

Audit and Risk Committee Meeting

Agenda for Tuesday 5 March 2013



**shire of
kalamunda**

NOTICE OF MEETING AUDIT AND RISK COMMITTEE

Dear Councillors

Notice is hereby given that the next meeting of the Audit and Risk Committee will be held in the Council Chambers, Administration Centre, 2 Railway Road, Kalamunda on **Tuesday 5 March 2013 at 5.00pm.**

Audit and Risk Committee Meeting Procedure

1. Audit and Risk Committee is not open to the public.
2. Audit and Risk Committee has a membership of all Councillors.
3. The Committee makes recommendations only to Full Council (held on the fourth Monday of each month at 6.30pm).
4. All other arrangements are in general accordance with Council's Audit and Risk Committee Terms of Reference February 2013.

Rhonda Hardy
Acting Chief Executive Officer
28 February 2013

Our Vision, Mission and Organisational Values

Vision

The Shire will have a diversity of lifestyles and people. It will take pride in caring for the natural, social, cultural and built environments and provide opportunities for people of all ages.

Mission

Working together to provide effective and efficient leadership and services our whole community.

Organisational Values

The organisational values of the Shire of Kalamunda assist in driving the behaviour of staff in implementing our strategic plan:

- **Customer Service Focus** – Deliver consistent excellent customer service through being timely and courteous.
- **Innovation** – Pursue excellence through innovative improvements.
- **Leadership** – Provide responsive leadership and excellent governance demonstrating high standards of ethical behaviour.
- **Mutual Respect** – Value each other's differences and demonstrate mutual respect.
- **Trust** – Communicate and collaborate openly and with integrity generating a strong culture of trust.



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AGENDA

1.0 OFFICIAL OPENING

2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

3.0 CONFIRMATION OF THE PREVIOUS MINUTES

- 3.1 That the Minutes of the Audit Committee Meeting held on 10 December 2012 are confirmed as a true and accurate record of the proceedings.

Moved:

Seconded:

Vote"

Statement by Presiding Member

"On the basis of the above Motion I now sign the Minutes as a true and accurate record of the meeting of 10 December 2012".

4.0 CONFIDENTIAL ITEMS

- 4.1 **04. Release of Forensic Audit to Public** - (Confidential Attachment 1) Provided under separate cover.

Reason for Confidentiality – *Local Government Act 1995 Section 5.23(2)(d) "legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting."*

(Attachment 2 and 3) Provided under separate cover.

Reason for Confidentiality – *Local Government Act 1995 Section 5.23(2)(a) "a matter affecting an employee or employees"*

- 4.2 **05. CONFIDENTIAL ITEM Status of CAMMS Software Contract**

(Confidential Attachments 1 and 2) Provided under separate cover.

Reason for Confidentiality – *Local Government Act 1995 Section 5.23(2)(c) "'a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting."*

- 4.3 **06. CONFIDENTIAL ITEM Letter from the Department of Local Government in Respect to the Forensic Audit Investigation Report**

(Confidential Attachments 1, 2 and 3) Provided under separate cover.

Reason for Confidentiality – *Local Government Act 1995 Section 5.23(2)(a) "'a matter affecting an employee or employees."*

5.0 DISCLOSURE OF INTERESTS

5.1 Disclosure of Financial and Proximity Interests

- a. Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the *Local Government Act 1995*.)

5.2 Disclosure of Interest Affecting Impartiality

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

6.0 REPORTS TO COUNCIL

Please Note: declaration of financial/conflict of interests to be recorded prior to dealing with each item.

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

01. 2012 Compliance Audit Return

Previous Items	N/A
Responsible Officer	Office of the CEO
Service Area	Governance
File Reference	FI-AUD-004
Applicant	N/A
Owner	N/A
Attachment 1	2012 Compliance Audit Return

PURPOSE

1. To consider the 2012 Compliance Audit Return.

BACKGROUND

2. Every local government in Western Australia is required, under Section 7.13(1)(i) of the *Local Government Act 1995* (the Act), to complete a Compliance Audit Return ("CAR") each year.
3. The CAR is produced by the Department of Local Government and, once presented to Council and adopted, is to be submitted to the Department by 31 March.
4. The CAR is designed to be a tool for local government, allowing it to identify those areas where legislative requirements have not been met and then implement processes to ensure that such instances of non-compliance do not continue.

DETAILS

5. The Terms of Reference of the Audit and Risk Committee require the Audit and Risk Committee to review and make recommendations to Council on the completed CAR.
6. The Terms of Reference state that *"the report presented to the Audit and Risk Committee should specifically highlight those cases of non-compliance which have reoccurred"*.
7. The 2012 CAR covered eight specific topics with 72 questions, which was slightly reduced from the 2011 CAR which covered nine specific topics with 78 questions.
8. No issues of non-compliance were identified in the areas covered by the 2012 CAR.

STATUTORY AND LEGAL IMPLICATIONS

9. Regulations 14 and 15 of the *Local Government (Audit) Regulations 1996* provide for the completion, adoption by Council and certification by the Shire President and Chief Executive Officer of the CAR. Additionally, the regulations require the certified return to be submitted to the Department of Local Government by 31 March.

POLICY IMPLICATIONS

10. There are no policy implications related to the CAR.

PUBLIC CONSULTATION/COMMUNICATION

11. Public consultation is not required with respect to the CAR Return.

FINANCIAL IMPLICATIONS

12. There are no financial implications arising from the CAR.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

13. Ensuring compliance with all relevant legislative requirements is a key performance indicator.

Sustainability Implications

Social Implications

14. Nil.

Economic Implications

15. Nil.

Environmental Implications

16. Nil.

OFFICER COMMENT

17. It is very pleasing that there were no issues of non-compliance identified in 2012 and that the issue of non-compliance identified in 2011 with respect to disposal of property under the provisions of Section 3.58 of the Act did not re-occur.

