



# Agenda

## Ordinary Council Meeting

25 November 2020

Shire of Victoria Plains  
Council Chambers, Calingiri  
AND  
via E-Meeting Protocol

Commencing – 2.00 pm

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## **DISCLAIMER:**

The recommendations contained in this document are officers' recommendations only and should not be acted upon until Council has resolved to adopt those recommendations.

The resolutions of Council should be confirmed by perusing the minutes of the Council meeting at which these recommendations were considered. Resolutions are not considered final until the minutes of the meeting are confirmed or advised in writing by the CEO or authorised person.

Members of the public should also note that they act at their own risk if they enact any resolution prior to receiving official written notification of Council's decision.

### Recording of Meeting

Members of the public are advised that meetings of Council are audio recorded to assist with ensuring an accurate record of the meeting is provided for the formal minutes of the meeting. In terms of the Privacy Act 1998 this may involve the recording of personal information provided at the meeting. The provision of any information that is recorded is voluntary, however if any person does not wish to be recorded they should not address or request to address the meeting. By remaining in this meeting, you consent to the recording of the meeting.

You are not permitted to record this meeting with any recording device, unless you have the express authorisation of the Council of the Shire of Victoria Plains.

## **E – Disclaimer**

It is the Presiding Member's responsibility to preserve order in the meeting and this can be more difficult in an eMeeting. Therefore, each Council Member must consistently and respectfully follow the Local Government's Meeting Procedures Local Law, any additional eMeeting guidance provided by the Local Government and support the Presiding Member in their conduct of the eMeeting.

The pace of an eMeeting should be slow and orderly. The following practices will help avoid confusion and support effective eMeetings:

Speak clearly and slowly, as connections may be distorted or delayed;

Always state your name to indicate to the Presiding Member that you wish to speak. Restate your name if the Presiding Member has not heard you at first;

In debate, only speak after the Presiding Member has acknowledged you. Then state your name, so that others know who is speaking;

Follow the Presiding Member's directions and rulings;

If you are unclear about what is happening in an eMeeting, immediately state your name to draw the Presiding Member's attention and enable you to then seek clarification from the Presiding Member;

Avoid looking for opportunities to call Points of Order; instead, politely and respectfully gain the Presiding Member's attention and explain any deviation from your Meeting Procedures, the Local Government Act or any other relevant matter.

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**Commonly-used abbreviations**

AAS / AASB	Australian Accounting Standard / Australian Accounting Standards Board
BF Act	Bush Fire Act 1954
BFB	Bush fire brigade
CEO	Chief Executive Officer
CDO	Community Development Officer
DBCA	Dept of Biodiversity, Conservation and Attractions
DFES	Dept of Fire and Emergency Services
DPLH	Dept of Planning, Lands and Heritage
DWER	Dept of Water and Environmental Regulation
EHO	Environmental Health Officer
EFT	Electronic Funds Transfer
FAM	Finance and Administration Manager
JSCDL	Parliamentary Joint Standing Committee on Delegated Legislation
LEMA	Local Emergency Management Arrangements
LEMC	Local Emergency Management Committee
LG Act	Local Government Act 1995
LGGC	WA Local Government Grant Commission
LPP	Local Planning Policy
LPS	Local Planning Scheme
MOU	Memorandum of Understanding
MRWA	Main Roads WA
NNTT	National Native Title Tribunal
OAG	Office of Auditor General
OCM	Ordinary Council Meeting
PTA	Public Transport Authority
RRG	Regional Roads Group
RTR	Roads to Recovery
SAT	State Administrative Tribunal
SEMC	State Emergency Management Committee
SGC	Superannuation Guarantee Contribution
SJAA	St John Ambulance Association
SWALSC	South West Aboriginal Land and Sea Council
WAEC	WA Electoral Commission
WALGA	WA Local Government Association
WSM	Works and Services Manager

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**3. DISCLOSURES OF INTEREST**

*Refer – Local Government Act, Regulations, Code of Conduct, and Declaration Forms in Councillor folders.*

Type	Item	Person / Details
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3.1 Financial

3.2 Proximity

3.3 Impartiality

**4. PUBLIC QUESTION TIME**

*Refer – Local Government Act, Regulations, Local Law and Submission Form & Guidelines circulated.*

**4.1 Public Questions With Notice**

The following public questions and responds provided at the 28 October 2020 OCM.

**Annemarie Byrne-O'Neil**

Q1. Pauline, do you acknowledge that I presented a Petition to yourself on the afternoon of September 14th 2020?

A1. On the 14<sup>th</sup> Sep I received a request for a special meeting of electors, to discuss the financial management, control and annual budgetary status of the Shire of Victoria Plains over the 3 preceding years Nov 2016 to Nov 2019. This is not a petition, but a request signed by electors of the Shire, to hold an electors meeting. Under the current State of Emergency, the Minister has made a direction which prohibits electors meetings being held. The matter will be presented to the Annual Electors Meeting which will be held once the State of Emergency declaration is removed. In the meantime, the financial management & control of the Shire was discussed in detail in agenda item 8.4 at the September Council Meeting.

Q2. What percentage of locally based interest is present in applications for positions recently available, due to the current restructuring of the VP shire workforce?

A2. The public question time policy states that the Shire will not comment on employment matters. Broadly, the CEO is responsible for this matter and must comply with the local government act and is guided by the strategies outlined in the Shire's Workforce Plan. A part of a previous response to your questions, it was advised that the CEO recruits locals where possible. The CEO does need to follow the Corporate Business Plan and the Workforce Plan and jobs cannot be offered to locals who are not appropriately qualified. The local government act under s5.36 makes it very clear the CEO must believe a person is suitability qualified to undertake the position required. The CEO can comment that the most recently filled position has been filled by a local applicant.

**Stacey Byrne-Brandis**

Q1. Can each councillor name 3 things that they have done that has benefited this Shires community since they have held their position please?

A1. This is not a matter addressed individually, as elected members work together as a team under the body of the Council. The Council body can direct you towards the Shire’s annual report and the update on the Shire’s Corporate Business Plan to see the benefits the Shire is delivering.

Q2. Can each councillor name 3 different things that Glenda has done for this community to make it better please?

A2. Similar to the answer provided to your first question, the CEO and Council body work together as a team for the benefit of the local government. It would be inappropriate for individual Councillors to comment, as such matters are addressed with the CEO as part of her performance review.

Public Question Time was opened to the floor at \_\_\_\_\_ pm.

**4.2 Public Questions Without Notice**

*Where written questions are not submitted, a summary of the questions and responses are given, as per the Local Government (Administration) Regulations 1996 r.11(e).*

Public question time closed at \_\_\_\_\_ pm

**5. PRESENTATIONS AND DEPUTATIONS**

**5.1 Presentations**

Nil

**5.2 Deputations**

Nil

**6. APPLICATIONS FOR LEAVE OF ABSENCE**

**Council Resolution**

Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

## 7. MINUTES OF MEETINGS

### 7.1 Confirmation of Council Meeting minutes

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#### VOTING REQUIREMENTS

Absolute majority required: No

<b>2011-01 Officer Recommendation</b>
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Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

That the Minutes of the following meeting:

- Ordinary Council Meeting held 28 October 2020 as circulated, be **CONFIRMED** as a true and correct record.

For \_\_\_ / Against \_\_\_

**8. REPORTS REQUIRING DECISION****8.1 Accounts for Endorsement – October 2020**

<b>File reference</b>	F1.8.4		
<b>Report date</b>	18 November 2020		
<b>Applicant/proponent</b>	Nil		
<b>Officer disclosure of interest</b>	Nil		
<b>Previous meeting references</b>	Nil		
<b>Prepared by</b>	Agatha Prior – Office Manager		
<b>Authorised by</b>	Glenda Teede – CEO		
<b>Attachments</b>			
Attachment 1	Page	2	Public schedule – in the Attachments to Agenda
		2	Restricted schedule – to councillors under separate cover

**PURPOSE**

This Item presents the attached List of Accounts Paid, paid under delegated authority, for October 2020.

**BACKGROUND**

As per Local Government Act and Financial Management Regulations.

**COMMENT**

Each month Council is to be advised of payments made during the preceding month; the amount, payee, date and reason for payment.

**CONSULTATION**

None

**STATUTORY CONTEXT**

*Local Government Act 1995 –*

- s.6.8(2)(b) – expenditure is to be reported to the next ordinary meeting of Council

*Local Government (Finance) Regulations 1996 –*

- r.13 Payments for municipal fund or trust fund
  - (1) the Chief Executive Officer is to provide a list of accounts paid from the Municipal fund or Trust fund, a list of all accounts paid each month showing for each account paid –
    - a) The payee's name
    - b) The amount of the payment
    - c) The date of the payment
    - d) Sufficient information to identify the transaction
  - (2) the listing to be presented to the Council at the next ordinary meeting of Council after preparation.

