



Shire of
Chapman Valley
Love the Rural Life

ORDINARY COUNCIL MEETING

Notice is hereby given that an Ordinary Meeting
of Council will be held on Wednesday 21 September 2016
at the Shire Chambers, Nabawa, commencing at 9:00am.

Maurice Battilana
CHIEF EXECUTIVE OFFICER

AGENDA

SEPTEMBER 2016

DISCLAIMER



No responsibility whatsoever is implied or accepted by the Shire of Chapman Valley for any act, omission or statement or intimation occurring during Council Meeting. The Shire of Chapman Valley disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee Meetings.

Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council Meeting does so at that person's or legal entity's own risk.

The Shire of Chapman Valley warns that anyone who has any application or request with the Shire of Chapman Valley must obtain and should rely on **WRITTEN CONFIRMATION** of the outcome of the application or request of the decision made by the Shire of Chapman Valley.

A handwritten signature in black ink, appearing to read 'M. Battilana', written in a cursive style.

Maurice Battilana
CHIEF EXECUTIVE OFFICER

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- 6.0 DISCLOSURE OF INTEREST

Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences.

Section 5.60A:

*"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 5.60B:

*"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; or

(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."

Regulation 34C (Impartiality):

*"**interest** means an interest that could, or could reasonably be perceived to, adversely affect the **impartiality** of the person having the interest and includes an interest arising from kinship, friendship or membership of an association."*

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7.0 PETITIONS/DEPUTATIONS/PRESENTATIONS

8.0 CONFIRMATION OF MINUTES FROM PREVIOUS MEETINGS

8.1 Ordinary Meeting of Council held on Wednesday 17 August 2016

That the minutes of the Ordinary Meeting of Council held Wednesday 17 August 2016 be confirmed as a true and accurate record.

9.0 OFFICERS REPORTS

9.1

Manager of Planning

September 2016

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No Report

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9.2 AGENDA ITEMS

9.2.1 Financial Reports for August 2016

AGENDA ITEM:	9.2.1
SUBJECT:	FINANCIAL REPORTS FOR AUGUST 2016
PROPONENT:	SHIRE OF CHAPMAN VALLEY
SITE:	SHIRE OF CHAPMAN VALLEY
FILE REFERENCE:	307.04
PREVIOUS REFERENCE:	N/A
DATE:	21 SEPTEMBER 2016
AUTHOR:	DIANNE RAYMOND

DISCLOSURE OF INTEREST

Nil

BACKGROUND

Financial Regulations require a monthly statement of financial activity report to be presented to Council.

COMMENT

The monthly financial statements for August 2016 have been provided as a **separate attachment** for Council's review.

STATUTORY ENVIRONMENT

Local Government Act 1995 Section 6.4

Local Government (Financial Management) Regulations 1996 Section 34

POLICY IMPLICATIONS

CP-023 Significant Accounting Policies

Extract:

"2. Monthly Reporting

In accordance with Section 6.4 of the Local Government Act 1995 and Regulation 34 of the Financial Management Regulations 1996, monthly reporting will be provided as follows:

- 1. Statement of Financial Activity*
 - 2. Balance Sheet and statement of changes in equity*
 - 3. Schedule of Investments*
 - 4. Operating Schedules 3 – 16*
 - 5. Acquisition of Assets*
 - 6. Trust Account*
 - 7. Reserve Account*
 - 8. Loan Repayments Schedule*
 - 9. Restricted Assets*
 - 10. Disposal of Assets*
- A value of 10 percent is set for reporting of all material variances."*

FINANCIAL IMPLICATIONS

As presented in August 2016 financial statements.

- **Long Term Financial Plan (LTFP):**

No significant affect on the LTFP

STRATEGIC IMPLICATIONS

Nil

- **Strategic Community Plan/Corporate Business Plan:**

Nil

CONSULTATION

Not applicable

RISK ASSESSMENT

The associated risk would be the failure to comply with Local Government Financial Regulations requiring monthly reporting of financial activity.

VOTING REQUIREMENTS

Simple Majority

STAFF RECOMMENDATION

That Council receives the financial report supplied under separate attachment for the months of August 2016 comprising the following:

- Statement of Financial Activities with notes
- Note 1 – Significant Accounting Policies
- Note 2 – Explanation of Material Variances
- Note 3 – Net Current Funding Position
- Note 4 – Cash & Investments
- Note 5 – Budget Amendments
- Note 6 – Receivables
- Note 7 – Cash Backed Reserves
- Note 8 – Capital Disposals
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- Appendix A – Budget by Program
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Chief Executive Officer

September 2016

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- 9.3.3 Yuna Bushfire Brigade - Bushfire Control Officer Appointment
- 9.3.4 Consultation Paper - Proposal for Regional Subsidiaries Legislation

AGENDA ITEM:	9.3.1
SUBJECT:	HONOUR AWARDS
PROPONENT:	CHIEF EXECUTIVE OFFICER
SITE:	SHIRE OF CHAPMAN VALLEY
FILE REFERENCE:	401.00
PREVIOUS REFERENCE:	NIL
DATE:	21 SEPTEMBER 2016
AUTHOR:	MAURICE BATTILANA, CHIEF EXECUTIVE OFFICER

DISCLOSURE OF INTEREST

Nil

BACKGROUND

Management Procedure CMP-033 provides guidelines and procedures associated with various honour awards.

COMMENT

The purpose of this Agenda Item is to seek Council consideration for the following Awards:

- Freeman of the Shire; and
- Shire of Chapman Valley - Certificate of Appreciation

All other Awards listed in Management Procedure CMP-033 are dealt with separately.

STATUTORY ENVIRONMENT

Not applicable

POLICY IMPLICATIONS

Below is the current Management Procedure (CMP-033):

MANAGEMENT PROCEDURE No.	CMP-033
MANAGEMENT PROCEDURE	HONOUR AWARDS
RESPONSIBLE DIRECTORATE	ADMINISTRATION
RESPONSIBLE OFFICER	CHIEF EXECUTIVE OFFICER
PREVIOUS POLICY No.	9.120
RELEVANT DELEGATIONS	

OBJECTIVES:

Set conditions, guidelines and processes for bestowing awards upon recipients.

MANAGEMENT PROCEDURE STATEMENT/S:

The Chief Executive Officer is to present an Agenda item at the appropriate time each year requesting Council consideration for awards to be presented in accordance with this Operational Procedure.

Citizenship Ceremonies

Citizenship ceremony be conducted at an event as considered appropriate by the Chief Executive Officer (in consultation with the President) and a native plant be given to the recipients.

Shire of Chapman Valley – Freeman of the Shire

A member of our Community may be honoured by the Shire with the title "Honorary Freeman of the Shire".

An Honorary Freeman of the Shire must have served the community of the Shire of Chapman Valley in an outstanding and meritorious manner that stands above the contributions of most other persons,

and whose activities have contributed significantly to the wellbeing of the Shire's residents.

The Shire of Chapman Valley Freeman of the Shire Award recognises the outstanding achievements and dedicated service to the community by a person. The Freeman of the Shire Award is the highest honour the Shire of Chapman Valley can give to a community member.

Council may also consider conferring of the title of 'Posthumous Freeman of the Municipality'. In this case, the eligibility criteria would still apply.

Eligibility Criteria

To be eligible for nomination, a person does not have to currently reside within the Shire or have served on Council.

Nominees will be assessed on their record of service to the local and broader community against the following criteria:

1. Length of service in a field (or fields) of activity;
2. Level of commitment to the field (or fields) of activity;
3. Personal leadership qualities;
4. Benefits to the community of the Shire of Chapman Valley and/or to the State of Western Australia and/or to the nation resulting from the nominee's work; and
5. Special achievements of the nominee.

Exclusions

- A current Council Elected Member with the Shire of Chapman Valley cannot be nominated for the award.

Nomination Procedure

- Nominations for the Award may be made by Elected Members, individuals or organisations and are to be sponsored by an Elected Member of the Shire of Chapman Valley;
- They are to be submitted to the Chief Executive Officer in written format addressing the Eligibility Criteria;
- Nominations are to be made in the strictest confidence without the knowledge of the nominee;
- On receipt of a nomination the Chief Executive Officer is to present the nomination to Council as a Confidential Agenda Item for consideration;
- Council is to consider the item behind closed doors;
- Once a nomination has been accepted by Council, the nominee and any person(s) or organisation(s) involved in the nomination are to be informed of the decision and nominee is to be contact to confirm their acceptance of the honour;
- Should the nomination be supported by Council and accepted by the nominee the award shall be presented to the nominee at a function considered appropriate by the President.

