 days seeking public comment***
- 3. At the closure of the submission period the WMSBP be presented to Council for final adoption with or without modification.***

CARRIED 7/0

Council advertised in the Pipeline on the 27th June 2016, No submissions were received.

FINANCIAL IMPLICATIONS

The Shire of Kellerberrin includes expenditure and revenue in its annual budgets. The 2016 / 2017 budget will include provision of \$2000 for community waste programs.

POLICY IMPLICATIONS - Nil

STATUTORY IMPLICATIONS

The Act requires that Council prepare and implement a plan. The procedures include a public submission period as determined by the Local Government, but sufficient and suitable for the region.

STRATEGIC PLAN IMPLICATIONS - Nil

LONG TERM FINANCIAL PLAN IMPLCATIONS

In February 2016 Council adopted the Long Term Financial Plan which recommended fees and charges increase 1.5% each year, to be reviewed when preparing the annual budget.

COMMUNITY CONSULTATION

Strategic Community Plan - Public Consultation 2016
Chief Executive Officer
Manager Works and Services
Manager Development Services
Senior Finance Officer
Community Development Officer

ABSOLUTE MAJORITY REQUIRED – YES

STAFF RECOMMENDATION

That Council;

- 1. Adopts the Waste Management Strategy & Business Plan 2016 - 2026 including its appendices without modification*

COUNCIL RECOMMENDATION

MIN 189/16 MOTION - Moved Cr. Steber 2nd Cr. Reid

That Council;

- 1. Adopts the Waste Management Strategy & Business Plan 2016 - 2026 including its appendices without modification*

CARRIED 7/0

Agenda Reference:	11.2.3
Subject:	51 Forrest Street, Kellerberrin
Location:	51 Forrest Street, Kellerberrin
Applicant:	Melinda Marchesano
File Ref:	A555
Record Ref:	ICR161237
Disclosure of Interest:	N/A
Date:	31 st October 2016
Author:	Mr Raymond Griffiths, Chief Executive Officer

BACKGROUND

Council received information that there was possibly somebody illegally camping on a residential site in Forrest Street, Kellerberrin.

On inspection it was noticed that someone has set up a campsite at 51 Forrest Street, after further investigation it was realized that the people camping at the above location was indeed the owners.

Council's CEO requested that Mr Garry Tucker review the situation as camping at that site is illegal.

Council on 21 October 2016 issued a letter to the owners advising that they are camping illegally.

The letter advised that the owner had until Friday, 29th October 2016 to rectify the illegal camping issue.

Council subsequent to this has met with the owner to ascertain what their future plans are. It was at this point we requested that the owner provide a letter requesting camping at this site.

Council on 26 October, 2016 received a written request from the owner advising of their intentions to build on the property and that currently in the process of receiving quotes for professionals to draw up plans to submit.

The owner is expecting to have building commenced after Christmas 2017.

The owner has also advised they have water connected; toilets connected to sewerage and are running on solar power.

COMMENT

Council under the caravan Parks and camping grounds regulations 1997 can grant approval for up to three months in any period of 12 months.

Council can also on receipt of building permit application grant approval for the owners to occupy the land by camping while the building licence is in force. Unfortunately to date a building permit hasn't been applied for therefore council can only approve camping for a three month period.

On receipt of the building permit the owner can reapply for council permission to camp under Part 11 (2)(c)(ii) of the Caravan Parks and Camping Regulations 1997.

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

POLICY IMPLICATIONS - Nil

STATUTORY IMPLICATIONS –

Caravan Parks and Camping Grounds Regulations 1997

Section 2

8. This Part subject to other written law

If there is a conflict or inconsistency between this Part and any other written law other than a local law, the other written law prevails to the extent of the conflict or inconsistency.

8A. Definition of “camp” in this Part

In this Part —

camp when used as a verb, includes to camp in a vehicle.

[Regulation 8A inserted in Gazette 16 Jul 1999 p. 3202.]

9. Park homes may only be occupied in caravan parks

Despite anything else in this Part, a person may occupy a park home only in a caravan park licensed under the Act.

Penalty: \$3 000.

10. Where a person may camp

A person may camp only —

- (a) at a site in a caravan park or camping ground, as appropriate, licensed under the Act; or
- (b) in accordance with regulation 11.

Penalty: \$1 000.

