

SHIRE OF MERREDIN



“Heart of the Wheatbelt”

MINUTES OF ORDINARY COUNCIL MEETING

20 March 2012

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**Minutes of the Ordinary Meeting of the Shire of Merredin held in the Council Chambers,
Corner King and Barrack Streets, Merredin on
Tuesday 20 March 2012 commencing at 1.00pm.**

ATTENDANCE:

Councillors:	D Crook	Shire President
	M Morris	Deputy Shire President
	BJ Anderson	
	RM Crees	
	DN Hayes-Thompson	
	KA Hooper	
	T McFarlane	
	D Morris	
	W Wallace	
Staff:	G Powell	Chief Executive Officer
	L Wyatt	Executive Assistant to Chief Executive Officer

1.0 OFFICIAL OPENING

The President declared the meeting open at 1.00pm. Mr Victor London was present.

2.0 PUBLIC QUESTION TIME

Mr London sought information from Council regarding waste management charges. He queried whether or not Council made a profit on the charges passed on to ratepayers for the collection of refuse. The CEO advised he would provide information from the current financial year's activities to Mr London by the end of the month.

3.0 APOLOGIES AND LEAVE OF ABSENCE

Nil

4.0 DISCLOSURE OF INTEREST

Councillor Martin Morris declared an interest in Item 9.2 Audit Committee Meeting.

5.0 PETITIONS AND PRESENTATIONS

Nil

6.0 CONFIRMATION OF MINUTES**6.1 Ordinary Council Meeting**

Confirmation of the minutes of the Ordinary Council Meeting held on 21 February 2012.

30853

Moved: Cr D Morris

Seconded: Cr W Wallace

Officer's Recommendation

That the minutes of the Ordinary Council Meeting held on 21 February 2012 be confirmed as a true and correct record of proceedings.

CARRIED 9/0**7.0 ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

Nil

8.0 MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC

Nil

9.0 RECEIVAL OF MINUTES OF COMMITTEE MEETINGS HELD SINCE THE PREVIOUS MEETING OF COUNCIL**9.1 Great Eastern Country Zone Meeting held 1 March 2012****Attachment 9.1A****9.2 Audit Committee Meeting Held 20 March 2012****Attachment 9.2A**

Recommendation

That Council adopt the 2011 Compliance Report subject to the return being amended to reflect;

- 1. Disclosure of Interest: s5.67; Remove the comment from the report as this item does not require the Councillors who declared the interest to leave the meeting as it was an interest affecting impartiality; and*
- 2. Amend the typing error, Elections: Elect Reg 30 (1); change "do" to "no".*

30854

Moved: Cr Crees

Seconded: Cr Hooper

Officer's Recommendation

That Council receive the minutes from the Great Eastern Country Zone Meeting held 1 March 2012 and minutes from the Audit Committee Meeting held 20 March 2012.

CARRIED 9/0**30855**

Moved: Cr D Morris

Seconded: Cr K Hooper

Resolution

That Council adopt the 2011 Compliance Report subject to the return being amended to reflect;

- 1. Disclosure of Interest: s5.67; Remove the comment from the report as this item does not require the Councillors who declared the interest to leave the meeting as it was an interest affecting impartiality; and***
- 2. Amend the typing error, Elections: Elect Reg 30 (1); change "do" to "no".***

CARRIED 9/0

10.0 DEVELOPMENT SERVICES

10.1 **BUILDING ACT 2011**

Reporting Department:	Development Services
Reporting Officer:	Rebecca Bowler (EHO)
Author:	Julian Goldacre- Principal Environmental Health Officer- Shire of Wyalkatchem
Adjustment/ amendments:	Rebecca Bowler
Legislation:	<i>New Building Act 2011, Building Regulations 2012, Building Services (Registration) Act 2011, Building Services (Complaint Resolution & Administration) Act 2011 and the Building Services Levy Act 2011</i>
File Reference:	
Disclosure of Interest:	Nil
Attachments:	New Building Act Explained (Attachment 10.1A) Uncertified Applications (Attachment 10.1B) Certified Applications (Attachment 10.1C) Occupancy Permit Building Approval Certificate (Attachment 10.1D) Roles and Responsibility Permit Authority (Attachment 10.1E) Timeframe for Approval Process (Attachment 10.1F) Table of Proposed Delegations (Attachment 10.1G) Schedule of Fees (Attachment 10.1H)

Background

The State Government has progressed through Parliament legislation that will change the future of the building approvals process throughout Western Australia (WA).

The *Building Act 2011* was given Royal Assent on 11 July 2011 and is expected to be proclaimed together with supporting Regulations on 2 April 2012.

The new Act aligns with the following recently proclaimed complementary Acts:

- *Building Services(Registration) Act 2011;*
- *Building Services (Complaint Resolution & Administration) Act 2011; and*
- *Building Services Levy Act 2011.*

The *Building Act 2011* will replace Parts VIII, IX and XV of the current *Local Government (Miscellaneous Provisions) Act 1960* as the building control legislation. The existing Building Regulations 1989 will be replaced by the Building Regulations 2012 to support the new *Building Act 2011*.

With the introduction of the new *Building Act 2011* there will be key changes that will affect local governments, as it will introduce changes such as:

- Private Certification (allows plans to be approved outside of the Shire)
- Permit Authorities and Special Permit Authorities
- Timeframe for approvals.
- Occupancy Permits and Building Approval Certificates.
- Applying for Building Permit when ready to build or occupy.
- Consent to affect other land.
- Local government no longer able to certify their own building projects

The Act will also set out the role of local government (Permit Authority) which can be categorised into the following three (3) main functions:

1. Building Approval Certificates (Uncertified Applications);
2. Permit approval and issue (Building and Occupancy Permits); and
3. Enforcement.

Within the Act there are new terms used and the Building Commission has released a paper with the common terms used in the Act (***Refer to Attachment No. 1***). Furthermore the roles and responsibilities of a Permit Authority is also attached (***Refer to Attachment No. 5***).