Number of Freeman within the Shire

There is no limit on the number of persons upon which the title of Freeman of the Shire of Chapman Valley may be conveyed.

Entitlements

Any person upon whom the title 'Honorary Freeman of Shire' has been conferred may designate him/herself 'Honorary Freeman of the Shire of Chapman Valley'.

The recipient shall be presented with a special badge, which identifies them as 'Honorary Freeman of the Shire' along with a certificate to commemorate receiving the award.

Any Honorary Freeman of the Shire shall be invited to all subsequent formal Civic functions conducted by the Shire.

Revocation of Title of Freeman or Honorary Freeman

Council, by resolution, shall also have the ability to revoke the title bestowed upon a person, if;

- A criminal matter, for which the Freeman in question was found guilty of, or for any other matter, was considered by Council to have caused embarrassment to the municipality or that the ongoing recognition of such a title on this person by the Shire was inappropriate.
- The removal of the name from Honour Boards and other places and any other such items will be at the discretion of Council and conducted through liaison with the Chief Executive Officer.

WALGA Honour Awards

As detailed by the WALGA Awards Guidelines

Elected Members eligible due to length of service are to be automatically nominated by the Chief Executive Office.

All other award types are to be determined by Council.

Shire of Chapman Valley - Certificate of Appreciation

For personal commitment, eminent service and contribution to the Shire of Chapman Valley as an Elected Members, Community Members or Staff Member

Automatically given to Elected Members who have retired from Council or are the recipient of a Department of Local Government Certificate of Recognition.

All others as determined by Council.

Annual Agenda Item to discuss suitable nominations.

Elected Members

Presented at Annual Council Dinner/Function

Community Members

Certificate of Appreciation issued at an Annual Council Dinner/Function.

Recipient & partner invited to attend.

Shire of Chapman Valley Australia Day Awards and Function

For personal commitment, service and contribution to the community of the Shire of Chapman Valley

Nominations called in October and close in November (or as determined by the Australia Day Council).

The Council appointed Working Group shall:

- Evaluate annual Australia Day Award Nominations and submitting these to Council in readiness for presenting the awards at the Shire's annual Australia Day Function;
- Assist with coordinating the annual Australia Day function(s);
- Discuss all other item(s) referred to them by Council in the areas of tourism and events.

Dept. Local Government & Community Services Awards

As detailed by the Department's Awards Guidelines

Elected Members eligible due to length of service are to be automatically nominated by the Chief Executive Office.

All other award types are to be determined by Council.

(Note: All other Awards such as Australia Day Citizen of Year, Bushfire Brigade Service, etc., will only be dealt with by Council if nomination is initiated from within the community or by a Council resolution).

FINANCIAL IMPLICATIONS

No impact envisaged.

- **Long Term Financial Plan (LTFP):**

No affect on LTFP.

STRATEGIC IMPLICATIONS

It is important Council recognises members of the community by bestowing appropriate awards on them.

- **Strategic Community Plan/Corporate Business Plan:**

Objective	Strategy	Outcome
We want to strengthen our community's position for the future	Maintain a resilient and independent Shire	A sustainable and progressive local government

CONSULTATION

Council has been consulted in regards to establishment of the Management Procedure dealing with Honour Awards in the Shire.

RISK ASSESSMENT

There is a risk that without a structure procedure Honour Awards will not be made in an appropriate manner or not made at all. Hence the reason a robust Management Procedure has been established and reviewed at least annually.

VOTING REQUIREMENTS

Simple Majority

STAFF RECOMMENDATION

Council determination on bestowing awards in accordance with Management Procedure CMP-033 for:

- Freeman of the Shire; and/or
- Shire of Chapman Valley - Certificate of Appreciation

AGENDA ITEM:	9.3.2
SUBJECT:	NOTICE OF COUNCIL MEETINGS 2017
PROPONENT:	CHIEF EXECUTIVE OFFICER
SITE:	SHIRE OF CHAPMAN VALLEY
FILE REFERENCE:	401.09
PREVIOUS REFERENCE:	NA
DATE:	21st SEPTEMBER 2016
AUTHOR:	MAURICE BATTILANA, CHIEF EXECUTIVE OFFICER

DISCLOSURE OF INTEREST

Nil

BACKGROUND

Council is required under the Local Government Act 1995 to at least once a year set and advertise meeting dates, times and venues for Ordinary Council meetings for the next 12 month period.

Council has previously resolved to reach out to the community, with one of the proposals being to move the Ordinary Monthly Council Meeting around the shire. In 2016 Council held two of its OCM away from the Nabawa Administration Building i.e.

- April 2016 OCM – John Batten Hall, Drummonds Cove;
- August 2016 OCM – Yuna Multipurpose Community Centre.

It is being recommended Council maintain this activity, with an alteration being suggested to hopefully accommodate a meeting at the proposed Bill Hemsley Park Community Centre building.

COMMENT

Council meetings are usually held at Nabawa on the third Wednesday of the month, commencing at 9:00am, with the exception of January when no Ordinary Council meeting is held.

The meeting date for December has occasionally been brought forward to the second Wednesday of the month to avoid clashes with Christmas/New Year break period. This would be appropriate again in 2017 as the third Wednesday is the 20th December, which is getting a little late in the month.

Below are recommended meeting locations and dates for the 2017 Ordinary Council Meeting (OCM):

DATE	MEETING LOCATION
15 th February	Nabawa Chambers
15 th March	Nabawa Chambers
19th April	Yuna Multipurpose Community Centre
17 th May	Nabawa Chambers
21 st June	Nabawa Chambers
19 th July	Nabawa Chambers
16 th August	Nabawa Chambers
20 th September	Nabawa Chambers
18 th October	Nabawa Chambers
15 th November	Nabawa Chambers
13th December	Bill Hemsley Park Community Centre

In the event the Bill Hemsley Park Community Centre Building is not completed by December 2017 then an advertisement will be placed advising the public the December 2017 OCM meeting will be held at the Nabawa Chambers.

STATUTORY ENVIRONMENT

Local Government (Administration) Regulations 1996 Clause 12 (1) states: Public notice of Council or Committee meetings – s 5.25(G)

At least once each year a local government is to give local public notice:

1. Of the dates, time and place of the ordinary council meetings;

2. The committee meetings that are required under the Act to be open to the members of the public or that are proposed to be open to members of the public are to be held in the next 12 months.

POLICY IMPLICATIONS

No Policy affected.

FINANCIAL IMPLICATIONS

No significant costs envisaged.

- **Long Term Financial Plan (LTFP):**

No affect on the LTFP is envisaged.

STRATEGIC IMPLICATIONS

It is important for Council to include and engage all sectors of our community and the concept of structuring meeting times, dates and location is one means of improving this.

- **Strategic Community Plan/Corporate Business Plan:**

Leadership

Objective	Strategy	Outcome
Transparent decision-making is important to us	Active engagement with the community to inform decision-making	Contribution to how local issues are managed
	Maintain a strong customer focus	Effective communication on key decisions

CONSULTATION

This matter has been discussed by Council in the past and I believe the trial of relocating OCM's in 2016 proved successful.

RISK ASSESSMENT

There is a risk of Council being perceived as not reaching out to its community by insisting OCMs are always held at Nabawa.

VOTING REQUIREMENTS

Simple majority

STAFF RECOMMENDATION

Council Ordinary Meeting time, dates and locations for the next Calendar Year as listed below be adopted and advertised in accordance with the Local Government (Administration) Regulations under the condition the December OCM be relocated to the Nabawa Chambers in the event the Bill Hemsley Park Community Centre has not been completed and this change be re-advertised accordingly:

DATE	Start Time	MEETING LOCATION
15 th February	9:00am	Nabawa Chambers
15 th March	9:00am	Nabawa Chambers
19th April	9:00am	Yuna Multipurpose Community Centre
17 th May	9:00am	Nabawa Chambers
21 st June	9:00am	Nabawa Chambers
19 th July	9:00am	Nabawa Chambers
16 th August	9:00am	Nabawa Chambers
20 th September	9:00am	Nabawa Chambers
18 th October	9:00am	Nabawa Chambers
15 th November	9:00am	Nabawa Chambers
13th December	9:00am	Bill Hemsley Park Community Centre

AGENDA ITEM:	9.3.3
SUBJECT:	YUNA BUSH FIRE BRIGADE – FIRE CONTROL OFFICER
PROPOSER:	CHIEF EXECUTIVE OFFICER
SITE:	YUNA BUSH FIRE BRIGADE
FILE REFERENCE:	601.08
PREVIOUS REFERENCE:	MINUTE REFERENCE: 04/16-16
DATE:	21 SEPTEMBER 2016
AUTHOR:	MAURICE BATTILANA

DISCLOSURE OF INTEREST

Nil

BACKGROUND

At the April 2016 OCM Council resolved the following:

MOVED: CR WARR

SECONDED: CR HUMPHREY

Council endorse the appointment of the following Shire of Chapman Valley Bushfire Control Officer in accordance with Section 38 the Bushfire Act, 1954 and Emergency Management Procedure EMP-005:

- *Craig Mincherton - Naraling Brigade;*
- *Calvin Royce – Howatharra Brigade;*
- *Jason Stokes – Yetna Brigade;*
- *Gerard Williamson – Yuna Brigade; and*
- *Darryl Burton – Durawah/Valentine Brigade*

Voting 7/0

CARRIED

Minute Reference: 04/16-16

COMMENT

It has since been brought to my attention Gerard Williamson, Yuna BFB Bushfire Control Officer, has left the district and therefore is not able to continue in the position.