11. Camping other than at a caravan park or camping ground

(1) A person may camp —

- (a) for up to 3 nights in any period of 28 consecutive days on land which he or she owns or has a legal right to occupy, and may camp for longer than 3 nights on such land if he or she has written approval under subregulation (2) and is complying with that approval;
- (b) for up to 24 consecutive hours in a caravan or other vehicle on a road side rest area;
- (c) for up to 24 consecutive hours in a caravan or other vehicle on a road reserve in an emergency, unless to do so would cause a hazard to other road users or contravene any other written law with respect to the use of the road reserve;
- (d) on any land which is —
 - (i) held by a State instrumentality in freehold or leasehold; or
 - (ii) dedicated, reserved, or set apart under the *Land Administration Act 1997* or any other written law, and placed under the care, control or management of a State instrumentality,in accordance with the permission of that instrumentality; or
- (e) on any unallocated Crown land or unmanaged reserve, in accordance with the permission of the Minister within the meaning of the *Land Administration Act 1997*, or a person authorised by the Minister to give permission under this paragraph.

(2) Written approval may be given for a person to camp on land referred to in subregulation (1)(a) for a period specified in the approval which is longer than 3 nights —

- (a) by the local government of the district where the land is situated, if such approval will not result in the land being camped on for longer than 3 months in any period of 12 months;

- (b) by the Minister, if such approval will result in the land being camped on for longer than 3 months in any period of 12 months; or
- (c) despite paragraph (b), by the local government of the district where the land is situated —
 - (i) if such approval will not result in the land being camped on for longer than 12 consecutive months; and
 - (ii) if the person owns or has a legal right to occupy the land and is to camp in a caravan on the land while a building licence issued to that person in respect of the land is in force.

(3) In this regulation —

building licence means a building licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*;

emergency means a situation where to move the caravan or other vehicle to a more suitable area would constitute an immediate and serious hazard due to the condition of the caravan or other vehicle, or a vehicle towing the caravan, or of the driver, or passengers, of any such vehicle;

road side rest area means an area designated by a traffic sign erected in accordance with a written law, as an area which may be used for 24 hours for —

- (a) resting;
- (b) stopping; or
- (c) camping,

in a vehicle;

State instrumentality has the same meaning as it has for the purposes of the *Land Administration Act 1997*;

unallocated Crown land has the same meaning as it has for the purposes of the *Land Administration Act 1997*;

unmanaged reserve has the same meaning as it has for the purposes of the *Land Administration Act 1997*.

[Regulation 11 amended in Gazette 16 Jul 1999 p. 3202-4; 25 Aug 2000 p. 4911.]

STRATEGIC COMMUNITY PLAN IMPLICATIONS – Nil

TEN YEAR FINANCIAL PLAN IMPLICATIONS - Nil

COMMUNITY CONSULTATION

Chief Executive Officer
Deputy Chief Executive Officer
Manager of Development Services
Ranger

ABSOLUTE MAJORITY REQUIRED – NO

STAFF RECOMMENDATION

That Council in accordance with Caravan Parks and Camping Grounds Regulations 1997 Section 2 (11)(a) grants three months approval for camping at 51 Forrest Street with the following conditions:

- 1. Any power connections are to be RCD protected.*
- 2. Working smoke alarms*
- 3. A Licenced plumber connection to the sewer*
- 4. Water Connection*
- 5. Building Permit Application submitted by 10th February 2017.*
- 6. Expires 14th February 2017*

COUNCIL RECOMMENDATION

MIN 190/16 MOTION - Moved Cr. Steber 2nd Cr. Leake

That Council in accordance with Caravan Parks and Camping Grounds Regulations 1997 Section 2 (11)(a) grants three months approval for camping at 51 Forrest Street with the following conditions:

- 1. Any power connections are to be RCD protected.***
- 2. Working smoke alarms***
- 3. A Licenced plumber connection to the sewer***
- 4. Water Connection***
- 5. Building Permit Application submitted by 10th February 2017.***
- 6. Expires 14th February 2017***

CARRIED 7/0

Agenda Reference:	11.2.4
Subject:	Local Planning Policy – Ancillary Accommodation
Location:	Shire of Kellerberrin
Applicant:	Shire of Kellerberrin - Council
File Ref:	Policy Manual
Disclosure of Interest:	N/A
Date:	07 th November 2016
Author:	Mr Raymond Griffiths, Chief Executive Officer

BACKGROUND

Council has been approached with requests for additional ancillary accommodation within non-residential areas. The Shire of Kellerberrin Local Planning Scheme No.4 does not permit the development of full independent second group dwellings in many circumstances. It is important to have a clear guideline that distinguishes between “grouped dwelling” and ancillary accommodation.

