



Shire of York

Special Council Minutes

June 30, 2008

MISSION STATEMENT

"To build on our history to create our future"

Local Government Act 1995 (as amended)

Part 1 Introductory Matters

1.3. Content and intent

- (1) This Act provides for a system of local government by —
 - (a) providing for the constitution of elected local governments in the State;
 - (b) describing the functions of local governments;
 - (c) providing for the conduct of elections and other polls; and
 - (d) providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.
- (2) This Act is intended to result in —
 - (a) better decision-making by local governments;
 - (b) greater community participation in the decisions and affairs of local governments;
 - (c) greater accountability of local governments to their communities; and
 - (d) more efficient and effective local government.
- (3) In carrying out its functions a local government is to use its best endeavours to meet the needs of the current and future generations through an integration of environmental protection, social advancement and economic prosperity.

Part 2 Constitution of Local Government

Division 2 Local Governments and Councils of Local Governments

2.7 The Role of Council

- (1) The Council –
 - (a) directs and controls the Local Government's affairs; and
 - (b) is responsible for the performance of the Local Government's functions.
- (2) Without limiting subsection (1), the Council is to –
 - (a) oversee the allocation of the Local Government's finances and resources; and
 - (b) determine the Local Government's policies.

SHIRE OF YORK

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Shire of York for any act, omission or statement or intimation occurring during Council meetings.

The Shire of York disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council meetings.

Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a license, any statement or intimation of approval made by any member or Officer of the Shire of York during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of York.

The Shire of York notifies that anyone who has any application lodged with the Shire of York must obtain and should only rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attaching to the decision made by the Shire of York in respect of the application.

RAY HOOPER
CHIEF EXECUTIVE OFFICER

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SHIRE OF YORK

MINUTES OF THE SPECIAL MEETING OF THE COUNCIL
HELD ON MONDAY, 30 JUNE 2008, COMMENCING AT
2.35PM IN THE LESSER HALL, YORK.

1. OPENING

- 1.1 Opening
 - The Shire President, Cr Pat Hooper, declared the meeting open at 2.35pm.
- 1.2 The Chief Executive Officer read the Disclaimer
- 1.3 Announcement of Visitors
 - Nil
- 1.4 Announcement of any Declared Financial Interests
 - Nil

2. ATTENDANCE

- 2.1 Members
 - Cr Pat Hooper (Shire President), Br Brian Lawrance (Deputy Shire President), Cr Ashley Fisher, Cr Tony Boyle, Cr Trevor Randell, Cr Tricia Walters
- 2.2 Staff
 - Ray Hooper (CEO, Graham Stanley (Deputy CEO), Perter Stevens (EHO), Julieanne Treloar (ESO)
- 2.3 Apologies
 - Nil
- 2.4 Leave of Absence Previously Approved
 - Nil
- 2.5 Number of People in Gallery at Commencement of Meeting
 - Nil

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

- Nil

4. PUBLIC QUESTION TIME

- Nil

5. APPLICATIONS FOR LEAVE OF ABSENCE

- Nil

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

- Nil

7. CONFIRMATION OF PREVIOUS MINUTES

- Nil

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

- Nil

9. OFFICER'S REPORTS

9.1 Development Services Reports

Nil

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 DELEGATION OF BUILDING SURVEYORS

FILE NO: BS.GEN.1 & OR.CMA.1
COUNCIL DATE: 30 June 2008
REPORT DATE: 24 June 2008
LOCATION/ADDRESS: N/A
APPLICANT: N/A
SENIOR OFFICER: CEO – RAY HOOPER
REPORTING OFFICER: PETER STEVENS
DISCLOSURE OF INTEREST: NIL
APPENDICES: A - *Local Government (Miscellaneous Provisions) Amendment Act 2007*
B - *Local Government (Building Surveyors) Regulations 2008*
DOCUMENTS TABLED: NIL

Summary:

Recent changes to the *Local Government (Miscellaneous Provisions) Act 1960* have affected the appointment and delegation of Building Surveyors.

Previous to the changes Local Governments with a population of 15000 or less could delegate the issue of building licences to a person appointed to the office of Building Surveyor without having any formal qualifications. The changes to the legislation have introduced statutory minimum qualifications for Building Surveyors.

A clause in the revised legislation allows those officers delegated to the position of Building Surveyor prior to July 1 2008 within a particular Shire to continue in that position indefinitely without having to meet the new standards.

Currently there are very few qualified Building Surveyors in Western Australia and it is foreseen that there will be a severe shortage of officers to undertake Building Surveying duties in the next few years. This report aims to delegate the power to issue building licences to a number of experienced officers currently working in the Wheatbelt to ensure that the Shire of York has an adequate relief and supplementary supply of Building Surveyors should the need arise.

Background:

The recently Gazetted *Local Government (Miscellaneous Provisions) Amendment Act 2007* (**Appendix A**) and subsidiary *Local Government (Building Surveyors) Regulations 2008* (**Appendix B**) has introduced some significant changes to the *Local Government (Miscellaneous Provisions) Act 1960* in relation to building licences and Building Surveyor qualifications.

The changes to Building Surveying qualifications do not affect Council's current Building Surveyor as current delegations remain in force until revoked. However should Council's current Building Surveyor leave the position, take leave or become sick for an extended period it may be very difficult to fill the position of Building Surveyor with someone who has the correct qualifications.