Voting Requirements: Simple Majority

OFFICER RECOMMENDATION (AC 01/2013)

That Council:

1. Adopts the Compliance Audit Return for the year ending 31 December 2012.

Moved:

Seconded:

Vote:

Attachment 1

Department of Local Government • Compliance Audit Return



Government of Western Australia
Department of Local Government

Kalamunda - Compliance Audit Return 2012

Certified Copy of Return

Please submit a signed copy to the Director General of the Department of Local Government together with a copy of section of relevant minutes.

Commercial Enterprises by Local Governments					
No	Reference	Question	Response	Comments	Respondent
1	s3.59(2)(a)(b)(c) F&G Reg 7,9	Has the local government prepared a business plan for each major trading undertaking in 2012.	N/A		Darrell Forrest
2	s3.59(2)(a)(b)(c) F&G Reg 7,10	Has the local government prepared a business plan for each major land transaction that was not exempt in 2012.	N/A		Darrell Forrest
3	s3.59(2)(a)(b)(c) F&G Reg 7,10	Has the local government prepared a business plan before entering into each land transaction that was preparatory to entry into a major land transaction in 2012.	N/A		Darrell Forrest
4	s3.59(4)	Has the local government given Statewide public notice of each proposal to commence a major trading undertaking or enter into a major land transaction for 2012.	N/A		Darrell Forrest
5	s3.59(5)	Did the Council, during 2012, resolve to proceed with each major land transaction or trading undertaking by absolute majority.	N/A		Darrell Forrest

Department of Local Government - Compliance Audit Return



Government of Western Australia
Department of Local Government

Delegation of Power / Duty					
No	Reference	Question	Response	Comments	Respondent
1	s5.16, 5.17, 5.18	Were all delegations to committees resolved by absolute majority.	N/A		Darrell Forrest
2	s5.16, 5.17, 5.18	Were all delegations to committees in writing.	N/A		Darrell Forrest
3	s5.16, 5.17, 5.18	Were all delegations to committees within the limits specified in section 5.17.	N/A		Darrell Forrest
4	s5.16, 5.17, 5.18	Were all delegations to committees recorded in a register of delegations.	N/A		Darrell Forrest
5	s5.16	Has Council reviewed delegations to its committees in the 2011/2012 financial year.	N/A		Darrell Forrest
6	s5.42(1), 5.43 Admin Reg 18G	Did the powers and duties of the Council delegated to the CEO exclude those as listed in section 5.43 of the Act.	Yes		Darrell Forrest
7	s5.42(1)(2) Admin Reg 18G	Were all delegations to the CEO resolved by an absolute majority.	Yes		Darrell Forrest
8	s5.42(1)(2) Admin Reg 18G	Were all delegations to the CEO in writing.	Yes		Darrell Forrest
9	s5.44(2)	Were all delegations by the CEO to any employee in writing.	Yes		Darrell Forrest
10	s5.45(1)(b)	Were all decisions by the Council to amend or revoke a delegation made by absolute majority.	Yes		Darrell Forrest
11	s5.46(1)	Has the CEO kept a register of all delegations made under the Act to him and to other employees.	Yes		Darrell Forrest
12	s5.46(2)	Were all delegations made under Division 4 of Part 5 of the Act reviewed by the delegator at least once during the 2011/2012 financial year.	Yes		Darrell Forrest
13	s5.46(3) Admin Reg 19	Did all persons exercising a delegated power or duty under the Act keep, on all occasions, a written record as required.	Yes		Darrell Forrest

Disclosure of Interest					
No	Reference	Question	Response	Comments	Respondent
1	s5.67	If a member disclosed an interest, did he/she ensure that they did not remain present to participate in any discussion or decision-making procedure relating to the matter in which the interest was disclosed (not including participation approvals granted under s5.68).	Yes		Darrell Forrest
2	s5.68(2)	Were all decisions made under section 5.68(1), and the extent of participation allowed, recorded in the minutes of Council and Committee meetings.	N/A		Darrell Forrest

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Department of Local Government - Compliance Audit - Return



Government of Western Australia
Department of Local Government

No	Reference	Question	Response	Comments	Respondent
3	s5.73	Were disclosures under section 5.65 or 5.70 recorded in the minutes of the meeting at which the disclosure was made.	Yes		Darrell Forrest
4	s5.75(1) Admin Reg 22 Form 2	Was a primary return lodged by all newly elected members within three months of their start day.	Yes		Darrell Forrest
5	s5.75(1) Admin Reg 22 Form 2	Was a primary return lodged by all newly designated employees within three months of their start day.	Yes		Darrell Forrest
6	s5.76(1) Admin Reg 23 Form 3	Was an annual return lodged by all continuing elected members by 31 August 2012.	Yes		Darrell Forrest
7	s5.76(1) Admin Reg 23 Form 3	Was an annual return lodged by all designated employees by 31 August 2012.	Yes		Darrell Forrest
8	s5.77	On receipt of a primary or annual return, did the CEO, (or the Mayor/ President in the case of the CEO's return) on all occasions, give written acknowledgment of having received the return.	Yes		Darrell Forrest
9	s5.86(1)(2) Admin Reg 26	Did the CEO keep a register of financial interests which contained the returns lodged under section 5.75 and 5.76	Yes		Darrell Forrest
10	s5.86(1)(2) Admin Reg 26	Did the CEO keep a register of financial interests which contained a record of disclosures made under sections 5.65, 5.70 and 5.71, in the form prescribed in Administration Regulation 26.	Yes		Darrell Forrest
11	s5.86 (3)	Has the CEO removed all returns from the register when a person ceased to be a person required to lodge a return under section 5.75 or 5.76.	Yes		Darrell Forrest
12	s5.86(4)	Have all returns lodged under section 5.75 or 5.76 and removed from the register, been kept for a period of at least five years, after the person who lodged the return ceased to be a council member or designated employee.	Yes		Darrell Forrest
13	s5.103 Admin Reg 34C & Rules of Conduct Reg 11	Where an elected member or an employee disclosed an interest in a matter discussed at a Council or committee meeting where there was a reasonable belief that the impartiality of the person having the interest would be adversely affected, was it recorded in the minutes.	Yes		Darrell Forrest
14	s5.70(2)	Where an employee had an interest in any matter in respect of which the employee provided advice or a report directly to the Council or a Committee, did that person disclose the nature of that interest when giving the advice or report.	Yes		Darrell Forrest

