

Street Address
Level 5
400 King William St
Adelaide SA 5000

Postal Address
GPO BOX 1018
Adelaide SA 5001
DX 662 Adelaide

Tel (08) 8235 3000
Fax (08) 8232 0926
general@wallmans.com.au

www.wallmans.com.au
ABN 98 802 494 422



WALLMANS
LAWYERS

District Council of Yankalilla

Legal Compliance Audit

November 2010

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WALLMANS
LAWYERS

Our Ref: NMJ:ksm:101343

Your Ref:

19 November 2010

Ms Corinne Garrett
District Council of Yankalilla
1 Charles Street
YANKALILLA SA 5203

Dear Corinne

LEGISLATIVE COMPLIANCE AUDIT REPORT

The District Council of Yankalilla has commissioned Wallmans Lawyers to undertake a governance legislative compliance audit. The purpose of the audit is to identify the requirements for District Council of Yankalilla to achieve timely and accurate compliance with the *Local Government Act 1999* and related legislation and regulations and, to test the performance of the Council against those requirements.

We are pleased to now provide the completed report.

Scope

For the purpose of undertaking the legislative compliance audit, the following legislation has been considered:

- *Local Government Act 1999 ("the Act");*
- *Local Government Act 1934;* and
- *Local Government (Financial Management) Regulations 1999.*

Conduct of the Review

Cimon Burke attended the Council offices on 21 July 2010 and was given unrestricted access to Council's files to complete the review. The review process involved conferring with key personnel to identify the procedures adopted by the Council in its day-to-day operations. Council documents were also obtained for further verification of Council's practices and procedures.

We have also obtained documents from the Council's website where necessary.

In conducting this review, a detailed activity assessment of staff carrying out their functions roles and duties was not carried out. For example, Cimon did not observe an authorised officer conducting an interview, gathering evidence or laying a

complaint. Accordingly, no comment is made about the manner in which Council staff undertake their procedural tasks.

Format of the Audit Report

Part 1 of the report is a summary action list of the matters of statutory non-compliance and recommendations to achieve compliance. Some recommendations contained within this list serve as a reminder for the next statutory review and do not reflect an area of non-compliance on the Council's part.

Part 2 is a summary action list of recommendations concerning matters of best practice. This is intended primarily to provide the Council with a checklist to assist with the process of reviewing improvements and adopting implementation. This part of the report should be read in conjunction with the comprehensive review.

Part 3 of the report is a comprehensive review of the statutory responsibilities of the District Council of Yankalilla in accordance with Local Government legislation and regulations. The comprehensive report identifies each of the Council's statutory obligations and, where appropriate, recommends a course of action to enable the District Council of Yankalilla to better address each requirement. In addition to noting areas of non-compliance, the report identifies matters of best practice which reflect our knowledge of practice in Local Government generally and matters of prudential management and propriety. The Council is free to adopt these recommendations at its discretion.

Conclusion

There is no doubt that prudent management practices endorse regular review of the Council's compliance with the requirements of local government legislation.

We recommend that the Council undertake an internal updated review in 12 months time to assess whether recommendations have been adopted and whether the actual practices and procedures of the District Council of Yankalilla have evolved to accommodate them.

We look forward to working with the Council to implement all of the recommendations contained in this report.

Yours sincerely
WALLMANS LAWYERS



NATASHA JONES
Partner
Direct Line: 08 8235 3039
Email: natasha.jones@wallmans.com.au

Yours sincerely
WALLMANS LAWYERS



CIMON BURKE
Associate
Direct Line: 08 8235 3084
Email: cimon.burke@wallmans.com.au

Partner: Natasha Jones

Part 1 – Statutory Compliance Recommended Action List

Section		Statutory Compliance Recommendations
Local Government Act 1999		
Section 43	Regional Subsidiaries	<ul style="list-style-type: none"> • Ensure the Charter is reviewed before November 2013.
Section 44	Delegations	<ul style="list-style-type: none"> • Ensure Council continues to review its delegations annually.
Section 49	Contracts & Tenders Policy	<ul style="list-style-type: none"> • Council's Contracts, Tenders and Purchasing Policy be amended to ensure it addresses: <ul style="list-style-type: none"> • the sale and disposal of Council land and other assets; • the requirement to record reasons for entering into contracts other than those resulting from a tender process; • the circumstances where Council will consider using local goods and services.
Section 50	Public Consultation Policy	<ul style="list-style-type: none"> • Amend the Council's Public Consultation Policy to include reference to the Council's obligations to undertake public consultation under sections 123 and 151(5) of the Act; and • Ensure the Policy clearly reflects that public consultation with respect to the Council's Strategic Management Plan is conducted in accordance with the requirements of section 122 of the Act.



Section		Statutory Compliance Recommendations
Section 73-74	Conflict of Interest (Chapter 5, Part 4, Division 3)	<ul style="list-style-type: none"> Ensure that elected members when declaring a conflict of interest, continue to ensure that the exact nature of the disclosure (i.e. the details of the relevant interest) be declared and recorded in the minutes so that a person reading the minutes can assess whether the elected member would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or non pecuniary benefit or, suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment or non-pecuniary detriment.
Section 77	Reimbursement of Member Expenses	<ul style="list-style-type: none"> That Council revise its Policy to reflect the recent changes to section 76 of the Act in relation to elected member allowances to refer to the fact that allowances will be set by the Remuneration Tribunal.
Section 79	Register of Allowances – Benefits	<ul style="list-style-type: none"> Ensure the register is updated to include the spreadsheets maintained for every year to ensure changes in allowances are recorded as per the requirements of the Act.
Section 91	Minutes and Release of Documents	<ul style="list-style-type: none"> Where Council makes orders that operate for a period of 12 months or more, ensure that a review of the relevant documents that are subject to the confidentiality order is conducted at least once every year.
Section 92	Access to Meetings & Documents – Code of Practice	<ul style="list-style-type: none"> Undertake a review of its Code before November 2011.



Section		Statutory Compliance Recommendations
Section 110	Code of Conduct	<ul style="list-style-type: none"> • Ensure that the Code is reviewed before November 2011 and that in doing so employees and registered industrial associations are consulted as required by section 110(5) of the Act. • Ensure the Code is made available on the Council's website to achieve compliance with section 132(4)(c) of the Act.
Section 122	Strategic Management Plans	<ul style="list-style-type: none"> • Complete all components of Council's Long Term Asset Management Plan as soon as possible • Undertake a review of the Plan before November 2012.
Section 129	Conduct of Annual Audit	<ul style="list-style-type: none"> • Ensure the Annual Audit is completed within the prescribed time frame to ensure the financial statements are forwarded to the Minister before 30 November 2010.
Section 132	Access to Documents	<ul style="list-style-type: none"> • Ensure that the Council's Code of Conduct for Employees and the Information Statement required under the <i>Freedom of Information Act 1991</i> are included on the Council's website.
Section 170	Notice of Declaration of Rates (and valuations)	<ul style="list-style-type: none"> • Ensure notice of Council's declaration of rates is published in the local paper.
Section 196	Management Plans	<ul style="list-style-type: none"> • Ensure the categories of community land listed in the Council's Management Plan lists all the parcels of land that fall into that particular category.



Section		Statutory Compliance Recommendations
Section 207	Register	<ul style="list-style-type: none"> Establish a community land register which contains all the information required by the Act. Ensure the register is available for public inspection.
Section 219	Power to assign a name, or change the name, of a road or public place	<ul style="list-style-type: none"> Prepare and adopt a street-naming policy as a matter of priority.
Section 231	Register of Public Roads	<ul style="list-style-type: none"> Establish a register of all public roads within Council's area (which include unmade roads) that includes all the information required by the Act.
Section 237	Removal of Vehicles	<ul style="list-style-type: none"> Maintain a register of all vehicles impounded under this section which details: <ul style="list-style-type: none"> the vehicle registration number; the make/model/type of the vehicle; a photo of the vehicle the owner's details; the impound date; the responsible officer; a summary of all interaction and/or attempts to communicate with the owner of the car; and any action taken to dispose of the vehicle either by sale or otherwise.
Section 259	Policies	<ul style="list-style-type: none"> Undertake a review of Council's Order Making Policy as a matter of priority to address its applications to orders under sections 216, 218 and 299 of the Act.



Section		Statutory Compliance Recommendations
Section 270	Council to Establish Grievance Procedures	<ul style="list-style-type: none"> Undertake a review of Council's Internal Review of Council's Decisions Policy to ensure it addresses the requirements of Section 270(2)(ca).
Section 299	Vegetation Clearance	<ul style="list-style-type: none"> Revise Council's Order Making Policy to ensure it extends to orders issued under this section.
Schedule 2	Preparation of Charter	<ul style="list-style-type: none"> Ensure that the Charter for the Authority is reviewed before November 2013.
Schedule 5	Documents to be made available by Councils	<ul style="list-style-type: none"> Establish a register for community land and a register for public roads which both include the information required under the Act and ensure these are made available for public inspection. Ensure Council's Code of Conduct for Employees is made available on the Council's website.
Local Government Act 1934		
Part XXX	Cemeteries	<ul style="list-style-type: none"> Revise Council's standard cemetery lease to ensure it addresses the requirements of <i>the Local Government (Cemetery) Regulations 2010</i>. Develop the template plain English statement that is now required to be given to persons <i>before</i> an interment right is granted to them.



Part 2 - Recommended Best Practice Action List

Note: While it is not a statutory requirement to action these matters they are nevertheless recommended as examples of best management practice.

Section		Best Practice Recommendation
Local Government Act 1999		
Section 12	Composition and Wards	<ul style="list-style-type: none"> Keep informed of the commencement date of the amended Section 12(4) as it will have a bearing on the due date for Council's next review.
Section 36(4)	A Council must not do anything inconsistent with a law of the State or Commonwealth	<ul style="list-style-type: none"> Continue to obtain legal advice as appropriate with respect to the operation of the Council.
Section 38	Common Seal	<ul style="list-style-type: none"> Ensure all of the following information is contained in Council's Common Seal Register: <ul style="list-style-type: none"> the nature of the document to which the seal is affixed; the relevant resolution by Council and minute description/agenda item reference; the date the document was executed; and the date the entry was recorded in the Register.
Section 41	Committees	<ul style="list-style-type: none"> Revise the Terms of Reference for the Audit Committee to provide for a fixed number of committee members to ensure there is no ambiguity.
Section 48	Prudential Requirements for Certain Activities	<ul style="list-style-type: none"> Ensure Council staff are familiar with the requirements contained within the proposed amendments to this section.
Section 49	Contracts & Tenders Policy	<ul style="list-style-type: none"> Continue to review Council's Contracts & Tenders Policy on an annual basis



Section		Best Practice Recommendation
Section 61	Access to information by Members of Council	<ul style="list-style-type: none"> • Consider developing and adopting an Elected Member Access to Council Information Policy which sets out a procedure under section 61 where elected members can request access to information. • Develop and maintain a register to track and identify a request by elected members for access to documents, which includes reference to the document requested.
Section 62	General Duties	<ul style="list-style-type: none"> • Ensure new members undertake training in relation to the duties of a public officer under the <i>Criminal Law Consolidation Act 1935</i>. • Ensure members are provided with training at least annually to ensure they have a complete understanding of their functions and duties under the Act.
Section 63	Code of Conduct – Members	<ul style="list-style-type: none"> • Amend the Code to include further detail with respect to the complaint handling process, and in doing so, have regard to the LGA's model Code of Conduct for Elected Members and Complaint Handling Procedure.
Section 64	Register of Interests – Members	<ul style="list-style-type: none"> • Maintain a register of all requests from members of the public to review the register of interest and, require any such request to be received in writing. • Develop a proforma letter to be sent to elected members who have failed to return their returns in accordance with section 68(2) of the Act, notifying them of their failure to submit a return and advising of the repercussions of doing so (i.e. loss of office).
Section 73-74	Conflict of Interest (Chapter 5,	<ul style="list-style-type: none"> • Undertake conflict of interest training following the November



