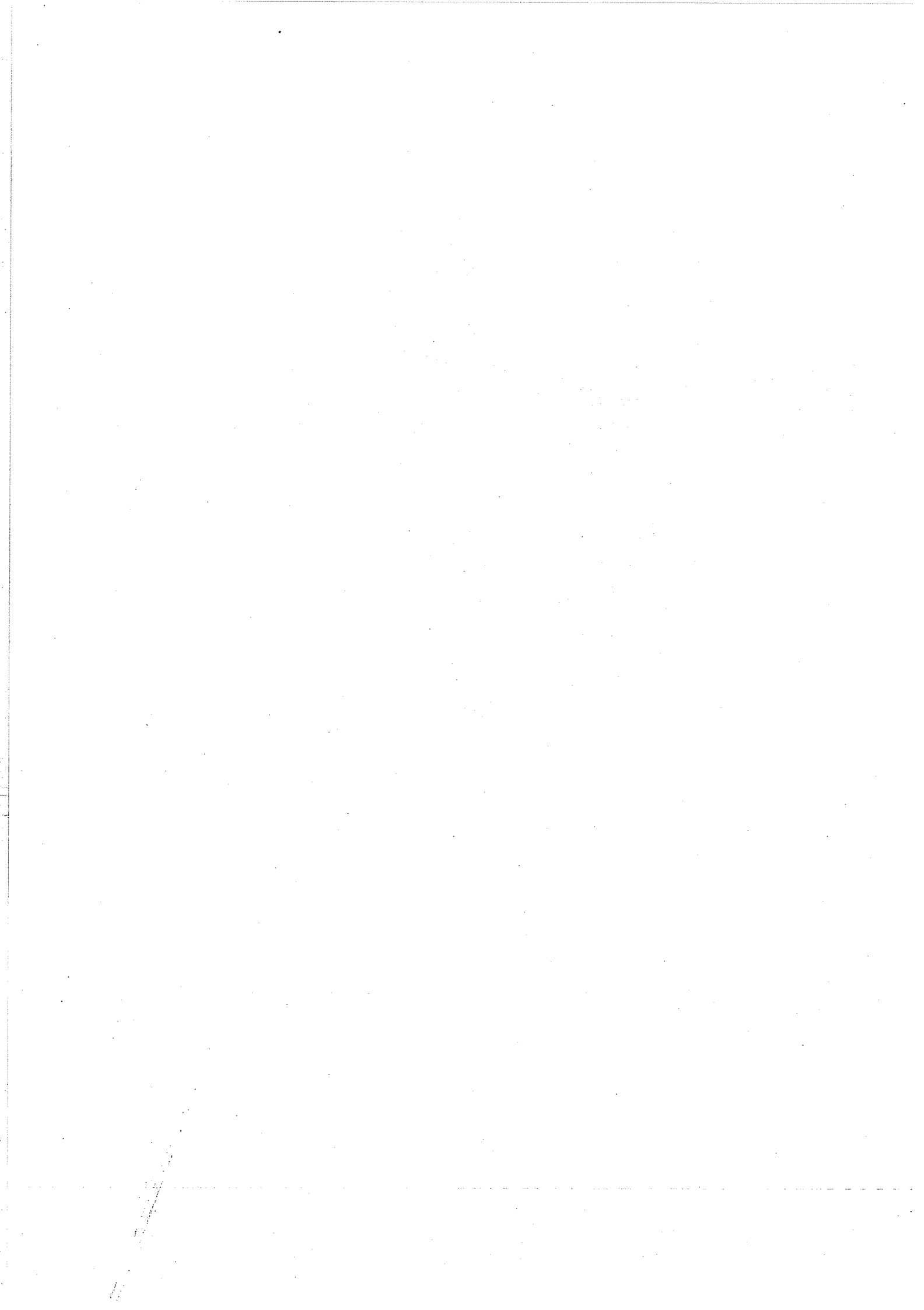




SHIRE OF KALAMUNDA

Index for Minutes of the Special Council Meeting Monday 26 July 2010

1.0	OFFICIAL OPENING	3
2.0	APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED.....	3
3.0	PUBLIC QUESTION TIME	2
4.0	MATTERS FOR WHICH MEETING MAY BE CLOSED	2
5.0	DISCLOSURE OF INTERESTS	2
6.0	REPORT TO COUNCIL.....	3
6.1	Shire of Kalamunda submission to the WA Local Government Association in response to the draft discussion paper "Local Government Enterprises as a Means of Improving Local Government"	3
7.0	MEETING CLOSED TO THE PUBLIC.....	8
8.0	CLOSURE	8





**Minutes of Special Council Meeting
Held in the Council Chambers
2 Railway Road, Kalamunda
Monday 26 July 2010**

1.0 OFFICIAL OPENING

- 1.1 The Chairman opened the meeting at 6.45 pm and welcomed Councillors and Staff.