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Department of Local Government - Compliance Audit Return



Government of Western Australia
Department of Local Government

No	Reference	Question	Response	Comments	Respondent
15	s5.70(3)	Where an employee disclosed an interest under s5.70(2), did that person also disclose the extent of that interest when required to do so by the Council or a Committee.	Yes		Darrell Forrest
16	s5.103(3) Admin Reg 34B	Has the CEO kept a register of all notifiable gifts received by Council members and employees.	Yes		Darrell Forrest

Disposal of Property

No	Reference	Question	Response	Comments	Respondent
1	s3.58(3)	Was local public notice given prior to disposal for any property not disposed of by public auction or tender (except where excluded by Section 3.58(5)).	Yes		Darrell Forrest
2	s3.58(4)	Where the local government disposed of property under section 3.58(3), did it provide details, as prescribed by section 3.58(4), in the required local public notice for each disposal of property.	Yes		Darrell Forrest

Elections

No	Reference	Question	Response	Comments	Respondent
1	Elect Reg 30G (1)	Did the CEO establish and maintain an electoral gift register and ensure that all 'disclosure of gifts' forms completed by candidates and received by the CEO were placed on the electoral gift register at the time of receipt by the CEO and in a manner that clearly identifies and distinguishes the candidates.	Yes		Darrell Forrest

Finance

No	Reference	Question	Response	Comments	Respondent
1	s7.1A	Has the local government established an audit committee and appointed members by absolute majority in accordance with section 7.1A of the Act.	Yes		Darrell Forrest
2	s7.1B	Where a local government determined to delegate to its audit committee any powers or duties under Part 7 of the Act, did it do so by absolute majority.	N/A		Darrell Forrest
3	s7.3	Was the person(s) appointed by the local government to be its auditor, a registered company auditor.	Yes		Darrell Forrest
4	s7.3	Was the person(s) appointed by the local government to be its auditor, an approved auditor.	N/A		Darrell Forrest
5	s7.3, 7.6(3)	Was the person or persons appointed by the local government to be its auditor, appointed by an absolute majority decision of Council.	Yes		Darrell Forrest

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Department of Local Government - Compliance Audit Return



Government of Western Australia
Department of Local Government

No	Reference	Question	Response	Comments	Respondent
6	Audit Reg 10	Was the Auditor's report for the financial year ended 30 June 2012 received by the local government within 30 days of completion of the audit.	Yes		Darrell Forrest
7	s7.9(1)	Was the Auditor's report for 2011/2012 received by the local government by 31 December 2012.	Yes		Darrell Forrest
8	S7.12A(3), (4)	Where the local government determined that matters raised in the auditor's report prepared under s7.9 (1) of the Act required action to be taken by the local government, was that action undertaken.	Yes	Issues raised in the Management Letter are being actioned	Darrell Forrest
9	S7.12A(3), (4)	Where the local government determined that matters raised in the auditor's report (prepared under s7.9 (1) of the Act) required action to be taken by the local government, was a report prepared on any actions undertaken.	Yes	Report will be presented when all items raised in the Management Letter have been finalised	Darrell Forrest
10	S7.12A(3), (4)	Where the local government determined that matters raised in the auditor's report (prepared under s7.9 (1) of the Act) required action to be taken by the local government, was a copy of the report forwarded to the Minister by the end of the financial year or 6 months after the last report prepared under s7.9 was received by the local government whichever was the latest in time.	N/A	As these were only Management Letter matters of a minor nature and not a "Audit Qualification", a report to the Minister was not considered necessary	Darrell Forrest
11	Audit Reg 7	Did the agreement between the local government and its auditor include the objectives of the audit.	Yes		Darrell Forrest
12	Audit Reg 7	Did the agreement between the local government and its auditor include the scope of the audit.	Yes		Darrell Forrest
13	Audit Reg 7	Did the agreement between the local government and its auditor include a plan for the audit.	Yes		Darrell Forrest
14	Audit Reg 7	Did the agreement between the local government and its auditor include details of the remuneration and expenses to be paid to the auditor.	Yes		Darrell Forrest
15	Audit Reg 7	Did the agreement between the local government and its auditor include the method to be used by the local government to communicate with, and supply information to, the auditor.	Yes		Darrell Forrest

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Department of Local Government - Compliance Audit Return