COMMENT

Council's has been approached by Vicky Haywood seeking approval for ancillary accommodation larger than the set 70m² to allow for disabled access. This new policy allows for an increase areas in ancillary accommodation up to 100m² required for disabled requirements.

The reason that Management has selected the 100m² is that it in line with the Deemed to comply requirements within the State Planning Policy 3.1 – Residential Design Codes. It is understood that the land in discussion and the Policy isn't to deal with Residential land though the thought process was to keep everything in line to show consistency and ease of operation.

The policy that has been presented to Council for adoption is an Ancillary Accommodation policy for the entire Shire of Kellerberrin and covers all zones within the Planning Scheme.

FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

New policies or amendments to existing policies will have financial implications on Council's Budget depending upon which policy/s are added/deleted/amended.

POLICY IMPLICATIONS

Shire of Kellerberrin Policy Manual (October 2016) – Review various policies and update document. The Council is always considerate of its operational and legislative functions and for endorsement towards serving the function and role of the Council, seeks to state defined parameters of its policy review and adoption of any new policies and/or of its existing policies.

STATUTORY IMPLICATIONS

Local Government Act 1995 (as amended)

Section 2.7. The role of the council

- (1) The council —
 - (a) directs and controls the local government's affairs; and
 - (b) is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the council is to —
 - (a) oversee the allocation of the local government's finances and resources; and
 - (b) determine the local government's policies.

Section 2.8. The role of the mayor or president

- (1) The mayor or president —
 - (a) presides at meetings in accordance with this Act;
 - (b) provides leadership and guidance to the community in the district;
 - (c) carries out civic and ceremonial duties on behalf of the local government;
 - (d) speaks on behalf of the local government;
 - (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
 - (f) liaises with the CEO on the local government's affairs and the performance of its functions.
- (2) Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

Section 2.9. The role of the deputy mayor or deputy president

The deputy mayor or deputy president performs the functions of the mayor or president when authorised to do so under section 5.34.

Section 2.10. The role of councillors

A councillor —

- (a) represents the interests of electors, ratepayers and residents of the district;
- (b) provides leadership and guidance to the community in the district;
- (c) facilitates communication between the community and the council;
- (d) participates in the local government's decision-making processes at council and committee meetings; and
- (e) performs such other functions as are given to a councillor by this Act or any other written law.

5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

- (a) the relevant person; or
- (b) a person with whom the relevant person is closely associated,

has —

- (c) a direct or indirect financial interest in the matter; or
- (d) a proximity interest in the matter.

[Section 5.60 inserted by No. 64 of 1998 s. 30.]

5.60A. Financial interest

For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

[Section 5.60A inserted by No. 64 of 1998 s. 30; amended by No. 49 of 2004 s. 50.]

5.60B. Proximity interest

- (1) For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —
 - (a) a proposed change to a planning scheme affecting land that adjoins the person's land;

- (b) a proposed change to the zoning or use of land that adjoins the person's land; or
 - (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.
- (2) In this section, land (**the proposal land**) adjoins a person's land if —
- (a) the proposal land, not being a thoroughfare, has a common boundary with the person's land;
 - (b) the proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or
 - (c) the proposal land is that part of a thoroughfare that has a common boundary with the person's land.
- (3) In this section a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.

[Section 5.60B inserted by No. 64 of 1998 s. 30.]

5.61. Indirect financial interests

A reference in this Subdivision to an indirect financial interest of a person in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in relation to the matter.