The intent of the Act is to give the head of power to enable matters to be done and the Regulations will deal with the day to day operation of the Act.

Comment:

The *Building Act 2011* will replace much of the *Local Government (Miscellaneous Provisions) Act 1960*, and amends a range of associated Acts. The key objectives of the new Act are:

- To provide a comprehensive system of building control in WA;
- Reduce building approval times;
- Set standards for building and demolition work in WA; and
- Deal with building or demolition work that affects other land.

The Act will bring significant changes to the building approvals process, from the design stage through to the occupation of a building and covers all types of buildings within WA. It will establish Permit Authorities, to issue permits and notices/orders, ensure enforcement of permits and retain building records. A Permit Authority can be a local government, Special Permit Authority (a group of local governments) or State Government.

The *Building Act 2011* enables local governments to deal with issues it cannot deal with under existing legislation, for example, the removal of fences without consent. In addition, the penalties for non-compliance are quite severe in that there are in some offences with escalating penalties up to gaol terms for repeat offenders. This enables the local government to take a more proactive role in enforcement of the building control legislation to ensure buildings are constructed in compliance with legislative requirements and appropriate standards within the community.

It is an expectation that local government will be carrying out routine inspection to ensure compliance with building standards and procedures in accordance with the Act. It is anticipated that there will be an additional role for the local government to undertake audits of applications being submitted for accuracy and compliance with the relevant codes and standards.

Under the Act, a local government will be a Permit Authority and this is a separate function to that of a certifier. The Permit Authority checks that the application is complete and has the associated certificate (Certificate of Design Compliance) included within the application. The required permits and supporting certificates are:

Permit	Certificate Required with Permit Application	
Building Permit	Certificate of Design Compliance	
Demolition Permit	Nil	
Occupancy Permit	New Buildings (with a current Certificate of Design Compliance)	Existing Buildings
	Certificate of Construction Compliance	of Certificate of Building Compliance; or Building Approval Certificate

The above certificates will only confirm that the building conforms to building regulations and requirements. It may, but does not have to, certify that the building meets other laws or requirements such as the Shire's Town Planning Scheme, environmental health and engineering requirements, heritage requirements and the like. It will be the role of the Permit Authority to ensure that the application is

consistent with these requirements, including any other that are specific to the local government - such as footpath deposits, and the Permit Authority will also be required to ensure that all levies and fees are paid.

The Permit Authority will be responsible for issuing all relevant permits under the Act, including:

1. Building Permits;
2. Demolition Permits;
3. Occupancy Permits; and
4. Building Approval Certificates.

The local government as the Permit Authority will be required under the Act to still provide a certification service for Class 1 and 10 buildings (single house on a single lot and incidental structures to dwellings) where it will be required to issue a certificate that the building complies with the Building Code (Certificate of Design Compliance) and other associated legislation. The local government as a service to the community may also provide a certification service for all other classifications of buildings (public & commercial) where certification from a registered building surveyor is required under the Act.

To provide this service all necessary requirements under the *Local Government Act 1995* are required to be met, in particular:

- Section 3.18 Performing executive functions; and
- Section 3.59 Commercial enterprises by local government.

Certification documents can only be signed by a registered building surveyor. On the other hand, Permits can only be signed by 'authorised persons'.

Registered building surveyors are those who are accredited through the Building Commission and at the time of the proclamation of the Act hold a current accreditation. The position of Building Surveyor accredited by the Building Commission cannot be delegated as it is a Statutory function under the *Building Act 2011* and *Building Services (Registration) Act 2011*. The Author has accreditation by the Building Commission for this role.

The powers that the local government has can be delegated to the Chief Executive Officer through Section 5.42 of the *Local Government Act 1995*. The Chief Executive Officer can then in turn sub-delegate those powers to an authorised person through the delegation of Section 5.44 of the *Local Government Act 1995*.

As one of the principles of the Act is to provide a reduction in the approval times for building approvals, the timeframes specified for processing applications will be tight and require local governments to perform at the most efficient level.

Applications can be either 'uncertified' or 'certified'. Uncertified applications will be required to be determined in 25 business days (**Refer to Attachment No. 2**). Certified applications are required to be determined in business 10 days (**Refer to Attachment No. 3**). The timeframes overall (**Refer to Attachment No. 6- note: recent change to draft- Time frame after further information due, clock 'restarts' not 'resets'**) are important to be adhered to as failure to achieve the specified timeframes will result in the application being deemed refused and the full application fees refunded to the applicant. Notwithstanding the refund and the refusal the application will still be required to be determined for no fee and furthermore the determination is appealable through the State administrative Tribunal (SAT).

During the assessment if there is any additional information required the local government may 'stop the clock' and request the additional information to be provided within 21 days. Upon the receipt of the additional information within the specified timeframe the 'clock is restarted' and the local government is to continue to assess the application within the specified timeframe. If the additional information is not received within the specified timeframe then the application is deemed refused and the fees are retained. The local government as the Permit Authority is also responsible to issue the Occupancy Permit, which will enable a building to be occupied (**Refer to Attachment No. 4**). Occupancy permits are required for all other classification of buildings (commercial premises - Class 2, 3, 4, 5, 6, 7, 8 and 9) and replace the now Certificate of Classification.

The issuing of an Occupancy Permit requires an inspection to be undertaken by a registered building surveyor and if the building is compliant with the Building Permit issued by the Permit Authority a Certificate of Construction Compliance can be issued. The owner of the building is then required to apply through the Permit Authority for an Occupancy Permit. The timeframe for determining the Occupancy Permit application is 10 business days with the ability to request for additional information to be provided within 21 days. Applications not determined in the specified timeframes require the application fees are to be refunded to the applicant.