Mr. Shaun Earl has indicated a willingness to take on the role of the Yuna BFB Bushfire Control Officer and the Ranger (Earl O'Donnell) has discussed this with the Chief Bush Fire Control Officer (Andrew Vlahov) with both being comfortable in recommending Shaun Earl to Council for formal appointment to the position.

I have been inform Shaun Earl has completed the Bushfire Control Officer training course in 2011, which would make it necessary for Mr. Earl to undergo a refresher course in accordance with the current conditions by Council set under Management Procedure EMP-005. However; if Council was prepared to amend EMP-005 to 10 year periods for this training (as per the Staff Recommendation 1) then the refresher course would not be required and this would then not be a condition of appointment for Mr. Earl.

The Bush Fires Act, 1954, stipulates the following is required of the local government i.e.

38. Local government may appoint bush fire control officer

- (1) *A local government may from time to time appoint such persons as it thinks necessary to be its bush fire control officers under and for the purposes of this Act, and of those officers shall subject to section 38A(2) appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it.*
- (2A) *The local government shall cause notice of an appointment made under the provisions of subsection (1) to be published at least once in a newspaper circulating in its district.*

Council's current Management Procedure relevant to the appointment of BFCO states:

MANAGEMENT PROCEDURE No.	EMP-005
MANAGEMENT PROCEDURE	FIRE CONTROL OFFICER APPOINTMENTS
RESPONSIBLE DIRECTORATE	ADMINISTRATION
RESPONSIBLE OFFICER	CHIEF EXECUTIVE OFFICER
PREVIOUS POLICY No.	3.90
RELEVANT DELEGATIONS	

OBJECTIVES:

This Operational Procedure provides the eligibility criteria for a person to be appointed as a Bush Fire Control Officer with the following objectives:

1. To ensure that a person has the relevant qualifications necessary to hold the position of Bush Fire Control Officer (BFCO); and
2. To ensure that these qualifications are maintained by the appointed Bush Fire Control Officer (BFCO).

MANAGEMENT PROCEDURE STATEMENT/S:

1. To be eligible for appointment as a Bush Fire Control Officer, a person must have completed the Bush Fire Control Officer Training Program not more than five (5) years prior to appointment.
2. Notwithstanding Item 1 above, a person will be eligible for appointment as a Bush Fire Control Officer if they complete the Bush Fire Control Officer Training within six (6) months of appointment.
3. For a person to continue as a Bush Fire Control Officer, they must complete the Bush Fire Control Officer's Course or a refresher course at intervals of no more than every five (5) years.
4. Nominations from Brigades shall be submitted to a Bush Fire Brigades Group Management Advisory Committee for recommendation to Council by 1 October, where applicable.
5. An appointment shall be for a period of one (1) year, unless revoked by Council. Bush Fire Control Officers will be eligible for reappointment unless their appointment was revoked by Council.

Upon enquiry with the Department of Fire and Emergency Services (DFES) it has been highlighted their standard *best practice* is for Bush Fire Control Officer's Course refresher courses to be undertaken every ten years, not five as stated in Council's EMP-005.

DFES also confirms there is not a legal requirement for BFCO to undertake a refresher course as the initial training/qualification remains satisfactory. The refresher course is considered *best practice* only. Therefore I am recommending Council amend its Management Procedure to reflect the DFES standard.

STATUTORY ENVIRONMENT

- *Local Government Act 1995 & associated Regulations;*
- *Bushfire Act, 1954*

POLICY/PROCEDURE IMPLICATIONS

Council's current Management Procedure EMP-005 is affected.

FINANCIAL IMPLICATIONS

No foreseen effect on Council's general finances.

- **Long Term Financial Plan:**

No foreseen effect on Council Long Term Financial Plan.

STRATEGIC IMPLICATIONS

Objective	Strategy	Outcome
We need good services to support our development as a Shire	Maintain existing services and facilities	Essential services help us to grow and prosper as a community

VOTING REQUIREMENTS

Simple Majority

STAFF RECOMMENDATION 1

Council amend Management Procedure EMP-005 to read as follows:

MANAGEMENT PROCEDURE No.	EMP-005
MANAGEMENT PROCEDURE	FIRE CONTROL OFFICER APPOINTMENTS
RESPONSIBLE DIRECTORATE	ADMINISTRATION
RESPONSIBLE OFFICER	CHIEF EXECUTIVE OFFICER
PREVIOUS POLICY No.	3.90
RELEVANT DELEGATIONS	

OBJECTIVES:

This Operational Procedure provides the eligibility criteria for a person to be appointed as a Bush Fire Control Officer with the following objectives:

2. To ensure that a person has the relevant qualifications necessary to hold the position of Bush Fire Control Officer (BFCO); and
2. To ensure that these qualifications are maintained by the appointed Bush Fire Control Officer (BFCO).

MANAGEMENT PROCEDURE STATEMENT/S:

1. To be eligible for appointment as a Bush Fire Control Officer, a person must have completed the Bush Fire Control Officer Training Program not more than ten (10) years prior to appointment.
2. Notwithstanding Item 1 above, a person will be eligible for appointment as a Bush Fire Control Office if they complete the Bush Fire Control Officer Training within six (6) months of appointment.
3. For a person to continue as a Bush Fire Control Officer, they must complete the Bush Fire Control Officer's Course or a refresher course at intervals of no more than every ten (10) years.
4. Nominations from Brigades shall be submitted to a Bush Fire Brigades Group Management Advisory Committee for recommendation to Council by 1 October, where applicable.
5. An appointment shall be for a period of one (1) year, unless revoked by Council. Bush Fire Control Officers will be eligible for reappointment unless their appointment was revoked by Council.

STAFF RECOMMENDATION 2

Council:

- a) Removes the appointment of Mr. Gerard Williamson from the position of the Yuna Bushfire Brigade Bushfire Control Officer in accordance with Section 38 the Bushfire Act, 1954 and Emergency Management Procedure EMP-005; and
- b) Endorses the appointment of Mr. Shaun Earl to the position of the Yuna Bushfire Brigade Bushfire Control Officer in accordance with Section 38 the Bushfire Act, 1954 and Emergency Management Procedure EMP-005

AGENDA ITEM:	9.3.4
SUBJECT:	CONSULTATION PAPER - PROPOSAL FOR REGIONAL SUBSIDIARIES LEGISLATION
PROPONENT:	CHIEF EXECUTIVE OFFICER
SITE:	SHIRE OF CHAPMAN VALLEY
FILE REFERENCE:	404.03
PREVIOUS REFERENCE:	NIL
DATE:	21 SEPTEMBER 2016
AUTHOR:	MAURICE BATTILANA, CHIEF EXECUTIVE OFFICER

DISCLOSURE OF INTEREST

Nil

BACKGROUND

Correspondence (see **Attachment 1**) has been received from the Department of Local Government & Communities (DLGC) accompanied by the *Consultation Paper - Proposal for Regional Subsidiaries Legislation* (Paper) seeking comment on the Paper by the 30th September 2013

COMMENT

I have attached a copy of the Paper to this Agenda Report with my comments highlighted in yellow for Council consideration as a basis for a submission to be made to the DLGC on this matter (see **Attachment 2**).

STATUTORY ENVIRONMENT

The *Local Government Legislation Amendment Bill 2014* will be introduced as amendments to the Act to enable regional subsidiaries to be formed. This Bill is currently under consideration by the WA Legislative Council.

The Paper has been circulated seeking feedback on how to develop Regulations to complement the proposed legislation.