Section		Best Practice Recommendation
	Part 4, Division 3)	elections to ensure that members have an accurate understanding of their obligations under the Act.
Section 80A	Training and Development	<ul style="list-style-type: none"> Consider developing and implementing a 12 month training and development program for elected members.
Section 90	Meetings to be held in Public except in Special Circumstances	<ul style="list-style-type: none"> Review Council's use of section 90 annually.
Section 91	Minutes and Release of Documents	<ul style="list-style-type: none"> Ensure reviews of confidential orders are undertaken before the expiration of 12 months to ensure that the 12 month orders do not expire inadvertently.
Section 103	Appointment etc by Chief Executive Officer	<ul style="list-style-type: none"> Consider developing and adopting a HR Policy which outlines the Council's approach to recruitment and termination.
Section 110	Code of Conduct	<ul style="list-style-type: none"> Ensure that express reference to the employee's general duties under the Act is included in the Code. Amend the Code to include further details with respect to the receipt and/or benefits by staff, the general duties of staff under the Act and to reinforce their Conflict of Interest obligations.
Section 111-119	Register of Interests	<ul style="list-style-type: none"> Ensure that any members who request to review the register is advised of the onerous confidentiality obligations that must be adhered to. Ensure all requests to review the register are recorded.
Section 120	Conflict of Interest	<ul style="list-style-type: none"> Provide conflict of interest training to <u>all</u> staff of the Council.
Section 125	Internal Control Policies	<ul style="list-style-type: none"> Finalise and adopt a detailed Policy that addresses the management of the Council's resources and sets out the internal control measures



Section		Best Practice Recommendation
		implemented by the Council to ensure that its resources are not misused or misappropriated.
Section 132A	Related Administrative Standards	<ul style="list-style-type: none"> Consider developing and maintaining a key dates dairy which is accessible to all relevant staff and includes the dates for review of Council's policies and procedure documents.
Division 5	Rebate of Rates	<ul style="list-style-type: none"> Consider including further detail within the policy regarding the legislative and policy criteria for determining discretionary rebates and consider attaching the application forms which may be used to apply for a rebate to the policy.
Section 196	Management Plans	<ul style="list-style-type: none"> Undertake a review of its community land and in doing so, review and update its existing Management Plan to ensure it is meeting current Council and community expectations. Consider preparing and adopting specific Community Land Management Plans for those areas of community land (such as significant reserves) which may require more careful, tailored management than that offered in the "generic" plans.
Section 202	Alienation of Community Land by Lease or Licence	<ul style="list-style-type: none"> Ensure Council's addresses in its Management Plan its intentions with respect to the long term use of community land and specifically, its ability to be leased and/or licensed for periods of up to 5 years.
Section 220	Numbering of Adjacent Premises & Allotments	<ul style="list-style-type: none"> Consider developing a street numbering policy which provides guidance to the community regarding the way in which Council assigns numbers to new properties.



Section		Best Practice Recommendation
Section 221-225	Control of Work on Roads	<ul style="list-style-type: none"> • Maintain a register of all permits and authorisations issued under these provisions. • Consider creating an Outdoor Trading/Dining Policy to outline standard conditions which attach to any permit issued for these purposes.
Section 232	Trees	<ul style="list-style-type: none"> • Review Council's tree planting policies to include details regarding the Council's management of roadside vegetation and, to expressly address the specific criteria under this section of the Act
Section 237	Removal of Vehicles	<ul style="list-style-type: none"> • Ensure staff who exercise powers under this section have regard to the State Ombudsman's Guidance Paper No. 2 of 2009 which extensively examines the exercise of section 237 powers and to the Local Government Association's Standard Operating Procedure for the Disposal of Vehicles under this section. • Ensure relevant Council staff familiarise themselves with the changes to section 237 which are contained in the <i>Local Government (Accountability Framework) Amendment Act 2009</i>, which will commence on a date yet to be proclaimed and receive training in relation to them.
Section 238	By-laws – Land	<ul style="list-style-type: none"> • If Council has not yet resolved to determine the areas to which specific areas of its Local Government Land and Dogs by-laws apply, make a determination of these areas.
Section 245	Liability for Injury, Damage or Loss caused by Certain Trees	<ul style="list-style-type: none"> • Continue to liaise with the Risk Services of the Mutual Liability Scheme when assessing



Section		Best Practice Recommendation
		<p>whether a tree poses a risk.</p> <ul style="list-style-type: none"> • Maintain a register of all complaints/requests received in relation to trees which records details of any action taken by the Council and references when the matter was completed/resolved.
Section 247	Principles Applying to by-laws	<ul style="list-style-type: none"> • Commence Council's next by-law review in January 2016 to allow plenty of time for the new by-laws to be made before the expiration of the existing by-laws.
Section 254	Power to Make Orders	<ul style="list-style-type: none"> • Before issuing any order under this section, ensure Council has sufficient evidence to justify the order being issued • Ensure any directions contained in the order are lawfully valid.
Section 255	Procedure to be followed	<ul style="list-style-type: none"> • Ensure that Council staff who are responsible for roads and infrastructure are aware of the recent amendments to this section which extend the application of the procedure prescribed under this section to orders issued under sections 216 and 218 of the Act.
Section 260	Authorised Officers	<ul style="list-style-type: none"> • Officers who are appointed as authorised officers by Council attend training to ensure they are aware of their legislative powers and functions with respect to enforcement including in relation to investigation procedures and evidentiary matters.
Section 299	Vegetation Clearance	<ul style="list-style-type: none"> • Revise the Policy to include the matters that the Council may consider in exercising its discretion to resolve what is, in effect, a neighbourly dispute, through issuing an order under this section.



Section		Best Practice Recommendation
Local Government Act 1934		
Section 359	Prohibition of Traffic or Closure of Streets or Roads	<ul style="list-style-type: none">• Maintain a register of all road closures made under this section which includes a copy of the relevant Gazette notice.



PART 3 - LEGAL DUE DILIGENCE REPORT

Local Government Act 1999

Section 12

Composition and Wards

Requirement

Council must undertake a review of the composition of the Council, the issue of division, or potential division, of the area of the Council into wards, at least once every eight years.

Compliant

Yes.

Comment

The Council last completed its representation review in 2009 in accordance with the requirements of the Act. As a result of the review, the composition of the Council changed from four wards to two, however, the number of elected members (being nine in total) was retained.

The *Local Government (Accountability Framework) Amendment Act 2009* will amend Section 12(4) of the Act so that the Council must ensure a representation review is undertaken at least once in every relevant period that is prescribed by the Regulations. We understand the Regulations are likely to commence during November 2010, accordingly, we **recommend** Council keep itself informed of the commencement date of amended Section 12(4) given it will have a bearing on the due date for Council's next review.

Section 36

General Powers and Capacities

Requirement

36(3) A Council should in the arrangement of its affairs take reasonable steps to separate its "*regulatory activities*" from its other activities. [NB – Regulatory Activity is defined in Section 4 to mean an activity, which involves the making or enforcement of by-laws, orders, standards or other controls under this Act or another Act.]

Compliant

Yes.

Comment

The Council has achieved this division through its reporting mechanisms, the allocation of responsibility to employees and through budget allocation.

Section 36(4)

A Council must not do anything inconsistent with a law of the State or Commonwealth

Requirement

A Council must not do anything inconsistent with the law of the State or Commonwealth.

Compliant

Yes.



Comment

It is the role of the Chief Executive Officer and senior managers to keep under review the legislative updates provided in the Government Gazette and contained within circulars provided by the Local Government Association and various legal service providers for the purposes of ensuring staff are made aware of all relevant updates.

Staff meetings are held weekly and provide a forum for staff to raise current issues such as legislative amendments that are relevant to and impact upon the Council's practices.

The fact that the Council has commissioned us to conduct this audit serves as a good example of Council assessing its compliance with its legislative obligations.

Finally, a key responsibility for all staff, in particular managers, is understanding and maintaining an awareness of legislative requirements. Accordingly, we **recommend** Council staff continue to obtain legal advice as appropriate.

Section 38

The Common Seal

Requirement

The Common Seal must not be affixed except to give effect to a resolution of the Council.

The affixation of the Common Seal must be attested by the Principal Member and the Chief Executive Officer.

Compliant

Yes.

Comment

The Common Seal is retained by the Chief Executive Officer and the Council maintains a Common Seal Register that records the date that the seal was applied to the corresponding document.

We **recommend** that the Council ensure all of the following information is contained in its Common Seal Register:

- the nature of the document to which the seal is affixed;
- the relevant resolution by Council and minute description/agenda item reference;
- the date the document was executed; and
- the date the entry was recorded in the Register.

Section 41

Committees

Requirement

Council may establish committees and in doing so must determine the reporting and other accountability requirements that are to apply in relation to its committees.

Compliant

Yes.



Comment

The Council has established the following Section 41 Committees:

1. The Economic Development Committee

The Economic Development Committee was established by Council resolution at its meeting of 19 February 2009. The Council also adopted the Terms of Reference for the Committee at this meeting. The Committee's Terms of Reference provides that the Committee shall comprise seven members being four elected members and three community members who represent tourism and economic development interests. The Committee meets on a monthly basis at times it deems appropriate. The Council adopted meeting procedures for the Committee at its meeting of 20 August 2009.

2. The Audit Committee

The Council established the Audit Committee at its meeting of 21 December 2006. The Council also adopted the Terms of Reference for the Committee at this meeting. The Terms of Reference set out the objectives of the Committee, its purpose, membership and meeting details. The Council adopted meeting procedures for the Committee at its meeting of 17 December 2009.

The Terms of Reference provides that the Committee must comprise a minimum of 3 members and a maximum of 5 members. The Committee is currently comprised of three members, being two elected members and one independent member appointed by the Council.

We **recommend** that the Terms of Reference for the Audit Committee be revised to provide for a fixed number of committee members (as opposed to providing that the Committee will comprise a minimum and maximum number of elected members) to ensure there is no ambiguity.

Minutes of the Council's committee meetings are maintained and are available at the Council's offices and on its website. Public notice of all committee meetings is given and the agendas for committee meetings are also available at the Council's offices and on its website.

It is evident from our review of the Terms of References for the two committees that the Council has not delegated authority to the Committee to exercise functions and powers under legislation. Accordingly, the decisions made by Council's committees constitute recommendations to the Council.

Section 42

Single Council Subsidiaries

Requirement

A Council may establish a subsidiary.

Compliant

Not Applicable.

Comment

The Council current does not have any section 42 subsidiaries.



Section 43

Regional Subsidiaries

Requirement

Two or more Councils may establish a regional subsidiary.

Compliant

Yes.

Comment

The Council is constituent Council of the Fleurieu Regional Waste Authority. The Charter for the Authority is dated October 2009. Notices of the Minister's approval of the establishment of the Authority and the Charter for the Authority was published in the Government Gazette on 11 February 2010.

Pursuant to clause 19(4) of Schedule 2 of the Act, the Charter must be reviewed at least once every four years. Clause 8.8.1 of the Authority's Charter provides that the Charter will be reviewed by the constituent Councils at least once in every three years. Accordingly, we **recommend** that the constituent Councils ensure the Charter for the Authority is reviewed before February 2013.

Section 44

Delegations

Requirement

A Council may delegate a power or function vested or conferred under the Act or another Act.

The Council must cause a separate record to be kept of all delegations under this Section and should at least once in every financial year review the delegations for the time being in force. A person is entitled to inspect (without charge) the record of delegations at the principal office during ordinary office hours.

Compliant

Yes.

Comment

Council delegations are reviewed annually in accordance with section 44(6) of the Act. The last annual review of Council's delegations was conducted in June 2010.

The Council maintains a Register of Delegations and Sub-Delegations which we sighted. A review of the content of Council's delegations does not fall within the scope of this audit. That said, the Council previously engaged Wallmans Lawyers to review its delegations and has adopted our recommended delegation templates which delegate powers and functions only.

The resolution adopted by Council with respect to the 2010 delegations review expressly extends delegations to the Chief Executive Officer and to any person who is, from time to time, appointed to that position. This is consistent with Justice Debelle's comments in the Supreme Court case of *Paradise Developments v District Council of Yorke Peninsula*¹ (in which His Honour commented that a delegation to a person occupying a particular position does **not** extend to a person acting in that position unless the instrument of delegation expressly provides this).

¹ Paradise Development Investments Pty Ltd v District Council of Yorke Peninsula [2008] SASC 139



We **recommend** that Council continues to ensure that its delegations are reviewed annually.

Section 45

Principal Office

Requirement

The principal office must be open to the public for the transaction of business during hours determined by the Council.

Compliant

Yes.

Comment

The Council's offices are open during ordinary business hours.