Traditionally in smaller Shires in Western Australia Building Surveying duties were undertaken by Environmental Health Officers as their training involved studies of building codes, standards and legislation. These officers often have many years of experience undertaking Building Surveying duties but may not qualify for formal qualifications in accordance with the new regulations.

This report aims to delegate, to a number of officers with previous experience in Building Surveying, to the office of Building Surveyor for the Shire of York to ensure that there is an adequate supply for relief Building Surveyor Officers if and when necessary.

Consultation:

Department of Housing and Works
Linton Thomas (Shire of Goomalling)
Neil Flood (Shire of Wickepin/ Cuballing)
Julian Goldacre (Shire of Wyalkatchem/ Koorda/ Mt Marshall)
Allan Ramsay (Rtd)
Frank Buise (Shire of Beverley/ Quairading)
Rodney Woods (Shire of Pingelly)
Jim Riddle (Shire of Northam)
Tony Cox (Shire of Brookton)

Statutory Environment:

Local Government (Miscellaneous Provisions) Act 1960 Part XV
Local Government (Miscellaneous Provisions) Amendment Act 2007
Local Government (Building Surveyors) Regulations 2008

Policy Implications:

Nil

Financial Implications:

No additional costs over & above the current system of relief staff for periods of leave etc.

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

The lack of a Building Surveyor or reliance on accredited metropolitan based service providers may have a detrimental effect on the local economy including for builders and trades people.

Social Implications:

The community would expect an in house service to be available for building licences to ensure that they are processed in a reasonable time frame.

Environmental Implications:

Nil

Comment:

The changes made to the *Local Government (Miscellaneous Provisions) Act 1960* will make it difficult in the future to ensure that the Shire of York has access to suitably experienced officers to undertake the duties of Building Surveyor. The recommendation is to delegate a number of experienced officers, currently working as Building Surveyors within the region, to the office of Building Surveyor for the Shire of York. This may help provide alternative staff if Councils current Building Surveyor is unavailable.

The legislative changes appear to have been implemented without much thought as to the current availability of qualified Building Surveyors in regional WA or the availability of courses that allow persons to gain the recognised qualifications. Local Governments have few options other than to attempt to implement an alternative solution to ensure that building surveying services can continue to be provided to their communities.

The Shire President put the meeting into recess at 2.38pm.

The Shire President reconvened the meeting at 2.43pm.

OFFICER RECOMMENDATION

**RESOLUTION
130608**

MOVED: CR Boyle SECONDED: Cr Randell

“That Council in accordance with section 374 (1b) of the Local Government (Miscellaneous Provisions) Act 1960:

- 1. delegate the position of Principal Building Surveyor for the Shire of York to Peter Stevens;***
- 2. delegate the following persons as Building Surveyors for the Shire of York to act in the position when necessary:***

***Neil Flood (Shire of Wickepin/ Cuballing)
Frank Buise (Shire of Beverley/ Quairading)
Linton Thomas (Shire of Goomalling/ Dowerin)
Julian Goldacre (Shire of Wyalkatchem/Koorda/ Mt Marshall)
Rodney Woods (Shire Of Pingelly)
Allan Ramsay (Retired)
Jim Riddle (Shire of Northam)
Tony Cox (Shire of Brookton)
EHO (Shire of Brookton)
Tyhscha Cochrane (Shire of York);***

- 3. continue these delegations until revoked by Council; and***
- 4. refer the issue of Building Surveyor services to WALGA for action to ensure that building licence applications can be adequately and appropriately serviced in rural areas”***

CARRIED (5/1)

Appendix A

Western Australia

**Local Government (Miscellaneous Provisions)
Amendment Act 2007**

As at 29 Jun 2007

No. 11 of 2007

Extract from www.slp.wa.gov.au, see that website for further information



Western Australia

Local Government (Miscellaneous Provisions) Amendment Act 2007

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As at 29 Jun 2007

No. 11 of 2007

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Extract from www.slp.wa.gov.au, see that website for further information

Local Government (Miscellaneous Provisions) Amendment Act 2007

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Western Australia

**Local Government (Miscellaneous Provisions)
Amendment Act 2007**

No. 11 of 2007

An Act to —

- amend the *Local Government (Miscellaneous Provisions) Act 1960*;
- amend the *Builders' Registration Act 1939* and the *Local Government Act 1995* consequentially,
and for related purposes.

[Assented to 29 June 2007]

The Parliament of Western Australia enacts as follows:

As at 29 Jun 2007

No. 11 of 2007

page 1

Extract from www.slp.wa.gov.au, see that website for further information

s. 1

1. Short title

This is the *Local Government (Miscellaneous Provisions) Amendment Act 2007*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act (other than in sections 13 and 14) are to the *Local Government (Miscellaneous Provisions) Act 1960**.

[* Reprint 7 as at 16 September 2005.]

4. Section 245A amended

Section 245A(1) is amended in the definition of “swimming pool” by inserting after “entitled to use” —

“ and includes a spa-pool but not a spa-bath ”.

