

# SHIRE OF MERREDIN

19 January 2016

Minutes of Ordinary Council Meeting

Held in Council Chambers  
Corner King & Barrack Street's, Merredin



### Common Acronyms Used in this Document

WEROC	Wheatbelt East Regional Organisation of Councils
GECZ	Great Eastern Country Zone
WALGA	Western Australian Local Government Association
CEACA	Central East Aged Care Alliance
CEO	Chief Executive Officer
DCEO	Deputy CEO
EMDS	Executive Manager of Development Services
EMES	Executive Manager of Engineering Services
EMCS	Executive Manager of Corporate Services
EA	Executive Assistant to CEO
LPS	Local Planning Scheme
LGIS	Local Government Insurance Services
AMP	Asset Management Plan
LTFP	Long Term Financial Plan
MRC&LC	Merredin Regional Community and Leisure Centre
CWVC	Central Wheatbelt Visitors Centre
UCL	Unallocated Crown Land
MoU	Memorandum of Understanding
LHAG	Local Health Advisory Group
NEWROC	North Eastern Wheatbelt Regional Organisation of Councils
LoA	Leave of Absence



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Shire of Merredin  
Ordinary Council Meeting  
Tuesday 19 January 2016



**1. Official Opening**

The President welcomed all those in attendance and declared the meeting open at 3.02pm.

**2. Record of Attendance / Apologies and Leave of Absence**

**Councillors:**

Cr KA Hooper	President
Cr RM Crees	Deputy President
Cr BJ Anderson	
Cr CA Blakers	(from 3.06pm)
Cr MA Crisafio	
Cr JP Flockart	
Cr ML Young	(from 3.07pm)

**Councillor Elect:** LN Boehme

**Staff:**

G Powell	CEO
R McCall	Deputy CEO
J Mitchell	EMDS (until 3.21pm)
V Green	EA to CEO
S Lowe	Media & Communications Officer

**Members of the Public:** G Banks, JP (until 3.07pm)

**Apologies:** Nil

**Approved Leave of Absence:** Cr MD Willis (CMRef 81696)

**3. Swearing In of Councillor Elect**

In accordance with Section 2.29 of the *Local Government Act 1995*, Mrs Gloria Banks, JP witnessed the declaration of newly elected member Cr Leah Boehme.

Councillor Blakers entered the meeting at 3.06pm.

Councillor Young entered the meeting at 3.07pm.

G Banks, JP left the meeting at 3.07pm and did not return.

**4. Public Question Time**

Nil

**5. Election of Delegates and Deputy Delegates to Committees**

Given there is now a full complement of Elected Members a full review of delegates to Committees will be conducted at Council's February 2016 meeting.

**6. Disclosure of Interest**

Councillor Anderson and Councillor Crees declared a Proximity Interest in Agenda Item 15.1.

Councillor Flockart declared a Financial Interest in Agenda Item 15.1.

**7. Applications for Leave of Absence**

Councillor Crees requested Leave of Absence for all meetings in February 2016 and Councillor Boehme requested Leave of Absence for all meetings in April 2016.

**Councillor's Recommendation / Resolution**

**Moved:** Cr Young

**Seconded:** Cr Blakers

**81708 That Councillor Crees be granted Leave of Absence for all meetings in February 2016.**

**CARRIED 8/0**

**Councillor's Recommendation / Resolution**

**Moved:** Cr Anderson

**Seconded:** Cr Crisafio

**81709 That Councillor Boehme be granted Leave of Absence for all meetings in April 2016.**

**CARRIED 8/0**

**8. Petitions and Presentations**

Nil

**9. Confirmation of Minutes of the Previous Meeting**

9.1 Ordinary Council Meeting held on 15 December 2015  
**Attachment 9.1A**

**Officer's Recommendation / Resolution**

**Moved:** Cr Anderson

**Seconded:** Cr Flockart

**81710 That the Minutes of the Ordinary Council Meeting held on 15 December 2015 be confirmed as a true and accurate record of proceedings.**

**CARRIED 8/0**

**10. Announcements by the Person Presiding without discussion**

Nil

<b>11.</b>	<b>Matters for which the Meeting may be closed to the public</b>
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Nil

<b>12.</b>	<b>Receipt of Minutes of Committee Meetings</b>
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Nil

<b>13.</b>	<b>Recommendations from Committee Meetings for Council consideration</b>
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Nil

**14. Officer's Reports - Development Services**

**14.1 14 Caw Street, Merredin - Dog Act 1976 – Request to Keep Three Dogs**

## Development Services



<b>Reporting Officer:</b>	John Mitchell, EMDS
<b>Author:</b>	As above
<b>Legislation:</b>	<i>Dog Act 1976; Dog Regulations; Shire of Merredin Dog Local Laws</i>
<b>File Reference:</b>	A482
<b>Disclosure of Interest:</b>	Nil
<b>Attachments:</b>	<b>Attachment 14.1A</b> - Email
<b>Maps / Diagrams:</b>	Nil

### Purpose of Report



Executive Decision



Legislative Requirement

### Background

An application (13/01/2016) has been received to keep three dogs at 14 Caw Street, Merredin.