**CORPORATE CONTEXT**

Delegations Register –

- 3.2 – Municipal Fund and Trust Fund – Payments from Bank Accounts
  - o CEO authorised, subject to conditions
  - o compliance with legislation and procedures
  - o Minimum of 2 signatories with varying level of authorisation

**FINANCIAL IMPLICATIONS**

All payments are in accordance Council’s adopted budget.

**VOTING REQUIREMENTS**

Absolute Majority Required: No

**Officer Recommendation**

Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

That the payments made for October 2020 from the Municipal Bank Account/Trust Bank Account as per the attached listing and summarised below, and the Credit Card Reconciliation/Statement be endorsed:

Payment type	References from – to	\$ Amount
Creditor EFT Payments**	9322 - 9382	336,610.68
Creditor Cheque Payments		0.00
Direct Debit Payments**	DD11970 – DD12028	15,338.69
Salaries & Wages EFT	PE 14/10/20. PE 28/10/20	56,733.77
Credit Card Statements	DD11971.1 - DD11971.2	1,620.86
Fuel Card – Wright Express		700.42
Trust Payments		0.00
	<b>TOTAL</b>	<b>\$411,004.42</b>

\*\*includes salary and wages deductions, and SGC

For \_\_\_\_\_ / Against \_\_\_\_\_

**8.2 Monthly Financial Statements – September 2020**

<b>File reference</b>			
<b>Report date</b>	19 October 2020		
<b>Applicant/proponent</b>	Shire of Victoria Plains		
<b>Officer disclosure of interest</b>	Nil		
<b>Previous meeting references</b>	Nil		
<b>Prepared by</b>	RSM – Travis Bate		
<b>Authorised by</b>	Glenda Teede		
<b>Attachments</b>			
Attachment 1	Page	7	Monthly Financial Statements – 30 September 2020

**PURPOSE**

To receive the monthly financial statements for the period ending 30 September 2020.

**BACKGROUND**

Section 6.4 of the Local Government Act 1995 requires a Local Government to prepare financial reports.

The Local Government (Financial Management) Regulations 34 & 35 set out the form and content of the financial reports which have been prepared for the periods as above and are presented to Council for approval.

**COMMENT**

The 30 September 2020 Monthly Financial Statements are presented for consideration.

Explanations for the significant variances have been reported in Note 2. Most variances for the month were classified as timing variances.

**CONSULTATION**

RSM  
CEO

**STATUTORY CONTEXT**

Local Government (Financial Management) Regulations 1996 –

- r.34 – financial activity statement required each months and details of what is to be included

**CORPORATE CONTEXT**

None

**FINANCIAL IMPLICATIONS**

None

**VOTING REQUIREMENTS**

Absolute Majority Required: No

<b>2011-0    Officer Recommendation / Council Resolution</b>
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Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

That Council receive the 30 September 2020 Monthly Financial Reports as presented:

**For \_\_\_\_\_ / Against \_\_\_\_\_**

**8.3 Monthly Financial Statements – October 2020**

<b>File reference</b>			
<b>Report date</b>	18 November 2020		
<b>Applicant/proponent</b>	Shire of Victoria Plains		
<b>Officer disclosure of interest</b>	Nil		
<b>Previous meeting references</b>	Nil		
<b>Prepared by</b>	RSM – Travis Bate		
<b>Authorised by</b>	Glenda Teede		
<b>Attachments</b>			
Attachment 1	Page	35	Monthly Financial Statements – 31 October 2020

**PURPOSE**

To receive the monthly financial statements for the period ending 31 October 2020.

**BACKGROUND**

Section 6.4 of the Local Government Act 1995 requires a Local Government to prepare financial reports.

The Local Government (Financial Management) Regulations 34 & 35 set out the form and content of the financial reports which have been prepared for the periods as above and are presented to Council for approval.

**COMMENT**

The 31 October 2020 Monthly Financial Statements are presented for consideration.

Explanations for the significant variances have been reported in Note 2. Most variances for the month were classified as timing variances.

**CONSULTATION**

RSM  
CEO

**STATUTORY CONTEXT**

Local Government (Financial Management) Regulations 1996 –

- r.34 – financial activity statement required each months and details of what is to be included

**CORPORATE CONTEXT**

None

**FINANCIAL IMPLICATIONS**

None

**VOTING REQUIREMENTS**

Absolute Majority Required: No

<b>2011- Officer Recommendation / Council Resolution</b>
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Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

That Council receive the 31 October 2020 Monthly Financial Reports as presented:

**For \_\_\_\_\_ / Against \_\_\_\_\_**

## 8.4 Review of WALGA Advocacy Paper: Positions for a new Local Government Act

<b>File reference</b>			
<b>Report date</b>	9 November 2020		
<b>Applicant/proponent</b>	WALGA		
<b>Officer disclosure of interest</b>	Impartial. Mr Fletcher has a training contract with WALGA		
<b>Previous meeting references</b>	August 2020 OCM: Item 8.5 - 2008-08		
<b>Prepared by</b>	Sean Fletcher, Governance Officer		
<b>Authorised by</b>	Entered once authorised by CEO		
<b>Attachments</b>			
Attachment 1	Page	63	WALGA Agenda Item 5.1 – November Zone Meetings: Local Government Act Review Advocacy Paper – Key Issues From Recent Inquiries into Local Government (05-034-01-0001 TL)
Attachment 2	Page	65	Advocacy Paper: Positions for a New Local Government Act

### PURPOSE

That the Shire of Victoria Plains supports WALGA's Advocacy Paper and its Recommendations.

### BACKGROUND

Tony Brown, WALGA's Executive Manager Governance and Organisational Services emailed on Monday 9 2020 to all local government CEO's the following:

**From:** Tony Brown  
**Sent:** Monday, 9 November 2020 7:42 AM  
**To:** Tony Brown <[tbrown@walga.asn.au](mailto:tbrown@walga.asn.au)>  
**Cc:** Nick Sloan <[NSloan@walga.asn.au](mailto:NSloan@walga.asn.au)>; Tim Lane <[tlane@walga.asn.au](mailto:tlane@walga.asn.au)>; James McGovern <[JMcGovern@walga.asn.au](mailto:JMcGovern@walga.asn.au)>  
**Subject:** Attention: Chief Executive Officer - Advocacy Paper: Positions for a New Local Government Act

### Hello Chief Executive Officers

Please find attached a document on Advocacy Positions for a new Local Government Act.

There have recently been released three significant inquiries relating to Local Government in Western Australia, being;

- The Local Government Act Review Panel report;
- Select Committee into Local Government report;
- City of Perth Inquiry report

The paper aims to distil key issues raised by these reports and identify strategic advocacy positions of the Local Government sector to inform the strategic direction of legislative reform. The paper will be considered at upcoming Zone meetings in November and then at a State Council meeting on 2 December 2020.

I have also attached the covering agenda item for the Zone meetings.

Any queries please let me know.

Kind regards

Tony

Mr Brown also asked that this information was disseminated throughout the governance network, of which the author is a member.

As this matter will be considered at the next Zone meeting in November 2020, it is appropriate for Council to review WALGA's Advocacy Paper: Positions for a New Local Government Act and form an opinion that the President can use as the basis of discussions at the Zone.

The Review of the *Local Government Act 1995* has been a key focus of the Local Government sector and WALGA since the review was announced in 2017.

Stage One, focusing on priority reforms, are now mostly in place following the passage of the *Local Government Legislation Amendment Act 2019*. The CEO Standards and Elected Member Code of Conduct remain outstanding, although feedback regarding both matters are dealt with in today's agenda.

As part of Phase Two of the Review, which focuses on wide ranging reforms, the Government established the Local Government Review Panel in November 2019.

The Final Report of the Local Government Review Panel was released in August 2020. At the August 2020 OCM, Council under Item 8.5 considered the outcome of the Local Government Review Panel's Final Report into the review of the Local Government Act. This included taking into account the local government sector's position through the consideration of WALGA's comments on the Review Panel's findings as discussed at the Zone meeting on 21 August 2020. Council supported WALGA's position except section 22 regarding All in/All out elections, which was **removed from Section 4** (WALGA to conduct further advocacy) **and included in Section 2** (The Panel Review recommendations opposed by WALGA), forming part of WALGA's oppose points. Council stated it is of the view that retaining the current two-yearly election cycle will contribute to the retaining of corporate knowledge of Council and the Shire and so no further consultation with the local government sector is necessary.

In addition to the Local Government Panel Review Report, the reports in their final form regarding the following two key inquiries were released in September 2020:

- Report of the Inquiry into the City of Perth. The impact on the local government sector as a result of the recommendations made was highlighted in part in Item 8.5 at the August 2020 OCM; and
- Select Committee into Local Government Final Report.