5. Part XV Division 1A inserted

After Part XV Division 1 the following Division is inserted —

“

Division 1A — Qualifications and appointment of local government building surveyors

373A. Qualifications of local government building surveyors

- (1) Regulations may be made prescribing the educational and professional qualifications (if any), and (where relevant) the certificates evidencing those qualifications, that must be held by a person before the

person can be appointed to the office of building surveyor of a local government.

- (2) Without limiting subsection (1), regulations made for the purposes of subsection (1) may —
 - (a) deal with the same sorts of matters as those set out in section 374AAB(3)(b), (c), (d) and (f); and
 - (b) give to a committee constituted under section 374AAB(3)(b) functions for the purposes of subsection (1).

373B. Appointment of local government building surveyors

- (1) A local government may appoint a person to the office of building surveyor of the local government.
- (2) If this Part applies to the district or a part of the district of a local government, the local government must appoint a person to the office of building surveyor of the local government.
- (3) If regulations made for the purposes of section 373A require an occupant of the office of building surveyor of a local government to hold a specified qualification under the regulations, the local government must not appoint a person to the office unless —
 - (a) the person holds the appropriate certificate of qualification under the regulations; or
 - (b) the Minister approves the appointment.
- (4) Subsection (3) does not apply to a person acting temporarily in the office of building surveyor of a local government for a period not exceeding 3 months.
- (5) The Minister may, after consultation with the local government, impose on an approval under subsection (3)(b) a condition that the person in respect

of whom the approval is given must obtain the specified certificate of qualification under the regulations within the time specified.

- (6) The Minister may from time to time grant an extension of the period fixed under subsection (5) if the Minister considers that the circumstances justify the extension.
- (7) If —
- (a) approval is given by the Minister under subsection (3)(b) subject to a condition that the person obtain a specified certificate of qualification; and
 - (b) at the completion of the period within which the certificate was to be obtained, or any extension of it —
 - (i) the person appointed by the local government under that approval still does not hold the certificate of qualification; and
 - (ii) the Minister does not consider that the circumstances justify an extension or further extension of that period,

the Minister may, after consultation with the local government, direct the local government to remove the person from the office and, despite anything in this Act or the *Local Government Act 1995*, the local government must comply with that direction.

- (8) A person occupying the office of building surveyor of a local government must not be removed from office just because the person does not hold a certificate of qualification required by the regulations to be held by the occupant of the office.
- (9) A person occupying the office of building surveyor of a local government who does not hold a certificate of qualification required by the regulations to be held by

the occupant of the office may, subject to section 374AAB(4), continue to perform the functions of that office.

”.

6. Section 374 amended

- (1) Section 374(1) is amended by deleting the penalty at the foot of the subsection and inserting instead —

“

Penalty: \$50 000 and in addition a daily penalty of \$5 000 for each day during which the offence continues.

”.

- (2) Section 374(1b), (1ba), (1c), (1d) and (2) are repealed and the following subsections are inserted instead —

“

- (1b) A local government may reject an application for a building licence under section 374 for the amendment, alteration, extension or enlargement of an existing building if the local government has reason to believe that there is something in the construction of the building which would give the local government grounds for issuing a notice under section 401(1).
- (1c) The local government may suspend dealing with the application pending the outcome of an application for a building approval certificate under section 374AA in respect of the building.
- (1d) A local government may require a person to whom a building licence for building work is issued under subsection (1) (after this subsection comes into operation) to give notice of the completion of the building work to the local government, within the time specified in the notice (which must not be less than 35 days after practical completion).

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- (2) A person to whom a notice is given under subsection (1d) must comply with the notice.
Penalty: \$400 and in addition a daily penalty of \$16 for each day during which the offence continues. ”.

- (3) Section 374(3) is amended by deleting the penalty at the foot of the subsection and inserting instead —

“
Penalty: \$4 000 and in addition a daily penalty of \$160 for each day during which the offence continues. ”.

- (4) After section 374(3) the following subsection is inserted —

“
(4) In proceedings for an offence against subsection (3) it is a defence if the accused proves that, before the occupation or use occurred, a building approval certificate had been issued under section 374AA in respect of the building work that was carried out in contravention of subsection (1). ”.

7. Sections 374AA, 374AAB, 374AAC and 374AAD inserted

After section 374 the following sections are inserted —

“

374AA. Building approval certificates for unauthorised building work

- (1) In this section —
“**unauthorised building work**” means the erection of a building or the amendment, alteration, extension or enlargement of the structure of a building —
(a) which is carried out without the permission of the local government where that permission is required; or

-
- (b) which is not in compliance with, or is a departure from, plans and specifications for the building that have been approved by the local government under section 374(1).
 - (2) The owner of a building on which unauthorised building work has been carried out may apply to the local government for the issue of a building approval certificate in respect of the unauthorised building work.
 - (3) An application under subsection (2) —
 - (a) is to be in the form prescribed by regulations;
 - (b) is to be accompanied by the documents and information prescribed by regulations or required by the local government; and
 - (c) is to be accompanied by the fee prescribed by regulations.
 - (4) The local government —
 - (a) may, if it is satisfied that the unauthorised building work substantially conforms with the requirements of this Act, issue a building approval certificate in respect of the unauthorised building work; or
 - (b) may refuse to issue a building approval certificate in respect of the unauthorised building work.
 - (5) A building approval certificate may be issued subject to such conditions as are specified in it.
 - (6) Section 374(2a) and (2b) (with any necessary modifications) apply in relation to the issue or refusal to issue a building approval certificate as if it were the approval or refusal to approve specifications and a plan submitted to the local government under section 374(1).