2.0 APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

2.1 ATTENDANCE

Councillors

Donald McKechnie	(CHAIRMAN/SHIRE PRESIDENT) NORTH WARD
Sue Bilich	NORTH WARD
Allan Morton	SOUTH WEST WARD
Maureen Robinson	SOUTH WEST WARD
Carol Everett	SOUTH EAST WARD
Frank Lindsey	SOUTH EAST WARD
Geoff Stallard	SOUTH EAST WARD
Dylan O'Connor	NORTH WEST WARD

Members of Staff

Bob Searle	DIRECTOR CORPORATE SERVICES
Darrell Forrest	MANAGER GOVERNANCE
Peter Hayes	MANAGER BUSINESS AND STRATEGY
Michelle Clark	EXECUTIVE ASSISTANT
Donna McPherson	MINUTE SECRETARY

Members of Public

Nil.

Members of Press

Nil.

2.2 Apologies

Noreen Townsend	SOUTH WEST WARD
Martyn Cresswell	NORTH WEST WARD
James Trail	CHIEF EXECUTIVE OFFICER
Mahesh Singh	DIRECTOR ENGINEERING SERVICES
Clayton Higham	DIRECTOR PLANNING & DEVELOPMENT SERVICES
Kevin O'Connor	DIRECTOR COMMUNITY DEVELOPMENT

2.3 Leave of Absence Previously Approved

Margaret Thomas

NORTH WARD

2.4 Absent

Peter Heggie

NORTH WEST WARD

3.0 PUBLIC QUESTION TIME

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this meeting. For the purposes of Minuting, these questions and answers are summarised.

Nil.

4.0 MATTERS FOR WHICH MEETING MAY BE CLOSED

4.1 Nil

5.0 DISCLOSURE OF INTERESTS

Disclosure of Financial and Proximity Interests

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

5.1 Nil.

Disclosure of Interest Affecting Impartiality

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

5.2 Nil.

6.0 REPORT TO COUNCIL

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

6.1 Shire of Kalamunda submission to the WA Local Government Association in response to the draft discussion paper "Local Government Enterprises as a Means of Improving Local Government"

Previous Items:	None
Responsible Officer	Chief Executive Officer
Service Area:	Chief Executives Office
File Reference:	OR-CMA-021
Applicant:	None
Owner:	None
Attachments	Attachment 1 – Submission to WALGA

PURPOSE

1. For Council to endorse the Shire of Kalamunda submission to the WA Local Government Association in response to the draft discussion paper "Local Government Enterprises as a Means of Improving Local Government"

BACKGROUND

2. It has been acknowledged for sometime that local governments need to find innovative solutions to the many challenges faced to ensure sustainability and meet increased community demands.

The proposal in the discussion paper to provide for the establishment of Local Government Enterprises [LGE's] is an attempt to provide this solution

DETAILS

3. A number of Reports at Commonwealth, State and the Local level since 2006 have identified issues relating to the long term sustainability of local government in WA, and recommended innovative solutions would be needed to meet the challenge of sustainability.

Such sentiments were raised in the Local Government Advisory Board Report of 2006 and the Systemic Sustainability Study [SSS] of 2008.

Additionally a 2009 Productivity Commission report identified serious shortcomings in the future financial viability of local government throughout Australia.

The WALGA discussion paper follows on from previous work commissioned by the former Department for Infrastructure and Planning (DPI) in 2007 to address statutory constraints to local government involvement in urban regeneration, which was adopted by the WA Local Government Association (WALGA) as part of its response to the 2008 Systemic Sustainability Study of Local Government.

The 2007 DPI/WALGA review identified urban development as an area of particular importance that was constrained by the statutory provisions set out in the *Local Government Act 1995* ("LGA").

There is a broad recognition that planning instruments alone are insufficient to deliver sustainable development outcomes: maintaining a balance between flexibility and certainty inevitably limits the capacity of planning authorities to regulate the form of development they wish to see produced, while the development outcomes that are best able to deliver environmental and social sustainability are often not those that meet the immediate needs of the private sector for profitability.