Essentially, the implications of the Act on the Shire's current procedures relating to the processing of building applications is that the applicant when applying for a building permit (building licence) must ensure that all relevant approvals applicable to the development have been obtained before making the application to the local government for a building permit (hence the recent front counter staff training sessions). This effectively ceases the common practice of lodging simultaneous applications for building and planning, or the local government holding applications for an extended period of time until the applicant finalises all outstanding requirements.

The key differences between the existing and new building processes can be summarised as follows:

Current Process for Residential Class 1 and 10 and Commercial 2 to 9

- Application lodged with local government.
- Assessed for Building Code Australia compliance.
- External referrals to other agencies (FESA, Water Corporation, etc.).
- Internal assessment for compliance with Planning, Environmental Health and Technical Services requirements.
- Approval issued.

Under the Building Act 2011

Uncertified Application Class 1 and 10

- Applicant to obtain external approvals from FESA, Water Corporation, Heritage Council etc.
- Application lodged with local government.
- Assessed for Building Code Australia compliance.
- Internal assessment for compliance with Planning, Environmental Health and Technical Services requirements.
- Approval issued.

Certified Application Class 1 and 10 and 2 to 9

- Applicant to obtain all required approvals necessary from FESA, Water Corporation, Heritage Council and the Shire's Planning, Environmental Health and other authorities as required and Technical Services.
- Applicant obtains Certificate of Design Compliance (in relation to Building Code Australia compliance).
- Application lodged with local government.
- Internal assessment for compliance with Planning, Environmental Health and Technical Services requirements.
- Approval issued.

Delegation of Powers

A Special Permit Authority or a local government will be able under section 127 of the *Building Act 2011* to delegate any of its powers or duties as a Permit Authority to an employee of the Special Permit Authority or a local government (under the *Local Government Act 1995* - section 5.36). The power and the duties of the Permit Authority in relation to both the approval or enforcement roles cannot be delegated to the private

sector. The delegation is to be in writing, executed by, or on behalf of, the Special Permit Authority or local government. The person that has the delegated power cannot on delegate those powers to someone else.

The areas in the Act where reference to the local governments having the ability or requirements to perform tasks and delegation from the Council to employees as required is set out as follows (***More details refer to Attachment No. 7***):

- Section 20 - Grant of building permit;
- Section 21 - Grant of demolition permit;
- Section 22 - Further grounds for not granting an application;
- Section 50 - Grant of occupancy permit, building approval certificate Strata type properties
- Section 58 - Grant of occupancy permit, building approval certificate;
- Section 96 - Authorised persons;
- Section 110 - Building orders; and
- Section 139 - Presumptions about authority to do certain things.

Currently under the Shires Delegation Authority Register there is one section being C2 relating to Building Control. It is recommended that the existing delegations remain in place and until the Building Act 2011 becomes operative on the 2 April 2012; then the recommended delegations within this item along with the new fees are also enacted.

It is recommended that the following new delegation statements be added to the current Shires Delegation Authority Register and be promulgated upon the enacting of the *Building Act 2011* on the 2 April 2012:

Grant of Building Permit

This delegation is required to enable the Shire to effectively and efficiently fulfil its obligations under the Act in relation to the issuing of building permits to ensure good governance in building control.

Delegation Number	Grant of Building Permit
Officer	Delegation
Chief Executive Officer - Sub-Delegated to: Principal Building Surveyor	Authority to grant or refuse to grant building permits.
Reference	
<i>Building Act 2011</i> Section 20	

Grant of Demolition Permit

This delegation is required to enable the Shire to effectively and efficiently fulfil its obligations under the Act in relation to the issuing of demolition permits to ensure good governance in building control.

Delegation Number	Grant of Demolition Permit
Officer	Delegation
Chief Executive Officer - Sub - Delegated to: Principal Building Surveyor	Authority to grant or refuse to grant demolition permits.
Reference	
<i>Building Act 2011 Section 21</i>	

Further Grounds Not to Grant a Permit

This delegation is required to enable the Shire to effectively and efficiently fulfil its obligations under the Act in relation to refusing permits due to incorrect or inconsistent applications to ensure good governance in building control.

Delegation Number	Not to Grant a Permit
Officer	Delegation
Chief Executive Officer - Sub - Delegated to: Principal Building Surveyor	Authority to refuse to grant Building Permits or Demolition Permits if it appears: <ol style="list-style-type: none"> 1. There appears to be an error in the documents or information provided in the application; or 2. If an application is inconsistent with: <ul style="list-style-type: none"> • A function that the Permit Authority has under written law; or • An agreement between the Permit Authority and the applicant.
Reference	
<i>Building Act 2011 Section 22</i>	

Grant of Occupancy Permits, Building Approval Certificates for Strata type properties

This delegation is required to enable the Shire to effectively and efficiently fulfil its obligations under the Act in relation to issuing Occupancy Permits and Building Approval Certificates for existing buildings to ensure good governance in building control.

Delegation Number	Grant of Occupancy Permit – Strata, Building Approval Certificate - Strata
Officer	Delegation
Chief Executive Officer - Sub-Delegated to: Principal Building Surveyor	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates.
Reference	
<i>Building Act 2011</i> Section 50	

Grant of Occupancy Permits, Building Approvals/Certificates

This delegation is required to enable the Shire to effectively and efficiently fulfil its obligations under the Act in relation to issuing Occupancy Permits and Building Approval Certificates for existing buildings to ensure good governance in building control.

Delegation Number	Grant of Occupancy Permits, Building Approval Certificate
Officer	Delegation
Chief Executive Officer - Sub-Delegated to: Principal Building Surveyor	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates.
Reference	
<i>Building Act 2011</i> Section 58	

Authorised Persons

This delegation is required to enable the Shire to effectively and efficiently fulfil its obligations under the Act in relation to the appointment of officers to conduct the duties of the Act to ensure good governance in building control.