The three reports make recommendations relating to a range of topics and issues relevant to the Review of the Local Government Act. Mr Brown advises that leveraging the concurrent release of the final reports of three Inquiries, an advocacy paper highlighting key issues has been prepared.

The advocacy paper addresses the issues listed below:

- New Local Government Act;
- Legislative Intent;
- Intergovernmental Cooperation;
- Elections;
- Rating Exemptions;
- Fees and Charges;
- Road Funding;
- Regional Collaboration;
- Community Engagement;
- Roles and Responsibilities;
- External Oversight;
- Financial Management and Procurement;
- Accountability and Audit.

The Advocacy Paper approach aims to:

1. Ensure the Local Government sector's key concerns are prominent during stage two of the Local Government Act Review.
2. Leverage the timing and inherent legitimacy of the three key reports to highlight ongoing strategic advocacy priorities
3. Concentrate engagement at the strategic policy level, rather than the detail of specific proposals that may or may not represent government policy, and
4. Link to WALGA's state election advocacy campaign.

The Advocacy Paper does not replace or diminish existing detailed policy positions, which are underpinned by multiple consultation processes and State Council deliberations. Key Local Government sector policy positions are listed in the Recommendations section of the paper (Refer to Attachment Two).

## **COMMENTS**

In essence, the Advocacy Paper makes the following recommendations:

### **New Local Government Act**

That the State Government prepare a new Local Government Act as a priority.

### Comment

The current Local Government Act contains ten parts and totals 490 pages. In addition, there are 13 sets of regulations comprising a further 460 pages. This is a legislative burden on the Local Government sector and requires a significant reduction and a move to a principle over prescription approach to a new Act.

The Local Government sector seeks a reduced regulatory approach accompanied by best practice guidance, support and assistance. In essence, the Review Panel Final Report supports this. Being agile, smart and inclusive is key. With a State Election looming, seeking a commitment to progress the new Act is essential.

### **Legislative Intent**

That the following key principles be embodied in the Local Government Act:

1. Uphold the general competence principle currently embodied in the Local Government Act;
2. Provide for a flexible, principles-based legislative framework;
3. Promote a size and scale compliance regime;
4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration Local Governments' role in creating a sustainable and resilient community through:
  - i. Economic development
  - ii. Environmental protection, and
  - iii. Social advancement;
5. Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act; and
6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.

### Comment

Throughout WALGA's consultation with the sector on the Local Government Act review, there has been overwhelming support for *principles over prescription*, an approach that avoids red tape and declutters the extensive regulatory regime.

The Review Panel Final Report recommends an Act that is considerably shorter, less prescriptive and minimises the use of regulations by establishing clear principles, robust processes, model charters, guidelines and templates.

The Select Committee into Local Government recommends the Government consider implementing a compliance regime that differentiates between local governments based on their size and scale where appropriate.

## Intergovernmental Cooperation

That a Partners in Government Agreement promoting a collaborative partnership approach be signed by the Premier, Minister for Local Government and Local Government leaders at the commencement of each term of the State Government.

### Comment

Local Government strongly supports the enhanced collaboration between State and Local Government, as two spheres of government responsible for delivering public infrastructure and services for the benefit of the Western Australian community.

## Elections

The Local Government sector supports:

1. Four year terms with a two year spill;
2. Greater participation in Local Government elections;
3. The option to hold elections through:
  - Online voting;
  - Postal voting; and
  - In-person voting;
4. Voting at Local Government elections to be voluntary;
5. The first past the post method of counting votes ;
6. Local Governments being enabled to determine the number of Elected Members required on the Council between six and 15 (including the Mayor/President)
7. Local Governments to determine if the Mayor or President is elected by the Council or the community at large.
8. Continuation of the property franchise (voting in multiple districts based on owner occupier principles, more than one vote in the district if a director in a company).

### Comment

Further to the above, the overwhelming majority of Local Governments support retaining four year terms with a half spill every two years. A principle of the current two year election cycle is to support the continuity of knowledge and experience of the Local Government. A key risk of a proposal for an all in/all out term is the loss of knowledge and the influence of a Council.

## Rating Exemptions

That an independent review of all rate exemptions be undertaken.

### Comment

Exemptions from rates represent significant revenue leakage for Local Government. Recent data indicates that revenue foregone represents approximately two percent of rate revenue. This shortfall in lost revenue must then be made up from other ratepayers.

The rating exemptions that are of concern for the sector relate to the following:

- Rating of Charitable Purpose properties
- Department of Housing: Leasing to Charitable Organisations
- Government Trading Entities

- State Agreement Act projects
- State Owned Unallocated Crown Land

The Local Government Panel Review recommends that the Economic Regulatory Authority undertakes the independent review.

The Select Committee recommends that the Government clarifies what charitable purposes mean and it conducts a broad review and the exemptions be listed in the Act.

### **Fees and Charges**

That:

1. An independent review be undertaken to remove fees and charges from legislation and regulation and,
2. Local Government be empowered to set fees and charges for Local Government services.

### **Comment**

There are a number of fees and charges applied that are beyond a local government's control: dog registration fees, fees for building approvals. Fees mandated by legislation often do not keep pace with the cost of delivery meaning that ratepayers will subsidise particular activities without any ability to have input into the setting of the fee.

### **Road Funding**

That the Government returns to Local Government at least 27 percent of motor vehicle licence fee collections.

Comment

Local Governments are responsible for 127,500km of roads in Western Australia, representing 88 percent of the public road network.

With a replacement value close to \$30 billion, the Local Government road network is a significant state asset that connects people and places and facilitates economic activity across all of Western Australia.

In their final report, the Select Committee into Local Government found that the shortfall between local government expenditure on road preservation and the amount required to maintain roads at their current condition has continued to increase over the past five years to \$155.74 million in 2018-19.

To that end, the Local Government sector advocates for road funding from the State Government to return to 27 percent of vehicle licence fees.

## **Regional Collaboration**

That:

1. Local Governments be empowered to form single and joint subsidiaries, and beneficial enterprises, and
2. Compliance requirements of Regional Councils be reviewed and reduced.

### Comment

Flexibility for local governments to select and adapt the most suitable collaborative model to local circumstances is crucial for the benefits of regional collaboration to be realised. While competitive neutrality is important, and should be respected, the ability to undertake commercial activities is important, particularly to address instances of market failure.

## **Community Engagement**

The Local Government sector supports:

1. Responsive, aspirational and innovative community engagement principles
2. Encapsulation of aims and principles in a community engagement policy, and
3. The option of hosting an Annual Community Meeting to present on past performance and outline future prospects and plans.

### Comment

The Local Government sector supports community engagement aims and principles to be encapsulated in a policy. However, the content of such a policy should not be prescribed; Local Governments, with knowledge and regular touchpoints with their communities, are best placed to determine the content of a community engagement policy. The Review Panel recommends the principles should be mandated.

## **Roles and Responsibilities**

That clarification of roles and responsibilities for mayors/presidents, councillors and CEO's be considered in conjunction with the separation of powers between the Council as governing body and the administration of the Local Government.

### Comment

The *Local Government Act 1995* is predicated on separate roles and responsibilities for Elected Members and the administration, as summarised in the Minister for Local Government's Second Reading Speech to Parliament in 1995

The Select Committee's Report supports that training and induction for elected members is reflective of the mandatory training and continuing professional development requirements introduced in the *Local Government Legislation Amendment Act 2019*.

WALGA has long advocated for absolute certainty in responsibilities and separation of powers associated with employees. Appointing and dismissing senior designated employees falls within the function of the CEO.

From this perspective, clarification of roles and responsibilities requires similar consideration of a clearly defined separation of powers between the governing body and the administration.

### **External Oversight**

The Local Government sector supports:

1. Establishing an Office of the Independent Assessor to replace the Standards Panel to provide an independent body to receive, investigate and assess complaints against elected members and undertake inquiries.
2. Remove the CEO from being involved in processing complaints
3. That an early intervention framework of monitoring to support local governments be provided.

### Comment

The Review Panel Final Report recommends the establishing an Office of the Independent Assessor to deal with dysfunctional matters when they arise within a local government. Similarly, the City of Perth Inquiry Report recommends an Office of Inspector of Local Government (Such an office exists in Victoria). The Select Committee had similar views to the other two reports.

WALGA supports the view to set-up an independent body to receive, investigate and assess complaints against elected members and undertake inquiries. This removes the CEO from being involved in processing and determining complaints, which has previously put the CEO in an invidious position.

An early intervention framework of monitoring to support Local Governments should also be provided.