As a consequence, profit-driven property development tends to overlook (or be unable to deliver) longer-term environmental, social and cultural outcomes

Urban development – especially the regeneration of established older urban areas - is by its nature a highly fragmented process involving the interaction of many individual investment and development decisions by a large number of individual property owners over a prolonged period.

Many such owners lack the financial resources, or the motivation, to redevelop their properties to higher or newer forms, especially in the early stages of the redevelopment cycle

The State has responded to this challenge in some areas by the establishment of Redevelopment Authorities with wide powers to plan and implement urban redevelopment where the scale of redevelopment is suburb-wide in nature.

In other areas, the Western Australian Land Authority (Landcorp) has played an important role in redeveloping property at a more localised scale.

However, there is no established mechanism for the public sector to facilitate redevelopment and regeneration at the level individual or small groups of properties.

There is thus a legitimate role for local government to participate in the property market in order to facilitate the achievement of such outcomes where it is beyond the capacity or appetite of the private market to do so and the scale is below the threshold appropriate to the involvement of State agencies

STATUTORY AND LEGAL IMPLICATIONS

4. There are currently no Statutory or Legal Implications with respect to this issue

POLICY IMPLICATIONS

5. Nil.

PUBLIC CONSULTATION/COMMUNICATION

6. Public Consultation is not required at this time.

FINANCIAL IMPLICATIONS

7. There are no current Financial Implications.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

8. Strategic Planning Implications

Whilst there are no immediate Strategic Planning Implications, should this proposal come to fruition then there would be significant impacts on the Strategic Plan particularly with respect to sustainability, social, economic and environmental factors

OFFICER COMMENT

9. An LGE is proposed to have a similar structure to a private company primarily tasked with land developments or other commercial enterprises.

In essence an LGE would be a wholly owned company of the local government run by a Board of Directors or Trustees at arms length from the Council and freed from the current legislative and political constraints that exist in the WA local government system.

The concept of an LGE is not new with organisations such as Telstra, WA Water Corp and the WA Redevelopment Authorities based on the same principles proposed in this paper. They also exist in Qld, Vic, SA, NSW and NZ.

The proposal is that an LGE could be established to deal with assets currently owned by a local government. Whilst the thrust of the discussion paper is primarily with respect to land developments, an LGE could be established for other commercial trading undertakings.

It is argued that an LGE operating as a private company does would be freed from the majority of the "red tape" constraints imposed on local governments through the current legislative framework. Additionally an LGE operating at arms length from a local government could minimise the impacts of local community and political pressure.

The discussion paper emphasis that an LGE could only be established with consent of the community through detailed consultation processes.

A Statement of Intent and Business Plan for the entity are an integral part of establishing an LGE.

Should local governments embrace this proposal, State Government support would be required along with some significant amendments to the current legislative framework, particularly the Local Government Act.

Whilst the proposed submission on behalf of the Shire of Kalamunda supports, in principle, the provision of an option in the legislation for an LGE to be established by those local governments that wish to. The attached submission (**Attachment 1**) identifies a number of issues for consideration by WALGA in finalising any proposal to the State Government for implementation.

RECOMMENDATION

1. That (**Attachment 1**) be endorsed as the submission on behalf of the Shire of Kalamunda to the WA Local Government Association in response to the draft discussion paper "Local Government Enterprises as a Means of Improving Local Government".

Moved:

Seconded:

As there was no mover for the recommendation it LAPSED

Councillor Frank Lindsey proposed an alternative motion providing for the submission to include restrictions be placed on the scope of the Local Government Enterprises and a suggestion that support be sought from State and Commonwealth Government to allow deposit of funds in the Future Fund. The motion was seconded by Councillor Sue Bilich who proposed an additional point be added which required a copy of the submission be sent to the Minister of Local Government. This additional point was accepted by the mover. Councillors debated the motion before it was put to the vote.

RESOLVED SCM 103/2010

1. That Attachment 1 be endorsed as the submission on behalf of the Shire of Kalamunda to the Western Australian Local Government Association in response to the draft discussion paper "Local Government Enterprises as a Means of Improving Local Government", subject to the following amendments:-
 1. the proposed legislation enabling the establishment of a Local Government Enterprise contain provisions which restrict the scope of operation of an Local Government Enterprise to:
 - (a) land and property developments
 - (b) the district in which the Local Government Enterprise is established and those local government districts immediately adjacent
 2. that the Western Australian Local Government Association should seek the support of the State and Commonwealth Governments to enter into an agreement allowing local government to deposit funds with the Future Fund for investment into a wider range of assets, should this be desired by a local government.

