

Council

ACTING CEO REPORT ON KEY PERFORMANCE
INDICATOR 1

Report – Review of Statutory requirements and
obligations

Meeting Date: 1 December 2020

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REPORT ON KEY PERFORMANCE INDICATOR 1

REVIEW OF STATUTORY REQUIREMENTS AND OBLIGATIONS OF THE SHIRE OF PLANTAGENET

SUMMARY

Overall there have not been any indications or evidence of significant non-compliance to statutory requirements and obligations, other than some minor breaches, which appear to have been rectified or action taken to ensure there will not be any future non-compliance issues arising.

Whilst there has been evidence of some minor adverse findings and breaches of statutory requirements and obligations in the organisation over the last two years and action has been taken to address these issues, in my opinion the overall organisation's compliance to legislation and the Local Government Act (LGA) is very good and the organisation is in a healthy space from a governance and compliance perspective.

Going forward, local governments and this organisation will need to continue to be diligent in the traditional area of finance, but also increase its level of oversight in other areas including governance and there may need to be further consideration given to the employment of dedicated staff in the areas of records management, governance and compliance, and risk management. I will consider these issues further in my second KPI that is a review of existing employees, their roles and skills.

BACKGROUND

As part of my contract of employment as Acting Chief Executive Officer (A/CEO), prior to the Council appointing a permanent CEO, the Council has indicated that the prime function of my role, in addition to day to day management responsibilities, *'is to determine the place Plantagenet may fit into the local government role heading into 2030 and to look at the strengths and weaknesses of the organisation and make recommendations in areas of both personnel and hard assets.'*

The Council has set four Key Performance Indicators (KPI's), with a further one to be completed if the appointment is extended past the six month initial engagement and requested a report be submitted to Council on each one by a predetermined date. The first KPI is as follows:

- ❖ *Review of statutory requirements and obligations of the organisation in regard to compliance and report back to the Audit and Risk Committee prior to the end of September 2020.*

This KPI is effectively a health check of the organisation's compliance to legislation and the Local Government Act (LGA).

REPORT

In considering what would be suitable measures of compliance for the organisation, I have determined that the following would be an effective measurement of the organisations compliance to legislation and so I have reviewed accordingly.

1. The Department of Local Government Sport and Cultural Industries (DLGSC) Compliance Audit Return (CAR) for the calendar years ended December 2018 and December 2019.
2. The Auditor's Report for the financial year ended 30 June 2018 and 30 June 2019 (Audit Report for the year ended 30 June 2020 not completed at time of this report).
3. The Risk Management Review [LG (Audit) Regulations, clause 17] required to be completed at least once every two years and last completed in 2018.
4. The internal Financial Management Review [LG (Financial Management) Regulations clause 5(2)(c)] required to be completed at least once every three years and last completed in 2018.

I have also undertaken an internal review of general compliance matters that may not have been covered in the above reports. I have looked at the Organisation's compliance in regards to recent changes to the LGA over the last twelve months and changes still to be proclaimed to ascertain the level of proactive responses being initiated to these changes, both already in place and still to be included in legislation.

Compliance Audit Return

The Compliance Audit Return is an internal self-assessment audit, undertaken each year, where the organisation, through its employees, is required to confirm compliance or non – compliance with the Local Government Act and Regulations if certain actions have been undertaken in that calendar year. A review of both the 2018 and 2019 Compliance Audit Returns endorsed by the Council revealed that there were no areas of non-compliance in those two calendar years.

This is a pleasing result by the organisation, but given that it's a self-assessment process it's open to some persons to draw the conclusion that the outcome or result is what would be expected in a self-assessment audit. However, the review of other documents, detailed further in this report and that are subject to an external review, would support this positive result of compliance.

Auditor's Report

The Auditor's Report for the year ended 30 June 2018 reported a high level of compliance by the organisation in that the financial statements are not inconsistent with the Local Government Act and Australian Accounting Standards. The Management Report did indicate some concerns in regards to following:

- Current Ratio;
- Operating Surplus Ration; and

➤ Asset Sustainability Ratio.

The Auditor's Report for the year ended 30 June 2019 reported a high level of compliance by the organisation in that the financial statements are not inconsistent with the Local Government Act and Australian Accounting Standards, however the two following issues were raised:

The audit report has pointed out that 'the following matters indicate a significant adverse trend in the financial position of the Shire:

- i. The Asset Sustainability Ratio has been below the DLGSCI standard for all 3 years reported in the annual financial report.*
- ii. The Operating Surplus Ratio has been below the DLGSCI standard for all 3 years reported in the annual financial report.'*

The Asset Sustainability Ratio indicates that to what degree the Shire is replacing or renewing existing assets at the same rate that its overall asset stock is wearing out. A basic standard is met if the ratio is greater than 0.9 and the Standard is 'Advanced if the ratio is above 1.1.

The Operating Surplus Ratio indicates an ability to cover operational costs and have revenues available for capital funding or other purposes. A basic standard is met between 0.01 and 0.15. An advanced standard is met over 0.15.

The result and comment by the Auditor is not uncommon for many local governments in Western Australia as the primary way to address this issue is by increasing funding to asset replacement or renewal and operational costs. The only ways to achieve this is to either remove some services and/or increase revenue and allocate these additional funds to asset replacement and renewal and remaining operational services.

Firstly, given that the reduction of services is generally not well received by the community and, in many instances is strongly opposed, Councils are reluctant to agree to this position. Secondly, given that a local government's main source of revenue that can be increased substantially to provide the increase in revenue required to make an impact on these two ratios, is rate revenue, an action that is also generally not received well by the community. It's understandable why these two are common to many local governments and can't be easily rectified.