### **Financial Management and Procurement**

That the Local Government sector:

1. Requests the Minister for Local Government to direct the Department of Local Government to prepare a Model set of Financial Reports for the Local Government sector, in consultation with the Office of the Auditor General;
2. Requests the Department of Local Government to re-assess the amount of detail required to be included in annual financial reports, in particular for small and medium sized entities as suggested by the Office of Auditor General;
3. Supports Local Governments being able to use freehold land to secure debt;
4. Supports Building Upgrade Finance being permitted for specific purposes such as cladding, heritage and green improvements;
5. Supports the alignment of Local Government procurement thresholds (Tender threshold: \$250,000), rules and policies with the State Government.

### Comment

WALGA has recently formed a Sector Reference Group to review the current financial ratios and to suggest more appropriate ratios. The Reference Group believes the first action to be taken should be for the Department of Local Government to prepare a Model set of Financial Reports for the Local Government sector. This is to enable consistent financial reporting across the sector which would then allow for ratios to be more meaningful for sector analysis.

The document would provide a template for Statements and Notes. This text could provide a greater understanding of the information and the cross referencing to other information. For example, the note on calculating financial ratios would include how those ratios are calculated, hence doing away with the need for Departmental Guidance Notes.

The benefits that would accrue to the Local Government sector and the community would be substantial. One set of model reports that could provide clear outcomes, rather than waiting for the annual audit to see if a Local Government had interpreted the standards and legislation correctly. Small Local Government would benefit as they may not have qualified accountants on staff and this would provide cost savings. Accessing information about each Local Government would be simplified. The audit process would also be simplified. All of these measures have the ability to lower costs incurred by Local Government in producing the annual financial report.

### **Accountability and Audit**

That audit committees of Local Government, led and overseen by the Council, have a clearly defined role with an Elected Member majority and chair.

### **Comment**

The Local Government sector supports a robust self-regulation audit framework, which includes a role for the audit committee overseen by council, and a role for the Office of the Auditor General in conducting financial and performance audits of Local Government. The Select Committee supports a shared internal audit service for small and medium local governments. The Review Panel Final Report recommends that the Audit Committee role be expanded to become internal audit, risk and improvement committees chaired by a person independent of the local government.

In essence, such an internal framework was recently adopted by Council regarding the Audit Committee.

In accordance with the principles of self-governance and self-regulation, majority independent membership of audit committees is not supported. Oversight of the affairs of the Local Government is a fundamental role of the Council, and should not be confused by diffusing responsibility among an audit committee comprised of a majority of non-elected members. Notwithstanding, the Local Government sector acknowledges that some independent expertise may be beneficial to the audit committee process.

### **Conclusion**

The author believes that WALGA's Advocacy Paper reflects the sector's position on the listed matters and has taken into account concerns and opinion raised by member local governments, including the Shire of Victoria Plains.

By supporting the Advocacy Paper, the Shire of Victoria Plains is taking a leading, and leadership role, in local government of the future.

## CONSULTATION

CEO

Council November 2020 Briefing Session

## STATUTORY CONTEXT

The Review of the Local Government Act by the McGowan Government is considered a once in lifetime of generational review.

## CORPORATE CONTEXT

### Strategic Community Plan

<b>Civic Leadership</b>	<b><i>to better allocate scarce resources and effectively interact with the community</i></b>	
5.1	Implement measures to improve relationship and communication between Council and community	<ul style="list-style-type: none"> <li>• <i>Implementation of initiatives to better connect Council with the community and associated matters.</i></li> </ul>
5.2	Improve elected member performance	
5.3	Develop an advocacy and lobbying capacity	
5.4	Measures to improve organisational efficiency	

The review of the local government act is a key reform to assist with strategies 5.1, 5.3 and 5.4.

### Risk Governance Framework

The Shire of Victoria Plains has a responsibility and substantial interest in participating in the review of the local government act. Although risks cannot be attributable to the Shire for not participating in the review in the short term, longer term there are a couple of matters to note:

- This is a once in a generational opportunity to participate in a review of legislation that is designed to assist local government operate more effectively, both in terms of its statutory obligations and in terms of the services and facilities it provides to its communities;
- If the Shire did not make a comment into the final review, the Shire's reputation could be impacted through both the community, the Zone and the broader industry as failing to participate in a process that is designed to improve the role of local government and assist with empowering its communities;
- Although the matter is not one of compliance, it has the potential to lessen the burden (red tape) on local governments at all levels.

## FINANCIAL IMPLICATIONS

Nil

**VOTING REQUIREMENTS**

Absolute majority required:            No

<b>2011            Officer Recommendation / Council Resolution</b>
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Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

1. The Shire of Victoria Plains supports the WALGA Advocacy Paper: Positions for a New Local Government Act as set out in Attachment Two.
2. Supports the Shire President:
  - a) To submit the Shire’s position regarding the WALGA Advocacy Paper: Positions for a New Local Government at the November 2020 Avon Zone meeting and other meetings and forums as appropriate.
  - b) To exercise discretion, if required regarding Point 2a.

**For \_\_\_\_\_ / Against \_\_\_\_\_**

**8.5 Review of the Local Government Act – CEO Standards**

<b>File reference</b>			
<b>Report date</b>			
6 November 2020			
<b>Applicant/proponent</b>			
Minister for Local Government			
<b>Officer disclosure of interest</b>			
<b>Previous meeting references</b>			
August OCM			
<b>Prepared by</b>			
Sean Fletcher, Governance Officer			
<b>Authorised by</b>			
Entered once authorised by CEO			
<b>Attachments</b>			
Attachment 1	Page	99	Draft <i>Local Government (Administration) Amendment Regulations (No2) 2020</i>
Attachment 2	Page	120	Explanatory Memorandum re <i>Local Government (Administration) Amendment Regulations (No2) 2020</i>
Attachment 3	Page	130	WALGA Info Page - Draft Local Government (Administration) Amendment Regulations (No.2) 2020 – Model standards for CEO recruitment, performance and termination
Attachment 4	Page	133	LG Professionals - Reasons for Opposing CEO Standards about Contract Re-advertising

**PURPOSE**

Council is asked to endorse the CEO's comments to WALGA regarding sector feedback on the proposed Draft Regulations that will adopt the CEO Standards for Recruitment, Performance Reviews and Termination.

**BACKGROUND**

At the August 2020 OCM, Council considered the outcome of the Local Government Review Panel's Final Report into the review of the Local Government Act. This included taking into account the local government sector's position through the consideration of WALGA's comments on the Review Panel's findings as discussed at the Zone meeting on 21 August 2020.

The Review Panel made 65 recommendations for the proposed legislation including the need to firm up the requirements regarding the proposed Code of Conduct for Elected Members and CEO Standards (including recruitment, performance review and early termination).

Council at the request of WALGA and the Zone considered the following regarding the CEO Standards:

**Recommendation 55 Integrity & Governance**

- f. CEO contracts should be standardised and consistent with the Public Sector Commission's policy and relevant conditions for public sector employees.
- g. CEO contracts should be no more than five years and after two terms the local government must readvertise the position.
- h. The department should facilitate additional oversight in the recruitment and management processes of CEOs. This could include representation on the selection panel and/or screening of applicants.

Council resolved to support WALGA's position to oppose recommendation 55 (g). WALGA has a current advocacy position opposing advertising the position of CEO after two terms of the incumbent's contract.

**Note:**

Local government officer's peak body, LG Professionals provides an extensive list opposing the mandatory introduction of advertising the CEO's position after two years. This is discussed later in today's report.

**Recommendation 56 – Training and Developments**

Compulsory training for new CEO's as agreed during the CEO appointment process.

In the report to Council at the August OCM, it was explained the Department sought feedback on a draft Code of Conduct for Elected Members and draft CEO Standards and accompanying guidelines. Submissions closed on 6 December 2019. Over 400 responses were received during the consultation period. regulations have now been drafted for both the Code of Conduct and the CEO Standards.

The regulations have now been drafted regarding the CEO Standards and are provided in Attachment 1 with an explanatory memorandum that provides background information regarding the regulations in Attachment 2. WALGA issued an Info Page on 2 November 2020 for Council feedback by Friday 13 November 2020 (Attachment 3). The Info Paper notes that State Council resolved to request that the Working Group be reconvened to develop and endorse the Model CEO Standards throughout 2020. However, this did not occur and the Draft Regulations have been issued for comment by the Department of Local Government, Sport and Cultural Industries without the Working Group's input. WALGA comments that the Draft Regulations include several elements that were highlighted as matters of concern by the sector:

1. Requirement to re-advertise CEO positions after 10 years of continuous service.
2. Independent panel member to be on the CEO selection panel.
3. Transparency and procedural fairness – Schedule 2. Council will no longer have input or oversight of the CEO recruitment process.
4. Council decision making authority bypassed regarding whether a person is suitably qualified to be a CEO or not.