5.62. Closely associated persons

- (1) For the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if —
- (a) the person is in partnership with the relevant person; or
 - (b) the person is an employer of the relevant person; or
 - (c) the person is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee; or
 - (ca) the person belongs to a class of persons that is prescribed; or
 - (d) the person is a body corporate —
 - (i) of which the relevant person is a director, secretary or executive officer; or
 - (ii) in which the relevant person holds shares having a total value exceeding —
 - (I) the prescribed amount; or
 - (II) the prescribed percentage of the total value of the issued share capital of the company,
 whichever is less;
- or
- (e) the person is the spouse, de facto partner or child of the relevant person and is living with the relevant person; or
 - (ea) the relevant person is a council member and the person —
 - (i) gave a notifiable gift to the relevant person in relation to the election at which the relevant person was last elected; or
 - (ii) has given a notifiable gift to the relevant person since the relevant person was last elected;
- or
- (eb) the relevant person is a council member and since the relevant person was last elected the person —
 - (i) gave to the relevant person a gift that section 5.82 requires the relevant person to disclose; or

- (ii) made a contribution to travel undertaken by the relevant person that section 5.83 requires the relevant person to disclose;

or

- (f) the person has a relationship specified in any of paragraphs (a) to (d) in respect of the relevant person's spouse or de facto partner if the spouse or de facto partner is living with the relevant person.

- (2) In subsection (1) —

notifiable gift means a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election;

value, in relation to shares, means the value of the shares calculated in the prescribed manner or using the prescribed method.

[Section 5.62 amended by No. 64 of 1998 s. 31; No. 28 of 2003 s. 110; No. 49 of 2004 s. 51; No. 17 of 2009 s. 26.]

5.63. Some interests need not be disclosed

- (1) Sections 5.65, 5.70 and 5.71 do not apply to a relevant person who has any of the following interests in a matter —

- (a) an interest common to a significant number of electors or ratepayers;
- (b) an interest in the imposition of any rate, charge or fee by the local government;
- (c) an interest relating to a fee, reimbursement of an expense or an allowance to which section 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.101(2) refers;
- (d) an interest relating to the pay, terms or conditions of an employee unless —
 - (i) the relevant person is the employee; or
 - (ii) either the relevant person's spouse, de facto partner or child is the employee if the spouse, de facto partner or child is living with the relevant person;

[(e) deleted]

- (f) an interest arising only because the relevant person is, or intends to become, a member or office bearer of a body with non-profit making objects;
- (g) an interest arising only because the relevant person is, or intends to become, a member, office bearer, officer or employee of a department of the Public Service of the State or Commonwealth or a body established under this Act or any other written law; or
- (h) a prescribed interest.

- (2) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —

- (a) any proposed change to a planning scheme for any area in the district;
- (b) any proposed change to the zoning or use of land in the district; or
- (c) the proposed development of land in the district,

then, subject to subsection (3) and (4), the person is not to be treated as having an interest in a matter for the purposes of sections 5.65, 5.70 and 5.71.

- (3) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —

- (a) any proposed change to a planning scheme for that land or any land adjacent to that land;
- (b) any proposed change to the zoning or use of that land or any land adjacent to that land; or

- (c) the proposed development of that land or any land adjacent to that land,
- then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.
- (4) If a relevant person has a financial interest because any land in which the person has any interest other than an interest relating to the valuation of that land or any land adjacent to that land may be affected by —
 - (a) any proposed change to a planning scheme for any area in the district;
 - (b) any proposed change to the zoning or use of land in the district; or
 - (c) the proposed development of land in the district,

then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.

- (5) A reference in subsection (2), (3) or (4) to the development of land is a reference to the development, maintenance or management of the land or of services or facilities on the land.

[Section 5.63 amended by No. 1 of 1998 s. 15; No. 64 of 1998 s. 32; No. 28 of 2003 s. 111; No. 49 of 2004 s. 52; No. 17 of 2009 s. 27.]

[5.64. Deleted by No. 28 of 2003 s. 112.]

5.65. Members' interests in matters to be discussed at meetings to be disclosed

- (1) A member who has an 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 CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
 Penalty: \$10 000 or imprisonment for 2 years.
- (2) It is a defence to a prosecution under this section if the member proves that he or she did not know —
 - (a) that he or she had an interest in the matter; or
 - (b) that the matter in which he or she had an interest would be discussed at the meeting.
- (3) This section does not apply to a person who is a member of a committee referred to in section 5.9(2)(f).

5.66. Meeting to be informed of disclosures

If a member has disclosed an interest in a written notice given to the CEO before a meeting then —

- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matters to which the disclosure relates are discussed.

[Section 5.66 amended by No. 1 of 1998 s. 16; No. 64 of 1998 s. 33.]

5.67. Disclosing members not to participate in meetings

A member who makes a disclosure under section 5.65 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 relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under section 5.68 or 5.69.