374AAB. Delegation of authority to approve plans of buildings or unauthorised building work

- (1) The authority to approve or refuse to approve —
- (a) plans and specifications submitted under section 374; or
 - (b) unauthorised building work under section 374AA,

may be delegated by a local government to a person, but if the plans and specifications so submitted conform, or the unauthorised building work conforms, to —

- (c) all local laws in force in the relevant district or part of a district in respect of building matters, and the local government's pre-determined policy in respect of building matters; and
- (d) all local laws and schemes in force in the relevant district or part of a district in respect of town and regional planning matters, and the local government's pre-determined policy in respect of town and regional planning matters,

the delegate must not refuse to approve the plans and specifications or the unauthorised building work without first obtaining the consent of the local government.

- (2) Regulations may be made regulating the delegation of the authority to approve or refuse to approve plans and specifications or unauthorised building work.
- (3) Without limiting subsection (2), regulations made for the purposes of subsection (2) may —
- (a) prescribe the educational and professional qualifications (if any), and (where relevant) the certificates evidencing those qualifications, that

must be held by a person before the authority to approve or refuse to approve —

- (i) plans and specifications for building work; or
 - (ii) unauthorised building work, of a kind specified in the regulations can be delegated to that person;
- (b) constitute a committee with the functions of assessing applications for certificates of qualification and granting certificates to applicants it determines have —
- (i) the prescribed qualifications or equivalent interstate and overseas qualifications; or
 - (ii) for a particular type of certificate — sufficient knowledge and experience to qualify them to carry out the functions of persons who hold certificates of that type;
- (c) provide for the committee to require that an applicant's qualifications or knowledge and experience be assessed by another person or body before the committee makes a determination about those qualifications or that knowledge and experience;
- (d) provide the grounds upon which, and the manner in which, those certificates may be cancelled by the committee;
- (e) provide for applications to be made to the State Administrative Tribunal for the review of decisions of the committee; and
- (f) prescribe fees payable in respect of assessing applications and granting certificates.

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- (4) A delegation under subsection (1) does not authorise the delegate to approve or refuse to approve —
- (a) plans and specifications for building work; or
 - (b) unauthorised building work,
- of a particular kind unless the delegate is a person to whom the local government can, under the regulations referred to in subsection (2), delegate the authority to approve or refuse to approve plans and specifications for building work, or unauthorised building work, of that kind.
- (5) A delegation under subsection (1), and any variation or revocation of it, must be in writing executed by the local government.
- (6) A person to whom authority is delegated under this section cannot delegate that authority.
- (7) A person exercising an authority that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of a local government to exercise its authority under section 374.
- (9) An authority delegated by a local government under subsection (1) and exercised by the delegate is to be taken to have been exercised by the local government.

374AAC. Advice to be sought where no delegation of authority

- (1) If the decision to approve or refuse to approve particular plans and specifications submitted under section 374 or particular unauthorised building work under section 374AA is to be made by a local government rather than a delegate, the local government must not make a decision unless it has —
 - (a) obtained advice from a person who holds a certificate of qualification under the regulations that indicates that the person could be delegated the authority by the local government to approve or refuse to approve the plans and specifications or the unauthorised building work; and
 - (b) taken that advice into account.
- (2) The advice must consider whether the plans and specifications conform, or the unauthorised building work substantially conforms, with the requirements of this Act.
- (3) This section does not apply where a person need not hold any qualifications to be delegated the authority to approve or refuse to approve the plans and specifications or unauthorised building work.

374AAD. Review of decisions about building licences and building approval certificates

- (1) A person who is dissatisfied with —
 - (a) the refusal of a local government to approve plans and specifications submitted under section 374(1);
 - (b) conditions specified in a building licence issued under section 374(1);

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- (c) the refusal of a local government to issue a building approval certificate under section 374AA; or
- (d) conditions specified in a building approval certificate under section 374AA,

may apply to the State Administrative Tribunal for a review of the refusal or the conditions.

- (2) For the purpose of enabling effect to be given to an order it makes upon an application under subsection (1), the State Administrative Tribunal may, if in its opinion the circumstances of a particular case warrant its so doing, order that any provision of a local law made by a local government under this Part or of a regulation made under this Part does not apply in that particular case or applies as modified by the order in that particular case and the order has effect according to its tenor, despite anything in this Act or the *Local Government Act 1995*.

”.

8. Section 374AA amended

- (1) Section 374AA is amended by inserting before “A local” the subsection designation “(1)”.
- (2) At the end of section 374AA the following subsection is inserted —
 - “
 - (2) A local government shall not issue to a person a building approval certificate under section 374AA unless satisfied that the person —
 - (a) has paid the levy imposed in respect of the work under the *Building and Construction Industry Training Levy Act 1990* and any amount due under section 24 of that Act; or

- (b) is not liable to pay a levy referred to in paragraph (a) in respect of the work.

”.

Note: The heading to section 374AA will be altered by deleting “licence under section 374 or 374A” and inserting instead “building licence or building approval certificate”.