POLICY IMPLICATIONS

No Policy or Management Procedure affected.

FINANCIAL IMPLICATIONS

No impact envisaged.

- **Long Term Financial Plan (LTFP):**

No affect on LTFP.

STRATEGIC IMPLICATIONS

The Regional Subsidiaries Legislation has been in development for many years and has been touted as being a vehicle to assist local governments in delivering services to its constituents on an efficient, regional basis. It has also been portrayed as a way of removing the bureaucratic red tape of the Regional Local Government Model for regional service delivery, a model I have been directly exposed to and can state from experience is a significantly flawed.

I have attempted to structure my response to the Paper along the lines of not burdening the *Regional Subsidiaries Model* with the same bureaucratic and administrative regulatory red tape associated with the *Regional Local Government Model*. However; also maintaining a level of accountability within Subsidiaries Model.

- **Strategic Community Plan/Corporate Business Plan:**

Objective	Strategy	Outcome
We want to strengthen our community's position for the future	Maintain a resilient and independent Shire	A sustainable and progressive local government

CONSULTATION

The proposed Regional Subsidiaries legislation has been around for many years and now the Bill has moved to the Legislative Council for final scrutiny (and hopefully endorsement) the DLGC has commenced the process of consultation with the industry on the development of Regulations to be associated with the new legislation.

RISK ASSESSMENT

There may be some risk associated with the establishment of a *Regional Subsidiary*. However this risk should be dealt with at the time a Charter is developed for the Subsidiary, rather not have the model overly regulated.

VOTING REQUIREMENTS

Simple Majority

STAFF RECOMMENDATION

1. Council endorse the comments provided by the Chief Executive Officer at **Attachment 2** as a basis for a submission to the Department of Local Government & Communities on the *Consultation Paper - Proposal for Regional Subsidiaries Legislation*;
2. Council authorise the Chief Executive Officer to comment further on the *Consultation Paper - Proposal for Regional Subsidiaries Legislation* as he considers necessary and inform Council of any significant deviation from those endorsed by Council at Item 1 above.



Government of **Western Australia**
Department of **Local Government and Communities**

Our Ref: 469-16 E1631957

To all local governments,

CONSULTATION PAPER – REGIONAL SUBSIDIARIES

The *Local Government Legislation Amendment Bill 2014* is currently being debated in the Legislative Council.

This Bill proposes to allow two or more local governments to come together to create a regional subsidiary for the purposes of providing joint services and other collaborative projects within their districts.

The Department is currently considering what regulations may be necessary to ensure the successful introduction of regional subsidiaries into Western Australia.

Attached to this letter is a consultation paper which sets out several legislative proposals. The paper also includes a short survey designed to give the Department an indication of how local governments view the concept of regional subsidiaries.

This paper is being circulated throughout the local government sector to provide the opportunity for feedback and suggestions. Submissions can be provided by mail, fax or email using the details provided in the consultation paper.

If your local government intends to make submissions on the proposals, it would be appreciated if they could be provided by **Friday, 30 September 2016**.

If you have any queries, please contact Mr Steven Elliott, Senior Legislation Officer on 6552 1642 or by email at legislation@dlgc.wa.gov.au.

Yours sincerely

Brad Jolly
A/DIRECTOR GENERAL

2 September 2016

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XDLGCL001



Government of **Western Australia**
Department of **Local Government and Communities**

Consultation Paper

Proposal for Regional Subsidiaries Legislation

5 August 2016

This consultation paper is an initiative of the Western Australia Department of Local Government and Communities. It is supported by the Liberal-National Government's Royalties for Regions program for the purposes of improving local government services in regional areas.

Consultation Paper
Proposal for Regional Subsidiaries Legislation

5 August 2016

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Disclaimer: Although every care has been taken to ensure accuracy in the preparation of this paper, the information has been produced as general guidance for persons wishing to make submissions.

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Introduction

This consultation paper is an invitation for comment on legislative proposals to regulate the operation of regional subsidiaries in Western Australia.

Submissions

Please address all comments and submissions:

By email to:

legislation@dlgc.wa.gov.au noting "Regional Subsidiaries Consultation" in the subject line.

By post to:

Senior Legislation Officer – Regional Subsidiaries Consultation

Department of Local Government and Communities

GPO Box R1250

PERTH WA 6844

If you have any queries in relation to the consultation paper, please contact:

Senior Legislation Officer – Regional Subsidiaries Consultation

Email: legislation@dlgc.wa.gov.au

Telephone: (08) 6551 8700

Free call: 1800 620 511 (Country Only)

Fax: (08) 6552 1555

Comments, queries and submissions should be forwarded no later than
30 September 2016.

Regional subsidiaries in Western Australia

The Liberal-National Government proposes to provide local governments with the power to form bodies known as “regional subsidiaries”.

These regional subsidiaries will be able to be established by agreement between two or more local governments, in order to provide services or carry out activities in the local governments’ respective districts.

This mechanism has been used in South Australia for over a decade and has proven to be a successful method of regional collaboration between local governments. It is intended to add this option to the other collaborative mechanisms available to local governments under the *Local Government Act 1995* and other legislation.

A regional subsidiary will be:

- A body corporate with perpetual succession and a common seal;
- Governed by a charter approved by the Minister for Local Government; and
- Managed by a governing board appointed under the charter.

From a regulatory compliance perspective, regional subsidiaries are intended to form a compromise between existing collaborative mechanisms:



The intention of the Liberal-National Government is to create an option that takes advantage of the structure of a Statutory Regional Local Government, while avoiding the level of regulation that applies to such entities.

The *Local Government Legislation Amendment Bill 2014* will introduce amendments to the Act to enable regional subsidiaries to be formed. This Bill is currently under consideration by the Legislative Council.

A copy of the current Bill can be freely accessed at the Parliamentary website at www.parliament.wa.gov.au. For convenience, the proposed amendments in the Bill relating to regional subsidiaries are replicated in Appendix 2.

While there is an emphasis on reducing regulatory compliance, the successful introduction of regional subsidiaries into Western Australia will require legislation to:

- Facilitate how regional subsidiaries are created;
- Ensure that regional subsidiaries conduct their business in a transparent, accountable manner; and
- Minimise the potential financial risks that could arise from forming these bodies.

To this end, the Department has formulated a number of legislative proposals which could potentially be drafted into regulations.

The Department seeks feedback from the local government sector on the appropriateness of these proposals and whether alternative approaches should be taken on particular issues.

Regulatory Proposals

The Department's legislative proposals are provided on the following pages.

Each proposal will include a short explanation of what the proposal will involve, followed by the Department's reasoning for why the proposal should be implemented.

Guidance Questions

Your comments and feedback are welcomed on all or part of this consultation paper.

Guidance questions have been created to assist you with your submission. If you respond to specific questions, it would be appreciated if you could reference the proposal number for ease of processing.

1. Local governments are to consult with districts prior to proposing a regional subsidiary

It is proposed that prior to the Minister approving a draft charter, the constituent local governments will carry out sufficient consultation in their respective districts.

The consultation is intended to operate in a similar manner to the consultation required for major trading activities and land acquisitions under section 3.59 of the *Local Government Act 1995*. This would include:

- Preparation of a business plan.
- Business plan to be posted on the local government's websites.
- State-wide public notice of the proposal.
- A period of 6 weeks to inspect the business plan and make submissions on the proposal.
- Any submissions received during this period must be taken into consideration by the constituent local governments.

If significant changes are made to the proposal after the consultation process, the proposal must be advertised for further comment. This would be done via a repetition of the above steps.

The term "significant change" would be defined in the regulations to mean "any change relating to the proposed function, activities or membership of the regional subsidiary". Changes that do not alter the fundamental elements of the original proposal would not require additional consultation.

If the Minister determines that insufficient consultation has occurred in one or more districts of the constituent councils, the Minister may refrain from approving the charter until sufficient consultation occurs in those remaining districts.

Reason

The *Local Government Act 1995* currently has a consultation process for proposed major trading activities and land acquisitions. It is justifiable to have a similar process for regional subsidiaries, given the potential financial implications.

If a proposal is significantly changed after consultation, this proposal will need to be readvertised for further submissions. If a charter were significantly changed and then approved without further consultation, it would increase the possibility that stakeholders will react negatively or feel marginalised during the final stage of the process.

In the event that one of the constituent councils has not met consultation requirements, the Minister can refrain from approving the proposal until that council has carried out sufficient consultation.