The other important point to consider in regards to asset replacement or renewal is that in many instances the replacement or renewal of a local government's larger assets, such as buildings and sporting facilities, is generally undertaken with the assistance of loan borrowings and State and/or Federal grants, and other organisations' like Lotterywest.

Finally, The Audit and Risk Committee has previously supported the probability that the asset ratios reporting below standard are likely to be mainly attributable to data integrity rather than legitimate financial management weaknesses. It is anticipated that the work being done to verify data will result in an improvement in the asset based ratios.

Risk Management Review (2018)

Regulation 17 of the Local Government (Audit) Regulations 1996 states that:

- (1) *The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to —*
- (a) *risk management; and*
 - (b) *internal control; and*
 - (c) *legislative compliance.*
- (2) *The review may relate to any or all of the matters referred to in sub- regulation (1)(a), (b) and (c), but each of those matters is to be the subject of a review at least once every 2 calendar years.*
- (3) *The CEO is to report to the audit committee the results of that review.'*

In the later part of 2018, the CEO and Deputy CEO undertook the internal review to comply with the above legislative requirements and provided a report to the Audit and Risk Management Committee (ARMC) on 4 December 2018.

Based on the report to the ARMC, there were generally no significant concerns identified in the review in regards to the appropriateness and effectiveness of the organisation's systems and procedures, however the following were noted in the review.

- Some segregation of duties has been achieved, although not to the degree available in an ideal world due to the size of the organisation. Other controls have been put in place to mitigate relevant risks as a result.
- An issue that arose in February 2018 was the budgeting processes for the O'Neill Road (Albany Hwy - Slip Lane) and Langton Road (Lowood Road to Marmion Street) projects.

It should be noted that the organisation's Risk Management Review was an internal review, given that the Chief Executive Officer is to decide what processes, systems and controls are appropriate in the context of risk appetite, the internal/external environment and what is suitable for the Shire's size and operations. However, my own internal review of the appropriateness and effectiveness of the organisation's systems and procedures has not identified any major issues of no compliance other than some minor matters as identified in the final part of this report.

Financial Management Review (2018)

In April 2018, an internal financial management review was undertaken by the organisation's auditor, Moore Stephens and overall the results of that review were good, with the following minor adverse findings identified.

- The fixed asset reconciliation is only updated and reconciled at year end.
- In two instances, from five asset additions selected, purchase orders were raised after supplier tax invoices were received.
- We noted three instances where the depreciation rate used was not in accordance with Shire's accounting policy.
- Four annual returns and two primary returns contained sections which had been left blank.
- Two staff required to lodge a return, had resigned from the Shire and had not been removed from the register.

- Whilst reviewing the adequacy of the Shire's IT general environment, we noted that the Shire does not have documented procedures relating to business continuity and recovery in the event of a disaster.

The response by Management to these findings above would appear to indicate that action has been taken to address these matters and further proof will be evident when the next financial management review is undertaken which should be by the end of 2021

General Internal Review

Since my commencement on 27 July 2020, I have undertaken a broad general perusal of the organisation's operations, both by observation and asking questions, to ascertain its overall compliance with statutory requirements and obligations in regards to compliance.

Overall, there have not been any indications or evidence of any significant non-compliance to statutory requirements and obligations, other than the following, which as I understand occurred prior to my commencement and appear to either have been rectified or action taken to ensure there will not be any future non-compliance issues arising.

- When the review of some local laws was undertaken in 2019 a copy of the local laws were not provided to the Minister for Local Government as soon as the local public notice was given as required by section 3.12(3)(b) of the Local Government Act 1995. The local laws were provided to the Minister some nineteen (19) days after the advertisement appeared in the Albany Advertiser. A copy of the notice was also placed in the local community newspaper 'Voice of the South' on 12 September 2019 and the posting of the local laws was held back pending a copy of this publication.

As this is not a requirement of the Act, but was undertaken as an additional communication to the community, in future the local laws will be forwarded to the Minister soon after they are published in the official local newspaper (Albany Advertiser).

- Due to the workload on some staff, unconfirmed minutes of Council Committee meetings were not being made available for inspection by members of the public within the required five (5) business day period after the meeting was held, as required by the Local Government (Administration) Regulations 1996 (clause 13). This is more of a compliance issue as it appears that there were no instances of members of the public being refused access in this period.

It appears that action has been taken to rectify this issue as this is no longer occurring.

CONCLUSION

Whilst there has been evidence of some minor adverse findings and breaches of statutory requirements and obligations in the organisation over the last two years and action has been taken to address these issues, in my opinion, the overall organisation's compliance to legislation and the Local Government Act (LGA) is very good and the organisation is in a healthy space from a governance and compliance perspective.

The adverse trends reported in the 2019 Auditor's Report for Asset Sustainability and Operating Surplus Ratios are similar to what many local governments, especially in regional and remote areas, are experiencing and without a significant increase in revenue it's very difficult to rectify this imbalance.

Whilst the organisation is tracking very well with regards to legislative compliance and governance, a level of diligence needs to be maintained going forward to maintain this position. The introduction of the State Office of Auditor General (OAG) taking over responsibility for the annual audits of local government in Western Australia has seen a strong focus, not just on local government finances, but an increased level of focus on other governance and legislative compliance matters such as Records, Employee information, Risk Management and internal controls, to the point where the OAG has been providing recommendations to local government on requirements to address these concerns.

Going forward, local governments and this organisation will need to continue to be diligent in the traditional area of finance but also increase its level of oversight in other areas, including governance, occupation, safety and health, compliance and risk management, with further consideration given to the employment of dedicated staff in these areas. I will consider these issues further in my second KPI that is a review of existing employees, their roles and skills.

Paul Sheedy

Acting Chief Executive Officer

9 September 2020.