Section 48

Prudential Requirements for Certain Activities

Requirement

A Council must obtain and consider a report that addresses certain prudential issues where it proposes to engage in a (commercial) project –

- (1) where the likely expenditure of the Council over the ensuing five (5) years is expected to exceed 20% of the Council's average annual operating expenses over the previous five financial years;
- (2) where the expected capital cost of the project over the ensuing five (5) years is likely to exceed \$4 million.

Compliant

Not Applicable.

Comment

The Council has not prepared any reports in accordance with section 48, however, Council staff are familiar with the obligation to obtain a prudential report in specified circumstances.

The *Local Government (Accountability Framework) Act 2009* contains amendments to section 48 of the *Local Government Act 1999* which have not yet commenced. Specifically, these amendments include:

- that Council must develop and maintain prudential management policies, practices and procedures for the assessment of projects which are consistent with any regulations made for the purposes of this section;
- clarification that a prudential report must be prepared by someone that is independent of the Council and does not have an interest in the relevant project;
- a definition of what constitutes an "interest in a project".

We **recommend** that Council staff ensure they are familiar with the requirements contained within the proposed amendments and are aware of their anticipated commencement.



Section 49

Contracts & Tenders Policy

Requirement

A Council must prepare and adopt policies on contracts and tenders, including policies on the following –

- (a) the contracting out of services;
- (b) competitive tendering and the use of other measures to ensure that services are delivered cost effectively;
- (c) the use of local goods and services;
- (d) the sale or disposal of land or other assets;

The policies must –

- (a) identify circumstances where the Council will call for tenders for the supply of goods etc;
- (b) provide a fair and transparent process for entering into contracts in those circumstances;
- (c) provided for the recording of reasons for entering into contracts other than those resulting from a tender process.

A person is entitled to inspect (without charge) a policy at the principal office of the Council during ordinary office hours.

[NB – The policies should be available on the internet (Section 132(3)(d)]

Compliant

No.

Comment

We reviewed a copy of the Council's Contracts, Tenders and Purchasing Policy. The Policy was adopted on 16 August 2007 and was last reviewed in August 2008 and September 2009.

The Policy addresses methods of procurement with respect to goods and services including competitive tendering and direct contract. The Policy clearly sets out the purchasing process to be observed in relation to various purchase values. For example, for the purchase of goods and/or services exceeding \$20,000 but not exceeding \$50,000, the Policy provides that a minimum of 3 quotations in writing shall be obtained and that selected or open tendering can also be used, depending on the circumstances. The Policy also sets out staff expenditure authorisation and includes the quotations and tenders process. The Policy is available on the Council's website.

The Policy does not provide for the recording of reasons for entering into contracts other than those resulting from a tender process which is information required under section 49(2)(c) of the Act.

Further, the Policy does not address the sale or disposal of Council land and/or other assets or Council's use of local goods and/or services.

We **recommend** that the Council's Contracts, Tenders and Purchasing Policy be revised to ensure it addresses:

- the sale and disposal of Council land and other assets;



- the requirement to record reasons for entering into contracts other than those resulting from a tender process;
- the circumstances where Council will consider using local goods and services.

We also **recommend** that the Council continue to review its Policy on an annual basis.

Section 50

Public Consultation Policy

Requirement

A Council must prepare and adopt a public consultation policy. It must –

- (a) set out the steps that the Council will follow in cases where the Act requires that a Council must follow its public consultation policy; and
- (b) may set out steps the Council will follow in other cases including Council decision making.

A person is entitled to inspect (without charge) a public consultation policy at the principal office during ordinary office hours.

[NB – The policy should be available on the internet (Section 132(3)(d))]

Compliant

No.

Comment

The Council adopted its Public Consultation Policy in June 2001. The Policy is reviewed annually every June.

The Policy is required to address the legislative public consultation requirements set out under the Act in relation to various matters. To that end, the appendix of the Policy identifies sections of the Act where Council must consult with the community in accordance with the process set out in its Policy. These sections include sections 45, 92, 193(2), 194(2), 197, 198, 202(2), 223 and 232. Section 122, which relates to public consultation in relation to the Council's Strategic Management Plan is incorrectly referred to in this part because section 122 of the Act requires the process under the Act to be observed (as opposed to the process outlined in the Council's Policy) before the Council's adopts its Strategic Management Plan.

The Policy also refers to the matters where the Council is required to undertake consultation in accordance with the process set out under the relevant sections of the Act. These sections include sections 12, 13, 48, 249 and 259. For the reasons expressed above, section 122 of the Act should be referred to in this table.

Further, the Policy does not refer to the Council's obligations to undertake public consultation with regards to the Council's Annual Business Plan (section 123) or, in relation to any decision to change Council's basis for rating as prescribed by section 151(5) of the Act.

The Policy is available at Council's offices and on the Council's website in accordance with section 50(8) and 132(3)(b) of the Act respectively.

We **recommend** that Council:



- amend the Policy to include reference to the Council's obligations to undertake public consultation under sections 123 and 151(5) of the Act; and
- ensure the Policy clearly reflects that public consultation with respect to the Council's Strategic Management Plan is conducted in accordance with the requirements of section 122 of the Act.

Section 60

Member's Declaration

Requirement

Members must at or before the first meeting to be attended by the member make an undertaking in the prescribed manner and form.

Compliant

Yes.

Comment

Each member of the Council made the declaration in the form and manner set out under Regulation 6 of the *Local Government (General) Regulations 1999* relating to Form 2.

The members declaration (or oath of office) occurred at the first meeting of Council following the November 2006 elections which took place on 30 November 2006.

Section 61

Access to Information by Members of Council

Requirement

A member is entitled in connection with the performance of the functions or duties of the member to have access to any relevant Council document.

A request for access should be directed to the Chief Executive Officer or another officer specified by the Chief Executive Officer for the purposes of the Section.

The Chief Executive Officer may indicate to the member that information contained in the document is, or should be considered as, confidential.

Compliant

Yes.

Comment

Access to information is readily given to elected members by the Chief Executive Officer or senior managers of Council. There is little formality in regards to how a request for information is treated and how access is provided. Council staff are, however, aware that the Act does not provide elected members with *carte blanche* access to information and that information should only be provided where it is relevant to the exercise, performance or discharge of the elected member's functions.

We **recommend** that the Council consider developing and adopting an Elected Member Access to Council Information Policy which sets out a procedure under section 61 where elected members can request access to information. A proforma for a request for information can also be adopted as part of this Policy. The Policy should also refer to elected member's obligations with respect to confidential information.



In addition, we **recommend** the Council develop and maintain a register to track and identify requests by elected members for access to documents, which includes reference to the document requested.

Section 62

General Duties

Requirement

A member of a Council must at all times act –

- (i) honestly in the performance and discharge of official functions and duties;
- (ii) with reasonable care and diligence etc;

A member or former member must not make improper use:

- (i) of information ... so as to gain, directly or indirectly an advantage for himself or herself or another person or to cause detriment to the Council;
- (ii) or his or her position as a member of the Council ... so as to gain etc.

These provisions extend to members of Section 41 committees and board members of subsidiaries.

Compliant

Yes.

Comment

Elected members general duties are complementary to those of a public officer under the *Criminal Law Consolidation Act 1935*.

Council officers have been offered training with respect to their duties under the Act and the Council maintains a register of the training opportunities offered to elected members which details the elected members that have chosen to attend various training sessions.

Examples of training attended by members include training in relation to governance and conflict of interest for committee members which was conducted during 2009.

We **recommend** that as a matter of best practice, following the 2010 elections, to ensure all members are aware of their general duties under the Act, members undertake training in relation to them and the duties of a public officer under the *Criminal Law Consolidation Act 1935*. Any such training should also address other relevant topics such as conflict of interest, confidentiality, meeting procedures and the administrative principles of law pertaining to good decision making. Further, we **recommend** that training be provided in these areas at least annually to ensure members have complete understanding of their functions and duties under the Act.



Section 63

Code of Conduct – Members

Requirement

A Council must prepare and adopt a code of conduct to be observed by members of the Council. A Council must within twelve (12) months after each periodic election complete (and, as appropriate implement) a review of its code of conduct etc.

A person is entitled to inspect (without charge) the code of conduct of a Council at the principal office during ordinary office hours.

[NB – Council should make the code available on the internet (Section 132(3)(d)]

Compliant

Yes.

Comment

Council's Code of Conduct for Elected Members was last reviewed in 2009. The Code was reviewed within 12 months of the last general election and it reinforces Council's expectations in relation to the behaviour displayed by its elected members and their obligations under the Act. The Code sets out the manner in which alleged breaches of the Code are to be reported. Specifically, complaints or allegations relating to breaches of the Code are to be made in writing to the Council Executive, which is (the Council executive comprises elected members and Council staff) responsible for investigating the breach where appropriate and, for preparing a report together with recommendations for Council's consideration.

The Code is available at the Council's principal office in accordance with section 63(4) and, is also available on the internet and in accordance with section 132(3)(c) of the Act.

We **recommend** that when the Code is next adopted following the November 2010 elections (this must occur before November 2011) that the Code be amended to include further detail with respect to the complaint handling process. In reviewing the Code we **recommend** that the Council have regard to the detail included in the LGA's model Code of Conduct for Elected Members and the associated Complaint Handling Procedure.

Section 64

Register of Interests – Members

Requirement

Primary return to be lodged by members within six weeks of election or appointment.

Ordinary returns must be lodged within 60 days of 30 June in each year.

If the member fails to submit the relevant return Chief Executive Officer must as soon as practical notify the member by registered mail of the fact and the consequence if the return is not submitted.

Section 68 requires the Chief Executive Officer to maintain a register of interests.

Section 70 provides that a person is entitled (without charge) to inspect the Register at the principal office during ordinary office hours.



A person is entitled to a copy of the Register.

An application to inspect the Register or to obtain a copy must be in writing to the Chief Executive Officer.

Section 72(1) applies this Division to committee members if the council so resolves.

Section 72(2) provides that the charter of a subsidiary may apply this Division to the board members.

Compliant

Yes.

Comment

The Council maintains a register of the ordinary and primary returns of elected members. We sighted the returns of the elected members and all were returned within the requisite time frame.

We **recommend** that Council develop a proforma letter to be sent to elected members who have failed to return their returns in accordance with section 68(2) of the Act, notifying them of their failure to submit a return and advising of the repercussions of doing so (i.e. loss of office).

Further, given the serious consequences of failing to submit a return, it is strongly recommended that the due dates for the return of the primary and ordinary returns be diarised and, that the relevant senior manager follow up the returns of all forms within the required timeframe.

We **recommend** that where any such requests are received, Council maintain a register of these requests and require any such request to be received in writing.

The Council has not extended the application of the requirements of this section to members of its committees.

Section 73-74

Conflict of Interest (Chapter 5, Part 4, Division 3)

Requirement

Sections 73 and 74 provide a comprehensive code on what matters constitute a conflict of interest and the consequences for the member who finds him or herself with a "*prescribed interest*".

Compliant

Yes.

Comment

There is no statutory obligation upon the Chief Executive Officer to ensure that elected members are aware of this division of the Act. However, as a matter of good governance, elected members and independent members of the Council's committees must be familiar with the application of these provisions and, where necessary, receive training in relation to them. The elected members and Council committee members have received training in regards to their conflict of interest obligations.

We were provided with 5 examples of a conflict of interest having been declared at a Council meeting. In all instances, the minutes reflect that the relevant member declared an interest and provided full and accurate details of the relevant interest. For example, the minutes of the meeting held on 15 April 2010 evidence that Council Aistrophe declared an interest



in relation to item 15.5 by virtue of her position as Manager of the Beachside Caravan Park, Normanville. Item 15.5 of the agenda related to the Caravan Park and it is evident that Councillor Aistroppe did indeed have an interest under the Act in relation to the matter which was properly declared in the circumstances. The minutes indicate that Councillor Aistroppe left the meeting whilst the matter was being considered by the Council.

We **recommend** that elected members continue to ensure that when declaring a conflict of interest, the exact nature of the disclosure (i.e. the details of the relevant interest) be declared and recorded in the minutes so that a person reading the minutes can assess whether the elected member would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or non pecuniary benefit or, suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment or non-pecuniary detriment.

