



**MINUTES FOR  
SPECIAL COUNCIL MEETING  
FRIDAY, 30 MARCH 2012**

**Council Chambers  
6177 Great Northern Highway, Bindoon**

**COMMENCEMENT: 10.47am  
CLOSURE: 10.57am**

These minutes will be confirmed at the **Ordinary meeting of Council** to be held on **18 April 2012**.

SIGNED BY \_\_\_\_\_  
Person presiding at the meeting at which minutes were confirmed

DATE \_\_\_\_\_

**Disclaimer**

The purpose of this Council meeting is to discuss and, where possible, make resolutions about items appearing on the agenda.

Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a member or officer, or on the content of any discussion occurring, during the course of the meeting.

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**Agendas and minutes are available on the Shire's website [www.chittering.wa.gov.au](http://www.chittering.wa.gov.au)**

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\* indicates separate attachments.



**1. DECLARATION OF OPENING OF MEETING / ANNOUNCEMENTS OF VISITORS**

Cr Alex Douglas declared the meeting open at 10.47am

**2. RECORD OF ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE**

**2.1 Attendance**

The following members were in attendance:

Cr Alex Douglas                      Shire President  
Cr Barni Norton  
Cr Sandra Clarke  
Cr Doreen Mackie

The following staff were in attendance:

Gary Tuffin                              Chief Executive Officer  
Jean Sutherland                      Executive Manager Corporate Services  
Azhar Awang                            Executive Manager Development Services  
Gavin Pollock                          Executive Manager Technical Services (from 10.55am)  
Karen Parker                            Manager Administration and Community Services  
Danica Kay                               Minute Secretary

There were no members of the general public in attendance

**2.2 Apologies**

Cr Robert Hawes                      Deputy Shire President  
Cr Michelle Rossouw

**2.3 Approved leave of absence**

Council has previously approved Leave of Absence for:

- Cr Gibson for the period inclusive of 30 March 2012 until 30 April 2012.

**3. DISCLOSURE OF INTEREST**

Nil



#### 4. PUBLIC QUESTION TIME

##### 4.1 Public question time

Nil

#### 5. PURPOSE OF MEETING

##### 5.1 Proposed new Delegations, Fees and Overview Associated with the new Building Act 2011\*

**Applicant** Shire of Chittering  
**File ref** 13/05/0001  
**Prepared by** Elena Bull – Principal Building Surveyor  
**Supervised by** Azhar Awang – Executive Manager Development Services  
**Voting requirements** Absolute majority  
**Documents tabled** Nil

**Attachments**

1. Fees and Charges
2. New delegations

#### OFFICER RECOMMENDATION / COUNCIL RESOLUTION - 220312

Moved Cr Mackie, seconded Cr Norton

That Council:

1. **accepts** the report in its contents in relation to the approach that Shire officers will take in response to the *Building Act 2011*.
2. **adopt** the following new delegations to take effect when the relevant provisions of the *Building Act 2011* are proclaimed:

(a) **Delegations to the Chief Executive Officer**

**Powers and Duties – *Building Act 2011***

**Authority – *Building Act 2011***

**Delegation:** Council delegates its authority and powers to the Chief Executive Officer the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the *Building Act 2011*:

Section 96	Authority to appoint authorised persons
Section 133	Authority to commence prosecution

(b) **Delegations to the Executive Manager Development Services and Principal Building Surveyor**

**Powers and Duties – *Building Act 2011***

**Authority – *Building Act 2011***

**Delegation:** Council delegates its authority and powers to the Executive Manager Development Services and Principal Building



Surveyor the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the *Building Act 2011*:

Section 20	Authority to grant or refuse to grant building permits
Section 21	Authority to grant or refuse to grant demolition permits
Section 22	Authority to refuse to grant building permits or demolition permits if: (1) there appears to be an error in the documents or information provided in the application; or (2) if an application is inconsistent with: a) a function that the Permit Authority has under written law; or b) an agreement between the Permit Authority and the applicant.
Section 58	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates
Section 65	Authority to extend the period to which the Occupancy Permit or modifications or the Building Approval Certificate has effect
Section 110	Authority to issue Building Orders
Section 117	Authority to revoke Building Orders