Guidance questions: Proposal 1

- 1) Will this level of consultation allow your community to make informed comments on a proposed subsidiary?
- 2) Is this the correct level of consultation that should occur? Why or why not?
- 3) When consultation concludes and the draft charter is prepared, should a copy of the draft charter be circulated for public comment as well? Why or why not?
- 4) Other comments? This is over the top and there should be thresholds in place before the consultation process would be necessary. There are legislated thresholds in place under the legislation for Major Trading Activities so something similar should be included for Regional Subsidiaries to ensure excessive regulatory red tape is not required for the simple tasks to be taken on by a group of LGAs.

2. The procedure for approving a charter

It is proposed that when making an application for Ministerial approval of a draft charter, the constituent councils will submit the following:

- A copy of the proposed business case.
- A copy of the draft charter duly executed by each constituent local government;
- A resolution from each constituent council endorsing the draft charter (*absolute majority*);
- Evidence that each constituent council has complied with consultation requirements;
- Evidence that the councils have obtained legal advice confirming that the proposed charter is legal and enforceable.

Reason

The Minister's approval of the charter is the final legislative decision which will occur prior to the Regional Subsidiary coming into legal existence under the Act. In using this power, the Minister must consider all relevant information.

This proposal will ensure that the Minister has access to sufficient documentary evidence to be satisfied that:

- (a) sufficient consultation has occurred;
- (b) all submissions received during consultation were duly considered;
- (c) the draft charter has been endorsed by all constituent councils; and
- (d) the charter will be legally enforceable.

The endorsement of the charter will require an absolute majority of the council, similar to how these councils would approve entry into a major trading activity or major land acquisition.

Once the charter is approved by the Minister, the regional subsidiary will operate as an independent entity. Neither the Act nor the Regulations will contain any direct means for constituent local government to enforce the terms of the charter over the regional subsidiary. The subsidiary will also be responsible for complying with all legislation that might be applicable to the subsidiary's activities.

This makes it important for constituent councils to obtain legal advice when drafting the charter to ensure the document is enforceable and in compliance with the law.

Guidance questions: Proposal 2

- 1) What other information should be provided to the Minister when considering a draft charter?
- 2) Other comments? As per the previous comment, this appears excessive and there should be thresholds in place before the Business Cases would be necessary. There are legislated thresholds in place under the legislation for Major Trading Activities so something similar should be included for Regional Subsidiaries to ensure excessive regulatory red tape is not required for the simple tasks to be taken on by a group of LGAs.

3. The procedure for amending a charter

It is proposed that in order to amend a charter, the following information will need to be provided to the Minister:

- A draft copy of the charter as amended; and
- An endorsement of the amended charter, either by resolution of the regional subsidiary's board or by resolutions from the constituent councils supporting the proposal.

The public consultation requirements for proposing a charter will apply to any proposed amendment which would make a significant change to the charter. The term "significant change" will be defined to mean any amendment which would change the regional subsidiary's current function, activities or membership.

Reason

The Act provides that a Minister can approve an amendment to a charter, but provides no further information on who can propose an amendment or what process is involved aside from the Minister's approval.

The Department assumes that the majority of amendments would be proposed by the regional subsidiary themselves, via a process set out in the regional subsidiary's charter. However, the Act does not expressly prohibit the constituent local governments from proposing their own charter amendments.

Since the unanimous support of the constituent councils is needed to create the charter, it would be difficult for the Minister to justify approving an amendment that is directly proposed by a constituent council unless:

- It is unanimously supported by the other constituent councils; or
- It has a sufficient level of support as defined in the charter.

If the constituent councils wish to have the ability to propose direct amendments without unanimous support, the charter will need to cover this matter in sufficient detail.

Guidance questions: Proposal 3

- 1) Should the constituent councils have the power to propose amendments to a charter after a regional subsidiary is created? Why or why not?

Yes, as things may change once the activity become operational and aspects arise that may not have been thought of when charter was original developed.

- 2) Should amendments only be proposed by the board of the regional subsidiary itself? Why or why not? Yes as this maintains the independence of the subsidiary and distances the individual LGA from the decision making process.

- 3) Is it appropriate for the Minister to approve an amendment made in accordance with the charter if some of the constituent councils object to the proposal? Only if the amendment is significant to the original charter.

- 4) Other comments? Who is to determine what is or isn't a "significant change"?

4. Employees of regional subsidiary - long service leave and superannuation

Option 1

Employees of regional subsidiary count as local government employees if specified in the charter.

Option 2:

The Regulations will provide that employees of regional subsidiaries will always count as local government employees.

Proposal

The Regulations could provide that an employee will count as a local government employee for the purpose of long service leave, superannuation benefits and other award conditions, if specified in the subsidiary's charter.

Alternatively, the Regulations could provide that the employees of regional subsidiaries would count as local government employees in all cases.

Reason

Under option 1, a regional subsidiary will specify in their charter whether their employees will be covered by existing local government regulations or awards or alternatively, have their minimum benefits defined by other awards.

Under option 2, regulations would ensure that employees of regional subsidiaries would count as local government employees in all cases. This would ensure that minimum benefits are secured for all employees under current local government legislation.

South Australian legislation provides all employees in regional subsidiaries are counted as local government employees. In other jurisdictions, the employees of regional local government organisations receive standard benefits under federal or state awards.

This would tend to indicate that option 2 is more consistent with other jurisdictions, while option 1 would provide more flexibility.

This proposal only relates to the minimum benefits for the employees of regional subsidiaries and will not prevent a subsidiary from offering more generous benefits to its employees if it chooses to do so.

Guidance questions: Proposal 4

- 1) Do you support constituent local governments being able to specify in the charter whether or not employees will operate under the Local Government Award? Why or why not? **Yes as this gives the independence of the regional subsidiary group.**
- 2) Should all employees of a regional subsidiary be treated in the same way, or should the regional subsidiary be allowed to determine this issue on an employee-by-employee basis? **The regional subsidiary be allowed to determine this issue on an employee-by-employee basis**
- 3) Other comments?

5. Conflicts of interest must be reported

It is proposed that Part 5 Division 6 ('disclosure of financial interests') of the *Local Government Act 1995* will apply to regional subsidiaries.

A member of the board of a regional subsidiary would count as a 'member' for the purposes of those sections of the Act. The employees of the subsidiary will count as local government employees for the purposes of those sections.

The application of Part 5 Division 6 would be modified in several ways:

- Provision will be made for situations where the subsidiary has no chief executive officer;
- Conflicts of interest must be disclosed to the constituent councils, not just to the board of the subsidiary.

Reason

It is important that regional subsidiaries conduct their activities in an accountable and transparent manner.

Conflicts of interest can potentially undermine the management of the subsidiary. It can also undermine the reputation of the subsidiary and the constituent councils, even if the conflict of interest is merely perceived.

While it would be possible for regional subsidiaries to manage their own conflicts of interest, there is no guarantee that a completely internal system would sufficiently manage the issue. An internal system would also lack the statutory penalties which are provided in the Act.

Guidance questions: Proposal 5

- 1) Should regional subsidiaries disclose conflicts of interest to the constituent local governments who formed the subsidiary? Why or why not? **No, this should be handled separately to retain independence of the regional subsidiary**
- 2) If the regional subsidiary only needed to report conflicts of interest to its own board, would this be sufficient to manage the issue? **Yes**
- 3) Should a regional subsidiary be required to have a code of conduct for their board members? Why or why not? **Yes as it maintains the integrity of the subsidiary**
- 4) Should regional subsidiaries also be required to have procedures in place for dealing with requests under Freedom of Information legislation? **Yes, simply follow the legislative requirements**
- 5) Other comments? **It is important those associated with both the regional subsidiary and a participating LGA are not expected to repeat the requirements of lodging an Annual Financial Declaration to both the Subsidiary and the LGA. This was a problem with the Regional Local Government structure and one that must be avoided at all costs in the Subsidiary legislation.**

6. Minister can investigate a regional subsidiary and issue directions

It is proposed that Part 8 ('Scrutiny of Local Governments') of the *Local Government Act 1995* will apply to regional subsidiaries.

This would allow the Minister to make inquiries into the affairs and performance of a regional subsidiary. Any report resulting from an inquiry would need to be released to the regional subsidiary and the constituent councils.

If the regional subsidiary fails to comply with the recommendations of the report, the Minister will have the power to suspend the board of the regional subsidiary. The regional subsidiary will be placed under the control of an administrator for the purposes of implementing the recommendations.

Reason

Part 8 of the Act provides a mechanism for the investigation and direction of local governments. While regional subsidiaries are separate from local government, they should be covered by the same enforcement mechanisms.