For example, if a member declares an interest in relation to a matter impacting his/her employer, it is necessary to record in the minutes enough information to ensure that it is evident that the decision for Council's consideration will result in either the member or his/her employer gaining/suffering a direct or indirect financial benefit/detriment or a non-financial benefit/detriment.

Furthermore, we **recommend** that all members of the Council undertake conflict of interest training following the November elections to ensure that they have an accurate understanding of their obligations under the Act.

Section 75

Committees and Subsidiaries

Requirement

The provisions of this Division (conflict of interest) extend to members of committee and to Board members of subsidiaries.

Compliant

Yes.

Comment

The Council has appointed one independent member to its Audit Committee and three independent members to its Economic Development Committee. All committee members have received training with respect to their conflict of interest obligations under the Act. Specifically, members of the Economic Development Committee received conflict of interest training in July 2009 and the independent member of the Council's Audit Committee attended conflict of interest training in May 2008.



Section 76

Allowances

Requirement

A Council must at its first ordinary meeting after each periodic election fix the rates of the annual allowance for the ensuing 12 months. The rates will be reviewed on an annual basis.

Compliant

No longer applicable.

Comment

This section was recently amended by the *Local Government (Accountability Framework) Act 2009* so that the Remuneration Tribunal is now responsible for setting the annual allowance of elected members.

Section 77

Reimbursement of Member Expenses

Requirement

The Council may establish a policy in respect of reimbursement of certain types of expenses (Section 77(1)(b)). A person is entitled to inspect a policy at the principal office during ordinary council hours.

Compliant

Yes.

Comment

The Council has adopted an Elected Members Allowances and Support Policy which was last reviewed on 19 June 2008.

The Policy is available at Council's offices and on the Council's website. The Policy clearly sets out elected members' entitlements to reimbursements and, requires elected members to provide evidence of expenses incurred to support reimbursement for claims. Claims for reimbursement are required to be submitted to the Chief Executive Officer on forms Council has developed for this purpose.

The Policy provides that expenses reimbursed to a Council member under section 77 of the Act will be recorded in the Council's Register of Allowances and Benefits maintained under section 79 of the Act.

We **recommend** that the Policy be reviewed to reflect the recent changes to section 76 of the Act in relation to elected member allowances to refer to the fact that allowances will be set by the Remuneration Tribunal.

Section 78

Provision of Facilities and Support

Requirement

A Council may provide facilities and other support to its members –

- the Council must specifically resolve that the provision of the facilities or services is necessary or expedient to the performance or discharge of official functions and duties;
- facilities and services must be available to members on a uniform basis;
- any property provided to a member remains the Council's.

A member must not use a facility or service provided by the Council for a



purpose unrelated to the performance or discharge of official functions unless that use has been approved by the Council and the member has agreed to reimburse the Council for any additional costs or expenses associated with this use.

Compliant

Yes.

Comment

The Council's Elected Members Allowances and Support Policy addresses the facilities and forms of support available to elected members in the performance and discharge of their official functions and duties.

For example, the Policy addresses reimbursement for travelling expenses and for dependent care associated with attendance at Council meetings.

Section 79

Register of Allowances – Benefits

Requirement

The Chief Executive Officer must ensure the Register of Allowances and Benefits is kept.

The Register must contain –

- the annual allowance payable to the member;
- details of expenses reimbursed under Section 77(1)(b);
- details of other benefits paid or payable to, or provided for the benefit of the member by the Council.

The Chief Executive Officer must ensure that the Register records –

- changes in the allowance or benefit payable to, or provided for the benefit of the members,
- the provision of a reimbursement (other than under Section 77(1)(a)) or benefit not previously recorded in the Register.

Compliant

No.

Comment

We sighted the Council's Register of Allowances and Benefits for 2009/2010. The register comprises spreadsheets for each elected member which details the allowances and disbursements paid to them during the financial year. However, the registers viewed by us do not record changes in the allowances payable to elected members over time (i.e. over a number of years) as they represent only the 09/10 financial year.

We **recommend** the register be updated to include the spreadsheets maintained for every year so as to ensure changes in allowances are recorded as per the requirements of the Act.



Section 80A

Training and Development

Requirement

A Council must prepare and adopt a training and development policy for its members.

The policy must be aimed at assisting members in the performance and discharge of their functions and duties.

A Council may from time to time alter its policy, or substitute a new policy.

A person is entitled to inspect (without charge) a policy at the principal office of the Council during ordinary business hours.

A person is entitled, on payment of a fee fixed by the Council, to a copy of the policy.

Compliant

Yes.

Comment

The Council's elected Member Training and Development Policy was adopted by Council on 15 June 2006 and has since been reviewed in September 2007, June 2008 and June 2009. In its Annual Report, the Council is required to report upon the training and development activities undertaken by members of the Council. This obligation is referred to in the Policy and was also addressed in the Council's Annual Report.

The Council employs a range of strategies to ensure adequate training is provided to its members including seminars and briefing sessions, attendance at seminars and conferences offered by organisations such as the Local Government Association and other private providers and through arranging internal workshops.

The Council maintains records of all training attended by elected members.

We **recommend** that the Council consider developing a 12 month training and development program for elected members. This will be especially beneficial for new members elected to Council following the November 2010 elections.

Section 81

Frequency & Timing of Ordinary Meetings

Requirement

Ordinary meetings at least monthly.

Compliant

Yes.

Comment

Council meets monthly on the third Thursday of the month at 10am. Details of Council meeting times are included on the Council's website.



Section 83

Notice of Ordinary or Special Meetings

Requirement

Section 83 describes the requirement and content of notices calling meetings.

The Chief Executive Officer must maintain a record of all notices of meetings given under this Section.

Compliant

Yes.

Comment

Notice of Council meetings is included as part of the agenda and includes a date, time and place of the meeting.

Section 84

Public Notice of Council Meetings

Requirement

Chief Executive Officer must cause a copy of the notice and agenda to be displayed at the principal office –

- in the case of ordinary meetings – at least three clear days prior to the meeting
- in the case of special meetings – as soon as practicable.

The notice and agenda must be kept on public display until after the completion of the relevant meeting.

A person is entitled to a copy of the notice and agenda.

[NB – Section 123(3)(a) – A Council should make the agenda available on the internet.]

Chief Executive Officer must ensure reasonable number of copies of any documents or reports provided to members are available for inspection by members of the public.

[NB – Exceptions for confidential items.]

Compliant

Yes.

Comment

Public notice of Council meetings is displayed at Council's offices and on the Council's website.

Section 87

Calling & Timing of Committee Meetings

Requirement

Chief Executive Officer must ensure that each member of the committee is given notice of an ordinary meeting of the committee –

- in the case of ordinary meeting – at least three clear days prior to the meeting
- in the case of special meetings – at least four hours.

The Chief Executive Officer must maintain a record of all notices given.

[NB – Regulations may modify the application of Section 87 for



committees not performing regulatory activities.]

Compliant

Yes.

Comment

Council committee meetings take place on a scheduled basis. Notice of committee meetings is given the same was as Council meetings.

Section 88

Public Notice of Committee Meetings

Requirement

Chief Executive Officer must cause a copy of the notice and agenda to be displayed at the principal office –

- as soon as practicable after the time that the notice is given to members.

The notice and agenda must be kept on public display until after the completion of the relevant meeting.

A person is entitled to a copy of the notice and agenda.

[NB – Section 132(3)(a) – A Council should make the agenda available on the internet.]

Chief Executive Officer must ensure reasonable numbers of copies of any documents or reports provided to members are available for inspection by members of the public.

[NB – Exceptions for confidential items.]

Compliant

Yes.

Comment

Notice of committee meetings is provided at the Council's offices and on the Council's website.

Section 90

Meetings to be held in Public except in Special Circumstances

Requirement

If an order is made to exclude the public from a meeting a note must be made in the minutes of the making of the order and the grounds on which it was made.

Compliant

Yes.

Comment

We sighted examples of Council minutes where section 90 had been relied upon to exclude the public. All orders reviewed are consistent with the LGA Model Confidentiality Orders in that they correctly refer to section 90(2) of the Act, state the grounds under section 90(3) upon which the Council excluded the public from the meeting and provide the reasons as to why such grounds are relevant to the matter before the Council. The minutes also correctly include the names of persons entitled to remain in the Chamber during Council's consideration of the matter.

The Council maintains a register of confidential items which is reviewed annually. We **recommend** that the Council review its use of section 90



annually as a report to the use of section 90(2) by the Council and Council committees is required to be included in the Annual Report of the Council in accordance with Schedule 4 of the Act.

Section 91

Minutes and Release of Documents

Requirement

The Chief Executive Officer must ensure that minutes are kept of the proceedings at every meeting of the Council or a Council committee.

Obligations to provide copies to members and on public display for a period of one month.

Exception for matters dealt with in a confidential basis under Section 90 where the Council so resolves.

The Council may not resolve to keep confidential –

- (1) remuneration or conditions of service of employees;
- (2) the identity of a successful tenderer for the supply of goods or the provision of services, or reasons adopted by the Council for the selection of a successful tenderer;
- (3) the identity of land acquired or disposed of or the reasons for the acquisition or disposal.

Compliant

Yes.

Comment

We sighted examples of Council minutes where section 91 had been relied upon. The orders were each made following a section 90(2) order and specify the duration that the relevant item is to remain confidential. Council maintains a register which details all confidential items, including the date the order was made and the period for which the item is to remain confidential.

We **recommend** that where Council makes orders that operate for a period of 12 months or more, the Council ensures that it conducts a review of the document that is subject to the confidentiality order at least once every year. We **recommend** Council ensure this review be undertaken before the expiration of 12 months to ensure that any 12 month orders do not expire inadvertently.

Section 92

Access to Meetings & Documents – Code of Practice

Requirement

A Council must adopt a code of practice relating to the principles, policies, procedures and practices that the Council will apply for the purposes of Parts 3 and 4 of Chapter 6.

The Council must, within twelve months after the conclusion of each periodic election, review the operation of its code of practice.

Prior to any proposed alteration to the code or substitution of a new code the Council must follow the steps in its public consultation policy.

A person is entitled to inspect (without charge) the code of practice at the



principal office during ordinary office hours.

[NB – The Council should make the code available on the internet (Section 132(3)(c)).

Compliant

Yes.

Comment

The Council's Code of Practice was first adopted in June 2001 and was last reviewed on 18 June 2009. The Code is available for inspection at Council's offices and on the Council's website.

The Council is required to review its Code within 12 months of the periodic election. Accordingly, we **recommend** Council undertake a review of its Code before November 2011.

Section 93

Meeting of Electors

Requirement

The Council may convene a meeting of electors of the area or a part of the area. Section 93 sets out the entitlement to attend and vote.

The Chief Executive Officer must ensure that minutes of all meetings of electors are kept.

Compliant

Not Applicable.

Comment

We were informed that there had been no meetings of electors in the term of the current Council.

Section 94A

Meeting Information on Website

Requirement

The Chief Executive Officer of a Council must, so far as is reasonably practical, make available for inspection on the internet an up to date schedule of the dates, times and places set for meetings of the Council and Council committee.

Compliant

Yes.

Comment

The Council maintains details of its upcoming Council and committee meetings on its website. Further, the agendas for Council and committee meetings, which are available on the Council's website, set out the place of Council and committee meetings.

Section 101

Delegation by Chief Executive Officer

Requirement

The Chief Executive Officer may delegate (or sub-delegate) a power or function vested or conferred in or on the Chief Executive Officer under the Act.

Compliant

Yes.



Comment See comments for section 44 above.

Section 103 **Appointment etc by Chief Executive Officer**

Requirement The Chief Executive Officer is responsible for appointing, managing, suspending and dismissing the other employees of the Council.

The Chief Executive Officer must ensure that an appointment is consistent with strategic policies and budgets approved by the Council.

Compliant Yes.

Comment The Manager Corporate and Community Services take responsibilities for HR processes and in conjunction with the Chief Executive Officer, advises the Council accordingly with respect to new recruitments. The appointment of any new staff is consistent with the Council's budget allocations. Council will use the services of a recruitment agency for the appointment of senior positions.

As a matter of best practice, we **recommend** the Council consider developing and adopting a HR Policy which outlines the Council's approach to recruitment and termination.

Section 105 **Register of Remuneration, Salaries & Benefits**

Requirement The Chief Executive Officer must ensure that a record ("the Register of Salaries") is kept.

A person is entitled to inspect the Register at the principal office during ordinary office hours.