3. **delete** the following delegations from the Delegated Authority Register, upon the proclamation of the *Building Act 2011*:
  - (i) DA38 – Issue of Building Licence
  - (ii) DA39 – Approval of Building Licences
  - (iii) DA40 – Dangerous Buildings
  - (iv) DA41 – Removal of Neglected and Dilapidated Buildings
  - (v) DA42 – Uncompleted Buildings
  - (vi) DA45 – Demolition Licences
  
4. **insert** the following delegations to the Delegated Authority Register, as attached:
  - i) DA38 – Demolition permits
  - ii) DA39 – Building Permits
  - iii) DA40 – Building Orders
  - iv) DA41 – Extension of period of duration of an occupancy permit or building approval certificate
  - v) DA45 – Authority to commence prosecutions
  - vi) DA53 – Occupancy Permits or building approval certificates
  - vii) DA54 – Authority to appoint authorized persons
  
5. **adopt** and give local public **notice** of the attached Schedule of Fees and Charges to be implemented at the commencement of the *Building Act 2011* on 2 April 2012.

THE MOTION WAS PUT AND DECLARED CARRIED 4/0  
BY ABSOLUTE MAJORITY

10:57AM



## **Background**

Section 1, 2 and 3 of the *Building Act 2011* (the Act) were passed by Parliament on 23 June 2011. A Proclamation Notice for the *Building Act 2011* was published in the Government Gazette on 13 March 2012. The notice provides that the *Building Act 2011* (other than sections 1, 2 and 3 that were proclaimed earlier), will come into operation on 2 April 2012.

The new *Building Act 2011* and Building Regulations will replace Building Regulations 1989 (the existing regulations), and parts of the *Local Government (Miscellaneous Provisions) Act 1960*, that deal with building matters. The Act covers all buildings in the state of Western Australia bringing some significant changes to the building approvals process, introduces permit issuing authorities, enables private certification of design compliance and is designed to streamline and clarify the building process.

The State Government has undertaken a Building Regulation Reform package that is planned to deliver the most significant transformation to Western Australian building legislation in over fifty years. The existing building approvals process was established by the Local Government Act in 1960, and reflects the way buildings were designed in the 1950s – relying on builders register under the *Builder's Registration Act 1939*. Building policy and legislation has been fragmented between local and state government departments since then, with practitioner registration managed by individual boards. Reviews of building regulations undertaken by the former Housing and Works and Consumer Protection portfolios recommended that the legislation be updated to reflect modern building practices in Western Australia. Reviews also suggested that the legislation be managed in one place, by a single entity; and as a result the Building Commission was established.

The Building Commission was established as a division of the Department of Commerce in July 2009, and brings together building practitioner registration, building standards, complaints processes and building policy; and is leading the implementation of the Government's Building Regulation Reform package.

This new legislation abolishes the Builder's Registration Board, the Painter's Registration Board, the Building Surveyors Qualifications Committee and the Building Disputes Tribunal; and replaces them with a more streamlined and integrated system.

## **Statutory Environment**

### ***Building Act 2011***

The Act allows for private sector registered building surveyors. This means project owners will have different options applying for a building licence to be termed under the new Act "Building Permit". The application types are termed "uncertified" and "certified". "Certified" applications require the involvement of private building practitioners (e.g. private certifier). Certification services include providing a Certificate of Design Compliance that will accompany a "certified" building permit application and a Certificate of Construction Compliance, or a Certificate of Building Compliance that will accompany applications for occupancy permits, building approval certificates or applications to strata title.



The reforms presented by the new Act include a requirement that all buildings owned by the Crown must comply with this Act; and provides for "Permit Authorities" to be established. Local Governments are the primary "Permit Authority" who issue Building Permits (which will replace the current Building Licence). The Act enables special permit authorities (a group of local governments) and also State Government to act as a Permit Authority for any building in the State.