Council's Local Laws permit the keeping of two dogs.

### Comment

The Local Laws permit the local authority to consider the keeping of more than two dogs but no more than six dogs without the need for a kennel establishment licence.

The applicant seeks to assist animal rescue and act as a temporary home for up to three greyhound dogs.

The applicant seeks for the local government to waive the registration fees. Neither the Ranger nor EMDS are aware of any clause that permits the local government to waive the statutory fees unless for a guide dog. Further enquiries will be made and advice on the matter provided to the meeting.

Greyhounds are required to be muzzled in public places and clause 3.1 of the local law details fencing requirements.



### Policy Implications

Nil

### Statutory Implications

The provisions of Clause 3.2 of the Local Law & Part 26 of the *Dog Act 1976* are applicable

### Strategic Implications

Service Area: 3.5 Ranger Services  
Activities: Animal control & Welfare  
Link to Vision: Liveable  
Link to Strategic Priorities: Regional collaboration  
Service Level: Nil  
Service Level Change: Nil

### Sustainability Implications

➤ Asset Management Plan

Nil

➤ Long Term Financial Plan

Nil

➤ Workforce Plan

Nil

### Financial Implications

If adopted fees for registration apply

### Voting Requirements



Simple Majority



Absolute Majority

### Officer's Recommendation / Resolution

**Moved:** Cr Young

**Seconded:** Cr Blakers

**81711 That:**

1. the application to house up to three greyhounds at 14 Caw Street, Merredin be approved subject to strict compliance with all relevant provisions of the *Dog Act 1976* and other relevant legislation; and
2. approval to keep up to three greyhounds at 14 Caw Street, Merredin be reviewed annually to determine if the appropriate legislation is being complied with.

**CARRIED 8/0**

**14.2 Lot 602 Merredin-Nungarin Road, Merredin - Local Planning Scheme No. 6 – Subdivision Application**

## Development Services



<b>Reporting Officer:</b>	John Mitchell, EMDS
<b>Author:</b>	As above
<b>Legislation:</b>	Local Planning Scheme No. 6
<b>File Reference:</b>	A6066
<b>Disclosure of Interest:</b>	Nil
<b>Attachments:</b>	<b>Attachment 14.2A</b> - WAPC Reference Form 1A, Correspondence to Applicant
<b>Maps / Diagrams:</b>	Nil

### Purpose of Report

Executive Decision



Legislative Requirement

### Background

The WAPC has received an application to create four rural lots from a single lot including two homestead lots within the existing lot at Lot 602 Merredin-Nungarin Road, Merredin.

The proposal prepares the land for the Special Residential lot subdivision as agreed within the 2007 Local Planning Strategy.

### Comment

Boundary clearances are required to be met for the lots created for any buildings. For rural lots the required setbacks are 20m & 10m from secondary streets.

### Policy Implications

WAPC DC 3.4 permits the establishment of a homestead lot within a rural zone under certain conditions.

Council's Homestead policy permits the establishment of a (one) homestead lot within an existing lot of area 4Ha unless an environmental, ecological or topographical consideration (creepline) impacts on the proposal. For example, an endangered species occupying an area of the land greater than 4Ha.

### Statutory Implications

On the basis of the application and information provided the application creates three lots of 5.0Ha, 13.3Ha, 151.9Ha and 78.1Ha within the rural zone, which is not supported by the policy.

### Strategic Implications

Service Area: 3.3 Town Planning

Activities: Subdivision clearances

Link to Vision: Liveable

Link to Strategic Priorities: Town Enhancement

Service Level: As determined by legislation and the Local Planning Scheme

Service Level Change: Nil

### Sustainability Implications

➤ Asset Management Plan

Nil

➤ Long Term Financial Plan

Nil

➤ Workforce Plan

Nil

### Financial Implications

Nil

### Voting Requirements



Simple Majority



Absolute Majority

### Officer's Recommendation / Resolution

**Moved:** Cr Young

**Seconded:** Cr Anderson

**81712** That the Western Australian Planning Commission be advised that the application to create three lots within the rural zone of 13.3Ha, 5.0Ha and 151.9Ha from Lot 602 Merredin-Nungarin Road, Merredin is not supported as it creates lots outside the scope of the Policy and more than one homestead lot within an existing rural lot.

**CARRIED 8/0**

J Mitchell left the meeting at 3.21pm and did not return.

## 15. Officer's Reports - Engineering Services

Councillor Anderson and Councillor Crees declared a Proximity Interest in this agenda item and left the meeting at 3.22pm. Councillor Flockart declared a Financial Interest in this agenda item and left the meeting at 3.22pm.

### 15.1 Footpath Construction

## Engineering Services



<b>Responsible Officer:</b>	Kevin Paust, EMES
<b>Author:</b>	Charlie Brown, EMCS; Kevin Paust, EMES
<b>Legislation:</b>	<i>Local Government Act 1995; Local Government (Financial Management Regulations) 1996</i>
<b>File Reference:</b>	Nil
<b>Disclosure of Interest:</b>	Nil
<b>Attachments:</b>	<b>Attachment 15.1A</b> - Map
<b>Maps / Diagrams:</b>	Nil

### Purpose of Report



Executive Decision



Legislative Requirement

### Background

Council has been constructing and renewing its footpath network over a number of years.