Government of Western Australia
Department of Local Government

Local Government Employees					
No	Reference	Question	Response	Comments	Respondent
1	Admin Reg 18C	Did the local government approve the process to be used for the selection and appointment of the CEO before the position of CEO was advertised.	N/A		Darrell Forrest
2	s5.36(4) s5.37(3), Admin Reg 18A	Were all vacancies for the position of CEO and other designated senior employees advertised and did the advertising comply with s.5.36(4), 5.37(3) and Admin Reg 18A.	N/A		Darrell Forrest
3	s5.37(2)	Did the CEO inform council of each proposal to employ or dismiss a designated senior employee.	N/A		Darrell Forrest
4	Admin Reg 18F	Was the remuneration and other benefits paid to a CEO on appointment the same remuneration and benefits advertised for the position of CEO under section 5.36(4).	N/A		Darrell Forrest
5	Admin Regs 18E	Did the local government ensure checks were carried out to confirm that the information in an application for employment was true (applicable to CEO only).	N/A		Darrell Forrest

Official Conduct					
No	Reference	Question	Response	Comments	Respondent
1	s5.120	Where the CEO is not the complaints officer, has the local government designated a senior employee, as defined under s5.37, to be its complaints officer.	N/A		Darrell Forrest
2	s5.121(1)	Has the complaints officer for the local government maintained a register of complaints which records all complaints that result in action under s5.110(5)(b) or (c).	Yes		Darrell Forrest
3	s5.121(2)(a)	Does the complaints register maintained by the complaints officer include provision for recording of the name of the council member about whom the complaint is made.	Yes		Darrell Forrest
4	s5.121(2)(b)	Does the complaints register maintained by the complaints officer include provision for recording the name of the person who makes the complaint.	Yes		Darrell Forrest
5	s5.121(2)(c)	Does the complaints register maintained by the complaints officer include provision for recording a description of the minor breach that the standards panel finds has occurred.	Yes		Darrell Forrest
6	s5.121(2)(d)	Does the complaints register maintained by the complaints officer include the provision to record details of the action taken under s5.110(5)(b) (c).	Yes		Darrell Forrest

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Department of Local Government - Compliance Audit Return



Government of Western Australia
 Department of Local Government

Tenders for Providing Goods and Services					
No	Reference	Question	Response	Comments	Respondent
1	s3.57 F&G Reg 11	Did the local government invite tenders on all occasions (before entering into contracts for the supply of goods or services) where the consideration under the contract was, or was expected to be, worth more than the consideration stated in Regulation 11(1) of the Local Government (Functions & General) Regulations (Subject to Functions and General Regulation 11(2)).	Yes		Darrell Forrest
2	F&G Reg 12	Did the local government comply with F&G Reg 12 when deciding to enter into multiple contracts rather than inviting tenders for a single contract.	N/A		Darrell Forrest
3	F&G Reg 14(1)	Did the local government invite tenders via Statewide public notice.	Yes		Darrell Forrest
4	F&G Reg 14, 15 & 16	Did the local government's advertising and tender documentation comply with F&G Regs 14, 15 & 16.	Yes		Darrell Forrest
5	F&G Reg 14(5)	If the local government sought to vary the information supplied to tenderers, was every reasonable step taken to give each person who sought copies of the tender documents or each acceptable tenderer, notice of the variation.	N/A		Darrell Forrest
6	F&G Reg 16(1)	Did the local government reject the tenders that were not submitted at the place, and within the time specified in the invitation to tender.	Yes		Darrell Forrest
7	F&G Reg 16 (4)	In relation to the tenders that were not rejected, did the local government assess which tender to accept and which tender was most advantageous to the local government to accept, by means of written evaluation criteria.	Yes		Darrell Forrest
8	F&G Reg 17	Did the information recorded in the local government's tender register comply with the requirements of F&G Reg 17.	Yes		Darrell Forrest
9	F&G Reg 19	Was each tenderer sent written notice advising particulars of the successful tender or advising that no tender was accepted.	Yes		Darrell Forrest
10	F&G Reg 21 & 22	Did the local governments's advertising and expression of interest documentation comply with the requirements of F&G Regs 21 and 22.	Yes		Darrell Forrest
11	F&G Reg 23(1)	Did the local government reject the expressions of interest that were not submitted at the place and within the time specified in the notice.	Yes		Darrell Forrest

Department of Local Government - Compliance Audit Return



Government of Western Australia
 Department of Local Government

No	Reference	Question	Response	Comments	Respondent
12	F&G Reg 23(4)	After the local government considered expressions of interest, did the CEO list each person considered capable of satisfactorily supplying goods or services.	Yes		Darrell Forrest
13	F&G Reg 24	Was each person who submitted an expression of interest, given a notice in writing in accordance with Functions & General Regulation 24.	Yes		Darrell Forrest
14	F&G Reg 24E	Where the local government gave a regional price preference in relation to a tender process, did the local government comply with the requirements of F&G Reg 24E in relation to the preparation of a regional price preference policy (only if a policy had not been previously adopted by Council).	N/A		Darrell Forrest
15	F&G Reg 11A	Does the local government have a current purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$100,000 or less.	N/A		Darrell Forrest

I certify this Compliance Audit return has been adopted by Council at its meeting on _____

 Signed Mayor / President, Kalamunda

 Signed CEO, Kalamunda

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

02. Motor Vehicle Fringe Benefits Tax Compliance Review

Previous Items	N/A
Responsible Officer	Internal Auditor
Service Area	Office of the CEO
File Reference	
Applicant	N/A
Owner	N/A
Attachment 1	Summary of Recommendations and Action taken by the Shire

PURPOSE

1. To inform Council OF the advice received with respect to compliance with motor vehicle fringe benefits tax requirements for the 2012 Fringe Benefits Tax ("FBT") year.