"Certified" applications should the applicant choose this process will be required to have obtained all necessary approvals (e.g. planning, heritage, environmental health, etc) prior to lodging an application. These applications are required to be processed by the Shire and permits issued or refused within ten (10) business days of the date of lodgement.

"Uncertified" applications are essentially the same that are currently received and assessed by the Shire requiring processing within twenty-five (25) business days. If "Certified" or "Uncertified" applications are missing information, the Shire may request that information rather than rejecting the application, and may specify up to twenty-one (21) days for the information to be provided. A person submitting a defective application risks rejection or delay in approval.

Local Governments remain the primary regulator of building work within their local government area. Retaining the option for owners to use the current local government combined certification and permit issuing function for residential construction houses and minor building work (class 1 and 10). People wishing to construct new buildings or change the use of an existing building must apply to the local authority for a building permit or an occupancy permit.

The provisions of the Act allow local governments to provide a commercial building certification service that essentially is a continuation of the building assessment role that has traditionally been undertaken by local governments.

The desired outcome of these reforms is intended to be a more responsive and modern building regulatory system that meets the changing needs and aspirations of all building participants and consumers.

#### Local Government (Permit Authority)

Under the new *Building Act 2011* the fundamental role of local governments ("Permit Authority") is to issue building, demolition and occupancy permits; ensure building works within its district achieve statutory compliance with the building permit; and undertake assessment and issue Certificate of Design compliance for Class 1 ("single houses") and Class 10 ("sheds, patios, carports, etc").

#### Certification Services

Whilst local governments may only have to provide the minimum services under the Act that of a "Permit Authority" and provide assessment of residential applications as specified above, they are also able to consider providing other certification services and are able to charge a fee to recover the cost of those services.

Local governments have the opportunity to establish a certification service, in addition to its required role as a "Permit Authority" so that Council provides the same level of service it currently offers to its ratepayers and the community should the developing private industry not meet demand with the Shire of Chittering.





Before doing so, local governments will need to ensure that they do not breach the provisions of the *Local Government Act 1995* and other legislation such as the National Competition Policy. These other services may include issuing:

- (i) Certificate of Design Compliance – certification services for all classes of buildings
- (ii) Certificate of Construction Compliance – inspection and certification of various portions of a building during construction work that is within the scope of skills and qualifications available
- (iii) Certificate of Building Compliance – coordinate, inspect and certify that a completed building is compliant.

In the initial phase, it is recommended that the Shire of Chittering restricts its role to that of a “Permit Authority” unless applicants specifically request additional services and demonstrate the need for that service to be provided from the Shire – should industry take time understanding the systems provided by the Act and not meet the demand. It is expected that this industry will grow rapidly.

The level of additional services offered may be limited to available resources and by qualification of staff, as imposed by the new *Building Services (Registration) Act 2011* (the Registration Act). The Registration Act requires that all building service providers, including Building Surveyors, be registered and appropriately qualified. The Shire’s Principal Building Surveyor is a Registered Surveyor Level 2 that currently can approve commercial and residential structures with a floor area not exceeding 2,000m<sup>2</sup>; and not higher than three (3) storeys.

This certification service requires no significant changes to the existing operational environment other than an assessment of actual costs associated with the operation. The *certifying charge* will be required to accurately reflect all costs associated with providing that service including precisely costed operating overheads. Fees for issuing of permits will be set by statute; however the Certification process at this stage can only be set by Council if the local government chooses to offer such services. The non-statutory fees and the services being delivered for the fee require advertising under Section 6.19 of the *Local Government Act 1995* - a proposal for this has been included in this report.

It is also recommended that an hourly rate that is currently set at \$110per hour be applied as a non-statutory fee; an example of such service would be the non-prescribed inspections (at various stages of construction) associated with the Certificate of Construction Compliance and Occupancy Permits for commercial type buildings.