For information, Local Government Professionals WA will be making the following high level comments on the Amendment Regulations:

- The two stage Council approval process (to firstly offer a position and then to endorse the appointment) is not supported as it is bureaucratic and inefficient. Instead, it is suggested that the Council be able to resolve to appoint the preferred candidate in

accordance with an offer which may, or may not, have some endorsed flexibility for negotiation.

- The requirement to include an independent member on a selection panel is not supported as it limits Council autonomy and there is a lack of clarity around actual operation. Instead, it is proposed that the Regulation be broadened to require Councils to receive independent human resource advice when selecting a CEO. This would then allow Council to choose whether to include an independent person on the selection panel, whether the panel receives advice from an independent human resources consultant, or another option which introduces independence into the process.
- A requirement for all members of a selection panel to have skills in interviewing and selecting candidates is missing.
- The requirement for CEOs to reapply for their position after ten years is strongly opposed. Reasons for Local Government Professionals WA's opposition to this requirement are identified in Attachment 4 - Reasons for Opposing CEO Standards about Contract Re-advertising.

The Department is seeking feedback on the CEO Standards, with submissions required by 6 December 2020.

## COMMENT

The following contains information regarding the proposed CEO Standards including the concerns raised by WALGA and the Local Government Professionals WA. The CEO took these matters into account and responded to WALGA accordingly. The CEO's response is provided in the conclusion of this comments section.

### **Local Government (Administration) Amendment Regulations (No2) 2020**

The Department advises that the new Local Government Administration regulations will bring into effect section 22 of the *Local Government Legislation Amendment Act 2019* which includes the following, mandatory, requirements:

5.39A Model Standards for CEO recruitment, performance and termination

5.39B Adoption of Model Standards

5.39C Policy for temporary employment or appointment of a CEO.

In addition, requirements for advertising vacant CEO positions have been updated to align with the impending amendments to state-wide public notice provisions.

#### **5.39A. Model standards for CEO recruitment, performance and termination**

In part, once the regulations come into force, the key requirements are as follows:

- (1) Regulations must prescribe model standards for local governments in relation to the following:
  - (a) the recruitment of CEOs;
  - (b) the review of the performance of CEOs;
  - (c) the termination of the employment of CEOs.

The Model Standards (the Standards) are set out at pages 9 – 17 of Attachment 1.

At the Governance Network Meeting on 4 November 2020, the Department conducted a presentation on the key requirements regarding the Standards that included the following information:

### CEO RECRUITMENT



**Other**

- **A recruitment process is to be undertaken before expiry of CEO contracts where:**
  - The incumbent CEO has held the position for 10 or more consecutive years; or
  - A period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position has occurred.
- **The incumbent CEO is also subject to the same recruitment process if they wish to extend their tenure of employment with the Local Government.**
- **The incumbent CEO may have their contract renewed upon expiry if they are selected in accordance with the recruitment and selection process.**

WALGA comments that Section 5.39(2)(b) of the Local Government Act already limits CEO contracts to a maximum of 5 years and Councils have general competence powers to consider whether to renew the incumbent's contract or advertise the position. Suggesting that a Council must re-advertise the position of a CEO after 10 years is likely to prove unworkable or counterproductive.

## CEO Recruitment

- **Selection criteria must be determined and agreed on by an absolute majority of council prior to the position of CEO being advertised.**
- **The local government must give state-wide public notice of the position and a copy of a JDF made available on the local government's website.**
- **A selection panel must be established to conduct the recruitment and selection process.**
- **The selection panel must comprise council members and at least one independent person. The independent person should have knowledge and experience in recruitment.**

As noted in the background part of today's report, both WALGA and Local Government Professionals WA do not support the appointment of an independent person on the panel. The requirement to include an independent member limits Council autonomy and there is a lack of clarity around the actual operation of this process. Instead, the Regulation could be broadened to require Councils to receive independent human resource advice when selecting a CEO. This would then allow the Council to choose whether to include an independent person on the selection panel, whether the panel receives advice from an independent human resources consultant, or another option which introduces independence into the process.

LG Professionals further adds that a requirement for all members of a selection panel to have skills in interviewing and selecting candidates is missing.

## CEO Recruitment

- **It is the role of the selection panel to recommend to council one or more suitable applicants to the position of CEO.**
- **If a selection panel does not deem any of the applicants suitable for appointment, they must advise the Council. In this situation, the process for recruitment and selection needs to be undertaken again.**
- **A final decision to make an offer of appointment must be made by an absolute majority of council.**
- **Appointment of the successful applicant to the position of CEO is also made by an absolute majority of council following their acceptance of the offer.**

WALGA comments that Schedule 2, Cl. 9(2)(a) requires the selection panel to recommend one or more applicants it considers suitable, with Cl. 9(2)(b) requiring that it advise Council if it considers no applicants are suitable. In the second event, Cl. 10 requires the local government to carry out a new recruitment process. Bypassing Council in this decision-making process appears to directly conflict with Sec. 5.36(2) of the Act, where it is the Council that determines if a person is or is not suitably qualified to be employed as CEO.

## CEO PERFORMANCE REVIEWS

### Performance Review



- **Local governments are required to review the performance of a CEO annually in accordance with the Local Government Act.**
- **The regulations set out the process for performance review including:**
  - Establishing performance criteria;
  - Council endorsement of the performance review (by absolute majority); and
  - Informing the CEO of the results in writing, including any issues that may have been identified during the review and how Council proposes to address and manage those issues.

### Performance Review



- **A performance review must be carried out in an impartial and transparent manner, be comprehensive, and evidence based.**
- **The process for performance review must be agreed to between the CEO and the local government.**
- **Any performance criteria additional to that specified in the CEO's contract of employment must also be agreed to between both parties.**
- **The process for performance review and the selection criteria upon which the review will be based must be documented in writing.**

There is no apparent issue with the Performance Review Process and it is in keeping with required industrial relations practices and requirements.

WALGA notes in particular that Division 3 within Schedule 2 of the Draft Regulations seeks to improve the capacity of local governments to effectively manage CEO employment. This is a far more appropriate and adapted mechanism to address a perceived issue of 'contracts for life', by ensuring that the performance of CEOs, whether long serving or newly appointed, is appropriately assessed and managed.

## CEO TERMINATIONS

### Termination of Employment

- **Decisions relating to termination of employment must also be made in an impartial and transparent manner.**
- **The regulations outline the general principles of procedural fairness that must apply to any decision to terminate the employment of a CEO including:**
  - The CEO being informed of their rights and responsibilities;
  - Notification of any allegations against the CEO;
  - An opportunity to respond to the allegations; and
  - Genuine consideration of the CEO's response.

### Termination of Employment

- **Before a Council decides to terminate the employment of a CEO based on their work-related performance, they must have:**
  - Previously identified any issues as part of the performance review process;
  - Informed the CEO of the performance issues;
  - Given the CEO reasonable opportunity to address and remedy the issues;
  - Determined that the CEO has not remedied the issues to their satisfaction; and
  - Conducted a performance review within the previous twelve months.
- **A decision to terminate the employment of the CEO must be made by an absolute majority of council.**
- **Written notice must be provided to the CEO outlining the reasons for termination.**

The CEO Standards set out what is considered appropriate regarding the termination of a CEO.

## Other

- **Certification of compliance in accordance with the adopted standards is required in relation to:**
  - CEO recruitment; and
  - Termination of employment
- **A copy of the resolution to appoint a CEO or terminate a CEO's employment must be provided to DLGSC within 14 days of the decision.**

Council will be required to certify that it has complied with the CEO Standards regarding the recruitment or termination of a CEO.

### **5.39B Adoption of Model Standards**

Key requirements include:

- (2) Within 3 months after the day on which regulations prescribing the model standards come into operation, a local government must prepare and adopt\* standards to be observed by the local government that incorporate the model standards.

\* Absolute majority required.

- (4) A local government may include in the adopted standards provisions that are in addition to the model standards, but any additional provisions are of no effect to the extent that they are inconsistent with the model standards.
- (5) The model standards are taken to be a local government's adopted standards until the local government adopts standards under this section.
- (6) The CEO must publish an up-to-date version of the adopted standards on the local government's official website.

The above will be a new statutory requirement regarding the adoption of the CEO Standards.

### **5.39C Policy for temporary employment or appointment of a CEO**

Key requirements include:

1. A local government must prepare and adopt\* a policy that sets out the process to be followed by the local government in relation to the following:
  - (a) the employment of a person in the position of CEO for a term not exceeding 1 year;
  - (b) the appointment of an employee to act in the position of CEO for a term not exceeding 1 year.

\* Absolute majority required.

- (4) The CEO must publish an up-to-date version of the policy on the local government's official website.

The policy assists Council put into practice the requirements for an Acting CEO from either outside or inside an organisation.