-
2. That a copy of the Submission be forwarded to the Minister of Local Government.

Moved: Cr Frank Lindsey

Seconded: Cr Sue Bilich

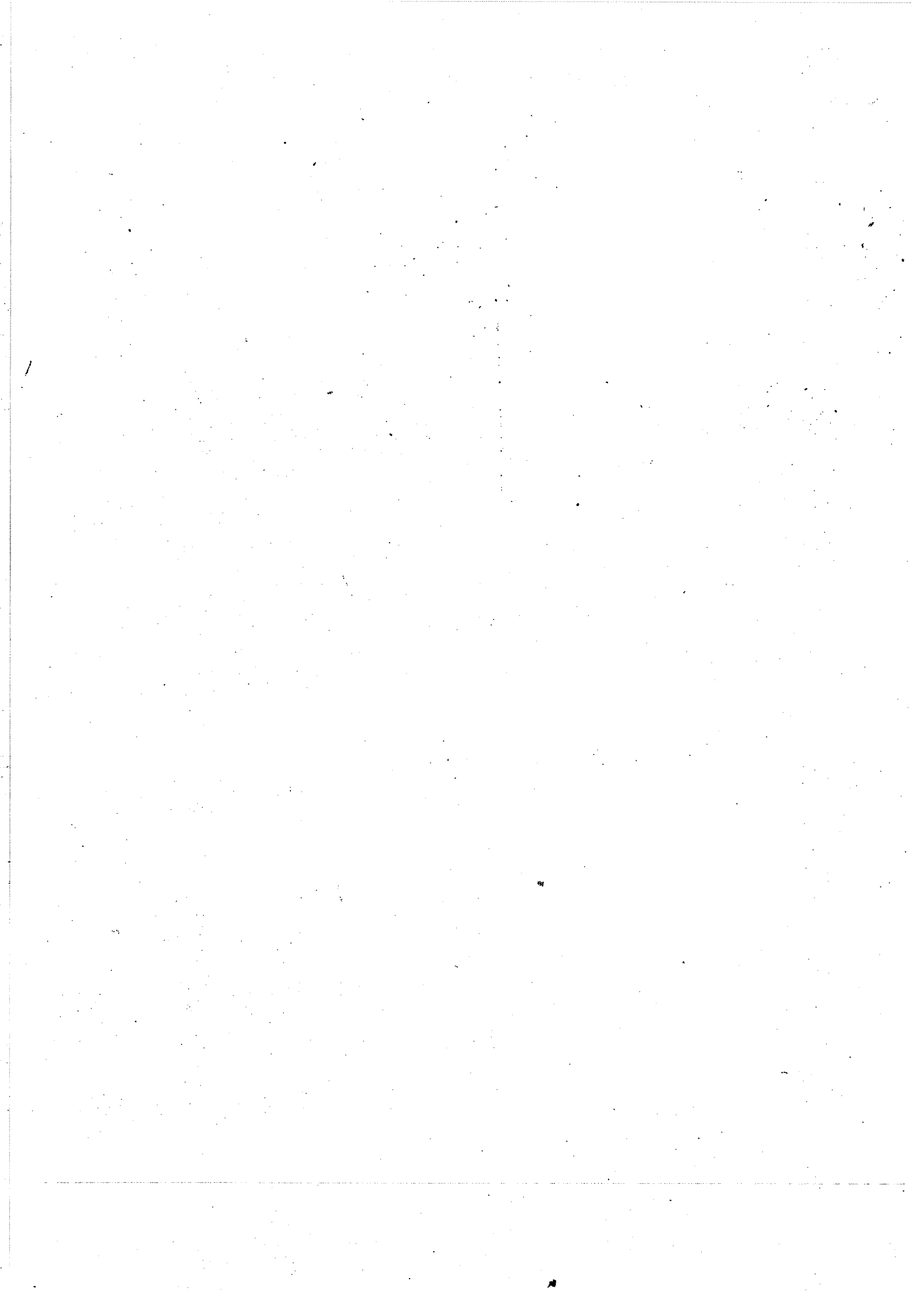
For

Cr Carol Everett
Cr Frank Lindsey
Cr Geoff Stallard
Cr Allan Morton
Cr Dylan O'Connor
Cr Sue Bilich
Cr Donald McKechnie

Against

Cr Maureen Robinson

CARRIED (7/1)



SHIRE OF KALAMUNDA

SUBMISSION TO WALGA

DRAFT DISCUSSION PAPER – LOCAL GOVERNMENT ENTERPRISES

1. INTRODUCTION

The Shire of Kalamunda supports in principle proposals that can provide the framework to enable local governments in WA to introduce new and innovative solutions, such as Local Government Enterprises [LGE's], which will assist local governments to meet the increasing demands and expectations of their communities whilst attempting to ensure that financial sustainability is maintained over the longer term.