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

5.68. Councils and committees may allow members disclosing interests to participate etc. in meetings

- (1) If a member has disclosed, under section 5.65, an interest in a matter, the members present at the meeting who are entitled to vote on the matter —
 - (a) may allow the disclosing member to be present during any discussion or decision making procedure relating to the matter; and
 - (b) may allow, to the extent decided by those members, the disclosing member to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision making procedures relating to the matter if —
 - (i) the disclosing member also discloses the extent of the interest; and
 - (ii) those members decide that the interest —
 - (I) is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct in relation to the matter; or
 - (II) is common to a significant number of electors or ratepayers.
- (2) A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with the extent of any participation allowed by the council or committee.
- (3) This section does not prevent the disclosing member from discussing, or participating in the decision making process on, the question of whether an application should be made to the Minister under section 5.69.

5.69. Minister may allow members disclosing interests to participate etc. in meetings

- (1) If a member has disclosed, under section 5.65, an interest in a matter, the council or the CEO may apply to the Minister to allow the disclosing member to participate in the part of the meeting, and any subsequent meeting, relating to the matter.
- (2) An application made under subsection (1) is to include —
 - (a) details of the nature of the interest disclosed and the extent of the interest; and
 - (b) any other information required by the Minister for the purposes of the application.
- (3) On an application under this section the Minister may allow, on any condition determined by the Minister, the disclosing member to preside at the meeting, and at any subsequent meeting, (if otherwise qualified to preside) or to participate in discussions or the decision making procedures relating to the matter if —
 - (a) there would not otherwise be a sufficient number of members to deal with the matter; or
 - (b) the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.
- (4) A person must not contravene a condition imposed by the Minister under this section.
Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.69 amended by No. 49 of 2004 s. 53.]

5.69A. Minister may exempt committee members from disclosure requirements

- (1) A council or a CEO may apply to the Minister to exempt the members of a committee from some or all of the provisions of this Subdivision relating to the disclosure of interests by committee members.

- (2) An application under subsection (1) is to include —
 - (a) the name of the committee, details of the function of the committee and the reasons why the exemption is sought; and
 - (b) any other information required by the Minister for the purposes of the application.
- (3) On an application under this section the Minister may grant the exemption, on any conditions determined by the Minister, if the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.
- (4) A person must not contravene a condition imposed by the Minister under this section.
Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.69A inserted by No. 64 of 1998 s. 34(1).]

5.70. Employees to disclose interests relating to advice or reports

- (1) In this section —
employee includes a person who, under a contract for services with the local government, provides advice or a report on a matter.
- (2) An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.
- (3) An employee who discloses an interest under this section must, if required to do so by the council or committee, as the case may be, disclose the extent of the interest.
Penalty: \$10 000 or imprisonment for 2 years.

5.71. Employees to disclose interests relating to delegated functions

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

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

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

State Planning Policy 3.1 Residential Design Codes

Part 5 – Design elements for all single house(s) and grouped dwellings; and multiple dwellings in areas coded less than R30

Objectives

- a) To ensure residential development is provided to accommodate people with or without special needs.
- b) To provide ancillary accommodation which is independent or semi-independent to residents of the single house.
- c) To ensure that dwellings for the aged and people with special needs can be provided within residential areas.
- d) To provide opportunities for affordable housing

Design principles

Development demonstrates compliance with the following design principles (P)

5.5.1 Ancillary dwellings

- P1 Ancillary dwelling for people who live either independently or semi-dependently to the residents of the single house, sharing some site facilities and services and without compromising the amenity of surrounding properties.

Deemed-to-comply

Development satisfies the following deemed-to-comply requirements (C)

- C1 Ancillary dwelling associated with a single house and on the same lot where:
- i. the lot is not less than 450m² in area;
 - ii. there is a maximum plot ratio area of 70m²;
 - iii. parking provided in accordance with clause 5.3.3 C3.1; and
 - iv. complies with all other R-Code provisions, only as they apply to single houses, with the exception of clauses:
 - a) 5.1.1 Site area;
 - b) 5.2.3 Street surveillance (except where located on a lot with secondary street or right-of-way access); and
 - c) 5.3.1 Outdoor living areas.