9. Sections 374AA and 374AAA renumbered

Sections 374AA and 374AAA are renumbered as 374AB and 374AC respectively.

10. Section 380 amended

Section 380(1) is amended by inserting after “building surveyor” in the first place where it occurs —

“ of the local government ”.

11. Section 401 amended

- (1) Section 401(1) is amended as follows:

(a) in paragraph (b) by deleting “Act, or which is a contravention of this Act; or” and inserting instead —

“ Act; ”;

(b) after paragraph (b) by inserting —

“

(ba) which is a contravention of this Act; or

”.

- (2) After section 401(1) the following subsections are inserted —

“

(1a) The local government is not to give notice under subsection (1)(b) or (c) in respect of particular building work if —

(a) a building approval certificate has been issued in respect of the building work;

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- (b) the owner has applied for the issue of a building approval certificate in respect of the building work and the application has not been finally refused; or
 - (c) the local government has given the owner written notice inviting the owner to apply for the issue of a building approval certificate in respect of the building work and the period (if any) specified in the written notice for the making of the application has not yet expired.
- (1b) For the purposes of subsection (1a)(b) an application for the issue of a building approval certificate has been finally refused if the local government has refused to issue the certificate and —
- (a) no application for review of that refusal has been made under section 374AAD; or
 - (b) on review under section 374AAD of that refusal, the refusal has been upheld.
- (1c) In subsections (1a) and (1b) —
“**building approval certificate**” means a building approval certificate under section 374AA. ”.
- (3) Section 401(4) is amended as follows:
- (a) by deleting “, whether”;
 - (b) by deleting “or not” and inserting instead —
“ under subsection (1) ”.
- (4) Section 401(5) is amended by inserting after “notice” in the first place where it occurs —
“ from the local government under subsection (1) ”.

12. Various references to building surveyor amended

Each provision listed in the Table to this section is amended by inserting after “building surveyor” in each place where it occurs —

“ of the local government ”.

Table

s. 364(3)(c)	s. 406
s. 374(5)	s. 415(1)
s. 377(2) and (4)	s. 420(1)
s. 379(1)	s. 433(26)
s. 399(3)(a)	

13. Consequential amendment to the *Local Government Act 1995* and transitional provision

- (1) The amendment in this section is to the *Local Government Act 1995**.

[* *Reprint 3 as at 5 August 2005.*]

- (2) Schedule 9.2 clause 4(2) is repealed.
- (3) The regulations referred to in the *Local Government Act 1995* Schedule 9.2 clause 4(2)(b) —
- (a) continue in effect so far as they relate to building surveyors and Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*; and
 - (b) are to be taken to have been made under the *Local Government Act 1995* section 9.59 for the purposes of the *Local Government (Miscellaneous Provisions) Act 1960* section 373A and 374AAB inserted by section 5 and 7 of this Act.

14. Consequential amendments to the *Builders' Registration Act 1939*

- (1) The amendments in this section are to the *Builders' Registration Act 1939**.
[* Reprint 11 as at 2 September 2005.]
- (2) After section 4B(1) the following subsections are inserted —
- “
- (1a) A person to whom a building approval certificate is issued under section 374AA of the *Local Government (Miscellaneous Provisions) Act 1960* must pay to the local government by which the certificate is issued (at the time of issue) such fee as is determined by the Minister.
- (1b) Subsection (1a) applies if and only if the certificate is issued in respect of building work for which no building licence was issued.
- ”
- (3) Section 4B(2) is amended as follows:
- (a) by deleting “referred to in subsection (1)” and inserting instead —
“ or building approval certificate ”;
- (b) in paragraph (a) by inserting after “licence” —
“ or certificate ”;
- (c) in paragraph (b) by inserting after “subsection (1)” —
“ or (1a) ”.

Appendix B

Western Australia

**Local Government (Building Surveyors)
Regulations 2008**

As at 06 Jun 2008 Version 00-a0-00
Extract from www.slp.wa.gov.au, see that website for further information

Western Australia

**Local Government (Building Surveyors)
Regulations 2008**

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Western Australia

Local Government (Miscellaneous Provisions) Act 1960

Local Government (Building Surveyors) Regulations 2008

Part 1 — Preliminary

1. Citation

These regulations are the *Local Government (Building Surveyors) Regulations 2008*.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Local Government (Miscellaneous Provisions) Amendment Act 2007* section 5 comes into operation.

[3. *Has not come into operation².*]

[Parts 2-7 have not come into operation².]

Notes

¹ This is a compilation of the *Local Government (Building Surveyors) Regulations 2008*. The following table contains information about those regulations ^{1a}.