Delegation Number	Authorised Persons
Officer	Delegation
Chief Executive Officer	Authority to appoint authorised persons for the purpose of the <i>Building Act 2011</i>
Reference	
<i>Building Act 2011</i> Section 96	

Building Orders

Within the Act permit authorities including local governments, will have the necessary power to ensure that work complies with a building or demolition permit, that buildings are used in accordance with an occupancy permit and that buildings comply with the

building code and standards. The local government may take enforcement action when a building is built or demolished without a building or demolition permit. A permit authority that issued the permit may take enforcement action if building work:

- Contravenes a building, demolition or occupancy permit;
- Is unfit for use or occupancy;
- Is a danger to occupants or adjoining owners; or
- Is used in contravention of the Act or regulations.

The Building Act therefore provides greater power and expectations of local government in the role of building enforcement. This delegation will enable the Shire to deal with non-compliance matters in an effective and efficient manner to enable the Shire to fulfil its obligations under the Act in relation to issuing of orders to ensure good governance in building control.

Delegation Number	Building Orders
Officer	Delegation
Chief Executive Officer - Sub-Delegated to Principal Building Surveyor	Authority to issue Building Orders in relation to: <ul style="list-style-type: none"> • Stop work, demolish/remove a building, alter a building or evacuate a building, where there is a contravention of a provision of the <i>Building Act</i>; • Take specific action to prevent contravention of the Act; • Finish an outward facing side of a wall; • Buildings which are considered as being unsafe or not fit for human habitation.
Reference	
<i>Building Act 2011</i> Section 110	

Presumptions about Authority to do Certain Things

This delegation is required to enable the Shire to have an appropriate person appointed under the Act to sign prosecution documentation as required.

Delegation Number	Presumptions About Authority to do Certain Things
Officer	Delegation
Chief Executive Officer	Authority to commence prosecution.
Reference	
<i>Building Act 2011</i> Section 139	

Building Act Fee Structure

Statutory Fees

Statutory fees are fees prescribed by the state government and are set out in Regulations. The prescribed building fees as set out in the *Building Regulations 1989* are statutory fees imposed by the state government. Given these fees are not a fee charge by or a fee that the '*local government wishes to impose*', the local government is not required to advertise these statutory fees under the *Local Government Act 1995*.

The *Building Act 2011* statutory fees have been set for applications for building (Section 16 (l)), demolition (Section 16 (l)), and occupancy permits (Section 54(4) (d)). The Act also introduces a number of other applications which fees can now be charged for.

Currently, statutory building fees are set in Regulation 24 of the *Building Regulations 1989*. This Regulation will be amended to reflect the new rates and the various types of applications and permits that statutory fees will be applied to (***Refer to Attachment No. 8***). Additional permits and applications to which new statutory fees will be applied are as follows:

- Application for Occupancy Certificate;
- Application for temporary Occupancy Permit;
- Application for modification of an Occupancy Certificate; and
- Application for a replacement of an Occupancy Permit (or Certificate of Classification).

Non-Statutory Fees

Non-statutory fees are those, which are imposed by the local government for a service that it has chosen to offer without any legislative requirement to do so. Under Section 6.19 of the *Local Government Act 1995*, non-statutory fees imposed by the local Government after the adoption of the Shire's budget are required to be advertised. When advertising the fee, the local government is required to advertise the fee charged and the service being delivered for the fee.

Under the *Building Act 2011*, the local government has the opportunity to provide a service to the community to carry out inspections for the purpose of either obtaining appropriate certificates to enable applications to be made to the local government for building related permits to be issued, or to carry out inspections for the builder if required under the issued Certificate of Design Compliance for the Building Permit. Also the builder is required to submit a Certificate of Completion to the local government within seven (7) days of completing the works.

The Certificate of Completion is to note that any inspections that were required (as stated on the Design Compliance Certificate) during construction have been carried out and that the required certificates of inspection have been attached to the Certificate of Completion. The inspections required during the construction can be carried out by any competent person and the local government may be requested or offer to undertake these inspections for the builder and as such charge the appropriate fee for this service.

As this is a non-statutory fee which is imposed by the local government it is required to be advertised in accordance with Section 6.19 of the *Local Government Act 1995*.

Based on the current salaries and overheads for the current building surveyor the recovery rate for a staff member is approximately \$45.00 per hour. When considering the fee for the service of doing inspections, allowances for the following provision should be taken into account:

1. Travel at \$0.91 per kilometre + time travelled based on Full Time Employee rate [FTE])
2. Inspection time -minimum 30 minutes; and
3. Administration and preparation of documentation - minimum 30 minutes (preparation, report, printing, registering and storage).

The minimum cost for an inspection would be 1 hour at \$45.00 per hour + \$0.91 per kilometre + time travelled, therefore it is recommended that the building inspection fee be a minimum of \$90.00.

Based on the above recommended inspection fees and the expected amount of inspections, the total revenue would not be a major trading activity in relation to the *Local Government Act 1995* and the Local Government (Function and General) Regulations 1996.

In summary the *Building Act 2011* establishes Permit Authorities with the power to administer building control and issue permits within its district and introduces reform in the processing and documentation in applying and issuing permits for building, demolition and occupancy. Provisions have been made in the Act to ensure appropriate delegations and appointments are adopted to ensure the Shire's obligations under the Act are complied with.

Fees for existing statutory applications have been amended and additional statutory fees for new application types have been included. Also under the Act there is the ability for the local government to provide additional services such as building inspections. Local governments still maintain the responsibility for enforcement of non-compliance matters, with some increased powers to assist in the gathering of evidence and increased penalties for severe breaches of the Act.

It is recommended that Council adopt new delegations to enable the Shire to effectively and efficiently fulfil its obligations under the Act; and introduce fees for the Shire to undertake building inspections.