Design principles

Development demonstrates compliance with the following design principles (P)

5.5.2 Aged or dependent persons' dwellings

- P2 Aged or dependent persons' dwellings for the housing of aged or dependent persons designed to meet the needs of aged or dependent persons; and
- reduces car dependence, i.e. is located in close proximity to public transport and services;
 - has due regard to the topography of the locality in which the site is located in respect to access and mobility;
 - has due regard to the availability of community facilities including parks and open space;
 - does not impinge upon neighbour amenity; and
 - responds to a demand for aged or dependent persons' accommodation in the locality which is recognised in the local planning framework.

Deemed-to-comply

Development satisfies the following deemed-to-comply requirements (C)

- C2.1 Aged or dependent persons' dwellings for the housing of aged or dependent persons shall comply with the following:
- i. a maximum plot ratio area of:
 - in the case of single houses or grouped dwellings – 100m²; or
 - in the case of multiple dwellings – 80m²;
 - ii. a minimum number of five dwellings within any single development;
 - iii. visitors car parking spaces at the rate of one per four dwellings, with a minimum of one space;
 - iv. the first visitors car space being a wheelchair accessible car parking space and a minimum width of 3.8m in accordance with AS4299, clause 3.7.1(as amended);
 - v. an outdoor living area in accordance with the requirements of clause 5.3.1 but reducing the area required by Table 1 by one-third; and vi. comply with all other provisions of Table 1 and Part 5 as relevant.
- C2.2 All ground floor units, with a preference for all dwellings, to incorporate, as a minimum, the following:
- i. an accessible path of travel from the street frontage, car parking area or drop-off point in accordance with the requirements of AS4299 clause 3.3.2 (as amended); and
 - ii. Level entry to the front entry door with preferably all external doors having level entries (diagrams, figure C1 of AS4299 [as amended]).
- C2.3 All dwellings to incorporate, as a minimum, the following:
- i. all external and internal doors to provide a minimum 820mm lear opening. (AS4299 clause 4.3.3 [as amended]);

- ii. internal corridors to be a minimum 1000mm wide, width to be increased to a minimum of 1200mm in corridors with openings on side walls;
- iii. a visitable toilet (AS4299, clause 1.4.12 [as amended]), preferably located within a bathroom; and
- iv. toilet and toilet approach doors shall have a minimum 250mm nib wall on the door handle side of the door and provision for the installation of grab rails in accordance with AS4299, clause 4.4.4 (h) (as amended).

C2.4 At least one occupant is a disabled or physically dependent person or aged person, or is the surviving spouse of such a person, and the owner of the land, as a condition of planning approval, lodging a section 70A notification on the certificate of title binding the owner, their heirs and successors in title requiring that this occupancy restriction be maintained.

STRATEGIC PLAN IMPLICATIONS: Nil (not applicable at this date and therefore unknown)

CORPORATE BUSINESS PLAN IMPLICATIONS

(Including Workforce Plan and Asset Management Plan Implications)

LONG TERM PLAN IMPLICATIONS: Nil (not applicable at this date and therefore unknown)

COMMUNITY CONSULTATION:

Council has a legislative requirement to consider and determine its Policies.

STAFF RECOMMENDATION

That Council

1. *Adopts the Local Planning Policy – Ancillary Accommodation as presented.*
2. *Insert the new policy into Councils Policy Manual to be implemented on 1 December 2016.*
3. *Advertise the Policy in the Pipeline*

COUNCIL RECOMMENDATION

MIN 191/16 MOTION - Moved Cr. Reid 2nd Cr. White

That Council

1. *Adopts the Local Planning Policy – Ancillary Accommodation as presented.*
2. *Insert the new policy into Councils Policy Manual to be implemented on 1 December 2016.*
3. *Advertise the Policy in the Pipeline*

CARRIED 7/0

11.3 WORKS & SERVICES – AGENDA ITEMS

Nil Items

COUNCIL RECOMMENDATION

MIN 192/16 MOTION - Moved Cr. Steber 2nd Cr. White

That Council receive Late Items

CARRIED 7/0

agenda Reference:	13.1
Subject:	80 Forrest Street, Prosecution for failing to adhere to Building Order – 20 th June 2014
Location:	80 Forrest Street, Kellerberrin.
Applicant:	N/A
File Ref:	Build 03 & Ass 1090
Record Ref:	MIN 116/15 & NCR15173
Disclosure of Interest:	NIL
Date:	15 th November 2016
Author:	Mr Raymond Griffiths, Chief Executive Officer

BACKGROUND

Council's June 2015 Ordinary Meeting of Council.