Compilation table

Citation	Gazettal	Commencement
<i>Local Government (Building Surveyors) Regulations 2008</i> r. 1 and 2	6 Jun 2008 p. 2205-24	6 Jun 2008 (see r. 2(a))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Local Government (Building Surveyors) Regulations 2008</i> r. 3 and Pt. 2-7 ²	6 Jun 2008 p. 2205-24	1 Jul 2008 (see r. 2(b) and <i>Gazette</i> 6 Jun 2008 p. 2179)

² On the date as at which this compilation was prepared, the *Local Government (Building Surveyors) Regulations 2008* r. 3 and Pt. 2-7 have not come into operation. They read as follows:

“

3. Terms used in these regulations

In these regulations, unless the contrary intention appears —

- “**BSCQ**” means a Building Surveyors Certificate of Qualification granted under regulation 21;
- “**Building Surveyor Level 1 certificate**” means a Building Surveyor Level 1 certificate granted under regulation 21;
- “**Building Surveyor Level 2 certificate**” means a Building Surveyor Level 2 certificate granted under regulation 21;
- “**Building Surveyor Technician certificate**” means a Building Surveyor Technician certificate granted under regulation 21;
- “**CEO**” means the chief executive officer of the department;
- “**certificate of qualification**” means a certificate granted under regulation 21;

“commencement day” means the day on which the *Local Government (Miscellaneous Provisions) Amendment Act 2007* section 5 comes into operation;

“Committee” means the Building Surveyors Qualifications Committee established by regulation 7;

“department” means the department of the Public Service principally assisting in the administration of the *Local Government (Miscellaneous Provisions) Act 1960* Part XV;

“MBSCQ” means a Building Surveyors Certificate of Qualification issued by the Municipal Building Surveyors Qualifications Committee under regulation 12(1) or (2) of the repealed regulations;

“repealed regulations” means the *Local Government (Qualification of Municipal Officers) Regulations 1984*;

“the Act” means the *Local Government (Miscellaneous Provisions) Act 1960*;

“Training Accreditation Council” means the Training Accreditation Council established under the *Vocational Education and Training Act 1996* section 25(1);

“transition period” means the period of 5 years beginning on the commencement day.

Part 2 — Qualifications for appointment to the office of building surveyor

4. Qualifications

- (1) For the purpose of section 373A of the Act, during the transition period a person must hold one of the following before the person is appointed to the office of building surveyor of a local government —
 - (a) a Building Surveyor Level 1 certificate;
 - (b) a Building Surveyor Level 2 certificate;
 - (c) a MBSCQ;
 - (d) a BSCQ;
 - (e) a Building Surveyor Technician certificate.
- (2) For the purpose of section 373A of the Act, after the transition period a person must hold one of the following before the person is appointed to the office of building surveyor of a local government —
 - (a) a Building Surveyor Level 1 certificate;
 - (b) a Building Surveyor Level 2 certificate.

Part 3 — Delegation of authority to approve plans of buildings or unauthorised building work

5. Limitation on delegation of authority to approve plans of buildings or unauthorised building work

- (1) Subject to regulation 6, a person to whom a local government may delegate the authority to approve or refuse to approve —
- (a) plans and specifications submitted under section 374 of the Act; or
 - (b) unauthorised building work,

must be a person employed under a contract of service by the local government or another local government.

- (2) If a delegation of an authority is made under section 374AAB(1) of the Act to a person (the “delegate”), the delegation is subject to the following conditions —

- (a) the delegate must not exercise the authority in relation to —
 - (i) plans and specifications submitted by the delegate under section 374 of the Act; or
 - (ii) an application made by the delegate for the issue of a building approval certificate under section 374AA of the Act;
- (b) the delegate must not exercise the authority if the delegate —
 - (i) is to be the builder in relation to the building work to be carried out under plans and specifications submitted under section 374 of the Act; or
 - (ii) was the builder in relation to unauthorised building work which is the subject of an application for the issue of a building approval certificate under section 374AA of the Act;
- (c) the delegate must not exercise the authority in relation to a matter in relation to which the delegate has or had an interest of a type referred to in the *Local Government Act 1995* section 5.60(c) or (d).

6. Prescribed qualifications that must be held by delegate of authority to approve plans of buildings or unauthorised building work

- (1) For the purposes of section 374AAB(2) of the Act, during the transition period, the authority to approve or refuse to approve

plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to any building must not be delegated to a person unless that person holds one of the following —

- (a) a Building Surveyor Level 1 certificate;
 - (b) a MBSCQ;
 - (c) a BSCQ.
- (2) For the purposes of section 374AAB(2) of the Act, after the transition period, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to any building must not be delegated to a person unless that person holds a Building Surveyor Level 1 certificate.
- (3) Despite subregulations (1) and (2), for the purposes of section 374AAB(2) of the Act, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to a building with a maximum floor area of 2 000 m² and not more than 3 storeys may be delegated to a person if that person holds a Building Surveyor Level 2 certificate.
- (4) Despite subregulations (1) and (2), for the purposes of section 374AAB(2) of the Act, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to a building with a maximum floor area of 500 m² and not more than 2 storeys may be delegated to a person if that person holds a Building Surveyor Technician certificate.
- (5) If a delegation to an individual under section 374(1b) of the Act (as in force before the commencement day) to approve or refuse to approve plans and specifications under section 374 of the Act has not ceased to have effect immediately before the commencement day, that delegation continues to have effect on or after that day as if it had been made under section 374AAB(1)(a) of the Act.

Part 4 — Building Surveyors Qualifications Committee

7. Building Surveyors Qualifications Committee established

The Minister is to establish a committee called the Building Surveyors Qualifications Committee.