#### **Conclusion**

The CEO submitted to WALGA the following feedback regarding the concerns raised in the Info Page (Attachment 3):

#### **1. Requirement to re-advertise CEO positions after 10 years of continuous service**

The requirement for CEOs to reapply for their position after ten years is strongly opposed. The Shire agrees with the comments by WALGA regarding this matter along with the further information as set out in the submission by Local Government Professional Officers WA regarding contract readvertising. In addition to this, the Shire would like to see a requirement for all members of a selection panel to have skills in interviewing and selecting candidates is missing.

The Shire also considers the two stage Council approval process (to firstly offer a position and then to endorse the appointment) is not supported as it is bureaucratic and inefficient. Instead, it is suggested that the Council be able to resolve to appoint the preferred candidate in accordance with an offer which may, or may not, have some endorsed flexibility for negotiation.

#### **2. Independent panel member**

The requirement to include an independent member on a selection panel is not supported as it limits Council autonomy and agrees with WALGA's position and that of Local Government Professionals there is a distinct lack of clarity around the actual operation of this requirement. Instead, the Regulations should be broadened to require Councils to receive independent human resource advice when selecting a CEO. This would then allow Council to choose whether to include an independent person on the selection panel, whether the panel receives advice from an independent

human resources consultant, or another option which introduces independence into the process.

### 3. Transparency and procedural fairness – Schedule 2

The Shire is concerned it would appear that the selection panel is “established” as an entity that lacks key local government governance rather than as a committee of Council where the provisions within the Act, the regulations and the Shire’s Meeting Procedures Local Laws would apply. The Shire is also concerned that with the removal of r.18C of the Local Government (Administration) Regulations, Council is removed from input and oversight of the selection panel processes.

### 4. Council decision making authority

The Shire agrees with the comments made by WALGA regarding a local government being made to undertake a new recruitment process if the selection panel considers there are no suitable applicants. This would appear to be in conflict with the Act regarding where Council determines if a person is suitably qualified or not.

### 5. Other Matters

The Shire does not have an issue regarding the implementation of the regulations regarding section 5.39B.

## **CONSULTATION**

CEO

November Council Briefing Session

## **STATUTORY CONTEXT**

### ***Local Government Act 1995***

Is the head of power regarding local government in Western Australia. It has been in operation since 1 July 1996.

### ***Local Government Legislation Amendment Act 2019***

This Act contains amendments made to the *Local Government Act 1995* in June 2019. It must be read in conjunction with the *Local Government Act 1995*.

### **Local Government (Administration) Amendment Regulations (No2) 2020**

Are the second set of the amendments to the *Local Government (Administration) Regulations 1996*. In essence these regulations deal with local government meetings, matters regarding the CEO and Integrated Planning and Reporting.

## **CORPORATE CONTEXT**

### **Strategic Community Plan**

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<b>Civic Leadership</b>	<b><i>to better allocate scarce resources and effectively interact with the community</i></b>
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5.1	Implement measures to improve relationship and communication between Council and community	<ul style="list-style-type: none"> <li>• <i>Implementation of initiatives to better connect Council with the community and associated matters.</i></li> </ul>
5.2	Improve elected member performance	
5.3	Develop an advocacy and lobbying capacity	
5.4	Measures to improve organisational efficiency	

The review of the local government act is a key reform to assist with strategies 5.1, 5.3 and 5.4.

### Risk Governance Framework

The Shire of Victoria Plains has a responsibility and substantial interest in participating in the review of the local government act. Although risks cannot be attributable to the Shire for not participating in the review in the short term, longer term there are a couple of matters to note:

- This is a once in a generational opportunity to participate in a review of legislation that is designed to assist local government operate more effectively, both in terms of its statutory obligations and in terms of the services and facilities it provides to its communities;
- If the Shire did not make a comment into the final review, the Shire’s reputation could be impacted through both the community, the Zone and the broader industry as failing to participate in a process that is designed to improve the role of local government and assist with empowering its communities;
- Although the matter is not one of compliance, it has the potential to lessen the burden (red tape) on local governments at all levels.

### FINANCIAL IMPLICATIONS

Nil

### VOTING REQUIREMENTS

Absolute majority required: No

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Moved \_\_\_\_\_ Seconded Cr \_\_\_\_\_

That Council:

1. Endorses the CEO’s submission to WALGA in response to UPDATE: Draft *Local Government (Administration) Amendment Regulations (No.2) 2020* – Model standards for CEO recruitment, performance and termination as follows:

1. **Requirement to re-advertise CEO positions after 10 years of continuous service**

The requirement for CEOs to reapply for their position after ten years is strongly opposed. The Shire agrees with the comments by WALGA regarding this matter along with the further information as set out in the submission by Local Government Professional Officers WA regarding contract readvertising. In addition to this, the Shire would like to see a requirement for all members of a selection panel to have skills in interviewing and selecting candidates is missing.

The Shire also considers the two stage Council approval process (to firstly offer a position and then to endorse the appointment) is not supported as it is bureaucratic and inefficient. Instead, it is suggested that the Council be able to resolve to appoint the preferred candidate in accordance with an offer which may, or may not, have some endorsed flexibility for negotiation.

## **2. Independent panel member**

The requirement to include an independent member on a selection panel is not supported as it limits Council autonomy and agrees with WALGA's position and that of Local Government Professionals there is a distinct lack of clarity around the actual operation of this requirement. Instead, the Regulations should be broadened to require Councils to receive independent human resource advice when selecting a CEO. This would then allow Council to choose whether to include an independent person on the selection panel, whether the panel receives advice from an independent human resources consultant, or another option which introduces independence into the process.

## **3. Transparency and procedural fairness – Schedule 2**

The Shire is concerned it would appear that the selection panel is “established” as an entity that lacks key local government governance rather than as a committee of Council where the provisions within the Act, the regulations and the Shire's Meeting Procedures Local Laws would apply. The Shire is also concerned that with the removal of r.18C of the Local Government (Administration) Regulations, Council is removed from input and oversight of the selection panel processes.

## **4. Council decision making authority**

The Shire agrees with the comments made by WALGA regarding a local government being made to undertake a new recruitment process if the selection panel considers there are no suitable applicants. This would appear to be in conflict with the Act regarding where Council determines if a person is suitably qualified or not.

## **5. Other Matters**

The Shire does not have an issue regarding the implementation of the regulations regarding section 5.39B.

2. Authorises the CEO to submit the submission endorsed in Point 1 to the Review of the Local Government Act at the Department of Local Government, Sport and Cultural Industries.
3. Supports the Shire President:
  - c) To submit the Shire's position regarding the CEO Model Standards at the November 2020 Avon-Midland Country Zone meeting and other meetings and forums as appropriate.
  - d) To exercise discretion, if required, regarding Point 3a.

**For \_\_\_\_\_ / Against \_\_\_\_\_**

## 8.6 Review of the Local Government Act – Mandatory Code of Conduct – Elected Members, Committee Members and Candidates

<b>File reference</b>			
<b>Report date</b>	11 November 2020		
<b>Applicant/proponent</b>	Minister for Local Government		
<b>Officer disclosure of interest</b>			
<b>Previous meeting references</b>	August 2020 OCM, Item 8.5 2008-08		
<b>Prepared by</b>	Sean Fletcher, Governance Officer		
<b>Authorised by</b>	Entered once authorised by CEO		
<b>Attachments</b>			
Attachment 1	Page	136	WALGA Draft Submission Mandatory Code of Conduct for Council Members, Committee Members and Candidates October 2019
Attachment 2	Page	148	<i>Local Government (Model Code of Conduct) Regulations 2020</i>
Attachment 3	Page	164	<i>Explanatory Memorandum Local Government (Model Code of Conduct) Regulations 2020</i>

### PURPOSE

Council is asked to consider the *Draft Local Government (Model Code of Conduct) Regulations 2020*. Responses are required to be submitted to the Department of Local Government, Sport and Cultural Industries by 6 December 2020.

### BACKGROUND

#### Local Government Review Panel's Final Report

At the 26 August 2020 OCM, Council considered the outcome of the Local Government Review Panel's Final Report into the review of the Local Government Act. This included taking into account the local government sector's position through the consideration of WALGA's comments on the Review Panel's findings as discussed at the Zone meeting on 21 August 2020.

In the report to Council at the August 2020 OCM, it was explained the Department sought feedback on a draft Code of Conduct for Elected Members and draft CEO Standards and accompanying guidelines during 2019. Submissions closed on 6 December 2019. Over 400 responses were received during the consultation period. regulations have now been drafted for both the Code of Conduct and the CEO Standards. A copy of the WALGA submission is provided in Attachment 1.