BACKGROUND

2. The FBT liability for the Shire has increased over the past few years due primarily to motor vehicle fringe benefits. The increase in liability has arisen due to the number of vehicles provided to staff for private use, and the compliance requirements in relation to FBT Law.
3. The reportable FBT on an employee's group certificate has also caused concern due to confusion and uncertainty among affected employees concerning the operation of the FBT Law.
4. To address these issues it was considered necessary to appoint an independent consultant to undertake a review of the Shire's compliance with motor vehicle fringe benefits requirements for the 2012 FBT year.

DETAILS

5. Three quotes were obtained and Grant Thornton was appointed to conduct the review.
6. Grant Thornton conducted a comprehensive review of the Shire's compliance with FBT requirements and provided recommendations to address issues of non-compliance.

STATUTORY AND LEGAL IMPLICATIONS

7. Regulation 5(1) and 5(2) of the *Local Government (Financial Management) Regulations 1996* requires the Chief Executive Officer to establish efficient systems and procedures for the general financial management under Section 6.10 of the *Local Government Act 1995*, and undertake regular reviews of the appropriateness and effectiveness of the financial management systems and procedures of the local government at least once every four years.

8. The *Fringe Benefits Tax Assessment Act 1986*. FBT is a tax payable by an employer on the value of certain fringe benefits that have been provided to their employees.

POLICY IMPLICATIONS

9. Shire's Light Vehicle Policy to be reviewed and updated.

PUBLIC CONSULTATION/COMMUNICATION

10. Nil.

FINANCIAL IMPLICATIONS

11. A liability arising from the Shire not paying the correct amount of FBT and incorrectly reporting the reportable fringe benefits on an employee's group certificate.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

Strategic Planning Implications

12. *Shire of Kalamunda Strategic Plan 2009-2014*
Strategy 5.1.4 Ensure appropriate systems and procedures are in place to comply with statutory compliance and enhance effective business management.

Sustainability Implications

Social Implications

13. Nil.

Economic Implications

14. Nil.

Environmental Implications

15. Nil.

OFFICER COMMENT

16. The report received from Grant Thornton has been reviewed and action taken to address the report's findings. These include:
- Using the appropriate method for calculation of residual benefits arising from the use of commercial vehicles and not the statutory formula method.
 - Amending the method for determining the FBT taxable value of motor vehicle benefits in situations where more than one employee has been provided with use of the same motor vehicle.
 - Log books currently being maintained by Shire employees not being valid in terms of the FBT law and ATO logbook guidelines.

-
- Confusion amongst affected Shire employees concerning the operation of the FBT laws with regard to the private use of commercial vehicles and in particular, the strict eligibility requirements for claiming an FBT exemption in these situations.
 - Incorrectly reporting on the 2012 payment summaries of certain employees who in fact qualified for the fringe benefit reporting exclusion.
17. The Shire has implemented a number of new processes and procedures to address the findings in the report.
18. To reduce the Shire's liability for FBT, a number of affected staff are moving to Novated lease arrangements and Shire vehicles are being sold. This will reduce the fleet of light vehicles and the Shire of Kalamunda's liability for FBT.

Voting Requirements: Simple Majority

OFFICER RECOMMENDATION (AC 02/2013)

That Council:

1. Receives the Summary of Recommendations (Attachment 1) received from Grant Thornton and acknowledges action taken by Shire.

Moved:

Seconded:

Vote:

Attachment 1

Shire of Kalamunda Recommendations By Consultant and Action Taken by Shire

Recommendation	Action Taken by Shire
<p>1 The Shire's practice of using the 'statutory formula method to calculate the taxable value of residual fringe benefits arising from the (non-exempt) private use of non-cars is not permitted under the FBT law.</p> <p>As log books or other accurate records of private usage in Shire 'non cars' were not maintained during the 2012 FBT year and in view of the apparent significant business use of these vehicles we recommend the Shire:</p> <ul style="list-style-type: none">i. Accept the use of the statutory formula method as producing reasonable approximation of the taxable value of these residual benefits for the 2012 income year.ii. Ascertain which of the commercial vehicles used by Commuting Use and Limited Private Use employees during 2013 and future FBT years are designed to carry a load of 1 tonne or more and therefore, do not qualify as cars for FBT purposesiii. Ensure that appropriate private usage records for these vehicles are implemented and maintained to enable the taxable value of any residual fringe benefits in respect to 'non cars' for the 2013 and future FBT years to be calculated under either the 'operating cost' or 'cents per kilometre' method.	<p>1 Log books will be used in the future.</p> <ul style="list-style-type: none">i No action required for 2012 financial Year. Basis used for 2012 year is considered reasonable.ii Information to be provided by Operations Manageriii Log books will be used in the future.
<p>2 The Shire's practice of performing multiple FBT taxable value calculations on an individual 'employee basis' for shared/ pooled cars' does not accord with the FBT law and creates a risk of incorrectly calculating the Shire's FBT Liability for car</p>	<p>2 Not material. Will be taken into account in determination of 2013 FBT Liability.</p>