Since the regional subsidiaries are formed from the constituent councils, the report of any investigation will be issued to those councils in addition to the regional subsidiary itself. The Minister will have the power to suspend the board of a regional subsidiary.

In practice, the use of this power would only be contemplated in situations where:

- Serious misconduct or mismanagement has been identified;
- The regional subsidiary refused to comply with directions from the Minister; and
- The constituent councils are unable to resolve the issue directly.

Guidance question: Proposal 6

- 1) Do you agree with this proposal? Why or why not? **Yes as it maintains control and instils accountability of the Subsidiary**

7. Minister can wind up a regional subsidiary

It is proposed that section 3.63(1)(a) of the *Local Government Act 1995* will apply to regional subsidiaries. This will allow the Minister to issue a direction that a regional subsidiary is to be wound up.

If the Minister issues a direction to abolish a regional subsidiary, the Minister will issue a notice in the *Government Gazette*. The regional subsidiary will be deemed to commence winding up on the day in which the notice occurs, or on a later date as specified in the notice.

At the point of winding up, all the regional subsidiary's assets will be vested in the constituent councils. Assets and liabilities will be distributed:

- in accordance with the winding up provisions of the charter; or
- by unanimous agreement of the constituent councils.

Reason

Section 3.63 of the Act gives the Minister the power to wind up a regional local government. It is desirable that a similar power exist for regional subsidiaries to ensure that the Minister can intervene in emergency situations.

In practice, this power would only be used in situations where serious misconduct is identified and the activities of the subsidiary must be immediately halted.

Guidance questions: Proposal 7

- 1) Should the Minister have the power to wind up a subsidiary? Why or why not? **Yes**
- 2) If the Minister has the power to wind up a subsidiary, in what circumstances should this power be used? **The subsidiary becoming dysfunctional or serious misconduct or mismanagement has been identified**
- 3) Should the direction require the unanimous approval of the constituent councils? Why or why not? **Yes as this will remove the process of LGAs optin in or out as they feel the need.**
- 4) Other comments? **Option should be made available within the charter to determine if a participating LGA can (or cannot) opt out of the subsidiary. Preferably the opt out decision should be very difficult to ensure the situation of an LGA opting out simply due to a change of Councillors or CEO at any one time. This was a real problem with the Regional Local Government model and one that needs to be dealt with within the Charter. Unanimous decision of all participating LGAs to allow an LGA to opt out or to allow others in should be a requirement. This will make the initial decision by an LGA to become a member of a subsidiary being dealt with more seriously at the time.**

8. A regional subsidiary is subject to the directions of its constituent councils

It is proposed that charters must include a provision ensuring that regional subsidiaries will be subject to any direction issued by the constituent councils.

This direction can be issued by the unanimous support of the constituent councils or by a lesser majority of the councils as specified in the charter. A constituent council can endorse their support of a direction via an absolute majority resolution.

Reason

In cases where the regional subsidiary cannot solve an issue internally or makes a controversial decision, the constituent local governments should reserve the power to step in and issue directions on how the subsidiary should proceed.

This power should be established in the charter of the regional subsidiary. This will mean that if a regional subsidiary refuses to comply with a direction from the constituent councils, the charter can be used to enforce the direction in court.

This proposal is intended to ensure that the constituent councils retain a degree of control over the subsidiary. The proposal is not intended to force constituent councils into an ongoing managerial role – the power could be used as often or rarely as the constituent councils decide.

Guidance questions: Proposal 8

- 1) Is it important for local governments to have a power to issue directions to a regional subsidiary? Why or why not? **Not really as I thought the idea of a subsidiary was to act independently of the LGA.**
- 2) Should a local government keep this power in reserve, even if the local government prefers not to use it? **No**
- 3) Other comments? **If the Charter is robust and detailed enough on the purpose & function of the subsidiary I cannot see the need for the LGAs to be involved.**

9. Subsidiary must prepare annual budgets and financial statements

It is proposed that regulations will require a regional subsidiary to prepare annual budgets. The relevant provisions of the *Local Government (Financial Management) Regulations 1996* relating to budgets will apply to the regional subsidiary subject to all necessary modification.

The Regulations will also include a requirement that the regional subsidiary prepare an annual financial report setting out the subsidiary's financial activities, assets and liabilities. The complexity of these documents will depend on the particular activities conducted by the regional subsidiary.

In addition to being provided to the board of the regional subsidiary, these documents must also be provided to the constituent local governments who formed the subsidiary.

22

Reason

This proposal will ensure that regional subsidiaries conduct sufficient levels of financial planning and management.

The Regulations will require copies of reports and budgets to be provided to constituent local governments. The purpose of this is to ensure that constituent councils:

- are aware of the subsidiary's ongoing financial situation; and
- can use the subsidiary's statements to estimate their own exposure to the subsidiary's assets and liabilities.

If the financial statements indicate that a regional subsidiary is having trouble meeting its debts, the constituent councils can use this information to determine whether the subsidiary should be wound up or given financial assistance.

Guidance questions: Proposal 9

- 1) Will annual budgets and financial statements provide sufficient information? What other financial records should the regional subsidiary need to prepare and provide to the subsidiary's board? **Should suffice**
- 2) Should these documents be provided to the constituent councils who formed the subsidiary, or merely provided to the subsidiary's own board? Which option do you prefer and why? **Provide to the constituent councils.**
- 3) Other comments? **It is important the financial reporting is not too onerous, otherwise the subsidiary will simply exhaust resources in financial reporting compliance rather than in undertaking the tasks it has been setup to do. There should be a tiered approach to financial reporting and compliance and perhaps based on the revenue/expenditure levels of a subsidiary. The last thing we need is for a subsidiary established to undertake a simple service delivery task to be burdened by red tape and bureaucracy.**

10. Subsidiary must provide information to constituent councils when requested

It is proposed that constituent councils will have an individual right to access any documents or records which are produced by the regional subsidiary, even when these documents are sensitive and confidential.

This will be achieved by making section 5.92 of the *Local Government Act 1995* apply to regional subsidiaries. In addition to the board of the subsidiary having the right to access information, the section will be modified so the right extends to each of the constituent councils who formed the subsidiary.

Section 5.93 of the Act ('improper use of information') will also apply to the regional subsidiary and constituent councils. This will ensure that any information obtained from the regional subsidiary can only be used for proper and lawful purposes.

A duty of confidentiality would not release a subsidiary from its obligation to report the information to a constituent council if the disclosure is required by the charter or requested by that council.

If a document is confidential, a disclosure to a constituent council will not constitute a breach of duty. However:

- the regional subsidiary must advise the person to whom the duty is held of the nature and extent of the disclosure; and
- any person to whom the document is disclosed will be bound by the same duty of confidentiality that applied to the subsidiary.

Reason

South Australian legislation ensures that constituent councils have complete access to information in a regional subsidiary, even where this information is sensitive or confidential.

If this provision is not replicated in the Regulations, it will create the possibility that a regional subsidiary may use confidentiality as a reason to conceal vital information from

the constituent councils. This non-disclosure could significantly impact the constituent councils' ability to make judgements on the regional subsidiary's activities and financial situation.

While disclosure is important, this must be balanced by sufficient protection to ensure confidential information is used correctly.

For this reason, a person or council who accesses information from a regional subsidiary will not be allowed to use it for improper purpose. The person requesting the information will also be bound by any duty of confidentiality which might apply over the information.

This proposal only relates to the regional subsidiary's obligation to provide information to its board and constituent councils. It would not impact an individual's right to request information from the subsidiary under existing Freedom of Information legislation.

Guidance questions: Proposal 10

- 1) Do you agree with this proposal? Why or why not? Yes as it removes the opportunity for the subsidiary to withhold important information under the excuse of confidentiality.
- 2) Should regional subsidiaries be allowed to conceal information from constituent local governments? Why or why not? Depends on what the information is. For example, if it is legal advice to be used against a constituent LGA then I suppose this would be legitimate.
- 3) Should regional subsidiaries be allowed to refuse to disclose information that has been requested by constituent local governments? Why or why not? Depends on what the information is. For example, if it is legal advice to be used against a constituent LGA then I suppose this would be legitimate.
- 4) If regional subsidiaries were allowed to conceal or deny information to constituent local governments, what should be done to prevent this from being misused? Sounds like legal advice would assist here.
- 5) Other comments?

11. Liabilities of regional subsidiary guaranteed by constituent local governments

It is proposed that constituent councils will be jointly and severally liable for the liabilities of a regional subsidiary, in the event that normal winding up procedures are insufficient to discharge all liabilities owed by that subsidiary.