Policy 7.9 Dual Use Paths states:

*"To install a network of Dual Use Paths (footpaths) within the Merredin Town-site based on strategic pedestrian routes that meet a variety of user needs. These Dual Use Paths shall be constructed of different materials based on their location."*

### Comment

During the preliminary review of the accounts as part of the statutory budget review, it was noted that Footpath Construction has an allocation against three jobs with significant savings achieved on each job.

Job No.	Street	Budget	Actual	Savings
FP014	Colin Street	\$95,000	\$56,500	\$38,500
FP015	Hay Street	\$95,000	\$56,500	\$38,500
FP016	Queen Street	\$100,000	\$62,000	\$38,000

It is proposed that whilst the funding is surplus, additional works be scheduled.

A review of the footpath program indicates that the following works could be included in the current budget and three options are listed for consideration.

**Option 1**

Remove existing footpath and kerb and reinstall new concrete footpath and kerbing from King Street entrance at the BP service station to Barrack Street, Barrack Street from King Street to Fifth Street.

Cost \$115,000

**Option 2**

Install new concrete footpath from western end of Dobson Avenue/Muscat Street to Kendall Street.

Cost \$115,000

**Option 3**

Remove existing footpath 400 metre section on Kitchener Road from Allenby Street to South Terrace.

Cost \$80,000

New footpath Stephens Street from Hay Street to Gamenya Ave 125 metres

Cost \$24,100

Total Cost \$104,100

**Policy Implications**

In accordance with Policy 7.9 Dual Use Paths within the Merredin Town Site.

**Statutory Implications**

Nil

**Strategic Implications**

Service Area: 2.5 Footpaths Construction, Renewals and Maintenance

Activities: Construction, renewals and maintenance of footpaths within the Shire

Link to Vision: Liveable

Link to Strategic Priorities: Key assets – roads and footpaths

Service Level: Footpaths to be constructed and reconstructed in accordance with Council's adopted programme

Service Level Change: Increase the length of footpaths undertaken in any one year, with the initial priorities being:

- Construct footpaths in townsite (at 2.4m)
- Improve footpaths in CBD
- Reconstruction in conjunction with roads programme

### Sustainability Implications

- Asset Management Plan

As detailed on Page 21 of the AMP.

- Long Term Financial Plan

The Capital Works Plan sits under the AMP and is an integral part of Council's forward planning. The Capital Works Plan specifically details the works undertaken on road infrastructure over 5 years and details the relevant financial implications.

- Workforce Plan

Nil

### Financial Implications

Nil as the proposed expenditure is not additional to initial amounts.

### Voting Requirements



Simple Majority



Absolute Majority

### Officer's Recommendation

That the current 2015/16 Budget be amended as follows:

1. reduce Job FP014 Colin Street by \$38,500;
2. reduce Job FP015 Hay Street by \$38,500; and
3. reduce Job FP016 Queen Street by \$38,000;

and include:

1. Option 1 - Remove existing footpath and kerbing and reinstall concrete footpath and kerbing from King Street entrance at the BP service station to Barrack Street, Barrack Street from King Street to Fifth Street at a cost of \$115,000.

### Resolution

**Moved:** Cr Young

**Seconded:** Cr Blakers

**81713** That the current 2015/16 Budget be amended as follows:

4. reduce Job FP014 Colin Street by \$38,500;
5. reduce Job FP015 Hay Street by \$38,500; and
6. reduce Job FP016 Queen Street by \$38,000;

and include:

- 1. Option 2 - Install a new concrete footpath from the western end of Dobson Avenue/Muscat Street to Kendall Street, Merredin at a cost of \$115,000.**

**CARRIED BY ABSOLUTE MAJORITY 5/0**

#### **Reason**

Council believed that new footpaths should be constructed in locations where there are none currently and where the existing network of footpaths can be extended.

Councillors Anderson, Crees and Flockart entered the meeting at 3.29pm.

**16. Officer's Reports – Corporate and Community Services**

**16.1 List of Accounts Paid**

## Corporate Services



<b>Responsible Officer:</b>	Charlie Brown, EMCS
<b>Author:</b>	As above
<b>Legislation:</b>	<i>Local Government Act 1995; Local Government (Financial Management) Regulations 1996</i>
<b>File Reference:</b>	Nil
<b>Disclosure of Interest:</b>	Nil
<b>Attachments:</b>	<b>Attachment 16.1A</b> - List of Accounts Paid
<b>Maps / Diagrams:</b>	Nil

### Purpose of Report



Executive Decision



Legislative Requirement

### Background

The attached List of Accounts Paid during the month of December 2015 under Delegated Authority is provided for Council's information.

### Comment

Nil

### Policy Implications

As outlined in the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*.

### Statutory Implications

As outlined in the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*.