Consultation:

Honourable Simon O'Brien MLA Minister for Finance; Commerce; Small Business

Mr T Bush President Australia Institute of Building Surveyors National & Principal Building Surveyor City of Belmont

Mr J Mitchell Manager Developmental Services Coolgardie-Kambalda (formally at Merredin)

Mrs M Dennis Manager Developmental Services Katanning

Mr L Thomas PEHO/BS Goomalling-Dowerin

Mr P Gow Building Commission Director

Mr P Scalzi Building Commission

Mr P Kocian CEO

Statutory/Policy Implications

Local Government Act 1995

Local Government (Miscellaneous Provisions) Act 1960

Building Act 2011

Building Services Levy Act 2011

Building Services (Complaint Resolution & Administration) Act 2011

Local Government (Function and General) Regulations 1996.

Building Regulations 1989

Policy Implications:

To be determined.

Financial Implications

Fees for certification of Class 1 and 10 buildings as required of a permit authority along with permit issuing is prescribed therefore not unlike present circumstances. There is the potential of further income in the form of additional prescribed fees for the issuing of additional permits introduced into the new Act. The inspection service fees noted above has no cost benefit as it is a fee for service and based on recovery cost only.

30856

Moved: Cr Crees

Seconded: Cr Hooper

Officer's Recommendation

1. *That Council notes the comments contained in this report relating to the Building Act 2011:*
2. *That upon proclamation of the Building Act 2011 adopt the following new delegation statements to the Delegation Authority Register -*

	Grant of Building Permit
Officer	Delegation
Chief Executive Officer - Sub-Delegated to: Principal Building Surveyor	Authority to grant or refuse to grant building permits.
Reference	
<i>Building Act 2011 Section 20</i>	

	Grant of Demolition Permit
Officer	Delegation
Chief Executive Officer - Sub - Delegated to: Principal Building Surveyor	Authority to grant or refuse to grant demolition permits.
Reference	
<i>Building Act 2011 Section 21</i>	

	Not to Grant a Permit
Officer	Delegation
Chief Executive Officer - Sub - Delegated to: Principal Building Surveyor	Authority to refuse to grant Building Permits or Demolition Permits if it appears: <ol style="list-style-type: none"> 1. There appears to be an error in the documents or information provided in the application; or 2. If an application is inconsistent with: <ul style="list-style-type: none"> <input type="checkbox"/> i) A function that the Permit Authority has underwritten law; or ii) An agreement between the Permit Authority and the applicant.
Reference	
<i>Building Act 2011 Section 22</i>	

	Grant of Occupancy Permits – Strata, Building Approval Certificate - Strata
Officer	Delegation
Chief Executive Officer - Sub-Delegated to: Principal Building Surveyor	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates.
Reference	
<i>Building Act 2011</i> Section 50	

	Grant of Occupancy Permits, Building Approval Certificate
Officer	Delegation
Chief Executive Officer - Sub-Delegated to: Principal Building Surveyor	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates.
Reference	
<i>Building Act 2011</i> Section 58	

	Authorised Persons
Officer	Delegation
Chief Executive Officer	Authority to appoint authorised persons for the purpose of the <i>Building Act 2011</i>
Reference	
<i>Building Act 2011</i> Section 96	

	Building Orders
Officer	Delegation
Chief Executive Officer - Sub-Delegated to Principal Building Surveyor	Authority to issue Building Orders in relation to: <ul style="list-style-type: none"> • Stop work, demolish/remove a building, alter a building or evacuate a building, where there is a contravention of a provision of the <i>Building Act</i>; • Take specific action to prevent contravention of the Act; • Finish an outward facing side of a wall; Buildings which are considered as being unsafe or not fit for human habitation.
Reference	
<i>Building Act 2011</i> Section 110	

	Presumptions About Authority to do Certain Things
Officer	Delegation
Chief Executive Officer	Authority to commence prosecution.
Reference	
<i>Building Act 2011 Section 139</i>	

3. *Notes that the Schedule of Fees and Charges will be amended to incorporate the new statutory building fees set in the Building Regulations 1989 as amended and gazetted;*
4. *Notes that the Shire Schedule of Fees and Charges will be amended to incorporate the new statutory building fees set in the Building Regulations 2012 Schedule 2 as (amended and gazetted) upon enactment of the Building Act 2011;*
5. *Approve the intention to introduce a building inspection service fee at \$45.00 + \$0.91 per kilometre + staff FTE time travelled;*
6. *Advertises the proposed building inspections service fee pursuant to Section 6.19 of the Local Government Act 1995.*

Voting Requirements: (ABSOLUTE MAJORITY)

**CARRIED 9/0
BY ABSOLUTE MAJORITY**

11.0 ENGINEERING SERVICES

11.1 PIONEER PARK UPGRADE

Reporting Department:	Engineering and Services
Reporting Officer:	James Garrett
Legislation:	Local Government Act 1995
File Reference:	
Disclosure of Interest:	Nil
Attachments:	Pioneer Park Concept Plan Photographs

Background

At the Council on the 16 November 2010 Council resolved that it refers the estimated costing of the Pioneer Park Concept plan to the 2011/12 budget for consideration (CMR 304670) but the bridge and footpath works be undertaken in the 2010/11 financial year. The cost to undertake these works was \$16,500. These works were completed in July 2011.

A budget of \$30,000 was allocated to install a retainer wall and lay artificial turf in the 2011/12 financial year. These works have also been completed for a cost of \$36,300. The project was supposed to be undertaken by Work for the Dole participants to reduce costs but due to the inexperience of these workers it was found they could not carry out the work. A variation was also made to increase the artificial turf area and to increase the length of the retainer wall from the Pioneer Park Concept by staff in control of the project, which resulted in the project going over budget. As there were insufficient funds to purchase paving bricks, left over packs were used from other projects to finish the brick paved footpath which resulted in different coloured pavers being used.