The following comments are provided in response to the WALGA discussion paper "Local Government Enterprises as Means of Improving Local Government".

2. ISSUES FOR CONSIDERATION

2.1 Suitability of LGE's for Local Government in WA

With a number of important provisos, the Shire of Kalamunda supports the proposed concept of an LGE as a vehicle to enable "non-core" functions to be undertaken on a more commercial basis with potential for a greater return and a reduction in the exposure to risk, particularly for many valuable land assets.

A broad approach to any legislative provisions in order to provide the greatest flexibility and options for functions that could be incorporated into an LGE, would be preferred by the Shire of Kalamunda.

Sufficient long term projects and a continuity of income are essential criteria in determining whether an LGE would be an appropriate option for a particular local government.

2.2 Proposed Governing Structure of an LGE

Whilst acknowledging that one of the objectives of establishing an LGE is to provide a separation between the Council and the operating entity through an arms-length relationship, the Shire of Kalamunda would not support any legislative provision which explicitly prevents an elected member from being a Board Member of an LGE. Although this might impact on the arms-length relationship and enable local political pressures to be applied, elected member representation on the Board is considered important to ensure that the decisions by the Board on operations of the LGE remain within the framework of the Statement of Intent establishing the LGE.

It is considered that any legislation relative to an LGE should contain a provision specifically stating that a councillor/elected member is **not disqualified** from being a Board Member. Elected member representation however should be restricted to a minority of the Board.

It is noted that the discussion paper canvasses the possibility of a local government staff member being a Board Member. It is considered that such a proposal has the potential for a conflict between the normal role of a staff member and that of the overall "Governance" role of the Council and elected member for the district.

The Shire of Kalamunda therefore does not support any proposal which would provide for a staff member of the local government to be a Board Member.

2.3 Community Consultation

It is considered that the proposed community consultation requirements contained in the draft legislation proposals are not sufficient for the establishment of what might be a significant enterprise for a local government.

The Shire of Kalamunda believes that the minimum notice should be Statewide to enable absent owners/electors to be aware of any proposal.

The Shire would also support that there be a requirement for a Special Meeting of Electors which should be required to make a recommendation to the Council on the proposal to ensure the widest possible canvassing of community views. An alternative to a special meeting could be a community forum at which the views of the community are taken into consideration by the Council.

There should also be a requirement for a local government to provide evidence of its community consultation process and the level of community involvement as part of any request for approval to establish an LGE should that be required from another party or organisation, such as the Minister.

2.4 Approval Process Requirements for Establishing an LGE – Council and Minister

Although the discussion paper canvasses the issue of whether there should be a role for the Minister to be involved in the approval process for the establishment of an LGE, it is noted that the proposed legislative provisions have anticipated full devolution of the approval process to local government.

Should this eventuate, the Shire of Kalamunda would support a more rigorous approval process to ensure that there is full support from the elected members and Council for establishing an LGE. To this end, the Shire of Kalamunda would recommend that the approval process at Council level should require two decisions of the Council at least three months apart. This would provide a period for reflection and further consideration of the ramifications in establishing an LGE. All decisions with respect to an LGE, including its establishment should be by Special/Absolute Majority.

Alternatively, if the Minister is to be given the right of "veto" for any proposal, then the Shire of Kalamunda believes that there should be some accountability provisions

incorporated in the legislation to provide transparency, natural justice and procedural fairness in the Minister's approval process and minimise the potential for a decision to be made purely of "political" grounds.

Such provisions should include a requirement for the Minister to take advice from an independent appropriately experienced and qualified source [ie, individual consultant or a company]. A local government aggrieved by any decision of the Minister should have an automatic right to all papers, documents or meeting minutes/notes utilised by the Minister in the decision making process.