### Strategic Implications

Service Area: Finance and Asset Management

Activities: Financial Management

Link to Vision: Developing and Liveable

Link to Strategic Priorities: Civic Leadership

Service Level: Financial management meets all legislated requirements

Service Level Change: No service level change

### Sustainability Implications

➤ Asset Management Plan

Nil

➤ Long Term Financial Plan

Nil

➤ Workforce Plan

Nil

### Financial Implications

All liabilities settled have been in accordance with the Annual Budget provisions.

### Voting Requirements



Simple Majority



Absolute Majority

### Officer's Recommendation / Resolution

**Moved:** Cr Blakers

**Seconded:** Cr Anderson

**81714** That the schedule of accounts paid as listed, covering cheques, EFT's, bank charges, directly debited payments and wages, as numbered and totalling \$1,347,452.72 from Council's Municipal Fund Bank Account and \$0 from Council's Trust Account be received.

**CARRIED 8/0**

**16.2 Statement of Financial Activity**

## Corporate Services



<b>Responsible Officer:</b>	Charlie Brown, EMCS
<b>Author:</b>	As above
<b>Legislation:</b>	<i>Local Government Act 1995; Local Government (Financial Management) Regulations 1996</i>
<b>File Reference:</b>	Nil
<b>Disclosure of Interest:</b>	Nil
<b>Attachments:</b>	<b>Attachment 16.2A</b> – Statement of Financial Activity
<b>Maps / Diagrams:</b>	Nil

### Purpose of Report



Executive Decision



Legislative Requirement

### Background

The Statement of Financial Activity, which includes the Detailed Schedules, Statement of Financial Position and Investment Register, is attached for Council's information.

### Comment

Revenue and Expenditure to 30 November 2015 is consistent with Council's adopted 2015/16 Budget.

#### **Variation actuals to YTD Budgets.**

##### **Operating Expenditure**

As can be seen from the statements, expenditure is down in most cases however Law Order & Public Safety and Transport are over in comparison with budget profiling.

With regards to Law Order and Public Safety, ranger services is currently over budget due to the need to contract our ranger services for an interim period, however this does have a corresponding entry on the income side. This will be addressed in the statutory budget review presented at the next meeting.

The items that causes the current situation in Transport is Roads Maintenance, where additional works have been completed due to flooding earlier this year.

Further comments regarding the Material Variations can be found on Note 2 of the attached statements.

### Policy Implications

As outlined in the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*.

### Statutory Implications

As outlined in the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996 Regulation 34(1)*.

### Strategic Implications

Service Area: 5.3 - Governance and Corporate Services  
Activities: Finance and Asset Management  
Link to Vision: Developing  
Link to Strategic Priorities: Civic Leadership  
Service Level: Financial management meets all legislated requirements  
Service Level Change: No service level change

### Sustainability Implications

➤ [Asset Management Plan](#)

Nil

➤ [Long Term Financial Plan](#)

Compliance with the *Local Government (Administration) Regulations 1996* and to also give Council some direction in regards to its management of finance over an extended period of time.

➤ [Workforce Plan](#)

Nil

### Financial Implications

As outlined in **Attachment 16.2A**.

### Voting Requirements

Simple Majority

Absolute Majority

### Officer's Recommendation / Resolution

**Moved:** Cr Young

**Seconded:** Cr Blakers

**81715** That in accordance with Regulation 34 of the *Local Government (Financial Management) Regulations 1996*, the Statement of Financial Activity for the period ending 31 December 2015 be received.

**CARRIED BY ABSOLUTE MAJORITY 8/0**

**17. Officer's Reports – Administration**

**17.1 Review of the *Local Government (Rules of Conduct) Regulations 2007* and Minor Breach Disciplinary Framework**

<h2 style="margin: 0;">Administration</h2> 	
<p><b>Responsible Officer:</b></p> <p><b>Author:</b></p> <p><b>Legislation:</b></p> <p><b>File Reference:</b></p> <p><b>Disclosure of Interest:</b></p> <p><b>Attachments:</b></p> <p><b>Maps / Diagrams:</b></p>	<p>Greg Powell, CEO</p> <p>Vanessa Green, EA to CEO</p> <p><i>Local Government Act 1995</i></p> <p>GR/17/11; GR/17/19</p> <p>Nil</p> <p><b>Attachment 17.1A</b> – Consultation Paper</p> <p>Nil</p>

**Purpose of Report**

Executive Decision
  Legislative Requirement

**Background**

The Department of Local Government and Communities (DLGC) have commenced a review of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) with the release of a consultation paper.

The Regulations, which provide a disciplinary framework to deal with minor breaches by local government councillors, are being reviewed in response to a range of concerns that have been raised by the sector.

The consultation paper sets out findings from the review of the current process and proposes a number of regulatory and process amendments in response to those findings.

The proposals encompass four key elements:

1. Amending the regulations to improve clarity and alignment with policy intent;
2. Improving guidance material and complaint documentation;
3. Encouraging mediation and conciliation as an alternative to complaints about interpersonal disputes; and
4. Codifying Standards Panel procedures and practice, and simplifying reporting.

Local governments are requested to consider whether the current Regulations appropriately express contemporary official conduct standards and whether the operations of the Standard Panel can be enhanced to deliver efficient, timely and reliable outcomes, including alternative dispute resolution strategies, when minor breach complaints are made.