**Shire of Kalamunda
 Recommendations By Consultant and Action Taken by Shire**

Recommendation	Action Taken by Shire
<p>2 fringe benefits.</p> <p>Overall, it does not appear this practice has materially impacted the determination of the Shire's 2012 FBT Liability.</p>	<p>2</p>
<p>3 It does not appear that the Shire's logbook requirements (as outlined in the Vehicle Use Policies) were adhered to, or enforced. Further, based on review of a sample of logbooks completed by Shire employees since the preparation of logbooks became mandatory, the logbooks do not appear to be valid in terms of the logbook guidelines provided with this advice.</p>	<p>3 Copy of Grant Thornton's tax advice on how to complete the logbookd provide to all employees with a Shire vehicle.</p>
<p>4 Review and enhance the FBT compliance aspects of the</p> <p>4(i) Vehicle Use Policies and ensure the 'no private use' (outside of home to work travel) restrictions for Commuting Use employees is heavily promoted and regularly enforced.</p>	<p>4(i) Policies will be updated as part of the review to ensure there is compliance with FBT legislation.</p>
<p>Consider implementing all, or a number, of the following</p> <p>4(ii) suggested FBT compliance improvement measures involving the private use of Shire vehicles by Commuting Use employees:</p> <p>a. Have employees in possession of commercial vehicles submit a declaration:</p> <p>i. confirming that their private use of the vehicle throughout the relevant FBT year did not breach the exemption eligibility requirements; and</p> <p>ii. Providing details of their other (privately held) vehicle(s)</p>	<p>4(ii) Declaration forms have been sent to all employees with commuter use of commercial vehicles</p> <p>Copy of Grant Thornton's tax advice on how to complete the logbookd provide to all employees with a Shire vehicle.</p>

**Shire of Kalamunda
Recommendations By Consultant and Action Taken by Shire**

Recommendation	Action Taken by Shire
<p>available for extended private use (by the employee and family members).</p> <p>b. Enforce the Shire's policy on the mandatory preparation of valid log books and opening and closing odometer readings by these employees.</p> <p>5 Although a sizeable number of cars in respect of which the Shire paid FBT, or claimed a work related travel exemption for the 2012 FBT year were used privately in the provision of shared/pooled car benefits, the Shire only applied this reporting exclusion to the employees who drove the three vehicles (designated as 'pooled cars' in the Shire's 2012 FBT working papers).</p> <p>Therefore, the shire incorrectly took into account the portion of the taxable value of the relevant car fringe benefits for the remaining employees eligible for a (shared/pooled car benefit) reporting exclusion in determining their 2012 RFBA's</p> <p>This affected two employeeyer. We recommend the Shire review the 2012 RFBT calculations and provide amended 2012 payment summaries to affected employees</p>	<p>5 Amended 2012 payment summaries provided to affected employees.</p>

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

03. Audit Plan

Previous Items	N/A
Responsible Officer	Internal Auditor
Service Area	Office of the CEO
File Reference	
Applicant	N/A
Owner	N/A
Attachment 1	Audit Plan

PURPOSE

1. To provide Council with an assurance the financial and statutory functions of the Shire have been undertaken in accordance with the provisions of the *Local Government Act 1995* and associated regulations.
2. To ensure risk management practices and procedures are fully integrated into strategic and operational planning processes and day to day business practices of the Shire.

BACKGROUND

3. The Audit Plan ("the Plan") (Attachment 1) includes a review of the appropriateness and effectiveness of the financial management systems and procedures of the Shire carried out on behalf of the Chief Executive Officer and the Audit and Risk Committee. Regular reports will be provided in accordance with the Plan on:
 - Review of compliance with Council Policies and Practices.
 - Review of key internal controls within accounting systems.
 - Review of accounting systems and procedures.
 - Review of annual statutory Compliance Audit Return.
 - Ensure monthly and annual financial reports to Council complies with legislation and Australian Accounting Standards.
 - Special reports as required from time to time by the Audit and Risk Committee.
 - An assessment of risk management practices, policies and procedures used as part of operational planning processes and procedures.

DETAILS

4. An Audit Plan of work completed or to be conducted this financial year has been prepared. This is a rolling Plan with items carried forward into the next financial year if not completed. The intention of the Plan is to review specific matters such as key internal controls annually and certain matters over a three to four year cycle and any new matters that may arise.

STATUTORY AND LEGAL IMPLICATIONS

5. Regulation 5(1) and 5(2) of the *Local Government (Financial Management) Regulations 1996* requires the Chief Executive Officer to establish efficient systems and procedures for the general financial management under Section 6.10 of the *Local Government Act 1995*, and undertake reviews of the appropriateness and effectiveness of the financial management systems and procedures of a local government at least once in every four years.

POLICY IMPLICATIONS

6. Nil.

PUBLIC CONSULTATION/COMMUNICATION

7. Nil.

FINANCIAL IMPLICATIONS

8. Nil.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

Strategic Planning Implications

9. *Shire of Kalamunda's Strategic Plan 2009-2014*
- | | |
|----------------|--|
| Strategy 5.5.2 | Provide financial services to support Council's operations and to meet sustainability planning, reporting and accountability requirements. |
| Strategy 5.5.3 | Ensure business continuity and risk management plans are in place and reviewed regularly. |
| Strategy 5.1.4 | Ensure appropriate systems and procedures are in place to comply with statutory compliance and enhance effective business management. |

Sustainability Implications

Social Implications

10. Nil.

Economic Implications

11. Nil.

Environmental Implications

12. Nil.

OFFICER COMMENT

13. The scope of work will be decided by the Chief Executive Officer and the Audit and Risk Committee. Regular reports will be prepared for the Chief Executive Officer and Audit and Risk Committee on findings and recommendations of specific area audited.
14. The Plan will be updated and refreshed each year with the intention of high risk areas being audited more frequently.