The Review Panel made 65 recommendations for the proposed legislation including the need to firm up the requirements regarding the proposed Model Code of Conduct for

Elected Members (encapsulated within new, separate, regulations) and CEO Standards (including recruitment, performance review and early termination).

Council at the request of WALGA and the Zone considered the following regarding the Code of Conduct for Elected Members identified in the Review Panel's Final Report:

#### **Recommendation 25 Elections**

(d) A caretaker policy should be introduced barring elected members up for re-election from representing the council at events, handing out council grants or donations and moving substantive notices of motion in the period before the election, and a requirement to comply with this policy should be included in the Code of Conduct.

The Panel also considered ways to increase transparency and accountability and reduce conflicts during a local government election period. The Panel agreed that the Code of Conduct should include caretaker provisions to be imposed from the close of nominations to the date of the election.

Note: Council resolved to support WALGA regarding its support for this recommendation.

#### **Recommendation 31 Role of Mayor/President**

(e) provides guidance to councillors about what is expected of a councillor including in relation

to:

- (i) the role of a councillor;
- (ii) the councillor code of conduct; and
- (iii) standing orders

Note: Council resolved to support WALGA regarding its support for this recommendation.

#### **Recommendation 60 – Complaints Against Elected Members (Office of Independent Assessor)**

The Panel supported the creation of an Office of the Independent Assessor, an independent “one stop shop” body to investigate and assess complaints against elected members. The Independent Assessor could assess and prioritise all complaints and, depending on the outcome of its investigations, refer it to the relevant agency. This could include the Corruption and Crime Commission, the Public Sector Commission, or the State Administrative Tribunal for mediation, possible further investigation and determination of a sanction/s. Where a complaint involves behaviour it could be referred back to the council to deal with under Part B of the new Code of Conduct provisions. It was suggested that the Queensland model for an Independent Assessor may provide appropriate guidance.

The Office of Independent Assessor would replace the Standards Panel, and have the power to investigate complaints of breach of Part C of the Code of Conduct. Its findings in relation to breaches of conduct could be referred to the State Administrative Tribunal for imposition of the penalty.

Note: Council resolved to support WALGA regarding its opposition to this recommendation

#### **Key Point – Rules of Conduct Regulations to be Repealed**

A key issue to understand is that the Council Member Code of Conduct Regulations will replace the current Rules of Conduct Regulations (and the WALGA Model Code of Conduct).

#### **Local Government (Model Code of Conduct) Regulations 2020**

The regulations have now been drafted regarding the Code of Conduct Regulations and are provided in Attachment 2 with an explanatory memorandum that provides background information regarding the regulations in Attachment 3.

The Department of Local Government, Sport and Cultural Industries is seeking feedback on the Model Code of Conduct Regulations, with submissions required by 6 December 2020.

## COMMENT

### **WALGA's Comments – Draft Submission Mandatory Code of Conduct for Council Members, Committee Members and Candidates October 2019**

The Mandatory Code of Conduct will be a departure from the present legislative form that separates Codes of Conduct and the Rules of Conduct Regulations.

It will also depart from the present requirement to adopt one Code of Conduct that is to be observed by council members, committee members and employees.

The new section 5.51A, will require the CEO to prepare and implement a Code of Conduct to be observed only by employees, aligning with the Sector's view that all matters relating to employees be separated from Council involvement and be contemplated within the CEO's functions under Section 5.41(g) of the Act.5

An additional significance is that the Mandatory Code of Conduct will apply to Local Government election candidates in the same way it applies to council members, and an alleged breach of the Code of Conduct by a candidate can only be referred to the Local Government Standards Panel if elected.

### **Construction of the Model Code**

Under Section 5.103(2) as amended by the *Local Government Legislation Amendment Act 2019*:

- (2) *The model code of conduct must include:*
- (a) *general principles to guide behaviour;*
  - (b) *requirements relating to behaviour; and*
  - (c) *the rules of conduct.*

The Model Code of Conduct is constructed in three Parts:

**Part A** – Principles [Section 5.103(2)(a)] i.e. Personal Integrity, Relationships with Others, Accountability.

**Part B** – Behaviours [Section 5.103(2)(b)] i.e. the processes available to deal with disciplinary matters.

**Part C** – Rules of Conduct [Section 5.103(2)(c)] i.e. replicates existing provisions within the Rules of Conduct Regulations.

Note: Local Governments will not be able to amend Parts A and C, but additional behavioural content may be included in Part B that is not inconsistent with the Model Code.

### ***Local Government (Model Code of Conduct) Regulations 2020***

The Model Code of Conduct is set out in Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2020*. Each local government, including the Shire of

Victoria Plains will be required to adopt the Model Code and put it in a form consistent with the setting out in the proposed regulations.

The Model Code of Conduct is set out into four divisions:

#### Division 1 – Preliminary Provisions

This part deals with where the Shire inserts its name into the model and includes definitions (terms used) regarding:

Act – means the *Local Government Act 1995*;

Candidate – someone running in a local government election;

Publish – includes publishing (posting) on a social media platform.

#### Division 2 – General Principles

This part sets out the behaviour expected of a council member, committee member or candidate.

An observation regarding this division is that, perhaps a general weakness is that it says should. In other words it is not mandatory.

#### Division 3 – Behaviour

Despite what is set out in Division 2 as general principles, this division makes it very clear that an elected member, committee member or must comply with its requirements. In other words, the behaviour required is mandatory e.g.:

##### 8. Personal integrity

(1) A council member, committee member or candidate:

(a) must ensure that their use of social media and other forms of communication complies with this code;

##### 9. Relationships with others

A council member, committee member or candidate:

(a) must not bully or harass another person in any way;

(f) when attending a council or committee meeting:

(i) must not act in an abusive or threatening manner towards another person;

(g) must direct to the CEO any request for a query or complaint to be dealt with, or other work or action to be undertaken, by a local government employee.

A local government may deal with a complaint (still referred to as a minor breach). Otherwise, they are referred to the Standards Panel, as they are now.

Section 5.105 amended:

Delete section 5.105(1) and insert:

- (1) A council member commits a minor breach if the council member:
- (a) contravenes a rule of conduct; or
  - (b) contravenes a local law under this Act, contravention of which the regulations specify to be a minor breach.
- (1A) Subsection (1) extends to the contravention of a rule of conduct that occurred when the council member was a candidate.
- (1B) Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under subsection (1), also be a serious breach under subsection (3).

If, a local government decides to deal with complaints, it would appear, that the local government can implement a plan that requires the recalcitrant to undertake training, meditation or counselling or undertake any other course of action.

The process regarding what happens to the recalcitrant not completing disciplinary action is not set out in the Regulations.

In dealing with complaints the CEO is to appoint a complaints officer. If a complaints officer is not appointed, the CEO is the complaints officer.

Serious breaches still apply and are dealt with through the current process i.e. the Departmental CEO/SAT.

#### Division 4 – Rules of Conduct

This division sets out those matters that an elected member and a candidate must not participate in (in part):

15. Securing personal advantage or disadvantaging others
- (1) A council member must not make improper use of their office
16. Prohibition against involvement in administration
- (1) A council member must not undertake a task that contributes to the administration of the local government.
  - (2) A council member or candidate must not:
    - (a) direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee;
18. Disclosure of information
- (2) A council member must not disclose information that the council member:
    - (a) derived from a confidential document; or
    - (b) acquired at a closed meeting other than information derived from a non-confidential document.

19. Disclosure of interests

- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the council member must disclose the nature of the interest

These matters regarding elected members are in the current Rules of Conduct Regulations. However, they are not currently applicable to candidates.

**Concluding Thoughts**

It would appear that the Draft Regulations sets out a framework, primarily through the Model Code of Conduct, regarding setting the behaviour required of an elected member, committee member and candidate and also dealing with inappropriate behaviour by the same.

However, further clarification is required regarding the process should a local government decide to deal with complaints, including refusal by the recalcitrant to undertake remedial action, as it is not exactly clear how these matters are handled.

Further, there needs to be a guide that underpins how the Draft Regulations work and are applied. Such a requirement should be called up in the proposed regulations.

**CONSULTATION**

CEO

November Council Briefing Session

**STATUTORY CONTEXT**

***Local Government Act 1995***

Is the head of power regarding local government in Western Australia. It has been in operation since 1 July 1996.

***Local Government Legislation Amendment Act 2019***

This Act contains amendments made to the *Local Government Act 1995* in June 2019. It must be read in conjunction with the *Local Government Act 1995*.

***Local Government (Model Code of Conduct) Regulations 2020***

These are the draft regulations that deal with the proposed Model Code of Conduct to replace the *Local Government (Rules of Conduct) Regulations 2007*.