WALGA are requesting feedback be provided to them prior to 29 January 2016 to allow the outcomes to be included for Zone and State Council consideration during February/March 2016. This will allow an industry position to be established and provided to the DLGC by its submission deadline of 4 March 2016.

The consultation paper is some 80 pages in length. For ease of reference, the Executive Summary has been reproduced below.

Since 2007, the *Local Government Act 1995* (the Act) has provided for a disciplinary framework to deal with minor, recurrent and serious breaches of conduct by individual council members. This review considers only the minor breach element. The minor breach system is separate to and different from the minor and serious misconduct reporting framework that operates under the *Corruption, Crime and Misconduct Act 2003* (CCM Act).

The minor breach system is intended to provide a mechanism to deter inappropriate conduct by individual council members that may lead to council dysfunction, loss of trust between council and administration, impairment of the local government's integrity and operational performance, and consequent reduction in public confidence. The minor breach system complements local government codes of conduct with enforceable standards for specified conduct focused on governance and integrity.

The foundation of the minor breach system is the *Local Government (Rules of Conduct) Regulations 2007* (regulations), enforced through the complaints process set out in Part 5 Division 9 of the Act which provides for the reporting of contraventions of the regulations to the Local Government Standards Panel (the Panel) appointed by the Minister.

The minor breach system is strongly supported in principle by the local government sector, but there is some dissatisfaction among those who have had dealings with it that it is not meeting the sector's pre-commencement expectation. This expectation was that it would be quick, transparent, informal and non-technical, and focused on the general interests of local government. The issues being raised in 2015 are very similar to the issues raised during the previous review by the Standards Panel Review Committee in 2011: specifically the length of the process, a perceived lack of transparency, and a sense that the focus is on legal process rather than addressing the effects of council member conduct on local government.

It is important to recognise that the minor breach system is based on regulatory contravention, unlike minor misconduct under the CCM Act or the code-of-conduct-based misconduct management systems in other jurisdictions. These are generally focused on types of conduct (abuse of power/position, breach of trust, dishonesty, bias) rather than the breaking of prescriptive rules governing specified activities.

It is not feasible for a rule-based disciplinary model, such as the Western Australian minor breach system, to capture all dysfunctional conduct or exclude all minor lapses that might result in vexatious complaints. More flexible outcome-based misconduct management models may have greater focus on the impact, intent and context of the conduct. However, the investigation and evidentiary interrogation required is considerably more resource intensive than the WA minor breach system, which uses a challenge-response approach usually determined solely on the documents provided.

Given the support of the local government sector for the current minor breach system, and lack of support for locally-driven disciplinary systems, this document assumes that the existing minor breach system will continue.

The purpose of this review was therefore to examine the local government sector's concerns with the current minor breach system, identify the likely causes of that concern and consider whether the Rules of Conduct regulations and current complaints processes can be reformed to improve operational efficiency and effectiveness.

The initial stage of this review undertook targeted consultation with the local government sector, particularly local governments with significant experience with the minor breach process and individual stakeholders who had expressed specific concerns. It also involved a technical analysis of the issues, the regulations, past complaints and determinations, and consideration of models in use in other jurisdictions to develop options for reform. This next stage widens the consultation process.

In addition to reiterating the process issues raised in the 2011 review about timeframes, transparency and technical focus, the sector has raised concern about the extent to which the Panel's decisions align with the policy objective to deter dysfunctional conduct. Some local governments are concerned that the impact that a persistently disruptive council member can have on a local government is given insufficient weight in decisions, and that the process is not communicating a clear, effective message about reasonable standards of conduct.

Specific reported concerns and perceptions in 2015 include:

- The length of the complaints process and lack of a complaints tracking mechanism exacerbates tensions and uncertainty within councils, contrary to the intended role of the process as a "circuit-breaker".
- There is need to better balance the intent of the regulations, the rights of the accused council members, and the interests of local government. Some findings have been seen as overly tolerant of serious wrong-doing and others as overly punitive of inconsequential behaviour which would have been quickly forgotten but for the complaint.
- The sanctions available to the Panel are seen as having little deterrent effect, especially since the local government rather than the council member bears the associated financial cost of sanctions such as training or public censure notices.
- The system is not seen to be addressing certain conduct with serious disruptive and dysfunctional consequences for local government: specifically bullying and harassment of councillors and employees, and use of the media to publicly disparage local government functions and local government employees to gain personal or political advantage.
- There is poor understanding of the regulations or what constitutes a minor breach, and the existing training and guidance material does not specifically focus on interpreting the Rules of Conduct or explain acceptable and unacceptable behaviour by example.

The processing time for complaints has improved significantly since 2012, although there are opportunities for further efficiencies, largely related to reducing system congestion caused by unsound, trivial and vexatious complaints, and prioritising matters with significant implications for the functioning of the local government over those with negligible operational consequences.

Given that the minor breach system is a contravention-based model, it is inevitable that determinations of whether a minor breach occurred will rely more on technical interpretations of the written law than on considering the context and consequences of the conduct. Better defining the regulations to embed the intent within them, and publishing the Panel's positions and policies on interpretation, may improve alignment between the system's intent and its implementation.