Voting Requirements: Simple Majority

OFFICER RECOMMENDATION (AC3/2013)

That Council:

1. Notes that the Audit and Risk Committee has received the Audit Plan for 2013 (Attachment 1).

Moved:

Seconded:

Vote:

Attachment 1

SHIRE OF KALAMUNDA INTERNAL AUDIT PLAN FOR 2012/2013													
Internal Auditor	Date Report to A/Comm	2012						2013					
		July	Sept Qtr Aug	Sept	Oct	Dec Qtr Nov	Dec	Jan	Mar Qtr Feb	Mar	Apr	June Qtr May	June
Corporate Services													
Systems Improvement													
Fringe Benefits Tax- Consultant Grant Thornton													
Purchasing- New Guideline	17/09/2012												
Tendering -New Guideline	17/09/2012												
Novated Leases													
Review of Procedures and Internal Control													
Evaluation of Procedures and Key Controls													
Conduct review of systems and controls as required under Regulation 5(2)(c) of the Local Government (Financial Management) Regulations 1996													
Bank Reconciliations													
Petty Cash													
Rates													
Receipts and Receivables (front counter)													
Fees and Charges													
Investments													
Purchases, Payments and Payables													
Credit Card Procedures													
Wages and Salaries													
Fixed Assets													
Record Keeping													
Receipting and Other Financial controls at other centres:													
Libraries													
Recreation Centres													
Health and Community Care (HACC)													
Consolidation of Financial Information													
Fringe Benefits Tax (FBT)													
Goods and Services Tax (GST)													
Grant Aquittals													
New Fees:													
Cat Act November 2013													
Other matters													
Trust Funds - Cell 9 Developers Contributions	OCM Dec												
Trust Funds -New Industrial Land Contributions													
Trust Funds - Bonds													

SHIRE OF KALAMUNDA													Page 2
INTERNAL AUDIT PLAN FOR 2012/2013													
Internal Auditor	Date Report to A/Comm	2012						2013					
		Sept Qtr			Dec Qtr			Mar Qtr			June Qtr		
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
Risk Assessment													
Data Privacy and Security													
Legislative Changes and Compliance													
Economic Risk													
IT- Computer Assisted Audit Techniques (CAAT's)													
Insurance/													
Human Resources													
Review DHS Policies and Procedures													
Other - Novates Leases													
Information Technology													
Review of Existing Systems													
IT Vision - Synergy													
CAMMS Products													
BMC													
IPM													
Interplan													
PES													
Risk Management													
Review of Infrastructure Hardware -External Consultants													
Review of Proposed and New Systems													
Staff training													
Financial Interest													

SHIRE OF KALAMUNDA INTERNAL AUDIT PLAN FOR 2012/2013												
Internal Auditor	Date Report to A/Comm	2012						2013				
		Sept Qtr			Dec Qtr			Mar Qtr			June Qtr	
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Other												
Review and Update of Long Term Financial Plans												
Review of Asset Management Plans												
Review Monthly Financial Reports												
Development of Guidelines												
Tendering	17/09/2012											
Purchasing	17/09/2012											
Budget Preparation												
Review Annual Financial Statements												
Implementation of Forensic Audit Recommendations on Kalamunda Water Park	17/09/2012											
Appointment of Forensic Auditors and collection of information for CCC												
Set up of Audit Files for External Auditor	N/A											
Report for Audit Committee on Terms of Reference	QCM Feb 13											
Review Motor Vehicle Log Books												
Review of Tender Procedures												
Review of New Policies:												
Credit Cards												
Travel												
Whistle Blowers Policy												
Reimbursement of Expenses												
Review of Current Policies												
Audit of Statutory Compliance Audit Return (CAR's)												
Introduction of Fair Value Treatment of Non-current Assets												
GST on Land Sales - PwC												

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

04. Release of Forensic Audit to Public

Previous Items	N/A
Responsible Officer	A/Chief Executive Officer
Service Area	Office of the CEO
File Reference	
Applicant	N/A
Owner	N/A

Confidential Attachment 1	Letter – Jackson McDonald – Disclosure of reasons for the termination of employment of Mr James Trail. <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(d) <i>“legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.”</i>
Confidential Attachment 2	Email – Deloitte Touche Tohmatsu <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(a) <i>“a matter affecting an employee or employees”</i>
Confidential Attachment 3	Script for Standard Statement by Councillors of the Shire of Kalamunda <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(a) <i>“a matter affecting an employee or employees”</i>

PURPOSE

1. To provide legal advice to Council in relation to how details of the findings of the recent forensic audit into the activities of the former Chief Executive Officer should be publicly released.

BACKGROUND

2. At a Special Meeting of Council held on 10 December 2012 it was resolved:

RESOLVED SCM 178/2012

That Council:

1. *Having considered the allegations, the evidence and responses to the allegations in relation to the conduct of the Chief Executive Officer, Mr James Trail, Council has formed the opinion that the Chief Executive Officer's conduct constitutes serious misconduct as defined in clause 10.3(1) of the contract of employment and has resolved to summarily terminate the employment on those grounds effective the 10 December 2012.*
2. *Request the Acting Chief Executive Officer to pay all accrued leave and salary entitlements to Mr James Trail up to and inclusive of the 10 December 2012.*
3. *Request the Acting Chief Executive Officer to advise Mr James Trail that he must return all Shire property and documents (including emails that were forwarded to the personal home email address) by Friday 15 December 2012.*

3. At the Ordinary Meeting of Council held on 25 February 2013 the Council requested advice as to whether, or not, details of the reason why the Chief Executive Officer was dismissed could be publicly released.