Reason

While the formation of regional subsidiaries is a flexible and useful tool for local governments, it comes with the responsibility of ensuring that a regional subsidiary carries on business in a responsible and sustainable manner.

While it is not intended for regional subsidiaries to take out loans in their own right, their activities may result in them owing significant debts. These liabilities will need to be settled if the regional subsidiary winds up before these debts are discharged.

In the event that a regional subsidiary is required to wind up, it is important that the constituent councils be guarantors for any liability which remains after the winding up has concluded.

Guidance questions: Proposal 11

- 1) Should local governments be the guarantors of a regional subsidiary's debts? If not, what is the alternative? Ideally the subsidiary would be an entity responsible for its own debts/liabilities; however, the ability should still be there for the constituent LGAs to underwrite such debt/liability and therefore have responsibility for the the subsidiaries debt/liability. The Charter should determine this, rather than the regulations setting this as a pre-requisite condition of the subsidiary being established.
- 2) What other protections do you believe are necessary to avoid a regional subsidiary incurring excessive levels of debt? Borrowing through the WA Treasury only may be a mechanism to manage sustainable debt.
- 3) Other comments?

12. Charter must address what occurs when a regional subsidiary is insolvent

It is proposed that the charter of a regional subsidiary must address what occurs if a regional subsidiary becomes insolvent, or becomes aware that insolvency is likely within the financial year.

The charter must also include a provision preventing a regional subsidiary from operating while insolvent, except to the extent needed for winding up procedures.

Reason

Insolvency represents the greatest risk that a regional subsidiary may pose to constituent local governments. This is due to the fact that the constituent local governments would be the guarantors of a regional subsidiary's outstanding liabilities.

If a regional subsidiary is permitted to continue activities while insolvent, this creates the possibility that the subsidiary's liabilities will spiral out of control and cause significant financial burdens on the constituent councils who may end up covering those debts.

For this reason, the charter should have clear instructions on what should occur in situations where a regional subsidiary (or the constituent councils) become aware that a regional subsidiary is unable to pay its debts.

Ideally, the charter should include:

- clear instructions for when the regional subsidiary must be wound up; and
- the ability for the constituent councils to take control of a regional subsidiary if it does not wind up when required.

This proposal is not intended to prevent regional subsidiaries from operating at a loss, since this may be unavoidable depending on the nature of the subsidiary's activities.

If a subsidiary is designed to operate at a loss, the constituent councils would be expected to have ongoing funding systems in place so that the subsidiary can meet its liabilities as they become due.

If a point is reached where the constituent councils are no longer willing to provide money to allow the subsidiary to meet ongoing liabilities, this would be a good indication that the subsidiary should either be wound up or reorganise its activities to a more sustainable model.

Guidance questions: Proposal 12

- 1) Should regional subsidiaries be allowed to operate at a loss? Why or why not? **Not unless an approved Business Case for a significant activity details there will be loss at particular times (e.g. early years of establishing an activity of the subsidiary).**
- 2) **How should constituent councils monitor the debts that a subsidiary is incurring? Audited Financial Statement provided to constituent LGA. However; this level of reporting should be determined by the level of revenue/expenditure activities of the subsidiary (i.e. one size should not fit all). Some subsidiaries may be operating very simply inexpensive activities, which will not require the level of scrutiny of a subsidiary involve in a large scale high revenue/expenditure activity. As previously mentioned, the level of consultation, prior business case requirements, reporting, etc. needs to be scales within the regulations to cater for differing situations.**
- 3) Other comments?

13. Protection from liability

Section 9.56 of the Local Government Act will apply to the board members, employees and agents of a regional subsidiary as if they were the members, employees or agents of a local government under the Act.

Reason

If local governments wish to delegate responsibilities to a regional subsidiary, it is appropriate that the board, employees and agents of the regional subsidiary should receive similar protection.

This protection will not extend to the regional subsidiary itself, which may remain liable for the actions and decisions which are carried out in the subsidiary's name.

Guidance questions: Proposal 13

- 1) Should the board members, employees or agents of regional subsidiaries receive this protection? Why or why not? Yes; however, how is this protection covered under insurance? Does the subsidiary need to take out its own liability insurance cover or is this reflected in the constituent LGs policies?
- 2) Should any of these groups not receive protection and if so, why?
- 3) Other comments?

14. Limits on investment and corporate acquisition

The regulations will provide that sections 3.60 and 6.14 of the Act and Clause 32 of the *Local Government (Financial Management) Regulations 1996* will apply to a regional subsidiary as if it were a local government.

This will mean that a regional subsidiary will be subject to the same investment restrictions which apply to local governments. This will prevent the subsidiary from conducting speculative investments or attempting to form or acquire a corporate interest.

The Regulations will not seek to obstruct investments which are directly connected and subservient to the subsidiary's activities. What qualifies as "directly connected" will depend on the purpose of the regional subsidiary and what assets need to be acquired to carry out this purpose.

Reason

The Act provides safeguards regarding how local governments may invest their funding. It is important that similar safeguards be put in place over regional subsidiaries.

The proposal is chiefly designed to ensure that regional subsidiaries are not used as a mechanism for circumventing the existing restrictions on investment. Since regional subsidiaries have fewer compliance requirements, they are not intended to be used for risky financial ventures or speculative investment.

Guidance questions: Proposal 14

- 1) Should regional subsidiaries be covered by the same restrictions on investment that apply to local governments? Why or why not? **Yes. For the reason stated in your preamble**
- 2) Should regional subsidiaries be required to justify investments to the constituent councils, prior to these investments occurring? Why or why not? **No, this should determine by the subsidiary and reflected in the financial statement. Such issues should be incorporated in the Charter, not Regulation.**

3) Would your answers be different depending on whether the regional subsidiary is self-funding or dependent on local government funding? Why or why not? **No**

4) Other comments?

15. Tender requirements apply to the regional subsidiary

The regulations will provide that the requirements to invite tenders for goods and services will apply to regional subsidiaries. Section 3.57 of the Act and the tender provisions of the *Local Government (Functions and General) Regulations 1996* will apply with all necessary modifications.

Reason

Local governments are required to spend their funds in a transparent and fair manner. This prevents the creation of circumstances which might be perceived as favouritism or a conflict of interest.

The proposal will ensure that regional subsidiaries are not used as a mechanism to circumvent the existing tender requirements for the acquisition of goods and services.

Since many regional subsidiaries will receive some form of funding by local governments, there is a clear interest in ensuring that local government tender requirements will continue to apply to these funds.

Guidance questions: Proposal 15

- 1) Should regional subsidiaries be required to hold tenders for the acquisition of goods and services? If not, what is the alternative? Yes and they should be able to use the WALGA preferred suppliers tender/eQuote system to deal with procurements.
- 2) If a regional subsidiary acquired goods or services in a manner that appeared corrupt or unfair, how should constituent councils deal with this? Simply report this to the Minister and let it be dealt with at this level, rather than the constituent councils becoming judge, jury & executioner on what only *appears* to an issue.
- 3) What other provisions of the Local Government Act and Regulations should apply to a regional subsidiary and why? As few as possible otherwise all we will have done is establish a Regional Council under a different name. The Charter for the establishment of a subsidiary needs to be the determining conditions, not over-loaded regulations. There must be flexibility in the regulations to allow for a vast range and type of subsidiaries to be established for many and varied activities.
- 4) Other comments?

16. Charter to address certain matters

The Act and Regulations will provide that a charter must address the following issues:

- Membership of the subsidiary.
- The specific powers of the subsidiary.
- How documents should be executed in the subsidiary's name.
- The constituency of the Board.
- How the meeting procedures of the board are to be determined.

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- Financial reporting requirements.
- General reporting requirements.
- Access to information by the constituent councils.
- Dispute resolution between constituent councils.
- Process of winding up.
- Any circumstances in which the subsidiary must cease activity and commence winding up.
- How the constituent councils may issue directions to the regional subsidiary.
- Whether the charter may be amended and if so, how this should occur.

Reason

A regional subsidiary is intended to conduct its activities in an independent manner. To achieve this, the charter must contain sufficient detail to allow the regional subsidiary to operate effectively on a day-to-day basis and provide guidance on how the subsidiary should deal with unexpected circumstances.

The regulations will only list the general matters which the charter must address. The regulations will not attempt to dictate how these items should be covered. It will be left to the constituent local governments to agree on the details and draft suitable provisions into the charter.

If a charter fails to address these issues in sufficient detail, it may result in the regional subsidiary having insufficient guidance on how to deal with certain circumstances. The

Minister will take this into consideration when determining whether to approve a draft charter.