Compliant Yes.

Comment The register is maintained and is compliant with the requirements of section 105. The register is available for public inspection and is updated on an ongoing basis to reflect changes in employment.

Section 106 **Certain Periods of Service to be regarded as Continuous**

Requirement Section 106 and Regulation 17 of the Local Government (Financial Management) Regulations 1999 prescribe how sick leave and long service leave entitlements must be dealt with for certain employees who leave the Council and take up employment with another Council.

Compliant Yes.

Comment In relation to sick leave, the Council makes no payment to the recipient until formally requested. With respect to long service leave, the Council makes payment at that time of the staff member's appointment to the



recipient Council upon completion of appropriate forms.

Section 107

General Principles of Human Resource Management

Requirement

The Chief Executive Officer must ensure that sound principles of human resource management are applied to employment in the administration and must take reasonable steps to ensure that those principles are known to all employees.

Compliant

Yes.

Comment

The Council has in place a number of Occupational, Health, Safety and Welfare Policies which staff are made aware of during their induction. The Council has also developed an induction checklist which ensures new employees are updated with respect to the relevant matters across the organisation including in relation to appropriate policies and the Council's Code of Conduct for Employees.

Section 109

General Duty (of Employees)

Requirement

An employee of a Council must at all times act honestly in the performance of official duties.

An employee of a Council must at all times act with reasonable care and diligence in the performance of official duties.

Compliant

Yes.

Comment

Staff members attend training in relation to their legislative duties on an as needs basis and records are maintained in relation to the training staff members have undertaken.

Section 110

Code of Conduct

Requirement

A Council (by 1 January 2001) must prepare and adopt a Code of Conduct to be observed by the employees of the Council.

A code must not diminish a right or employment condition under the Act, award, industrial agreement or contract of employment.

The Council must take reasonable steps to consult with its employees and with any registered industrial association when preparing or revising its code.

The Council must review the Code within twelve (12) months after each general election.

A person is entitled to inspect (without charge) code at the principal office during ordinary office hours. The Council must make the Code available on the internet (Section 132(3)(c)).



Compliant

No.

Comment

The Council's Code of Conduct for Employees is dated December 2009. The Code is not currently available on the Council's website, however, it is available at the Council's offices.

The Code is a comprehensive document which outlines the expectations Council has of its staff. Breaches of the Code are managed through performance management processes.

We **recommend** that the Council ensure that the Code is reviewed before November 2011 in accordance with the requirements of section 110(2). Further, we **recommend** that in undertaking a review, the Council ensure that:

- express reference to the employee's general duties under the Act be included in the Code;
- employees and registered industrial associations are consulted as required by section 110(5) of the Act; and
- the Code is amended to include further details with respect the receipt and/or benefits by staff, the duties of staff (as public officers) under the *Criminal Law Consolidation Act 1935* and to reinforce conflict of interest obligations.

Further, we **recommend** Council ensure the Code is made available on the Council's website to achieve compliance with section 132(3)(c) of the Act.

Section
111-119

Register of Interests

Requirement

The Chief Executive Officer must maintain a Register of Interest in respect of the Chief Executive Officer and those staff declared by the Council to be subject to the operation of the Division.

Returns to be completed by staff must be submitted within 60 days after 30 June in each year. The Chief Executive Officer must notify a staff member in writing of their failure to submit the Return. Only members of the Council may inspect the Register.

Compliant

Yes.

Comment

We sighted the returns of the Chief Executive Officer which were returned within the prescribed period. We were informed that the Council has not received any requests from an elected member to review the register.

We **recommend** that in the event that a request to review the register is received from an elected member, the Chief Executive Officer ensure that the member is advised of the onerous confidentiality obligations that must be adhered to. In addition, we **recommend** that all requests to review of the register are recorded.



Section 120

Conflict of Interest

Requirement

Section 120 prescribes a regime which applies in circumstances where the Chief Executive Officer and any staff have an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties.

Compliant

Yes.

Comment

The Council maintains a Gifts and Benefits Register and we were informed that Council staff generally have an understanding of their obligations under the Act. Council staff have not received conflict of interest training and the Manager, Corporate and Community Services expressed the view that they would benefit from training in this area.

We **recommend** conflict of interest training be provided to all staff of the Council to ensure staff have a thorough understanding of their obligations under the Act and of the probity issues relevant to public office.

Section 121

Protection from Personal Liability

Requirement

Liabilities of employees for honest acts or omissions in the (purported) exercise, performance or discharge of powers, functions or duties lies with the Council.

Compliant

Yes.

Comment

The Council, through its membership of the Local Government Association Mutual Liability Scheme, insures itself against these risks.

Section 122

Strategic Management Plans

Requirement

By July 2001 Council was required to adopt plans for the management of its area.

This section was amended on 25 January 2007.

The plans must identify the Council's objectives for the area for at least 4 years.

The Council must undertake a comprehensive review of its plans within 2 years after each general election of Council.

Council must adopt a process to ensure members of the public are given a reasonable opportunity to be involved in the development and review of the plans.

Compliant

No.

Comment

Council's Strategic Management Plan, entitled '*Strategic Directions 2007-*



2012', is dated September 2007. The Plan identifies the outcomes and targets set for a number of key objective areas.

The Council has also adopted a Long Term Financial Plan and a Long Term Asset Management Plan however, the Asset Management Plan is not yet complete as it does not address the Council's building and recreation assets. The Plans are available for inspection on the Council's website and at the Council's offices.

The Council is required to undertake a comprehensive review of its Strategic Plan within two years after each general election. Accordingly, we **recommend** that Council undertake a review of the Plan before November 2012.

We also **recommend** Council complete all components of its Long Term Asset Management Plan as soon as possible.

Section 123

Annual Business Plans and Budgets

Requirement

A Council must have an annual business plan and a budget for each financial year.

This section was amended on 25 January 2007.

1. Each annual business plan of a Council must –
 - a. include a summary of a Council's long term objectives (as set out in its Strategic Management Plans), and
 - b. include an outline of –
 - i. the Council's objectives for the financial year, and
 - ii. the activities that the Council intends to undertake to achieve those objectives, and
 - iii. the measures (financial and non-financial) that the Council intends to use to assess the performance of the Council against its objectives over the financial year, and
 - iv. assess the financial requirements of the Council for the financial year and, taking those requirements into account, set out a summary of its proposed operating expenditure, capital expenditure and sources of revenue, and
 - v. set out the rate structure and policies for the financial year, and
 - vi. assess the impact of the rate structure and policies on the community based on modelling that has been undertaken or obtained by the Council, and
 - vii. take into account the Council's long term financial plan and relevant issues relating to the management and development of infrastructure and major assets by the Council, and



- viii. address or include any other matter prescribed by the Regulations.
2. Before a Council adopts an annual business plan, the Council must –
 - a. prepare a draft annual business plan, and
 - b. follow the relevant steps set out in its public consultation policy, taking into account the requirements of Section 123(4).
3. The budget of a Council must –
 - a. be considered in conjunction with the Council's annual business plan (and must be consistent with that plan, as adopted), and
 - b. be adopted by the Council after the Council has adopted its annual business plan.
4. Council's annual business plan and budget must be adopted by a Council after 31 May for the ensuing financial year and before 31 August (excepting a case involving extraordinary administrative difficulty).
5. Copies of the annual business plan and the budget must be available for inspection (without charge) at the Council's principal office.

Compliant

Yes.

Comment

The Council adopted its Annual Business Plan at its special meeting in June 2010 in compliance with section 123(6). The Council undertook a comprehensive public consultation process including distributing a 2010/2011 draft Annual Business Plan consultation newsletter to all ratepayers, and published a notice advertising the availability of the Plan for inspection in the local newspaper, the Victor Times, on the Council's website and in the Council's monthly newsletter.

Copies of the draft Annual Business Plan and Budget were made available at the Council's offices and on its website. The Council held a number of community information sessions (being 4 in total) during April and May 2010 to ensure the community was adequately informed of the draft Plan. The Council provided the public with an opportunity to provide written submissions in relation to the draft Plan and allocated a time for the public to make verbal submissions in relation to it during the Council meeting of 17 June 2010.

We have reviewed the Council's Annual Business Plan and it contains all the information required under section 123(2) of the Act.

Section 124

Accounting Records

Requirement

A Council must –

- keep such accounting records as correctly and adequately record and explain the revenues, expenses, assets and liabilities of the Council; and
- keep its accounting records in such a manner as will enable the



preparation and provision of statements that present fairly financial and other information and so that the financial statement of the Council may be conveniently and properly audited.

Compliant

Yes.

Comment

The Council's accounting records are kept in accordance with accounting standards and certified by the Council's auditors.

We have not made any further enquiry into the efficiency or accuracy of the Council's records given this is the domain of the Council's auditors.

Section 125

Internal Control Policies

Requirement

Council must ensure that appropriate policies, practices and procedures of internal control are implemented to ensure adherence to management policies to safeguard the Council's assets and to secure the accuracy and reliability of the Council's records.

Compliant

Yes.

Comment

Internal Controls are addressed in the Council's Policy Manual. However, we were informed that the Council is yet to finalise and adopt a more detailed internal control policy. This will be the priority of the Council's Audit Committee in moving forward. The Council has also adopted a Whistleblower Protection Policy which is an important component of effective internal control systems.

We **recommend** that the Council finalise and adopt a detailed Policy that addresses the management of the Council's resources and sets out the internal control measures implemented by the Council to ensure that its resources are not misused or misappropriated.

Section 126

Audit Committee

Requirement

A council must have an audit committee (mandatory from 1 July 2007).

Compliant

Yes.

Comment

The Council has established an Audit Committee. The role of the Committee, as set out in its Terms of Reference, includes monitoring financial reporting, internal controls and risk management systems and liaising with the Council's external auditor. Further, the functions of the committee as set out in its Terms of Reference are consistent with the functions of an Audit Committee under section 126(4) of the Act.

The Council's committee comprises two elected members and one independent member who has suitable skills and qualifications.



Section 127

Financial Statements

Requirement

A Council must before the second Friday in September prepare –

- (a) an operating statement;
- (b) a statement of financial position at the end of the financial year;
- (c) a statement of changes in equity;
- (d) a statement of cash flows;
- (e) appropriate notes and other explanatory documentation to be read in conjunction with these statements.

The Regulations prescribed the content of the documents. Copies of audited financial statements must be sent to –

- (a) The Minister;
- (b) the presiding member of the SA Local Government Grants Commission.

on or before 30 November.

Copies of the audited statement must be available for inspection (without charge) at the Council's principal office during ordinary office hours.

Compliant

Yes.

Comment

The Council's minutes evidence that the financial statements for the year ending 30 June 2009 were adopted in November 2009 and were forwarded to the Minister within the required time frame.

At the time of conducting this audit, the Council's statement for the year ending 30 June 2010 were in the process of being prepared.

Section 128

Auditor

Requirement

Council must have an auditor appointed up to five years pursuant to written agreement.

Compliant

Yes.

Comment

At its meeting of 20 March 2008, the Council appointed Dean Newbery and Partners as external auditors for the 2008/2009 to 2012/2013 financial years.

Section 129

Conduct of Annual Audit

Requirement

Section 129 prescribes how the audit will be conducted. The auditor's reports must be provided by the Chief Executive Officer to the Members of the Council

Audit must be completed within two (2) months of date of preparation of



the Section 127 financial statements.

Compliant

Yes.

Comment

The conduct of the Annual Audit must be completed within 2 months from the date of preparation of the Council's financial statements. We **recommend** that Council ensure the Annual Audit is completed within this time frame to ensure of the financial statements can be forwarded to the Minister before 30 November 2010.

Section 131

Annual Report to be Prepared and Adopted

Requirement

By 30 November the Council must prepare and adopt an annual report containing the material specified in Schedule 4 to the Act and any other prescribed material relating to the operations of the Council for the financial year ending on the preceding 30 June.

A copy must be submitted to the Presiding Member of both Houses of Parliament and the South Australian Local Government Grants Commission before 31 December.

Copies of the annual report must be available for inspection (without charge) at the Council's principal office during ordinary office hours.

Compliant

No, with respect to the 2008/2009 Annual Report.

Comment

We reviewed the Council's 2008/2009 Annual Report, which was adopted by the Council on 19 November 2009.