8. Membership of Committee

The Committee consists of 5 members appointed by the Minister, of whom —

- (a) one is to be the CEO or an officer of the department, nominated by the CEO; and
 - (b) 3 are to be persons who are practising as a building surveyor; and
 - (c) one is to be a person with knowledge of building surveyor education and training.
9. **Chairperson of the Committee**
The CEO or the officer appointed under regulation 8(a) is the chairperson of the Committee.
10. **Functions of the Committee**
The functions of the Committee are as follows —
- (a) to assess applications for certificates of qualification;
 - (b) to grant certificates of qualification;
 - (c) to perform the other functions that are conferred on the Committee by these regulations.
11. **Term of office**
- (1) A member of the Committee appointed under regulation 8(b) or (c) holds office for the term, not exceeding 3 years, specified in the member's instrument of appointment.
 - (2) A member of the Committee appointed under regulation 8(b) or (c) is not to hold office for more than 9 years, consecutively or otherwise.
12. **Deputy members**
- (1) The Minister may appoint a person to be a deputy of a member and may terminate such an appointment at any time.
 - (2) The provisions of regulation 8 that apply in relation to the appointment of a member apply, with any necessary modification, in relation to the appointment of the deputy of that member.
 - (3) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.
 - (4) Despite anything in these regulations, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
 - (5) A deputy of a member, while acting as a member, has all the functions of a member.
 - (6) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

13. Vacation of office by member

- (1) A member of the Committee may resign from office by notice in writing given to the Minister.
- (2) A member of the Committee may be removed from office by the Minister if the member —
 - (a) becomes permanently incapable of performing his or her duties; or
 - (b) becomes a person who would not be qualified to be appointed a member; or
 - (c) carries out any act or omission that in the opinion of the Minister may cause prejudice or injury to the Committee.

14. Remuneration

A member of the Committee is to be paid such remuneration and allowances (if any) as the Minister, on the recommendation of the Minister for Public Sector Management, determines from time to time.

15. Leave of absence

The Minister may grant leave of absence to a member of the Committee, or a deputy of a member, for such period and upon such terms and conditions as the Minister determines.

16. Secretary

The Committee is to have a secretary, nominated by the CEO from time to time, who must be an officer of the department.

17. Meetings

- (1) The Committee is to hold such meetings as it considers necessary for conducting its affairs.
- (2) At a meeting of the Committee —
 - (a) 3 members form a quorum; and
 - (b) the chairperson, or in his or her absence the person appointed his or her deputy, must preside, or if both are absent or there is no deputy so appointed, the members present at the meeting must elect one of their number to act as chairperson at that meeting; and
 - (c) all questions must be decided by a majority of votes of the members present and voting; and
 - (d) the chairperson, or other person presiding as chairperson, at the meeting has a deliberate vote but no casting vote, and in the event of an equality of votes, the motion must be declared “not carried”.

Part 5 — Certificate of qualification

18. Types of certificate of qualification

The following types of certificate of qualification may be granted by the Committee —

- (a) Building Surveyor Level 1 certificate;
- (b) Building Surveyor Level 2 certificate;
- (c) a Building Surveyors Certificate of Qualification;
- (d) Building Surveyor Technician certificate.

19. Prescribed qualifications

- (1) Under sections 373A(1) and 374AAB(3) of the Act, the qualification for a Building Surveyor Level 1 certificate is —
 - (a) completion of a course of study comparable to that required by the Central Queensland University for the grant by it in 2007 of a Bachelor of Building Surveying and Certification; and
 - (b) 3 years' experience as a building surveyor.
- (2) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the following qualifications are also qualifications for a Building Surveyor Level 1 certificate —
 - (a) a BSCQ or a MBSCQ and 5 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day;
 - (b) an Advanced Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council and 5 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day.
- (3) Under sections 373A(1) and 374AAB(3) of the Act, the qualification for a Building Surveyor Level 2 certificate is —
 - (a) an Advanced Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council; and
 - (b) 2 years' experience as a building surveyor.
- (4) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the following qualifications are also qualifications for a Building Surveyor Level 2 certificate —
 - (a) a Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council

- and 4 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day;
- (b) 6 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day.
- (5) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the qualification for a BSCQ is —
- (a) an Advanced Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council; and
- (b) 2 years' experience as a building surveyor for a local government.
- (6) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the following qualifications are a qualification for a Building Surveyor Technician certificate —
- (a) a Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council;
- (b) 12 months' experience as a building surveyor for a local government in the period of 12 months immediately before the commencement day.
- 20. Application for certificate of qualification**
- An application for a certificate of qualification is to be —
- (a) for one and only one type of certificate; and
- (b) in the form approved in writing by the Committee; and
- (c) accompanied by the fee prescribed by regulation 26 for that type of certificate.
- 21. Grant of certificate of qualification**
- (1) The Committee must grant a certificate of qualification of the type applied for if the Committee determines that the applicant has —
- (a) a prescribed qualification for that type of certificate; or
- (b) an equivalent interstate or overseas qualification; or
- (c) sufficient knowledge and experience to qualify the applicant to carry out the functions of persons who hold a certificate of that type.
- (2) For the purpose of making a determination about an applicant's qualifications or knowledge and experience, the Committee may require that an applicant's qualifications or knowledge and experience be assessed by another person or body specified by the

Committee and the Committee is not required to make the determination until the assessment has been completed.