The original staged costing for the Pioneer Park Concept (**Attachment 11.1A**) was as follows:

3 YEAR PROGRAM

Year 1 – 2010/11	Cost per unit	Total
Prune 4 large gum trees to a manageable level	\$2,500	\$10,000
Construct new bridge over drain	\$6,433	\$ 6,433
Construct concrete footpath from carpark on highway to railway crossing (approximately 72m ²). NOTE: Footpath is the main pedestrian access route used to get from highway to CBD and will	\$65m ²	\$ 4,680

need to be constructed as an all purpose footpath(minimum width is 2.4m)		
Install 1200mm high fence either side of drain that runs along south side of Pioneer Park. Drain is over 1 metre deep and has no warning signage; the Shire may be open for litigation if someone was to fall into drain. Amount of fencing needed is 220 metres. Price is for a chain link mesh fence as the swimming pool fencing similar to the fence at Apex Park is prone to vandalism.	\$42m	\$ 9,240
Earth works for projects		\$ 9,447
	TOTAL	\$30,800

Year 2 – 2011/12	Cost per Unit	Total
Dig out old lawn area and bitumen approximately 80m ³	\$141m ³	\$11,355
Relay the excavated area with metal dust, level and compact so rain water will run off to drain. Approximately 400m ² .(20 metre x 20 metre area)	\$10m ³	\$ 4,154
Lay approximately 150m ² of artificial turf	\$100m ²	\$15,000
Install bricked paved footpath from bridge curving to horse statue and then continue to curve around to the paved pathway that runs through the centre of park. Approximately 160m ² .	\$45m ²	\$ 7,200
Construct 20 metre curved wall for seating from horse statue to table and chairs.	\$212m	\$4,250
	Total	\$41,959

Year 3 – 2012/13 (subject to budgetary consideration)	Cost per Unit	Total
Install new table and chairs	\$2,500	\$2,500
Replace the green chain mesh fence on the western side of the park with galvanized chain mesh.	\$102m	\$ 2,250
Move the telephone box out the front of the park about 20 metres to the west.		\$13,000
	Total	\$20,250

Stage one did not have gum trees pruned before artificial turf and retainer wall were installed which will result in the cost for the pruning to possibly double from original cost because of the difficulty of getting to the trees. Trees have been a problem with dropping leaves and seeds on the new turf which has resulted in turf needing to be raked once a week. Brookfield's Rail has also requested that the trees be pruned in case trees drop branches on the railway line.

At the March 2011 meeting Council endorsed the heritage committees meeting recommendation that the fence not be erected and bougainvillea plants be put in place of the fence.

Stage 2 has been completed. Stage 3 has the fence running alongside the new concrete footpath being replaced and moving the telephone out the front. The table and chairs have been installed.

The replacement of the fence and moving of telephone box were costed at 2010 prices.

As can be seen by **Attachment 11.1B** there are areas that have not been completed in the park. The areas numbered 1,2,3,4,5 and 6 on photos are the areas in question. These areas make the park look incomplete.

Comment

It is recommended that the following program be adopted for 2012/13 subject to budgetary considerations:

Year 3 – 2012/13 (subject to budgetary consideration)	Total
Pruning of trees	\$15,000
Lift and level gravel and landscaping	\$15,000
Total	\$30,000

As the new Merredin College has been constructed it is anticipated that there will be an increase of pedestrian traffic through the park and Council will need to take this into consideration when making any future plans for the park.

Statutory/Policy Implications

Nil

Financial Implications

Nil

Officer's Recommendation

That the following program be adopted for 2012/13 subject to budgetary consideration:

Year 3 – 2012/13 (subject to budgetary consideration)	Total
Pruning of trees	\$15,000
Lift and level gravel and landscaping	\$15,000
Total	\$30,000

30858

Moved: Cr D Morris

Seconded: Cr W Wallace

Resolution

That the following program for Pioneer Park be adopted for 2012/13 subject to budgetary consideration:

Year 3 – 2012/13 (subject to budgetary consideration)	Total
Pruning of trees	\$15,000
Lift and level gravel and landscaping	\$15,000
Total	\$30,000

CARRIED 9/0

12.0 CORPORATE AND COMMUNITY SERVICES

12.1 LIST OF ACCOUNTS PAID

Reporting Department:	Finance & Administration
Reporting Officer:	Evelyn Arnold
	Finance and Administration
Legislation:	Local Government Act 1995 & Financial Management Regulations
File Reference:	Nil
Disclosure of Interest:	Nil
Attachments:	List of Accounts Paid

Background

The attached List of Account Paid (**Attachment 12.1A**) during the month under Delegated Authority is provided for Council's information.

Statutory/Policy Implications

Local Government Act 1995 and Financial Management Regulations.

Financial Implications

All liabilities settled have been in accordance with the Annual Budget provisions. It should be noted that outstanding creditors total \$261,165.76.

30859

Moved: Cr M Morris

Seconded: Cr B Anderson

Officer's Recommendation

That Council receive the schedule of accounts as listed, covering cheques, EFT's, bank charges, directly debited payments and wages, as numbered and totalling \$461,266.88 from Council's Municipal Fund Bank Account.

CARRIED 9/0

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12.2 MONTHLY FINANCE REPORT

Reporting Department:	Finance and Administration
Reporting Officer:	Evelyn Arnold
Legislation:	Local Government Act 1995
File Reference:	Nil
Disclosure of Interest:	Nil
Attachments:	Monthly Finance Report

Background

The Monthly Finance Report is attached for Council's information.
([Attachment 12.2A](#))

Statutory/Policy Implications

Local Government Act 1995 and Financial Management Regulations.

Financial Implications

As outlined in [Attachment 12.2A](#).

30840

Moved: Cr D Morris

Seconded: Cr B Anderson

Officer's Recommendation***That Council receive the Monthly Finance Report for February 2012.*****CARRIED 9/0**

AGENDA

12.3 AUDIT SERVICES REVIEW

Reporting Department:	Corporate & Community Services
Reporting Officer:	Evelyn Arnold
Legislation:	Local Government Act 1995
File Reference:	Nil
Disclosure of Interest:	Nil
Attachments:	Nil

Background

The contract for audit services between the Shire of Merredin and UHY Haines Norton expired at the completion of the 2010/11 audit. In accordance with the Local Government Act 1995 and the Financial Regulations a new contract is required.