The Annual Report does not contain the freedom of information statement detailing the number of applications for access to information the Council received under the *Freedom of Information Act 1991* and the outcome of those applications (if any). That said, Schedule 4 has now been amended so that the Freedom of Information Statement is no longer required to be included in the Council's Annual Report.

The 2008/2009 Annual Report is available on the Council's website, however, the financial statements for the year ending 30 June 2009 are not attached to the Report.

Section 132

Access to Documents

Requirement

A member of the public is entitled to inspect specified documents and to copies of specified documents.

Compliant

No.

Comment

The Council maintains a user-friendly website. The majority of the information required to be made available for inspection by the public under section 132(3) is available for inspection at the Council offices and upon the Council's website. The Council's Code of Conduct for Employees and the most recent information Statement under the



Freedom of Information Act 1991 (which must be made available on the internet under section 132(3)(j) of the Act unless it is provided as part of the Annual Report, which it is not) are not, however, available on the Council's website. Accordingly, we **recommend** that the Council ensure this information is published on its website.

Section 132A **Related Administrative Standards**

Requirement A Council must ensure that appropriate policies, practices and procedures are implemented and maintained in order to ensure compliance with any statutory requirements and to achieve and maintain standards that reflect good administrative practices.

Compliant Yes.

Comment The Council has adopted and implemented a wide range of administrative policies. Comments regarding specific policies are made throughout this report. The Council conducts an annual policy review in June.

As a matter of best practice, we **recommend** that the Council consider developing and maintaining a key dates diary which is accessible to all relevant staff and includes the dates for review of Council's policies and procedure documents. The diary should also include other key dates such as the delegations review and return dates for ordinary returns.

Section 134 **Borrowing & Related Financial Arrangements**

Requirement A Council may borrow etc
Before a Council enters into the following types of financial arrangements it must:

Obtain independent and impartial advice.

Adopt risk management policies controls and systems by a resolution passed by a 2/3 majority of the Council –

- (i) interest rate swaps
- (ii) forward interest rate agreements
- (iii) interest rate options.

Compliant Yes.

Comment We have reviewed the Council's Treasury Management Policy which was adopted in December 2007 and last revised in December 2009. The Policy sets out the principles that Council will take into account before borrowing funds. The Policy addresses fixed interest rate borrowings and variable interest rate borrowings and provided interest only loans are suitable if Council wishes to borrow a set amount of funds for a known period and makes interest payments during the term of the loan with the



principal having been repaid at maturity. As a general rule, Council sets range limits for both fixed and variable interest rate borrowings to achieve its objective of minimising net interest costs on average over the longer term whilst at the same time, managing interest rate movement risks within acceptable limits.

The Council liaises with the Local Government Finance Authority in relation to its borrowings.

Section 135

Ability of a Council to give Security

Requirement

Council may provide various forms of security. Specific requirements exist in respect of debentures.

Compliant

Yes.

Comment

Decisions as to whether Council will provide security, such as to a community group are made by resolution of Council following its consideration of a detailed report and the recommendations of the Audit Committee. We were informed that the Council utilises the LGFA debenture loans documentation.

Section 139

Investment Powers

Requirement

Councils may invest money. Section 139 details the matters to be considered before making an investment.

Compliant

Yes.

Comment

The Council's Treasury and Management Policy addresses Council's investments and states that any funds that are not immediately required for operational needs and cannot be applied to either reduce existing borrowings or avoid the raising of new borrowings will be invested. Council may from time to time, invest surplus funds in to deposits within the Local Government Financial Authority and/or bank interest variable deposits. These investments may be authorised by the Chief Executive Officer under delegated authority, however any other investments require specific approval of Council. The Council receives a specific report regarding treasury management performance relative to the criteria specified in its Policy during each budget review.

Section 140

Review of Investments

Requirement

The Council must annually (at least) review the performance of its investments.

Compliant

Yes.



Comment The Council reviews its investments on a quarterly basis.

Section 142 **Duty to Insure Against Liability**

Requirement Council must take out and maintain insurance cover to a minimum of \$50 million (Regulation 18 of the Local Government (Financial Management) Regulations 1999). Membership of the Local Government Association Mutual Liability Scheme satisfies this requirement.

Compliant Yes.

Comment The Council is a member of the Local Government Association Mutual Liability Scheme.

Section 143 **Writing Off Bad Debts**

Requirement Council may write off bad debts only if the Chief Executive Officer has certified as required by Section 143. If the power to write off debts is delegated the Council must set an upper limit to the authority.

Compliant Yes.

Comment The Council has a Debt Recovery Policy which was adopted on 18 March 2010 and is next scheduled for a review in February 2011.

The Policy sets out the principles that will apply in the management and recovery of debt by the Council. The Policy also sets out the debt collection practices that apply to all sundry debtors that are not in dispute and have been outstanding for 30, 60 and 90 days.

The Chief Executive Officer has delegated authority to write off bad debts up to the amount of \$5,000 in respect of any one debt in the circumstances prescribed under the Act.

Section 153 **Declaration of General Rate**

Requirement In declaring the rate the Council must consider issues of consistency and comparability across Council areas.

A Council must not declare a general rate until after it has adopted its annual business plan and its budget for the financial year to which the rate relates.

A Council must not declare a rate for a particular financial year without first adopting the valuations that are to apply to land within its area for rating purposes for that year (Section 167(1)).

This section was amended on 25 January 2007.

Compliant Yes.



Comment Council's most recent rate declaration was legally vetted and approved by Wallmans Lawyers.

Council declared its rates for the 2010/2011 financial year at a special meeting on 24 June 2010. Minutes of this meeting confirm that the Council followed the necessary chronological process in adopting the Annual Business Plan, Budget, valuations then declaration of rates and charges. Notice of the Council's declaration of rates was published in the Government Gazette on 8 July 2010.

**Section
156-158**

Differential Rating & Special Adjustments

Requirement Procedures detailing how a Council may undertake differential rating.

Compliant Yes.

Comment The Council declares differential rates based upon land use pursuant to Section 156(1)(a) of the Act. The Council fixed a minimum rate of \$650 for the 2010/2011 financial year.

Division 5

Rebate of Rates

Requirement Formula for rate rebates.

Compliant Yes.

Comment All proposed rebates (both mandatory and discretionary) including all additional amounts over the 75% mandatory threshold where appropriate, are set out in reports to Council which distinguishes between what is mandatory and what is discretionary.

Rebates are determined on an annual basis and any person who wishes to seek a rebate of rates must make a written application to the Council. Application forms are attached to the Policy.

The Council's Rating Policy 2010, informs the public of the Council's ability to provide rate rebates under the Act. We **recommend** that the Council consider including further detail within the policy regarding the legislative and policy criteria for determining discretionary rebates and consider attaching the application forms which may be used to apply for a rebate to the policy.

Division 6

Valuation of Land for the Purpose of Rating

Requirement Procedures for adopting valuations prior to declaring rates and objecting to valuations.



Compliant Yes.

Comment Valuations provided by the Valuer-General were adopted by the Council for the purpose of declaring the rates at its special meeting on 24 June 2010. The Council's rates notice conforms with the requirements of the Act and Regulations by including advice to a rate payer about the objection procedure in respect of adopted valuations.

Section 170 **Notice of Declaration of Rates (and valuations)**
(and 167(6))

Requirement That both the adoption of valuations and the declaration of rates/imposition of service charges must be published in the Gazette within 21 days after the date of declaration/imposition and, further, the declaration of rates and imposition of service charges must also be published in a newspaper circulating within the area of the Council within the same 21-day time period.

Compliant No.

Comment The Council's Notice of Adoption of Valuation and Declaration of Rates for 2010/2011 was published in the Government Gazette on 8 July 2010.
At the time the audit was conducted, the Council was unable to locate a copy of a notice published in the local paper in relation to Council's declaration of rates. The Manager Corporate and Community Services informed us that it appears the notice was not published (contrary to Council's ordinary practice) and that this was due to an oversight stemming from the absence of a staff member.

We **recommend** that Council ensure notice of its declaration of rates is published within the local paper.

Section 171 **Publication of Rating Policy (Repealed)**

NB Section 171 was repealed from the Local Government Act 1999 on 25 January 2007. A rating policy is no longer required. The below comments relate to the adoption of the 2006/2007 rating policy prior to the amendments.

Requirement Council must prepare and adopt a rating policy in accordance with the requirements of Section 171.
A summary version must accompany rates notices.
Copies must be available for inspection without charge at the principal office during ordinary office hours. A copy must be available on the Internet – Section 132(3)(d).

Compliant Not applicable in light of this requirements having been repealed,



however Council continues to maintain its Rating Policy.

Comment

The Council's Rating Policy outlines for the public's benefit, the Council's approach to rating and provides information on rate capping, remissions and postponements, service rates and charges and payments methods etc,

Even though the Council is no longer obligated to maintain a Rating Policy, we acknowledge that the Rating policy provides important information to the public and that this is the reason the Council continues to maintain its Policy.

Section 172

Chief Executive Officer to Keep Assessment Record

Requirement

The Chief Executive Officer must ensure that assessment record is kept. The content is prescribed in Section 172.

Occupiers may with the consent of the owner apply to the Chief Executive Officer to have their name entered in the assessment record.

The Chief Executive Officer may, on application, suppress a name or address from the assessment record.

Compliant

Yes

Comment

The assessment record is maintained and available for public inspection.

Council staff assess applications from occupiers to have their name entered in the assessment record. Where sufficient written confirmation or consent from the land owner is provided, an occupiers name will be entered onto the assessment record.

Where a person applies to have their name suppressed from the assessment record, the Council would grant this request if adequate reasons are given. We were informed that the Council has not received any requests from a member of the public to have his/her name suppressed from the Assessment Record.

Section 173

Alterations to Assessment Record

Requirement

Persons may seek to have the assessment record altered.

Application must be in a manner and form prescribed by the Chief Executive Officer.

Dissatisfaction with the application entitles the applicant to seek a review by Council.

Compliant

Yes.

Comment

The Council's rates officer is responsible for dealing with applications for alterations to the assessment record.



The Council's practice is receive requests in writing.

In addition to these applications, Council also receives letters notifying change of ownership from conveyancers and from the Land Services Group which it uses to update its assessment record on a frequent basis.

Section 174

Inspection of Assessment Record

Requirement

A person is entitled to inspect the assessment record at the principal office during ordinary office hours.

Compliant

Yes.

Comment

Extracts of the assessment record can be requested and inspected at the Council's office.

Section 180

Service of Rates Notice

Requirement

Rates Notice must comply with Regulation 13 Local Government (General) Regulations 1999.

Compliant

Yes.

Comment

The Council's rates notice contains the information required under the Act.

Section 182

Remission and postponement of Payment

Requirement

A Council may grant remissions and postpone payment of rates in prescribed circumstances.

Compliant

Yes.

Comment

The Council considers all applications for the remission of rates and charges or postponement of rates in accordance with section 182 of the Act, and in accordance with its Rating Policy. All applications must be in writing.

It is outside the scope of this audit to review an actual, finalised application for a remission or postponement of rates pursuant to section 182 of the Act.

Section 182A

Postponement of Rates - Seniors

Requirement

A person may apply to postpone a proportion of rates for the current or a future financial year.



Compliant Yes.

Comment The Council considers all applications for the postponement of rates in accordance with section 182A of the Act and in accordance with its Rating Policy. All applications must be in writing.

We were informed that the Council has not received a request from a senior under this Section.

Section 184 **Sale of Land for Non-Payment of Rates**

Requirement Ability of a Council to sell land for non-payment of rates.

Compliant Yes.

Comment The Council was involved in a significant section 184 process in relation to Wirinna Resort in 2009. Whilst the outstanding rates were ultimately paid and the sale of the relevant land did not eventuate, as a result of this process Council staff have a good understanding of the requirements of this section and the process involved.

Section 188 **Fees & Charges**

Requirement Council may fix fees and charges. The Council's list of fees and charges must be available for inspection (without charge) at the Council's principal office during ordinary hours and via the internet (Section 132(3)(e)).

[NB - The Council may not delegate the setting of the following fees –

- (a) for providing information or materials, or copies of, or extracts from Council records;
- (b) in respect of any application to the Council;
- (c) in respect of any authorisation, licence or permit granted by the Council;
- (d) in respect of any matter for which another Act provides that a fee fixed under the Act is to be payable.]