The Act now covers all work and provides that the Certificate of Design Compliance must be issued by a person who is not associated with the building owner. State buildings must therefore now be certified by a registered building surveyor who is not employed by the state. This also means that a building development proposed by a local government will no longer be able to be certified by the local government building surveyor; the Shire will therefore be required to seek certification externally from a private certifier or other permit authority, however local governments will still need to issue a permit.





Delegations

With the full introduction of the *Building Act 2011* existing delegations will become redundant in that the head of power will move from the *Local Government (Miscellaneous Provisions) Act 1960* to the *Building Act 2011*.

Council's approval is being sought for new delegations under the *Building Act 2011*. Given the relevant provisions relating to delegations under the *Building Act 2011* have not yet come into operation, the functions of the new delegations cannot be performed by Shire officers until such time as the relevant provisions are proclaimed. It is therefore proposed that Shire officers continue to perform such functions in accordance with existing delegations with Council adopting the new delegations to be implemented at such future time as these provisions are proclaimed. The ability to do this is referred to under Section 25 of the *Interpretations Act 1984*. The *Building Act 2011* is scheduled to commence on 2 April 2012.

Section 127 of the *Building Act 2011* enables local governments to delegate any powers or duties to an employee. To enable the continuation of the building services currently available, the following delegations are recommended to be added to Council's existing delegation register:

A. Delegations to the Chief Executive Officer

Powers and Duties – *Building Act 2011*

Authority – *Building Act 2011*

Delegation: Council delegates its authority and powers to the Chief Executive Officer the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the *Building Act 2011*:

Section 96	Authority to appoint authorised persons
Section 133	Authority to commence prosecution

As the Act evolves it has been suggested by legal representatives to “name” the authorised person, i.e. Elena Bull (section 96).

Under Section 96 of the *Building Act 2011*, “Permit Authorities” (Local Governments) may also designate employees as authorised persons.

The following authorisations are provided under various sections of the *Building Act 2011*:

Section 100	Entry Powers
Section 101	Powers after entry for compliance
Section 102	Obtaining information and documents
Section 103	Use of force and assistance



Local governments must also provide the authorised persons with an identify card (section 97).

B. Delegations to Executive Manager Development Services and Principal Building Surveyors

Powers and Duties – *Building Act 2011*  
Authority – *Building Act 2011*

Delegation: Council delegates its authority and powers to the Executive Manager of Development Services and Principal Building Surveyor the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the *Building Act 2011*:

Section 20	Authority to grant or refuse to grant building permits
Section 21	Authority to grant or refuse to grant demolition permits
Section 22	Authority to refuse to grant building permits or demolition permits if: 1. There appears to be an error in the documents or information provided in the application; or 2. If an application is inconsistent with: (a) A function that the Permit Authority has underwritten law; or (b) An agreement between the Permit Authority and the applicant.
Section 58	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates
Section 65	Authority to extend the period to which the Occupancy Permit or modification or the Building Approval Certificate has effect.
Section 110	Authority to issue Building Orders
Section 117	Authority to revoke Building Orders

The *Building Act 2011* and the *Building Regulations 2012* have been gazetted and are scheduled to commence on 2 April 2012.

Any existing delegation given by a local government to approve or refuse plans of buildings will cease on 2 April 2012 as the new legislation will remove the ability of a local government to certify compliance via a resolution of its Council. The following existing delegations to be withdrawn:

- (i) DA38 – Issue of Building Licence
- (ii) DA39 – Approval of Building Licences
- (iii) DA40 – Dangerous Buildings
- (iv) DA41 – Removal of Neglected and Dilapidated Buildings
- (v) DA42 – Uncompleted Building
- (vi) DA45 – Demolition Licences



### Revisions to Schedule of Fees and Charges

The Act allows for "Permit Authorities" to receive fees for permit applications as well as a number of associated services. The *Building Regulations 2012* contains the Schedule of fees (attachment 1).