The Panel does have a legislated obligation to have regard to the general interests of local government in the State, which influences its decisions on how to deal with a minor breach once found. Documentation of the factors that the Panel must take into account when considering local government interests, and specific reference to those matters in Panel reports may link outcomes more clearly with the purpose of the minor breach system.

In practice, most local governments and most council members have little or no contact with the minor breach system. Between the commencement of the system in late 2007 and August 2015, 68 per cent of the total minor breach allegations (343 allegations out of 507 in total) have been generated from just twelve local governments involving complaints against 74 council members. Eighty local governments have not used the system at all.

A high number of complaints from a particular local government generally correlates with overt tension either centred on an individual or on the relationship between two factions. Departure of one of the parties usually results in the complaint frequency rapidly subsiding.

Despite the intent of the minor breach system, most allegations of minor breach received since 2007 appear to have arisen from personal disputes rather than being reports of significant matters of misconduct affecting local government integrity and good governance. Approximately forty percent of allegations of minor breach related to conduct with potential to cause serious operational consequences, although about one-fifth of these concern conduct that is currently not captured by the regulations. Of the sixty percent of allegations that related to inconsequential behaviour, about half complained about conduct which is not actually prohibited by the cited regulation and therefore cannot be a contravention (unsound complaints).

Amendments are currently before Parliament to allow the Panel to refuse to consider frivolous, vexatious and misconceived complaints and those without substance, and to allow withdrawal of complaints. If enacted, this reform is expected to reduce the number of inconsequential and unsound complaints considered by the Panel. However, the assessment of these will still require publicly-funded resources. Preferably, unsound and low value complaints should not reach the Panel at all.

This directions paper sets out findings and proposed regulatory and process amendments to address opportunities that have been identified for improved efficiency and effectiveness in the system. Acknowledging the general and specific concerns summarised above, the proposals put forward are based on the following principles:

1. The minor breach system should be driven by the policy objective: early intervention to address inappropriate behaviour by individual council members which may otherwise impair local government integrity and performance, bring local government into disrepute, or escalate to serious council dysfunction.
2. To the extent possible, the Rules of Conduct should capture significant dysfunctional, disruptive or deceptive conduct (unless dealt with in other legislation) which poses an organisational risk to local government.
3. A finding of minor breach is an over-reaction to trivial and inconsequential behaviour, which is better dealt with in other ways.
4. Clearly worded and well-defined regulations should unambiguously specify required and proscribed conduct, with no overlap or duplication between regulations.
5. Standards Panel processes, practice and reporting should be simple, quick, transparent, and as informal and practical as feasible while being consistent with procedural fairness and legal requirements.
6. Council members and prospective complainants should have access to guidance about types of behaviour that do or do not constitute a minor breach for each regulation, clear requirements for a complaint of minor breach, and information about the way in which the Standards Panel conducts its business.
7. Alternatives to the use of the complaints system need to be encouraged.

8. Where regulatory prohibition of specific types of dysfunctional conduct is not feasible, training, coaching, enforcement of local codes of conduct and peer feedback will be necessary to bring about attitudinal change.

Three key problems were identified:

1. The current regulations do not adequately address some significantly dysfunctional conduct that harms local government performance;
2. A very high proportion of unsound, unsupported and trivial complaints that increase system congestion and cost, and impose unnecessary stress on council members, and
3. Relatively poor understanding of the system and low penetration of “lessons learned” from the Panel’s determinations.

The proposed directions encompass four key elements:

1. Amending the regulations to improve clarity and alignment with policy intent;
2. Improving guidance material and complaint documentation;
3. Encouraging mediation and conciliation as an alternative to complaints about interpersonal disputes; and
4. Codifying Standards Panel procedures and practice and simplifying reporting. Where issues raised can only be fully addressed through legislative change, amendments to the Local Government Act have been suggested for the Government’s consideration in order to reduce red tape, increase responsiveness and improve the effectiveness of outcomes.

### **Proposed regulatory changes**

**Regulation 3** (general principles to guide behaviour – not a Rule of Conduct) Add a principle concerning compliance with local government codes and policies. Link Regulation 3 to codes of conduct required under s.103(1) of the Act and the proper use of office.

**Regulation 4** (contravention of local laws relating to conduct at meetings) Delete regulation 4 and capture seriously dysfunctional meeting conduct in a new regulation.

**Regulation 6** (use of information) Include personal information, information subject to a confidentiality or non-disclosure agreement, legal advice, and commercially sensitive information. Extend application to include confidential parts of otherwise non- confidential documents. Make resolutions that are made in closed meetings explicitly exempt from the regulation.

**Regulation 7** (improper use of office to secure personal advantage or disadvantage others) Define key terms to make intent more explicit and focus on matters of integrity, honesty and impartiality; exclude conduct that is the subject of other regulations or local laws and where it is unlikely that significant harm would be sustained as a result of the conduct.