MIN 116/15 MOTION - Moved Cr. Steber 2nd Cr. McNeil

That Council endorses the orders for Mr Robert as per the following;

1. *Mr Robert will not occupy the dwelling;*
2. *Mr Robert will remove the transportable building by 1 December 2015;*
3. *Mr Robert agrees not to sell Lot 331 provided the Shire agrees it will not take action to enforce the building order requiring the removal of the raised deck area while Mr Robert remains the owner of Lot 331;*
4. *Mr Robert agrees to apply for a building permit for any building work on the property;*
5. *The sole issue for determination between the parties is whether the outdoor kitchen and entertaining area with ablution facilities and undercover store area with toilet should be demolished;*
6. *Mr Robert will withdraw his other applications for review.*

CARRIED 6/0

Council's April 2015 Ordinary Meeting of Council.

MIN 70/15 MOTION - Moved Cr. Leake 2nd Cr. Steber

That Council:-

1. *In respect to "Item 1" acknowledges the commitments given by Mr Robert.*
2. *In respect to "Item 2" agrees to allow a 6 month extension on the Building Order.*
3. *In respect to "Item 3" Council agrees to the proposed extension of 12 months on the Building Order.*
4. *In respect to "Item 4" Council agrees to allow the raised deck to remain, subject to:*
 - a. *Mr Robert remaining the registered proprietor of Lot 331 (HN 78) Forrest Street, Kellerberrin (Lot 331); or*
 - b. *The amalgamation of Lot 331 and Lot 121 (HN 80) Forrest Street, Kellerberrin.*
5. *Advises that inasmuch as the existing structures is not "Building Code of Australia" compliant it will be necessary for Mr Robert to, in the first instance, address the suitability of the existing house structure including the raised deck to obtain a Building Permit. In submitting the necessary documentation in accordance with the provisions of the "Building Act 2011" as amended, the inclusion of utility rooms such as the kitchen, bathroom, toilet and laundry would be by default a necessity to suit item 3 listed by Mr Robert.*

CARRIED 4/0

MIN 39/15 MOTION - Moved Cr. Leake 2nd Cr. Steber

That Council:-

- 1. In respect to "Item 1" acknowledges the commitments given by Mr Robert.***
- 2. In respect to "Item 2" agrees to allow a 6 month extension on the Building Order.***
- 3. In respect to "Item 3" Council agrees to the proposed extension of 12 months on the Building Order.***
- 4. In respect to "Item 4" Council does not agree to allow the raised deck to remain.***
- 5. Advises that insomuch as the existing house structure is not "Building Code of Australia" compliant it will be necessary for Mr Robert to, in the first instance, address the suitability of the existing house structure to obtain a Building Permit. In submitting the necessary documentation in accordance with the provisions of the "Building Act 2011" as amended, the inclusion of utility rooms such as the kitchen, bathroom, toilet and laundry would be by default a necessity to suit item 3 listed by Mr Robert.***

CARRIED 6/0

Advice has been received from Council's Legal Counsel Mr Peter Gillett of McLeod's who attended the latest SAT Meeting held in Perth on Friday 27th February 2015.

MIN 130/12 MOTION - Moved Cr. Bee 2nd Cr. O'Neill

That Council resolve to:-

- 1. Direct the Administration to write to the owner of 80 Forrest Street Kellerberrin, Mr Cameron Robert and outline:-***
 - (a) the findings of the reports from the Structural Engineer and the Level 1 Building Surveyor;***
 - (b) advise that it is now Councils intention to progress the Motion from its "March 2011 Ordinary Meeting" wherein it declared the house unfit for habitation;***
 - (c) advise that he has 14 days to advise Council in writing whether he will of his own volition demolish the house and all appurtenant buildings; and***
 - (d) that in default of agreement to demolish and remove the buildings by the prescribed time (being one calendar month after receiving advice in Item (c)) then Council will refer the matter to their legal consultants.***

CARRIED 6/0

MIN 45/11 MOTION - Moved Cr. Bee 2nd Cr. O'Neill

That Council resolve to declare the house situated at 80 Forrest Street Kellerberrin to be "Unfit for Human Habitation" pursuant to the provisions of Section 135 of the Health Act 1911 and furthermore to endorse the issue of a NOTICE pursuant to the provisions of Section 137 of the Health Act 1911 requiring the owner to make repairs and do other things

as directed in the Notice within the time stated in the Notice (90 days) or alternatively for the Owner to demolish the house and remove all materials to a lawful disposal site.