22. Certificate

A certificate of qualification granted by the Committee is to be in or substantially in a form approved in writing by the Committee.

23. Cancellation of certificate

- (1) The Committee may at any time cancel the certificate of qualification issued to a person —
 - (a) who has obtained such certificate by fraud or misrepresentation; or
 - (b) who is a bankrupt as defined in the Commonwealth *Bankruptcy Act 1966* or has a substantially similar status under a law applicable in a place where that Act does not apply; or
 - (c) if the Committee is satisfied that the person is no longer capable of exercising, because of mental defect, the duties to which the certificate of qualification relates; or
 - (d) who has been convicted in this State of any crime or misdemeanour or who has been convicted in any place outside this State of any offence which, if committed in this State, would be a crime or misdemeanour; or
 - (e) who is proved to the Committee to have been guilty of fraudulent or dishonest conduct.
- (2) The cancellation takes effect when a notice of the decision is given to the person under regulation 24.

24. Reason for cancellation to be in writing

If the Committee cancels a certificate of qualification, it is to record the grounds on which the decision was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision, to give written notice of the decision, together with those grounds and reasons, to the person to whom the decision relates.

25. Surrender of certificate

- (1) If a person's certificate of qualification is cancelled under these regulations, the person is, within 14 days after the day on which the person is notified by the Committee of the cancellation, to surrender his or her certificate to the Committee.
Penalty: a fine of \$1 000.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the accused satisfies the court that the failure to surrender the certificate was due to its loss or destruction.
- (3) The cancellation of a certificate of qualification has effect despite any failure to surrender the certificate.

26. **Fee**

The fee specified in column 2 of the Table to this regulation is payable by a person who applies for a certificate of a type specified in column 1 of the Table opposite that fee.

Fees	
Type of certificate	Fee \$
Building Surveyor Level 1 certificate	200
Building Surveyor Level 2 certificate	200
BSCQ	150
Building Surveyor Technician certificate	150

Part 6 — Review by State Administrative Tribunal

27. **Review**

A person whose —

- (a) application for a certificate of qualification is refused by the Committee; or
- (b) certificate of qualification is cancelled by the Committee,

may apply to the State Administrative Tribunal for a review of that refusal or cancellation.

Part 7 — Local Government (Qualification of Municipal Officers) Regulations 1984 repealed

28. **The Local Government (Qualification of Municipal Officers) Regulations 1984 repealed**

The *Local Government (Qualification of Municipal Officers) Regulations 1984* are repealed.

”.

9.3 Finance Reports

9.
9.3
9.3.1

**OFFICER'S REPORTS
FINANCE REPORTS
TRANSFER TO AND FROM RESERVES**

FILE NO: F1.ACC.2
COUNCIL DATE: 30 JUNE 2008
REPORT DATE: 27 JUNE 2008
LOCATION/ADDRESS: N/A
APPLICANT: N/A
SENIOR OFFICER: RAY HOOPER, CEO
REPORTING OFFICER: GRAHAM STANLEY, DCEO
DISCLOSURE OF INTEREST: NIL
APPENDICES: NIL
DOCUMENTS TABLED: NIL

Summary:

Council is to consider transferring from the Reserve Account to the Municipal Account of the following amount:

- (1) \$920.00 from the Tied Funds Reserve to account 109403 "Transfers from Tied Funds Reserve"

and transferring from the Municipal Fund to the Reserve Account the following amount:

- (1) \$45,000 to the Tied Funds Reserve from account 101375 "Transfers from Reserves"

Background:

The sum of \$920 from a grant for School Holiday Programs was placed in Reserve at the end of last financial year. The funds were subsequently spent in the July school holidays however the budget did not make allowance for the funds to be transferred from the reserve. As the funds have been spent it is appropriate that the funds be transferred to the Municipal Fund.

A grant of \$45,000 for Phase 2 of the Zero Waste Strategy for SEAVROC was recently received. The expenditure will not occur until the 2008/09 financial year so the funds need to be placed in the Tied Funds Reserve for use next financial year.

Consultation:

Finance Staff.

Statutory Environment:

Local Government Act Sections 6.8 and 6.II.

Policy Implications:

Nil

Financial Implications:

These transfers will ensure that the funds to pay for expenditure on the projects for which the grants were received will be available in the year that the expenditure actually occurs.

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Comment:

The amount for the holiday program was held in the Reserve Account while the associated project was underway. As it has been completed the funds should be transferred from the Reserve Account to the Municipal Account.

In the case of the SEAVROC Zero Waste Grant it is a requirement under the Accounting directions that the unspent grant be recognized in the annual accounts as "Tied Funds" therefore the appropriate place to hold the funds is in the Reserve Fund.

Officer Recommendation

RESOLUTION

140608

MOVED: Cr Lawrance

SECONDED: Cr Randell

"That Council:

- (1) *Resolves to transfer \$920 from the Tied Funds Reserve to the Municipal Account for the School Holiday Program that was completed.***
- (2) *Resolves to transfer \$45,000 to the Tied Funds Reserve from the Municipal Account for the SEAVROC Zero Waste Plan Phase 2."***

CARRIED (6/0)

10. NEXT MEETING

- Not applicable to Special Meetings.

11. CLOSURE

There being no further business the Shire President declared the meeting closed at 2.50pm.