**Regulation 8** (misuse of local government resources) Clarify by defining key terms.

**Regulation 9** (prohibits involvement in administration) Clarify by defining key terms.

**Regulation 10** (relations with local government employees) Define and amend key terms to clarify intent and conditions of application. Add provisions related to CEO employment, threatening or abusive behaviour, unreasonable demands, chastisement of employees and protection of former local government employees. Recognise technological advances through which the public may have access to livestreamed meeting proceedings and audio/video records.

**Regulation 11** (disclosure of interest) Define key terms to clarify meaning – remove or clarify anomalies with Act provisions on interest disclosure; address lobbying by proponents; provide for enduring interest register.



**Regulation 12** (gifts) Add definition of “nominal gift” and exempt these from notifiable gifts. Prohibit acceptance of travel contributions from person seeking or intending to undertake an activity involving a local government discretion, and provide for situations where council member accepted a gift unaware that the giver was such a person. Include provisions to cover gifts to council made available to councillors and ceremonial gifts<sup>1</sup>. (Note that there are broader issues around appropriate gift value thresholds, consistency of legislative requirements, and gifts from entities likely to benefit from a local government discretion exercised in favour of a separate entity.)

### **Proposed new regulations**

1. Interactions between council members (replaces Regulation 4): Prohibit disparagement, adverse reflection and abusive language during council and committee meetings and public events. Prohibit threatening or abusive behaviour. Requirement to comply with directions of presiding member (except if dissent motion passed).
2. Notification of public statements: Require council members who make comments to the media about the local government administration or council decisions to notify the CEO, who will record the notice in a media contact register available for public inspection.

Concern has been expressed that the Rules of Conduct regulations provide only limited protection to local government employees from public disparagement by council members in the mainstream and social media. The current prohibition in Regulation

10(3) is limited to council/committee meetings/organised events attended by members of the public, and 60 per cent of complaints received about derogatory or offensive comments did not meet these regulatory pre-requisites. Civil defamation action is not available to local governments and tends to be cost prohibitive for most people.

Regulatory options to address this issue were investigated. However, the implied freedom of political communication under the Commonwealth Constitution as well as implementation considerations, make such an approach impractical. The requirement to notify the CEO of comments made to the media has been suggested to improve accountability, but in general non-regulatory measures are likely to be a more practical approach.

Regular re-assessment of the regulations in light of the types of complaints received and monitoring of behavioural standards will ensure the Rules of Conduct remain relevant to the needs of local government.

### **Policy, education and process improvements**

1. Encourage local governments to offer alternative resolution options to prospective complainants, and further encourage this through complaint documents.
2. Provide greater guidance on how the Rules of Conduct are applied, the intent of the minor breach system and the complaints process to inform complainants, and establish a training program for Complaints Officers.
3. Amend the complaints form to specify the information to be provided in support of allegations of contraventions resulting in a minor breach (this could potentially be regulated under section 5.107(2)(d) of the Act).
4. Take a stricter approach to complaints that are not in accordance with the requirements of the Act, and enforce timeframes for responses to the Department's requests for information on behalf of the Panel.
5. Introduce a mechanism to prioritise complaints that relate to conduct posing the greatest potential risk of impairing the local government's efficient and effective performance, working environment or its public reputation.

6. Ensure that local governments are promptly informed of policy and risk implications arising from the Panel's determination of a complaint or interpretation of the regulations.
7. Include a module on the interpretation of the Rules of Conduct in council member induction and professional development training.
8. Include in council member training, information about the impact of member conduct on organisational risks, particularly conduct associated with negative publicity, damaging working relationships or affecting workplace health and safety.
9. Where inappropriate conduct has occurred but is found not to be a minor breach, clearly advise the respondent that the conduct is not condoned.
10. (Longer term) If the State is to retain the current centralised complaints system, then consider an on-line, centralised, automated "self-serve" complaint lodgement system similar to that used by the State Administrative Tribunal to improve efficiency, reduce red tape, automate compliance checking and notifications, and facilitate complaint tracking.

#### **Potential Act amendments (for future consideration by Government)**

1. Reduce the time limit for submitting a complaint from two years after the incident to three months, with provision for an extension up to 12 months to be granted in exceptional circumstances.
2. Align the minor breach process more closely with the serious breach process by providing for complaints of minor breach to be sent to the Departmental CEO, who will decide whether to make an allegation to the Standards Panel that a council member committed a minor breach. This will permit the Departmental CEO to exclude unsound, frivolous, vexatious, trivial and inconsequential complaints, request that dispute resolution processes be engaged before action is taken, and ensure that contraventions are appropriately described and supported before being sent to the Panel.
3. Increase the range of actions available to the Panel after it has found that a minor breach has occurred, including actions appropriate to a technical breach with negligible consequences for the local government, and stronger sanctions for minor breaches involving deliberate conduct with significant consequences for the local government.

#### **Longer term measures to enhance standards of conduct**

This document assumes that the current rule-based minor breach system will continue, and focuses on improving the efficiency and effectiveness of that system. In the longer term, consideration could be given to a disciplinary framework that is less prescriptive and more outcome-based. Such a scheme would require council members to refrain from conduct likely to impair the integrity, operational performance or reputation of the local government, and hold them accountable should they fail to do so. The focus would be on demonstrable abuse of position, breach of trust, dishonesty and bias. However, examples and training to assist council members to make those judgements would take the place of regulatory prohibitions relating to specific actions.