CARRIED 6/0
BY ABSOLUTE MAJORITY

COMMENT

Council in February 2016 wrote to Mr Robert advising that Council is providing a 90 day extension to the Building Order to enable processes to be completed. Ie Demolition Permit and arranging equipment etc.

Mr Robert subsequently applied for a Demolition Licence in which Council provided however the permit didn't cover the area provided in the Building Order.

Council provided a letter to Mr Robert on 22 April 2016 as per exert below;

Please find attached your Demolition Permit (DP2-2016) as per your request for demolition of the outbuildings between the house and the Entertainment Area.

Please note that the Demolition Permit issued doesn't cover the full area specified under the order issued by the State Administrative Tribunal (SAT), though Council is issuing the Permit as per your request.

Council did advise to apply for a permit to cover all the demolition listed by the SAT to possibly save yourself \$95 in additional fees should you be required to obtain another Permit to demolish the balance of the buildings as per the order. However you have (as is your right to) requested to only demolish part of the area as per the area listed above.

Council's Manager Development Services has since inspected the property on 22nd August 2016 where it was found that the Building Order works had not been completed as per below photographs.





The Building Order timeline has now passed and Council needs to ascertain whether to progress with further prosecution for not adhering to the Building Order.

FINANCIAL IMPLICATIONS

There will be expenditure associated with legal costs if that is the course of action that is taken. Council currently has the following funds allocated within its 2016/2017 Budget.

General Ledger	Budget	Actual	Difference
042032	\$25,000	\$5,660	\$19,340
073032	\$ 500	\$ 0	\$ 500

The total costs association with this course of action is unknown.

With this action should it progress to a hearing, Mr Robert may also be found guilty and a fine may be applied as per section 115 as listed below.

POLICY IMPLICATIONS - NIL

STATUTORY IMPLICATIONS

1. Town Planning & Development Act

Building Act 2011

Section 115

115. Compliance with building order

A person who is served with a copy of a building order must not without reasonable excuse fail to comply with the order.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

Part 12 — Legal proceedings

Division 1 — General provisions about legal proceedings

133. Prosecutions

- (1) A prosecution for an offence against this Act may be commenced by, and only by —
 - (a) a permit authority or a person authorised to do so by a permit authority; or
 - (b) a local government or a person authorised to do so by a local government.
- (2) Subsection (1) does not limit the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991* section 11.
- (3) A prosecution for an offence against section 9, 10, 29(1) or (2), 37(1) or (2), 38(1) or (2), 76(1), 77, 78(1), (2) or (3), or 79(1) or (2) may be commenced within 6 years after the offence was allegedly committed, but not later.
- (4) A prosecution for any other offence against this Act may be commenced within 3 years after the offence was allegedly committed, but not later.
- (5) All prosecutions for offences against this Act are to be heard in a court of summary jurisdiction constituted by a magistrate.

3. Building Code of Australia.

STRATEGIC PLAN IMPLICATIONS - NIL

FUTURE PLAN IMPLICATIONS - NIL

COMMUNITY CONSULTATION

Chief Executive Officer
Manager Development Services
McLeods Lawyers & Solicitors
Mr Cameron Robert

STAFF RECOMMENDATION

That Council resolves to prosecute Mr Cameron Robert, 80 Forrest Street, Kellerberrin under section 115 of the Building Act 2011 for failing to comply with the Building Order dated 20th June 2014 requiring him to demolish and remove the outdoor kitchen and entertaining area which was the subject of a review in the State Administrative Tribunal and subsequently upheld by the Tribunal.

COUNCIL RECOMMENDATION

MIN 193/16 MOTION - Moved Cr. Leake 2nd Cr. O'Neill

That Council resolves to prosecute Mr Cameron Robert, 80 Forrest Street, Kellerberrin under section 115 of the Building Act 2011 for failing to comply with the Building Order dated 20th June 2014 requiring him to demolish and remove the outdoor kitchen and entertaining area which was the subject of a review in the State Administrative Tribunal and subsequently upheld by the Tribunal.

CARRIED 7/0

CLOSURE OF MEETING

The President thanked all members for the attendance and closed the meeting at 6.20pm.

CLOSURE OF MEETING

Tuesday, 20th December 2016 @ 2pm, Kellerberrin Council Chambers.