If the Council's list of fees is varied then the Council must take reasonable steps to bring the variation to the notice of affected persons.

Compliant Yes.

Comment Council recently reviewed its fees and charges, and subsequently adopted its schedule of fees and charges for the 2010/2011 financial year on 24 June 2010.

The fees and charges are determined by the Council by way of resolution and the power to set fees and charges under Sections 188(1)(d)-(h) has not been delegated to the Chief Executive Officer. This is consistent with



Section 44(3)(j) of the Act.

Council's website contains the schedule of fees and charges for the 2010/2011 financial year.

Section 196

Management Plans

Requirement

A Council must adopt management plans for certain of its community land.

Management plans must -

- Identify the land to which it applies.
- State the purpose for which the land is held by the Council.
- State the Council's objectives, policies (if any) and proposals for the management of the land.
- State performance targets and how the Council proposes to measure its performance against its objectives and performance targets.

In addition if the Council is not the owner of the relevant land the management plan must also –

- identify the owner of the land;
- state the nature of any trust, dedication or restriction to which the land is subject;
- contain any provisions reasonably required by the owner.

A management plan should (as far as practicable) be consistent with conservation, development and use of the land.

Compliant

No.

Comment

The Council has developed a Community Land Management Plan, however, the Plan is outdated and there is no record of it having been adopted by the Council. Community land within the Council's area is categorised as falling into one of four categories under the Plan, being 'Reserves', 'Community Facilities', 'Commercial and Business Facilities' or 'not otherwise classified'.

The Management Plan addresses performance target objectives, strategic management actions and performance measures in relation to the various categories of community land, however, they do not contain detail regarding the leases and licences that may operate over parcels of community land and do not define the specific parcels of land to which the Plan applies.

We **recommend** the Council undertake a review of its community land and in doing so, review and update its existing Management Plan to ensure it is meeting current Council and community expectations. In updating the Management Plan, we **recommend** that the categories of community land each list all the parcels of land that fall into that particular category (for example, Part 1 relating to Reserves should list all parcels



of land that constitute reserves in the Council's area).

In conducting the review, it is **recommended** that the Council also consider preparing and adopting specific Community Land Management Plans for those areas of community land (such as significant reserves) which may require more careful, tailored management than that offered in the "generic" plans.

Section 202

Alienation of Community Land by Lease or Licence

Requirement

Council may grant a lease or licence over community land provided it complies with the requirements of this section. That is, if a community land management plan exists in relation to that land and recognises the opportunity to grant a lease or licence the Council may grant such a lease or licence for a period of up to 5 years without the need to undertake public consultation. If, however, a community land management plan does not exist or does not contemplate leasing/licensing (in which case the plan will require amendment) the grant of a lease or a licence for any period of time will require public consultation to be undertaken. The Council may not grant any lease or licence of community land (including by the taking into account of a period of renewal) which exceeds 21 years in total.

Compliant

Yes.

Comment

Council staff are aware of the consultation requirements in relation to leases and licences over community land.

Council's Community Land Management Plan does not address leasing and/or licensing arrangements with respect to community land and therefore, before any lease or licence is granted over community land the Council **must** undertake public consultation.

We **recommend** that in undertaking a review of community land within its area, Council ensure it addresses its intentions with respect to the long term use of the land and specifically, its ability to be leased and/or licensed for periods of up to 5 years. Where the Community Land Management Plan is amended to contemplate leasing and licensing arrangements over specific parcels of land, Council will be able to avoid public consultation for leases and licences over community land that have terms for 5 years or less.

Section 207

Register

Requirement

A Council, by January 2003, must keep a register of all community land in its area.

The register must be available for inspection (without charge) by the public at the principal office during ordinary office hours.

The Register must identify in respect of each piece of community land in the Council's area –



- a) the legal description;
- b) the street address (if any);
- c) the name of the locality or suburb;
- d) the name by which the land is commonly known;
- e) the area of the land;
- f) the name of the owner of the land (if not Council);
- g) details concerning leases or licences in respect of the land.

Compliant

No.

Comment

The Council does not have a register of Community Land within its area. The Council does, however, maintain a folder of all parcels of community land within its area which includes the certificate of title for the land, photos of the land, a map of detailing the location of the land, a description of the land and any encumbrances upon the land (such as a right of way).

We **recommend** that the Council utilise the information contained within this file to compile a register of all the Community land within its area. The register must contain all the details listed above and must be available for public inspection.

Section 208

Ownerships of Roads

Requirement

Declaration of a road as a public road must be published in the Gazette.

Compliant

Not Applicable

Comment

We were informed that a declaration under this section has not been made during the term of the current Council. Staff did, however, express an awareness of the requirement for any such declaration to be gazetted.

Section 210

Conversion of Private Road to Public Road

Requirement

A declaration of private road to public road must be published in the Gazette. The Register-General must be provided with a copy of any such declaration.

Compliant

Not Applicable.

Comment

We were informed that a declaration under this section has not been made during the term of the current Council. Staff did, however, express an awareness of the requirements under this section.



Section 211

Highways

Requirement

A Council may exercise its powers under Part 2 of Chapter 11 in respect of highways only if it has an agreement with the relevant authority (previously the Commissioner of Highways) or pursuant to Section 26 of the Highways Act 1926.

Compliant

Yes

Comment

We were informed that the Council does not have any agreements with the Commissioner of Highways, nor has it been issued with any notices by the Commissioner under Section 26 of the *Highways Act*.

The Council does not conduct works of any sort on roads which are under the care, control and management of the Commissioner of Highways or DTEI.

Section 219

Power to assign a name, or change the name, of a road or public place

Requirement

As of 1 July 2010, the Council must assign a name to a public road created by land division and must prepare and adopt a policy relating to the assigning of names to streets and roads.

Compliant

No

Comment

Whilst the relevant Council staff are aware of the recent changes to the Act which require the Council to establish a street-naming policy, the Council has not yet adopted such a policy. Accordingly, we **recommend** that the Council prepare and adopt a street-naming policy as a matter of priority.

Section 220

Numbering of Adjacent Premises & Allotments

Requirement

Council may adopt a street numbering system.

Public notice, including notice to the Valuer-General, must be given of a resolution adopting, altering or substituting a numbering system for a particular road.

Compliant

Yes

Comment

The Council has not adopted a street numbering policy.

The Council is in the process of implementing the new rural addressing approach to numbering properties in rural area and otherwise continues with the standard approach of numbering properties as they expand outwards from the town centre.

As of 1 July 2010, section 220 was amended by the insertion of section



221(1a) which obliges the Council to assign a street number to all buildings or allotments adjoining a public road and which are created from 1 July 2010. We **recommend** that the Council consider developing a street numbering policy which addressed this obligation and provides guidance to the community regarding the way in which Council assigns numbers to new properties.

**Section
221-225**

Control of Work on Roads

Requirement

Council may issue permits and authorisations for use of Council's road, or any part of it.

Compliant

Yes

Comment

Council has issued outdoor dining permits and has implemented 'road rent' (i.e. a fee imposed for an authorisation under section 221 issued to owners of properties who have constructed fences or gates over public roads). The fees associated with a grant of an authorisation or permit under this section are set out in the Council's fees and charges schedule. The Council has also developed template application forms in relation to work that alters a public road which includes standard conditions of approval.

Council staff have regard to the provisions of sections 221-225 when making a decision in relation to issuing an authorisation or permit under these sections.

We **recommend** that the Council maintain a register of all permits and authorisations issued under these provisions.

We also **recommend** that the Council consider creating an Outdoor Trading/Dining Policy to outline standard conditions which attach to a permit issued for such purposes.

Section 231

Register of Public Roads

Requirement

The Council must keep a register of public roads in its area.

The register was required by 1 January 2002.

The register must contain the following prescribed information (Regulation 18, General Regulations) –

- (a) the name of the public road;
- (b) the situation of the public road;
- (c) the approximate extent of the public road;
- (d) the approximate width of the public road;
- (e) the approximate width of the carriageway, including any associated kerbing, verges or footpath (where formed).



Compliant

No

Comment

The Council has not compiled a register of public roads within its area. The Council does, however, maintain details of all public roads within its area (including unmade roads) in an electronic format, however this is not sufficient for satisfying the requirements of this section.

We **recommend** that the Council establish a register of all public roads within its area (which include unmade roads) that sets out all the information listed above. The Register must be available for public inspection. To avoid confusion, in developing the Register, we recommend that the Council assign all unmade and unnamed roads an unofficial title (such as 'Road A') so they can be easily identified from one another.

Section 232

Trees

Requirement

Council must consider certain matters prior to planting or authorising the planting of vegetation on a road.

Compliant

Yes.

Comment

The Council has a Policy for the planting of trees in rural areas and for planting of trees in towns. The Policies set out where trees may be planted in relation to roads. Clause a)(viii) of the Rural areas tree planting Policy provides that Council is not responsible for the maintenance of trees. Whilst this is true for trees on private land, Council is certainly responsible for maintaining roadside vegetation on public road reserves.

We **recommend** that the Council review its tree planting policies to include details regarding the Council's management of roadside vegetation and, to expressly address the specific criteria under this section of the Act (i.e. that in planting vegetation Council will have regard to environmental and aesthetic issues, the use and construction of any road and road safety matters).

Section 237

Removal of Vehicles

Requirement

Section details the procedure for dealing with abandoned vehicles, including sale.

Compliant

No.

Comment

We were informed that a former staff member of Council had previously impounded vehicles under this section of the Act, however, the current authorised officer, Mark Piro, who is responsible for exercising Council's powers under this section informed us that he is unable to locate any records of the process observed by the staff member in impounding the vehicles.

In the interests of maintaining accurate records, it is **recommended** that



Council maintain a register of all vehicles impounded under this section which details:

- the vehicle registration number;
- the make/model/type of the vehicle;
- a photo of the vehicle
- the owner's details;
- the impound date;
- the responsible officer;
- a summary of all interaction and/or attempts to communicate with the owner of the car; and
- any action taken to dispose of the vehicle either by sale or otherwise.

We **recommend** that staff who exercise powers under this section have regard to the State Ombudsman's Guidance Paper No. 2 of 2009 which extensively examines the exercise of section 237 powers and to the Local Government Association's Standard Operating Procedure for the Disposal of Vehicles under this section. The processes outlined in these documents should be observed in the exercise of powers under this section.

Further we **recommend** that relevant Council staff familiarise themselves with the changes to section 237 which are contained in the *Local Government (Accountability Framework) Amendment Act 2009*, which will commence on a date yet to be proclaimed. The proposed changes will significantly alter the notice and other requirements which apply to the exercise of section 237 powers.

Section 238

By-laws – Land

Requirement

Council's power to make by-laws.

Compliant

Yes.

Comment

We undertook the Council's by-law review in 2009 and have certified that the Council's existing by-laws are valid and comply with the requirements of legislation.

Further to our advice given as part of the by-law review, if Council has not yet resolved to determine the areas to which specific areas of its Local Government Land and Dogs by-laws apply (for example clauses 9.1.1 and 10.1.2 of the Dogs By-law cannot be enforced until the Council (by way of resolution) determines that they apply to one or more parts of the Council area pursuant to section 246(3)(e) of the *Local Government Act 1999*) we **recommend** it now consider doing so.



Section 239

By-laws – Road

Requirement

Council's power to make by-laws.

Compliant

Yes.

Comment

The Council has adopted "By-law No. 3 – Roads" under section 239 of the Act. As stated above, we undertook the Council's by-law review in 2009 and we have certified that this by-law is valid and complies with the applicable legislative requirements.

Section 242

Time Limits for Dealing with Certain Applications

Requirement

Applications for approval of use of community land for a business purpose, or use of a road for a business purpose must be dealt with in two months (subject to public consultation requirements).

Compliant

Yes.

Comment

We were informed that, in general, approvals are given within the necessary timeframe (ordinarily it takes Council 1-2 weeks to process an application) unless there are extenuating circumstances which are beyond the control of the Council.

Section 245

Liability for Injury, Damage or Loss caused by Certain Trees

Requirement

If the owner of a property adjacent to a road has made a written request to the Council to take reasonable action to avert a risk of damage to property (of the owner or occupier) from the tree and the Council has failed to take reasonable action the Council may be liable for any damage to the property that would have been averted if the Council had taken reasonable action in response to the request.

Compliant

Yes.