There should also be a right of objection/appeal to an appropriate reviewing organisation, such as SAT, against the Minister's decision. This process should be clearly defined in any proposed legislation in an endeavour to avoid resorting to costly litigation through avenues such as the Supreme or High Courts.

2.5 Scope of Operation of an LGE

The Shire of Kalamunda does **not support** LGE's being given a broad operational scope in any legislative provisions, both in terms of where the LGE could operate and the activities that could be undertaken. The Shire considers that the LGE concept should be restricted to land and property developments. Furthermore, consideration may need to be given as to whether an LGE could undertake activities outside of WA. The Shire of Kalamunda's preferred option being to restrict the area to the local government district in which it is established and those districts immediately adjacent.

This Shire does not support any proposal which would enable an LGE to be established as an Investment/Financing vehicle which could become involved in the trading of financial instruments such as Derivatives, CDO's, Futures Contracts or Stock Market trading.

Should local governments wish to diversify their investments then it is considered this should be pursued by WALGA seeking the support of the State and Commonwealth Governments to enter into an agreement allowing local government to deposit funds with the Future Fund for investment into a wider range of assets, should this be desired by a local government.

Nevertheless, the overriding criteria for LGE's must always be the viability of the intended proposal to ensure long term benefits for the community/ratepayers.

2.6 Financial Matters and Reporting

It is noted that the discussion paper only proposes that a Business Plan be prepared to cover only the first 5 years of operation of an LGE. It is considered essential that there should be a requirement for an ongoing Business Plan that projects 5 years in advance.

The Shire of Kalamunda believes it is essential for the legislation to require full financial reporting and disclosure to the community of the operations of an LGE and its impact on the operations of the local government which established the LGE. Inclusion of these reports in the local government's Annual Report should be a mandatory requirement.

It is considered that the following issues relating to the technical operation and establishment of an LGE should be an integral part of any overall evaluation of the LGE concept:-

- The need for the cost in establishing an LGE to be met by the local government until a decision is made to establish a new entity. If Council decides not to proceed with the business proposal, then accumulated expenditure will be written off in the profit and loss statement. If Council decides to proceed with the establishment of an LGE then all accumulated expenditure incurred is capitalized by a local government as part of the cost in establishing the new entity.
- Additional disclosure requirements in the annual financial statement of a local government to comply with Australian Accounting Standards, the Local Government Act 1995 (the Act) and regulations to the Act with the treatment of an investment in another entity.
- Investment will need to comply with Australian Accounting Standards prepared by the Australian Accounting Standards Board. This includes AASB 101 "Presentation of Financial Statements", or if a Joint Venture is proposed, then compliance with AASB 131 "Interests in Joint Ventures".
- The carrying value of investments disclosed as an asset of a local government will need to be assessed each year to ensure the carrying value is not impaired. This treatment is required to ensure the asset is not overstated and is being carried at fair value.
- Regulation under the Act should ensure that LGE's provide regular reports to its shareholders or joint venture partners.
- An LGE incorporated under the Corporations Act will be regulated under that piece of legislation but also need to comply with the Local Government Act.
- An LGE will need to be audited each financial year by an auditor appointed by shareholders.
- Audited financial statements will need to be submitted each year to shareholders.

3. **CONCLUSION**

The Shire of Kalamunda agrees that the following overarching objectives identified in the discussion paper are essential to any proposed reform:

- i) the proposed measures should maximise the commercial efficiency of local government in utilising its assets for the benefit of the community.
 - ii) the proposed measures should improve the quality of decision-making regarding the utilisation of local government assets.
 - iii) local governments should be encouraged to prudently broaden their sources of income in the interests of long-term financial sustainability.
-

- iv) a local government taking commercial risk should do so only to the extent that its "core" assets and functions are not placed at risk.
- v) ownership and control of local government assets should remain with local government, whether directly or indirectly.
- vi) governance arrangements should comply with recognised "best practice".
- vii) the proposed measures should support and enhance the principle of community consultation in matters affecting the disposition of local government assets.
- viii) the proposed arrangements should not contravene established Competition Policy.

Nevertheless, it is imperative that local government maintain some form of overall control of their assets irrespective of the proposed structure of any commercial entity established through an LGE process.

The trade off is needed for good governance practices for the control and administration of these assets that maximises the return for the community.



7.0 MEETING CLOSED TO THE PUBLIC

7.1 Nil.

8.0 CLOSURE

There being no further business, the Chairman declared the meeting closed at 7.30pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed.....Chairman

Dated thisday of.....2010