Comment

In the February Council meeting Council resolved to appoint AMD Chartered Accountants as the official auditors for the next 3 years. Unfortunately, they were unable to complete the final audit until October/November which is beyond the statutory deadline. In addition, there was some uncertainty surrounding final travel time and costs as they were travelling from Bunbury. For these reasons it is necessary to rescind last month's Council resolution and recommend that Council appoint UHY Haines Norton Accountants as official auditors. In finalising this recommendation, it has been confirmed that UHY Haines Norton will be able to complete an interim audit in early May 2012 and the final audit at the end of August 2012.

In addition, at the interim audit in May, UHY Haines Norton will also be able to perform a Financial Management review. Every three years Council has a statutory requirement to conduct a Financial Management Review (FMR). This review is intended to assess the performance of the control environment of the financial management system. It includes assurance procedures designed to test the financial management system and report to the CEO on the appropriateness and effectiveness of the control environment. The cost of this review is \$6,500.

UYH Haines Norton have an excellent reputation and experience in the Local Government Industry and have provided good auditing services to the Shire of Merredin for a number of years.

Statutory/Policy Implications

Local Government Act 1995 and Financial Management Regulations.

Financial Implications

The cost for the accounting services will be included in the 2012/13 annual budget. The cost of the Financial Performance review is \$6,500 and will also be included in the 2012/13 budget.

Officer's Recommendation

1. *That resolution 30843 be rescinded*

Note: Voting Requirements

Because this decision involves a revocation of an earlier decision it is necessary for at least one third of the offices (whether vacant or not) of members of the Council to support consideration of the matter before the motion can be moved (Administration regulation 10).

ABSOLUTE MAJORITY REQUIRED

2. *That Council appoint of UHY Haines Norton Accountants as official auditors for the period of 3 years expiring after the final audit in 2014.*

ABSOLUTE MAJORITY REQUIRED

CARRIED

Councillors Crees, Wallace and McFarlane support the officer's recommendation to rescind the previous motion 30843.

30841

Moved: Cr Crees

Seconded: Cr Wallace

Resolution

1. *That resolution 30843 be rescinded*
2. *That Council appoint of UHY Haines Norton Accountants as official auditors for the period of 3 years expiring after the final audit in 2014.*

CARRIED 9/0

BY ABSOLUTE MAJORITY

13.0 ADMINISTRATION

13.1 WORKING GROUP – ECONOMIC DEVELOPMENT

Reporting Department:	Administration
Reporting Officer:	CEO
Legislation:	Local Government Act
File Reference:	
Disclosure of Interest:	Nil
Attachments:	Nil

Background

At the February meeting of Council, it was resolved:

30847 Moved: Cr M Morris Seconded Cr T McFarlane
That an Economic Development Working Group be formed consisting of four Councillors and the CEO and that the terms of reference be discussed at the March Council meeting.

CARRIED 9/0

Comment

From the resolution above two matters need to be resolved. Firstly, the terms of reference need to be settled and the working group membership needs to be appointed.

Information circulated at the last Council meeting included the following suggested terms of reference for the working group:

1. Research the comparative advantage for business and industry to be attracted to Merredin.
2. Research what incentives that could be used to attract business and industry.
3. Investigate the expansion of current businesses.
4. Investigate the viability of the attraction of businesses.
5. Assess the shortfalls Merredin has in the attraction/retention/expansion of business and industry.
6. Research what businesses or industries may be interested in locating in Merredin.
7. Provide reports to Council on a regular basis.
8. The working group has no authority to commit Merredin Shire Council to anything unless specifically authorised to do so.

The draft terms were discussed with Alison Dalziel who suggested an addition of undertaking research on the region to obtain a sense of the wider

AGENDA

environment in which Merredin exists. This can be undertaken by way of a desktop analysis aimed at information available from, for example, the Department of Planning and Infrastructure, Regional Development Australia and the Wheatbelt Development Commission. The remainder of the draft terms are relevant although 7 and 8 provide direction to the working group rather than matters for its consideration.

Statutory/Policy Implications

Nil

Financial Implications

Nil

Officer's Recommendation

- 1. *That the terms of reference for the Economic Development Working Group be as follows:***
 - 1. *Undertake a desktop assessment of the economy of the wider Wheatbelt Economy***
 - 2. *Research the comparative advantage for business and industry to be attracted to Merredin.***
 - 3. *Research what incentives could be used to attract business and industry.***
 - 4. *Investigate the expansion of current businesses.***
 - 5. *Investigate the viability of the attraction of businesses.***
 - 6. *Assess the shortfalls Merredin has in the attraction/retention/expansion of business and industry.***
 - 7. *Research what businesses or industries may be interested in locating in Merredin.***

- 2. *That the Economic Development Working Group comprise Crs(4) together with the CEO.***

30842

Moved: Cr M Morris

Seconded: Cr Wallace

Resolution

- 1. That the terms of reference for the Economic Development Working Group be as follows:**
- 2. Undertake a desktop assessment of the economy of the wider Wheatbelt Economy**
- 3. Research the comparative advantage for business and industry to be attracted to Merredin.**
- 4. Research what incentives could be used to attract business and industry.**
- 5. Investigate the expansion of current businesses.**
- 6. Investigate the viability of the attraction of businesses.**
- 7. Assess the shortfalls Merredin has in the attraction/retention/expansion of business and industry.**
- 8. Research what businesses or industries may be interested in locating in Merredin.**

CARRIED 8/1**30843**

Moved: Cr Wallace

Seconded: Cr M Morris

That the Economic Development Working Group comprise Councillors McFarlane, Hayes-Thompson, M Morris and Crook together with the CEO.