The reduction in the fees for certified applications is to recognise the involvement of a Registered Building Surveyor in the design phase, and therefore less involvement of the Permit Authority's Building Surveyor. The Building Commission has provided an undertaking to review these fees once the Act has been in operation for a "sufficient period".

Fees for certification services are permitted, under the Act, to be market driven. Local Governments, under the *Local Government Act 1995*, are required to consider the price available from an alternative provider, i.e. private certifiers. This is currently difficult to establish until private providers start to promote their services. The fees proposed, as outlined in the recommendation, reflect the current fees charged for building licence applications and may need to be varied to better reflect the cost of the services provided.

All fees are reviewed on an annual basis therefore Council can determine at those times the competitiveness of its non-statutory building fees. It has been suggested that council utilizes an hourly rate.

### **Consultation**

WA Building Commission  
Building Surveyors from various Local Governments

### **Policy Implications**

Existing Delegation Policies are submitted to council to show the changes (see attachment 2).

### **Financial Implications**

Income generated within Development Services over time may decrease relative to the level of certified building applications received. This will be dependent on industry and is difficult to determine at this point in time.

On the other hand an establishment of certification services of building applications, as an independent business unit can have the potential to increased income for the Shire.

There is the potential of further income in the form of additional regulatory fees for the issuing of additional permits introduced into the Act.

The inspection services fee charged by hourly rate as noted above has no cost benefit as it is free for service and based on recovery cost only.

There will also be costs incurred to advertise the new adopted fees and charges as required under the *Local Government Act 1995*. Advertising will need to be in a local paper and will be submitted to the Advocate to be published.

### **Strategic Implications**

Nil



### **Site Inspection**

Not applicable

### **Triple Bottom Line Assessment**

#### Economic implications

There may be some economic implications associated with the implementation of the new Act, such as the number of forms required to be submitted when making an application

#### Social implications

There may be some social implications associated with the implementation of the new Act, such as the likely confusion in the process required to submit a building application from the Shire officer as well as the general public.

#### Environmental implications

There are no known significant environmental implications associated with this proposal.

### **Comment**

The building approval process in Western Australia is about to undergo significant change. The major change of the new *Building Act 2011* is the introduction of private certification that has traditionally been the sole role of local governments. The process of certification will be much more flexible and can be offered by appropriately registered building surveyors in private practice or by local governments. Private certifiers have been operating in other states of Australia for some time with the role of local government primarily being that of a "Permit Authority". The introduction of private certifiers may also make it more challenging to attract and retain suitable qualified staff for the statutory role within local government.

This report seeks to briefly outline the changes that are proposed in the Act and also to seek approval for amendments to the schedule of fees and charges and delegations of authority. It is considered that these are required to ensure that the Shire of Chittering is able to continue to operate under the provisions of the *Building Act 2011*.

The intent of the new *Building Act 2011* is to streamline and clarify the building process. Whether the new Act actually represents an improvement to the process will no doubt be judged after a suitable time has elapsed from its commencement.

Relevant Shire officers (Principal Building Surveyor and Development Services Customer Service Officer) are currently undertaking the necessary training and work to ensure that the Shire is prepared for and able to manage a smooth transition relating to these reforms.



New Fees and Charges under Building Act 2011

· Part A - Discretionary Fees (Local Government to Determine)

<b>Building Services – Schedule of Fees and Charges and Certification Service</b>	
Request for Certificate of Design Compliance – Class 2-9 buildings (within Shire district)	0.11% of the estimated value (inc GST) of the building work, but not less than \$ 220
Request for Certificate of Construction Compliance, Building Compliance, or other compliance (within Shire district)	\$110 per hour
Request for seeking confirmation Planning, Environmental Health, Infrastructure requirements have been met	\$110 per hour but not less than \$110

· Part B – Fees prescribed by Regulations (Local Government Unable to Vary)  
Refer to Attachment 1

**6 CLOSURE**

The presiding declared the meeting closed at 10.57am.