Minor breaches as defined through the Rules of Conduct do not cover all forms of minor misconduct. It is not practical for a prescriptive rule-based system to do so. Following recent amendments to the CCM Act, there is no longer an agency with statutory responsibility for dealing with elected members who engage in minor misconduct which does not contravene a specific regulation or legislative provision. If this gap needs to be addressed, there would be advantages in a single misconduct management system for elected members, subject to resolving responsibility, resource and other implementation considerations.

Local governments have a duty to safeguard employees' wellbeing and support those with health conditions. A similarly supportive environment for elected council members, including access to counselling, may better address dysfunctional conduct arising from stress or mental health disorders than an inherently adversarial reporting and penalty system.

### Comment

The review is regarded as an important step in updating, improving and clarifying the official conduct rules relating to Elected Members. It should be noted that there have been no amendments to the Regulations since their inception in 2007.

The consultation paper includes a number of specific proposals and it is suggested these proposals be supported in principle as there will be benefits from clarification of the Regulations, an increase in the efficiency and transparency of the Standards Panel and a greater focus on mediation and conciliation as dispute resolution strategies.

### Policy Implications

Council's Code of Conduct Policy 1.1 was adopted in September 2004 (CMRef 27632) with the last review undertaken in February 2015 (CMRef 81522). The Policy is based on a model policy developed by WALGA in 2008, which has not been amended since.

### Statutory Implications

Nil at this time, however future legislative implications may be applicable.

### Strategic Implications

Service Area: 5.2 Strategic Advice, General Management and Governance; 5.5 Administration

Activities: Nil

Link to Vision: Developing

Link to Strategic Priorities: Civic Leadership

Service Level: Nil

Service Level Change: No service level change

### Sustainability Implications

#### ➤ Asset Management Plan

Nil

#### ➤ Long Term Financial Plan

Nil

#### ➤ Workforce Plan

Nil

### Financial Implications

Nil at this time

### Voting Requirements



Simple Majority



Absolute Majority

### Officer's Recommendation / Resolution

**Moved:** Cr Young

**Seconded:** Cr Boehme

**81716** That the Department of Local Government and Communities, and the Western Australian Local Government Association, be advised Council supports in principle the proposals detailed in the Consultation Paper on the Review of the *Local Government (Rules of Conduct) Regulations 2007* and Minor Breach Disciplinary Framework.

**CARRIED 8/0**

**17.2 Policy Review – Uniforms - Staff**

**Administration**



<b>Responsible Officer:</b>	Greg Powell, CEO
<b>Author:</b>	Vanessa Green, EA to CEO
<b>Legislation:</b>	<i>Local Government Act 1995; Occupational Safety and Health Act 1984</i>
<b>File Reference:</b>	Policy Manual
<b>Disclosure of Interest:</b>	Nil
<b>Attachments:</b>	<b>Attachment 17.2A</b> – Proposed Policy
<b>Maps / Diagrams:</b>	Nil

**Purpose of Report**



Executive Decision



Legislative Requirement

**Background**

Council first adopted its Uniforms – Staff Policy at its September 2000 meeting (CMRef 27632). The policy was reviewed and amended at Council’s November 2014 meeting (CMRef 81470 following the release of a model policy produced by WALGA.

Recent investigations into Occupational Health & Safety (OSH) implications require the policy to be amended, specifically in relation to appropriate footwear.

**Comment**

The amendment stipulates that appropriate footwear must be worn applicable to the task at hand and to reduce the risk of injury.

**Policy Implications**

Policy 2.8 Uniforms – Staff will be updated accordingly.

**Statutory Implications**

*Local Government Act 1995; Occupational Safety and Health Act 1984*

### Strategic Implications

Service Area: 5.4 Human Resources

Activities: Human Resources Services; Workplace, Health & Safety

Link to Vision: Developing; Liveable

Link to Strategic Priorities: Civic Leadership; Key assets

Service Level: Nil

Service Level Change: No service level change

### Sustainability Implications

➤ Asset Management Plan

Nil

➤ Long Term Financial Plan

Nil

➤ Workforce Plan

Nil

### Financial Implications

Nil

### Voting Requirements



Simple Majority



Absolute Majority

### Officer's Recommendation / Resolution

**Moved:** Cr Blakers

**Seconded:** Cr Crees

**81717** That Policy 2.8 Uniforms – Staff be amended as per Attachment 17.2A.

**CARRIED 8/0**

<b>18.</b>	<b>Motions of which Previous Notice has been given</b>
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Nil

<b>19.</b>	<b>Questions by Members of which Due Notice has been given</b>
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Nil

<b>20.</b>	<b>Urgent Business Approved by the Person Presiding or by Decision</b>
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Nil

<b>21.</b>	<b>Matters Behind Closed Doors</b>
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Nil

<b>22.</b>	<b>Closure</b>
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There being no further business the President thanked all those in attendance and declared the meeting closed at 3.44pm.