CARRIED 7/2

13.2 STAFF – STRUCTURE AND RESPONSIBILITY

Reporting Department:	Administration
Reporting Officer:	CEO
Legislation:	Local Government Act
File Reference:	
Disclosure of Interest:	Nil
Attachments:	Nil

Background

Information was circulated at the February Council meeting in relation to staff structure. The information is reproduced in its entirety below.

“Local Government Act states quite clearly that restructuring of administration must be approved by council.

Division 1

Section 5.2

“The council of a Local Government is to ensure that there is an appropriate structure for administering the local government.”

Advice received from the Department of Local Government and other advisers have confirmed this.

It is up to Council to set the structure of the Administration and then ensure that sufficient funds are allocated to the CEO in the budget process to be able to implement it.

Due to various staff leaving, the staffing structure and areas of responsibility have continually altered according to the skills of applicants, which have also included transfer of current staff between positions.

The CEO at his recent annual review reiterated the changing staff structure when he stated that it was a work in progress depending on the quality of applicants.

To get the best results we need consistency and direction, which requires us as the Council to set the most effective structure.

There have been a number of restructures in this organisation over the years and these were presented to Council for approval by the then CEOs.

Recommendations:

- 1. That the Shire of Merredin adopts a policy that we comply with section 5.2 of the Local Government Act and Council set the best structure administering the Shire of Merredin.*
- 2. The CEO presents an organisational structure including areas of responsibility for Council consideration and adoption at the March 2012 meeting.*

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-
3. *No further positions to be permanently filled until after the March 2012 meeting. This may require casual/contract staff to undertake the duties of the current vacant positions."*

Comment

Section 5.2 is accurately stated above. However it is asserted that a Council "approves" the structure but the legislation states a Council is to "ensure" there is an appropriate structure. By way of illustration, this is quite different from the now repealed Queensland legislation which did require Councils to formally approve organisational structures. That legislation was as follows:

'Corporate structure

- 701.** *(1) A local government must have a corporate structure appropriate for the conduct of its affairs.*
(2) The corporate structure must be approved by the local government by resolution.

'Resources for staff

- 702.** *A local government must, by resolution, decide the resources to be allocated to the employment of staff.*

As can be seen this is significantly different from Section 5.2 of the WA legislation.

In practice S5.2 has been interpreted to mean that a Council is to provide adequate resources through the annual budget to undertake the functions it wishes to deliver rather than be involved in the detail of how those programs are delivered and who delivers them. The CEO took the opportunity to seek informal legal advice which confirms this view particularly when other sections of the Act are taken into consideration. (Should it wish to do so Council can seek a formal opinion.)

The provisions of Section 5.2 do not stand alone. Section 2.7 states as follows:

2.7. Role of council

- (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.

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Additionally Section 2.10 states:

2.10 . Role of councillors

A councillor -

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

In summary, Council provides the strategic direction and the administration delivers the services.

Although there has been some recent staff turnover, this has not resulted in any restructuring nor any need to do so. There has been some re-allocation of duties and roles but the structure has remained the same.

Council may have previously been involved in previous restructures but this may have been a reflection of the manner in which the Council operated rather than any legislative requirement to do so. However, Council did endorse the actions of the CEO in April 2011 when two senior positions were amalgamated.

To address the recommendations contained in the Background section of this report, the following should be noted:

1. A policy is not required as this is a legislative requirement which overrides any policy. The issue is one of interpretation and the view is held by both the CEO, legal practitioners and local government professionals that Councils do not set structure.
2. Council's current structure is attached. There is no need seen at this stage for it to alter.
3. There is a need to fill the current vacancies if Council is to deliver an adequate level of service to the community. Previous advice by Memo from the CEO to Councillors refers.

Statutory/Policy Implications

Local Government Act 1995

Financial Implications

Nil

30844

Moved: Cr D Morris

Seconded: Cr T McFarlane

Officer's Recommendation

That the information be noted.

CARRIED 9/0

13.3 OUTSIDE WORKFORCE – NEW EBA – BARGAINING COMMITTEE**REPRESENTATION**

Reporting Department:	Administration
Reporting Officer:	CEO
Legislation:	Fair Work Act 2009
File Reference:	
Disclosure of Interest:	Nil
Attachments:	Nil

Background

Correspondence has been received from The Australian Workers Union giving formal notice that the Union wishes to commence good faith bargaining for a new enterprise agreement.

Comment

The current agreement expires in August 2012. There is specific mention in the current agreement that negotiations will commence six months prior to the expiry of the agreement.

Council will need to appoint members to the bargaining committee. It is suggested that its members be a Councillor as nominated, the CEO and the EMES.

Statutory/Policy Implications

Not known at this stage.

Financial Implications

Not known at this stage.

Officer's Recommendation

That Council appoints one of its Councillors, the Chief Executive Officer and the Executive Manager of Engineering Services as its enterprise bargaining representatives.

30845

Moved: Cr Wallace

Seconded: Cr McFarlane

Resolution

That Council appoints Councillors Hooper and Anderson, the Chief Executive Officer and the Executive Manager of Engineering Services as its enterprise bargaining representatives.

CARRIED 9/0

14.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**15.0 QUESTIONS BY MEMBERS FOR WHICH DUE NOTICE HAS BEEN GIVEN****16.0 URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION**16.1 Request for Internment of Ashes at the Pioneer Cemetery

30846 Moved: Cr Hooper Seconded: Cr Wallace

Officer's Recommendation

1) That Council grant the right for Mrs Penny Foulkes to intern the ashes of the late Mr Joseph Edwin Gilbert into grave number 14 Section C of the Methodist denomination at the Pioneer Cemetery.

2) Fees and Charges for the internment of Mr Joseph Edwin Gilbert ashes be the same as the cemetery charges.

CARRIED 9/0**17.0 MATTERS BEHIND CLOSED DOORS**

Nil

18.0 CLOSURE

The President declared the meeting closed at 1.38pm.