**CORPORATE CONTEXT**

**Strategic Community Plan**

<b>Civic Leadership</b>	<b><i>to better allocate scarce resources and effectively interact with the community</i></b>	
5.1	Implement measures to improve relationship and communication between Council and community	<ul style="list-style-type: none"> <li>• <i>Implementation of initiatives to better</i></li> </ul>

5.2	Improve elected member performance	<i>connect Council with the community and associated matters.</i>
5.3	Develop an advocacy and lobbying capacity	
5.4	Measures to improve organisational efficiency	

The review of the local government act is a key reform to assist with strategies 5.1, 5.3 and 5.4.

### **Risk Governance Framework**

The Shire of Victoria Plains has a responsibility and substantial interest in participating in the review of the local government act. Although risks cannot be attributable to the Shire for not participating in the review in the short term, longer term there are a couple of matters to note:

- This is a once in a generational opportunity to participate in a review of legislation that is designed to assist local government operate more effectively, both in terms of its statutory obligations and in terms of the services and facilities it provides to its communities;
- If the Shire did not make a comment into the final review, the Shire's reputation could be impacted through both the community, the Zone and the broader industry as failing to participate in a process that is designed to improve the role of local government and assist with empowering its communities;
- Although the matter is not one of compliance, it has the potential to lessen the burden (red tape) on local governments at all levels.

### **FINANCIAL IMPLICATIONS**

Nil

### **VOTING REQUIREMENTS**

Absolute majority required: No

<b>2011- Officer Recommendation / Council Resolution</b>
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Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

That Council:

1. Authorises the CEO to submit a to the Review of the Local Government Act at the Department of Local Government, Sport and Cultural Industries comments regarding the *Draft Local Government (Model Code of Conduct) Regulations 2020* as follows:

<p>It would appear that the Draft Regulations sets out a framework, primarily through the Model Code of Conduct, regarding setting the behaviour required of an elected member, committee member and candidate and also dealing with inappropriate behaviour by the same.</p>
---

However, further clarification is required regarding the process should a local government decide to deal with complaints, including refusal by the recalcitrant to undertake remedial action, as it is not exactly clear how these matters are handled.

Further, there needs to be a guide that underpins how the Draft Regulations work and are applied. Such a requirement should be called up in the proposed regulations.

2. Supports the Shire President:

- a) To submit the Shire's position regarding the *Draft Local Government (Model Code of Conduct) Regulations 2020* at the November 2020 Avon-Midland Country Zone meeting and other meetings and forums as appropriate.
- b) To exercise discretion, if required, regarding Point 2a.

**For \_\_\_\_\_ / Against \_\_\_\_\_**

## 8.7 Christmas Closure 2020

<b>File reference</b>	
<b>Report date</b>	19 November 2020
<b>Applicant/proponent</b>	CEO and Council
<b>Officer disclosure of interest</b>	Nil
<b>Previous meeting references</b>	OCM 30 October 2019 - Item 8.15 1910-22
<b>Prepared by</b>	Sean Fletcher, Governance Officer
<b>Authorised by</b>	Entered once authorised by CEO
<b>Attachments</b>	
Attachment 1	Page
	Nil

### PURPOSE

That Council:

1. In accordance with s2.7(2)(b) of the *Local Government Act 1995*, sets aside Policy 8.15a - Christmas Closure for the Christmas 2020 and New Year 2021 Period.
2. Advises the CEO it agrees with her request that the Shire will be closed from Friday 18 December through to Sunday 3 January 2021, with the Shire re-opening on Monday 4 January 2021.

### BACKGROUND

The CEO is requesting Council set aside Policy 8.15a regarding Christmas Closures for the Christmas/New Year Period 20/21, so that Shire staff can proceed on leave from 18 December 2020.

Council adopted a Christmas Closure policy at the OCM on 19 October 2019. The policy was introduced to provide guidance, reduce red tape and streamline Shire operations a policy in lieu of continual annual reports to Council requesting the same or similar.

The policy currently states:

“The Shire of Victoria Plains Administration Centre and Works Depot shall close operations each year for the non-public holidays between Christmas Day and New Year’s Day each year. Closure on public holidays will be observed.”

“In addition, when Christmas Eve falls on a working day, the Administration Centre and Works Depot shall close operations from 12 noon onwards.”

Emergency contacts during the Christmas Closure must also be advertised.

### COMMENT

The CEO advises that it is planned for Shire staff to proceed on leave for the Christmas period from Friday 18 December 2020, with the Shire reopening on Monday 4 January 2021.

During this time, the Shire emergency contacts are as follows:

First Week:            Manager Works and Services  
Second Week:        CEO

Christmas Day is Friday 25 December 2020, with New Year’s Day on Friday 1 January 2021.

**CONSULTATION**

Council Briefing Session 16 November 2020

**STATUTORY CONTEXT**

(1) The council —

- (a) governs 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.

As an aside, it should be noted that such a policy is not really required as the CEO is responsible for the Shire’s operations and the management of staff and is not an “administrative” function under the Local Government Act that Council must give to the CEO.

**CORPORATE CONTEXT**

**Strategic Community Plan**

This matter of setting aside the Christmas Closure policy for 2020/21 is more of a tactical issue rather than a strategic one.

<b>Civic Leadership</b>		<b><i>to better allocate scarce resources and effectively interact with the community</i></b>
5.1	Implement measures to improve relationship and communication between Council and community	<ul style="list-style-type: none"> <li>• <i>Implementation of initiatives to better connect Council with the community and associated matters.</i></li> </ul>
5.2	Improve elected member performance	
5.3	Develop an advocacy and lobbying capacity	
5.4	Measures to improve organisational efficiency	

**Corporate Business Plan**

Strategy 5.4: Measures to improve organisational efficiency

5.4.5 Maximise operational efficiencies whilst maintaining appropriate controls.

5.4.6 Continue to provide regulatory services (including health/building inspections, ranger services).

**Policy**

As per the background and comments section in this agenda item.

**Risk Management**

Consequence	Consequence Rating:	Likelihood Rating:	Risk Rating	Risk Acceptance	Mitigation and Outcome
Interruption to Service  Christmas Closure for two weeks	Major (4)  Prolonged interruption of services – additional resources; performance affected < 1 month	Likely (4)  At least once per year	High (16)	Senior Management Team(SMT)/ CEO	By the CEO and SMT ensuring that there is “emergency contacts” in place, this will move the Shire from High to Low risk and thus the controls will be considered Effective

**FINANCIAL IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Absolute majority required: No

<b>2011</b>	<b>Office Recommendation / Council Resolution</b>
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Moved Cr \_\_\_\_\_

Seconded Cr \_\_\_\_\_

That Council:

1. In accordance with s2.7(2)(b) of the *Local Government Act 1995*, sets aside Policy 8.15a - Christmas Closure for the Christmas 2020 and New Year 2021 Period.
2. Advises the CEO it agrees with her request that the Shire will be closed from Friday 18 December through to Sunday 3 January 2021, with the Shire re-opening on Monday 4 January 2021.

**For \_\_\_\_\_ / Against \_\_\_\_\_**

**9. MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**10. NEW BUSINESS OF AN URGENT NATURE REQUIRING DECISION**

*Admitted by resolution of Council*

**11. MEETING CLOSED TO PUBLIC – CONFIDENTIAL ITEMS**

**11.1 Matters for Which the Meeting May Be Closed**

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**Council Resolution**

Moved: Cr

Seconded: Cr

That Council move into Camera.

*Remaining in the meeting –*

### 11.1 CONFIDENTIAL ITEM - Tender RFT 02 – 2020/21 Provision of Roadworks Contractor Services for the FY 2020/21 and FY2021/22 and consideration of the review of the tender process undertaken by Core Business Australia

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<b>File reference</b>		
<b>Report date</b>		November 8 2020
<b>Applicant/proponent</b>		Shire of Victoria Plains
<b>Officer disclosure of interest</b>		Core Business Australia is a WALGA Preferred Supplier and has the potential to be further engaged by the Shire to assist the Shire with this project, as such has a financial interest in this matter.
<b>Previous meeting references</b>		1909 – 17 & 2004-13
<b>Prepared by</b>		Bruce Lorimer, Managing Director, Core Business Australia for the Chief Executive Officer
<b>Authorised by</b>		CEO
<b>Attachments</b>		
Attachment 1	Page	Confidential Tender Assessment Report prepared by Brett Howson - RFT 02-2020/21 Provision of Roadworks Contractor Services for the FY 2020/21 and FY2021/22

## 12. CLOSURE OF MEETING

There being no further business, the Presiding Member declared the meeting closed at \_\_\_\_\_ pm.

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## CERTIFICATION

These minutes were confirmed at the Ordinary Council Meeting held on \_\_\_\_\_ 2020.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
(Presiding member at the meeting which confirmed the minutes)

**Council Minutes are unconfirmed until they have been adopted at the following meeting of Council.**