Guidance questions: Proposal 16

- Are there any matters listed in this proposal that are unnecessary in a charter? If so, please explain why you believe this to be the case. **The Charter needs to be expanded to remove the need for overly prescriptive Regulations**
- Are there any matters that aren't listed in the proposal that should be included? If so, please explain why you believe this to be the case.

Appendix 1 - Stakeholder survey

- The following questions are to assist the Department in determining how the local government sector views the concept of regional subsidiaries.
- Please read these questions and circle the options that most closely reflect your local government's views.
- Multiple options can be selected.

Name of local government:

1. Please indicate whether your local government would consider forming a regional subsidiary for the following purposes:

- (a) Aged care services.
- (b) Childcare services.
- (c) Waste services.
- (d) Volunteer emergency services.
- (e) Road maintenance.
- (f) Management of local government building services.

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- (g) Direct management of civic facilities (library, swimming pool, public parks etc.).
- (h) Office services (e.g. payroll, accounting, record keeping)
- (i) Other – please specify

c, e, f, h

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2. Has your local government held discussions with other local governments regarding the formation of regional subsidiaries?

- (a) Yes – detailed discussions.
- (b) Yes – but only for preliminary discussions.
- (c) No.

3. The primary goal(s) of a regional subsidiary should be to:

- (a) Reduce the burdens and costs of local government.
- (b) Allow local governments to pool their collective resources.
- (c) Reduce “red-tape” and regulatory compliance.
- (d) Increase services for district residents.

(e) Other _____

Meet the needs of the community where the other tiers of government or the private sector have failed to deliver (e.g. medical service, ICT service).

4. Regional subsidiaries should be based on the following funding model:

- (a) Operate on a “for-profit” basis.
- (b) Operate on a “cost-recovery” basis.
- (c) Operate at a loss and be funded by loans from local governments.
- (d) Any of the above, depending on the circumstances and the service it provides.

5. If a regional subsidiary raises profit during the course of its activities, the surplus money should be:

- (a) Reinvested in a way that furthers the subsidiary's goals under the charter.
- (b) Reserved until needed for the subsidiary's normal costs of business.
- (c) Reserved for an undefined emergency.
- (d) Distributed back to the local governments that formed it.
- (e) Determined by the Charter as it could be a combination any (or all) of the above.

6. The constituent local governments should have the power to issue directions to their regional subsidiary:

- (a) Whenever it is convenient to do so.
- (b) Whenever the subsidiary's charter permits.
- (c) Only during emergencies.
- (d) Never – the regional subsidiary should be independent.

7. The Minister should take direct control of a subsidiary in the following circumstances:

- (a) It is acting contrary to its charter.
- (b) It is acting contrary to the wishes of the constituent local governments that agreed to form it.
- (c) It is incurring excessive levels of debt which it cannot repay.
- (d) Never – any problems should be settled by the constituent local governments.

8. Do you believe the geographical location or population density of your district increase the potential benefit of forming a regional subsidiary?

(a) Yes.

(b) Possibly, but only for some services.

(c) Uncertain.

(d) No.

Appendix 2 - Local Government Amendment Bill

- Below is an extract of the proposed amendments contained in the *Local Government Amendment Bill 2014*.
- The proposed amendments to the Act are in italics.
- The Bill is currently being debated in Parliament and the following extracts may not reflect the final version of the amendments.

Western Australia

Local Government Act 1995

Incorporating the amendments proposed by the *Local Government Legislation
Amendment Bill 2014 Pt. 2* (Bill No. 108-1 - Version 2)

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1.4. Terms used

In this Act, unless the contrary intention appears —

...

regional subsidiary means a regional subsidiary established under section 3.69;

3.60. No capacity to form or acquire control of body corporate

A local government cannot form or take part in forming, or acquire an interest giving it the control of, an incorporated company or any other body corporate except a regional local government *or regional subsidiary* unless it is permitted to do so by regulations.

3.68. Other arrangements not affected

Nothing in *sections 3.61 to 3.67* prevents local governments from making arrangements under which —

- (a) a local government performs a function for another local government; or
- (b) local governments perform a function jointly.

3.69. Regional subsidiaries

- (1) *Two or more local governments making arrangements under which they are to provide a service or carry on an activity jointly may, with the Minister's approval and in accordance with the regulations, form a subsidiary body (called a **regional subsidiary**) to provide that service or carry on that activity.*
- (2) *If the Minister approves the formation of a regional subsidiary, the Minister must, by notice in the Gazette, declare that the regional subsidiary is established —*

- (a) on the date set out in the notice; and
 - (b) under the name set out in the notice.
- (3) A regional subsidiary —
- (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is to have a governing body consisting of members appointed in accordance with the regional subsidiary's charter (as approved by the Minister in accordance with section 3.70(3)).
- (4) Without limiting subsection (3)(b), a governing body may consist of or include members who are not council members or employees.

3.70. Regional subsidiaries to have charter

- (1) Local governments proposing to form a regional subsidiary must prepare a charter addressing the following matters —
- (a) the establishment and powers and duties of the regional subsidiary;
 - (b) the process for selecting and appointing members of the regional subsidiary's governing body;
 - (c) the qualifications that members of the regional subsidiary's governing body must have;
 - (d) the administration of the regional subsidiary, including the membership and procedures of its governing body, and the fees, allowances and expenses to be paid or reimbursed to the members of its governing body;
 - (e) the financial management, planning, auditing and reporting to be undertaken by the regional subsidiary;
 - (f) the process for amending the charter;
 - (g) the winding up of the regional subsidiary;

- (h) *any other matters required by the regulations to be dealt with in a charter.*
- (2) *The local governments must forward the charter to the Minister when applying for approval for the formation of the regional subsidiary.*
- (3) *A charter, and an amendment to a charter, are of no effect unless approved by the Minister.*

3.71. Regulations about regional subsidiaries

Regulations may —

- (a) *regulate the procedure for applying to the Minister for approval for the formation of a regional subsidiary; and*
- (b) *require the local governments proposing to form a regional subsidiary to consult with the community in their districts in accordance with the regulations; and*
- (c) *provide that a specified provision of this Act applies in relation to a regional subsidiary subject to any prescribed or necessary modifications; and*
- (d) *provide for or regulate any other matter that is necessary or convenient to be provided for or regulated in respect of a regional subsidiary.*

3.72. Other provisions and arrangements not affected

- (1) *Section 3.69 has effect in addition to the provisions of this Division relating to regional local governments, and does not derogate from those provisions.*
- (2) *Nothing in section 3.69 prevents local governments from making arrangements under which —*
 - (a) *a local government provides a service or carries on an activity for another local government; or*

- (b) *local governments provide a service or carry on an activity jointly without forming a regional subsidiary.*

5.49. Workers' compensation arrangement

- (1) In this section —

arrangement means the group self-insurance arrangement established under subsection (2);

eligible body means —

- (a) a local government; or
- (b) a regional local government; or
- (ca) *a regional subsidiary; or*
- (c) any other body with functions relating to local government approved in writing by the Minister;

6.23. Powers of receivers

- (1) A receiver is entitled to receive the general funds of the local government.
- (2) For the purposes of subsection (1) a receiver has the powers which a local government has with respect to general rates under this Part.
- (3) In relation to a regional local government a receiver is entitled to receive whichever of the following over which security has been given in a particular case —
 - (a) the financial contributions of the participants to the regional local government's funds as set out or provided for in the establishment agreement for the regional local government;
 - (b) Government grants which were not given to the regional local government for a specific purpose;

- (c) the general funds of a participant to the extent that those funds secure either money borrowed by, credit obtained for, or financial accommodation extended to, the regional local government.
- (4) *In relation to a regional subsidiary, a receiver is entitled to receive whichever of the following over which security has been given in a particular case —*
 - (a) *the financial contributions of the participants to the regional subsidiary's funds as set out or provided for in the regional subsidiary's charter;*
 - (b) *Government grants that were not given to the regional subsidiary for a specific purpose;*
 - (c) *the general funds of a participant to the extent that those funds secure financial accommodation extended to the regional subsidiary.*

10.0 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

11.0 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

11.1 Elected Member Reports

12.0 URGENT BUSINESS APPROVED BY THE PRESIDING MEMBER OR BY A DECISION OF THE COUNCIL

13.0 MATTERS FOR WHICH MEETING TO BE CLOSED TO MEMBERS OF THE PUBLIC

13.1 CEO Annual Performance Appraisal & Remuneration Review

14.0 CLOSURE