DETAILS

4. The Shire has sought advice from the Corruption and Crime Commission (“CCC”), the Shire’s lawyer, Jackson McDonald, and the Shire’s Forensic Auditor, Deloitte Touche Tohmatsu (“Deloitte”), to determine what, if any, information pertaining to the dismissal of the former Chief Executive Officer, James Trail, can be publicly released.
5. The CCC has advised they understand the Council dismissed the former Chief Executive Officer on the basis of the Deloitte’s Report. There is no caveat on behalf of the Commission in respect to the Report. The CCC is of the view that Council can determine to make the report public if it sees fit to do so.
6. The CCC have advised it is investigating the former Chief Executive Officer in respect to his relationship with CAMMS and have issued a Section 42 Notice on the Shire that prevents the Shire from investigating this aspect. Council is not able to comment on that investigation until the Commission completes its investigation, other than to say the Commission is investigating that matter.
7. The Shire’s lawyer, Jackson McDonald, was requested to provide an opinion as to the ramifications, if any, of the release to the public of the forensic audit report. A letter providing an opinion is presented as (Confidential Attachment 1).
8. Jackson McDonald have advised the difficulty facing the local government in regard to releasing information about the termination of employment is that the former Chief Executive Officer may launch litigation to protect his reputation any time within six years of the termination of his employment. Any litigation may claim damage to reputation which has prevented mitigation of any losses suffered.
9. In concluding Jackson McDonald is of the opinion that any statement Council might feel obliged to make *“...be limited to the terms of resolution 1 of the special meeting on 10 December 2012...”*.
10. Deloitte Touche Tohmatsu was contacted for their comment in relation to the public release of the forensic audit report. The Shire has been advised that in accordance with Clause 9 of the terms of engagement, to prepare the report, the Shire must not disclose it, or part, to any third parties without the prior written consent of Deloitte Touche Tohmatsu.
11. Deloitte’s opinion (Confidential Attachment 2), although not legal advice, concurred with the advice provided by Jackson McDonald that any disclosure should be limited to the minimum required under law.
12. Whilst sympathetic of the position of the Councillors, and their desire to account for their actions in a transparent way to constituents, Deloitte expressed the opinion that from a commercial perspective it would be prudent to limit any disclosure to the minimum required under the law. It was their

view that any departure from this (for example providing more context by way of a summary of the key themes of the types of matters that were identified and which were assessed by the Council as constituting “serious misconduct”) could potentially open the Council to a number of significant and unnecessary risks, including:

- a. Comments taken out of context and/or misinterpreted.
 - b. Providing fuel or impetus to any future contemplated legal action against the Shire (or even individual Councillors) as described in paragraph 2 of Jackson McDonald’s letter.
 - c. Creating new avenues for possible legal action against the Shire (or individual Councillors) – for example defamation action.
13. Deloitte are of the opinion that it is likely that the release of even very high level thematic issues, for example, will tend to lead to more questions than it answers. It is their view that a very strict line should be maintained following the script set out in paragraphs 9 and 10 of Jackson McDonald’s letter. This could be addressed by an additional statement which is provided as (Confidential Attachment 3). Such a statement is consistent with the advice provided by Jackson McDonald.
14. An alternative approach suggested by Deloitte could be to take a more proactive stance and prepare a “press release” or statement to this effect which could either be released to the press or on the Shire’s website. This would assist Councillors who could respond to any queries.

STATUTORY AND LEGAL IMPLICATIONS

15. The potential legal implications of releasing information are explained in (Confidential Attachment 1).

POLICY IMPLICATIONS

16. Nil.

PUBLIC CONSULTATION/COMMUNICATION

17. Nil.

FINANCIAL IMPLICATIONS

18. Nil.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

Strategic Planning Implications

19. Nil.

Sustainability Implications

Social Implications

20. Nil.

Economic Implications

21. Nil.

Environmental Implications

22. Nil.

OFFICER COMMENT

23. Given the advice received from the Shire's legal representative, it would not be prudent to place the Shire at risk of litigation. Whilst members of the community may feel that the local government has been withholding the reasons for the dismissal of the former Chief Executive Officer, the Council must take into account the legal advice and make decision in the best interests of the community.

Voting Requirements: Simple Majority

OFFICER RECOMMENDATION

That Council:

1. Releases a press statement outlining the reason why the Shire is unable to release the details of the forensic audit as per (Confidential Attachment 3).
2. Prepares a statement to assist Councillors in responding to queries in relation to the content of the forensic audit as per (Confidential Attachment 3).

Moved:

Seconded:

Vote:

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

05. CONFIDENTIAL ITEM Status of CAMMS Software Contract

Reason for Confidentiality – Local Government Act 1995 Section 5.23(2)(c) *“a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.”*

Previous Items	N/A
Responsible Officer	A/Chief Executive Officer
Service Area	Office of the CEO
File Reference	
Applicant	N/A
Owner	N/A

Confidential Attachment 1	Licence agreement <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(c) <i>“a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.”</i>
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Confidential Attachment 2	Confidential – Legal Advice <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(d) <i>“legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.”</i>
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Provided under separate cover.

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

06 CONFIDENTIAL ITEM Letter from the Department of Local Government in Response to the Forensic Audit Investigation Report

Reason for Confidentiality – Local Government Act 1995 Section 5.23(2)(a) *“a matter affecting an employee or employees.”*

Previous Items	Nil
Responsible Officer	Acting Chief Executive Officer
Service Area	Office of the CEO
File Reference	
Applicant	N/A
Owner	N/A
Confidential Attachment 1	Report on Letter from the Department of Local Government in Response to the Forensic Audit <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(a) <i>“a matter affecting an employee or employees.”</i>
Confidential Attachment 2	Letter from the Director General of the Department of Local Government <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(a) <i>“a matter affecting an employee or employees.”</i>
Confidential Attachment 3	Responses to the Department of Local Government Findings and Recommendations on the Forensic Audit <u>Reason for Confidentiality</u> – Local Government Act 1995 Section 5.23(2)(a) <i>“a matter affecting an employee or employees.”</i>

Provided under separate cover.

7.0 CLOSURE