Comment

From interviews conducted with Council staff, it is clear that the requirements of section 245 are well-understood.

The Council does not have a formal procedure with respect to the management of complaints it receives about trees, however, as a matter of practice, we were informed that Council ensures that all complaints are followed up with an inspection. Council will obtain the opinion of an arborist where appropriate in determine what action (if any) should be taken in a response to a complaint. Council will also liaise with the LGAMLS with respect to any liability issues stemming from trees.

We **recommend** the Council continues to liaise with the Risk Services of the Mutual Liability Scheme when assessing whether a tree poses a risk. We also **recommend** that Council maintain a register of all complaints/requests received in relation to trees which records details of



any action taken by the Council and references when the matter was completed/resolved.

Section 247 **Principles Applying to by-laws**

Requirement A person is entitled to inspect the Council's Register of By-Laws at the Council's principal office, and to obtain a copy of payment of a fee fixed by the Council.

By-laws must be available on the internet (Section 132(3)(f)).

Compliant Yes.

Comment The Council's by-laws are available for inspection at Council's office and on the Council's website. There were no reported difficulties with respect to the operation and enforcement of the Council's by-laws.

The Council's existing by-laws will expire on 1 January 2017. Accordingly, we **recommend** the Council commence its next by-law review in January 2016 to allow plenty of time for new by-laws to be made before the expiration of the existing by-laws.

Section 254 **Power to Make Orders**

Requirement Councils may make orders to control certain hazards and nuisances.

Compliant Yes.

Comment We were informed that the Council rarely has cause to exercise its powers under this section. Council staff are, however, familiar with the requirements of the Act regarding the procedure to be followed in respect of issuing an order.

We **recommend** that before issuing any order under this section, Council ensures it has sufficient evidence to justify the order being issued and that the directions of the order are lawfully valid.

Section 255 **Procedure to be followed**

Requirement Sections 255-258 set out detailed procedures regarding the making of orders and the recipients rights of review.

Compliant Not applicable

Comment We are unable to provide comment as to whether Council is compliant with this section because the Council did not have an order issued under this section available for our review.

Since 1 July 2010, the *Local Government (Accountability Framework) Act 2009* has amended this section so that the procedure set out in Sections



255-258 applies to the order-making powers of the Council under Sections 216 and 218. We **recommend** Council ensure that its staff who are responsible for roads and infrastructure are aware of this amendment.

Section 259

Policies

Requirement

The Council must adopt a policy on the making of orders. The Act does not prescribe a date by which the policy must be adopted. Before adopting the policy the Council must undertake public consultation for a period of not less than four (4) weeks. Notice must be given by circulating in a newspaper in the area of the Council.

A person is entitled to inspect the policy at the Council's principal office and to a copy on payment of a fee fixed by the Council.

The policy is to be available on the internet.

Compliant

No.

Comment

The Council's Order Making Policy was adopted in March 2001 and has since been reviewed in June 2003, May 2006 and June 2009.

From 8 April 2010, the Council was required to amend its Policy so that it addresses orders made under sections 216 and 218 of the Act. The Policy does not contain reference to these sections and therefore is not compliant.

We **recommend** that the Council undertake a review of this Policy as a matter of priority to address its applications to orders under sections 216, 218 and 299 of the Act. In doing so, we recommend that the Council have regard to the model Order Making Policy Guidelines on the Local Government Association's website which we have updated to reflect the recent legislative changes.

Section 260

Authorised Officers

Requirement

A Council may appoint in writing authorised officers. The appointment may be limited.

The Authorised Officer must be issued with an identity card incorporating a photograph and any limitations on the authority.

Compliant

Yes.

Comment

We reviewed authorised officer identity cards during the course of the audit. Identity cards meet legislative requirements. We were informed that written instruments of appointment are issued to each authorised officer, and a copy kept in their personnel file. Further comment regarding the authorisation of officers by Council under Local Government Legislation is provided within the Regulatory audit.

It is not the Council's practice to limit or condition an authorised officer's



appointment.

We **recommend** that officers who are appointed as authorised officers by Council attend training to ensure they are aware of their legislative powers and functions with respect to enforcement including in relation to investigation procedures and evidentiary matters.

Section 270

Council to Establish Grievance Procedures

Requirement

A Council must establish a procedure for the review of decisions of the Council, employees and others acting on behalf of the Council.

The procedure must be available for inspection and purchase at the Council's principal office. The procedure should be available on the internet (Section 132(3)(f)).

Compliant

No.

Comment

The Council adopted its Internal Review of Council Decisions Policy in June 2006. The Policy is due for review.

The Policy addresses all of the requirements of section 270(2) of the Act except the requirements under subsection (2)(ca). This subsection relates to applications made in relation to the impact that any declaration of rates or services charges may have had on ratepayers, and requires the Policy to provide that any such application will be dealt with promptly and, if appropriate, addressed through the provision of relief or concession under the Act.

We **recommend** that the Council review its Policy to ensure it addresses the requirements of Section 270(2)(ca).

Section 299

Vegetation Clearance

Requirement

A Council may order a person, at the request of another person, cut back vegetation encroaching on the applicant's property. The provisions relating to "orders" apply to this Section.

Compliant

Yes.

Comment

It was evident from speaking with relevant staff of the Council that they are aware of the requirements of this section.

We were informed that Council has not exercised its powers under Section 299, but instead encourages applicants to resolve issues in relation to trees through other means.

The Council's Order-making Policy does not refer to section 299 orders. We **recommend** that the Council revises its order making policy to ensure it extends to an order under this section. Further we **recommend** the Policy be revised to include the matters that the Council may consider in exercising its discretion to resolve what is, in effect, a neighbourly dispute, through issuing an order under this section. For example, the



Policy could address:

- pre-requisites to Council making the order (i.e. the failure of other avenues or approaches to resolving the dispute);
- The issues of apportionment of costs (i.e. associated with engaging arborists) between neighbours; and
- Indemnities in favour of Council staff carrying out inspectorial work.



Schedules

Schedule 2

Preparation of Charter

Requirement

Since 25 January 2007 it is now a requirement that the charter of a regional subsidiary be reviewed at least once every four years.

Compliant

Yes.

Comment

The Council is constituent Council of the Fleurieu Regional Waste Authority. The Charter for the Authority is dated October 2009.

We **recommend** that the constituent Councils ensure the Charter for the Authority is reviewed before November 2013.

Schedule 4

Material to be included in the Annual Report of the Council

Requirement

The following material must be included in the annual report of a council:

- (a) a copy of the audited financial statements of the council for the relevant financial year;
- (b) a list of the registers that are required to be kept under this Act or the *Local Government (Elections) Act 1999*;
- (c) a list of the codes of conduct or practice required under this Act or the *Local Government (Elections) Act 1999*;
- (e) a copy of its most recent information statement under the *Freedom of Information Act 1991*;
- (f) information on allowances paid to members of the council or a council committee;
- (g) information on the number of senior executive officers and information on the kinds of allowances, bonuses and benefits that are made available to those officers as part of a salary package;
- (ga) a report on the use of sections 90(2) and 91(7) by the council and its council committees containing the information required by the regulations;
- (gb) a report on the applications made to the council under the *Freedom of Information Act 1991* during the relevant financial year containing the information required by the regulations;
- (h) a statement of –
 - (i) the council's representation quota; and
 - (ii) the average representation quota for councils of similar size and type (taking into account various factors prescribed by the regulations); and
 - (iii) when the council next intends to conduct a review



under Chapter 3 Part 1 Division 2; and

- (iv) the procedures that are available under Chapter 3 for electors to make submissions on representation under this Act;
- (ha) the annual report of any subsidiary received by the council under Schedule 2 for the relevant financial year;
- (i) other material prescribed by the regulations (that includes the report required under Section 270(8) of the Act);
- (j) other information to be included in the annual report under this or another Act.

The following matters must be reported on in the annual report of a council:

- (a) the council's performance in implementing its strategic management plans during the relevant financial year, and the council's projections and targets under its plans for the next financial year;
- (ab) the council's performance against its annual business plan for the relevant financial year;
- (b) the extent to which activities of the council have been subjected to competitive tender or other measures to ensure services are delivered cost-effectively, and the extent (if any) to which the council has pursued policies for purchasing local goods and services;
- (c) the decision-making structure of the council;
- (ca) the training and development activities for members of the council during the relevant financial year;
- (d) the implementation of equal employment opportunity programs, and other human resource management or development programs, during the relevant financial year;
- (e) the progress of the council in preparing or finalising any management plans for community land required under the Chapter 11;
- (f) other matters prescribed by the regulations.

Compliant

No.

Comment

The Council's 2008/2009 Annual Report was reviewed as part of this audit. The Annual Report did not include the necessary statement under the *Freedom of Information Act 1991* which outlines the number of freedom of information applications the Council received during that year and the outcome of those applications.

That said, Schedule 4 has now been amended so that this Statement is no longer required to be included in the Annual Report. The Statement must, however, be made available on the Council's website.



Schedule 5

Documents to be made available by Councils

Requirement

Identifies documents to be made available by the Council at the Principal Office.

Compliant

No.

Comment

The majority of the requisite Codes, registers, documents, policies and returns are all available for public inspection at the Council's offices and are also available on Council's website.

We **recommend** the Council establish registers for community land and for public roads which include the information required under the Act and ensure these are made available for public inspection. Further, we **recommend** the Council's Code of Conduct for Employees is also made available on the Council's website.



Local Government Act 1934

Section 359

Prohibition of Traffic or Closure of Streets or Roads

Requirement

Majority of all members of the Council may resolve to exclude vehicles from a street or public place.

The resolution must be published in the Gazette and a newspaper circulating in the Council's area.

Compliant

Yes.

Comment

We were informed that the Council has exercised its powers under this section to effect temporary road closures.

We **recommend** the Council maintain a register of all road closures made under this section which includes a copy of the relevant Gazette notice.

Furthermore, it is to be **noted** that section 359(1) provides "*the Council may by resolution, supported by a majority of all members of the Council, exclude vehicles generally or vehicles of a particular class from a particular street, road or public place or part of a particular street, road or public place*" (our emphasis). Consistent with the wording of this section, road closures may only occur following a resolution of the Council and this power may not be delegated to Council staff.

Part XXX

Cemeteries

Requirement

Power of Council to establish and manage a cemetery, crematorium and mortuary. To close a cemetery and take over control of a cemetery.

Compliant

Yes.

Comment

The Council is responsible for managing the cemeteries within its area. We were informed that the Council intends to prepare a Cemetery Management Plan in order to give staff guidance with respect to the long-term management of Council's cemeteries.

We **recommend** that the Council revise its standard cemetery lease to ensure it addresses the requirements of *the Local Government (Cemetery) Regulations 2010*. Further, in light of the recent changes to the Regulations, we **recommend** the Council develop the template plain English statement that is now required to be given to persons *before* a interment right is granted to them. This statement must include the information prescribed by the Regulations.



Local Government (Financial Management) Regulations 1999

Part 4A

Audit Committees

Requirement

Section 13A provides for the membership of the Audit Committee of a Council.

The Audit Committee of a Council must have:

- (i) between 3-5 members (inclusive), and
- (ii) must include at least one person who is not a member of the Council and who is determined by the Council to have financial experience relevant to the functions of the Audit Committee, and
- (iii) must not include, as a member, the Council's auditor under Section 128 of the Act.

The Audit Committee of a Council subsidiary –

- (i) must have between 3-5 members (inclusive), and
- (ii) must include at least one person who is not a member of the Board of management of the subsidiary and who is determined by the Council to have financial experience relevant to the functions of the audit committee, and
- (iii) must not include, as a member, the Council's auditor under Section 128 of the Act or the auditor of the subsidiary under Part 5.

Compliant

Yes.

Comment

The Council has established an audit committee and has appointed members to it including the required independent member.

Part 16A

Independence of Council Auditor

Requirement

Section 16A was included as a result of the amendments effective from 25 January 2007.

The Council or Council subsidiary must not engage its auditor to provide services to the Council outside the scope of the auditor's function under the Act.

The Chief Executive Officer of a Council and the presiding member of the Audit Committee of the relevant body must each provide (on an annual basis) a statement that provides a certification as to compliance for the relevant financial year with the requirement that the auditor be independent of the relevant body.

Compliant

Yes.

Comment

The necessary certificate of independence of the Council's auditors is included in the Council's financial statements on an annual basis.



