



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 16 APRIL
COMMENCING AT 3.00PM
IN THE TALBOT HALL, YORK**

SHIRE OF YORK

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RAY HOOPER
CHIEF EXECUTIVE OFFICER

SHIRE OF YORK

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SHIRE OF YORK

**MINUTES OF THE ORDINARY MEETING OF THE COUNCIL HELD ON
MONDAY, 16 APRIL 2007, COMMENCING AT
3.00PM IN THE TALBOT HALL, YORK.**

1. OPENING

1.1 DECLARATION OF OPENING & READING OF DISCLAIMER

The Shire President, Cr Pat Hooper declared the meeting open at 3.00pm and thanked the Talbot Hall Association for hosting the meeting.

The Shire President also passed on Council's condolences to the family and friends of the late Mr Bill (William) Luelf, who recently passed away.

The Chief Executive Officer read the disclaimer.

1.2 ANNOUNCEMENT OF VISITORS

Nil.

1.3 ANNOUNCEMENT OF ANY DECLARED FINANCIAL INTERESTS

COUNCILLOR/OFFICER	ITEM	NATURE OF INTEREST
Cr A Fisher	9.1.1	Financial. Adjoining Landowner
Cr T Randell	9.1.6	Financial. Owner of the Property

2. ATTENDANCE

2.1 MEMBERS

Cr Pat Hooper	President
Cr Brian Lawrance	Deputy President
Cr Michael Delich	
Cr Trevor Randell	
Cr Tony Boyle	
Cr Ashley Fisher	

2.2 STAFF

Mr Ray Hooper	Chief Executive Officer
Mr Graham Stanley	Deputy Chief Executive Officer
Mr Peter Stevens	Environmental Health / Building Officer
Mr David Lawn	Planning Consultant
Mrs Natasha Brennan	Executive Assistant
Mrs Alison Emin	Executive Support Officer

2.3 APOLOGIES

Nil.

2.4 LEAVE OF ABSENCE PREVIOUSLY APPROVED

Nil.

2.5 NUMBER OF PEOPLE IN GALLERY PRESENT AT COMMENCEMENT OF MEETING

The Shire President welcomed the (19) people present at the commencement of the meeting.

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

3.1 Mrs Sally Hasluck

Questions received on the 14th March 2007 in relation to the proposed development at Lots 1 and 2 Avon Terrace and Lot 26 Monger Street, York.

Question 1

Has the Council received from the developer the engineering design plans for the proposed building with respect to the waterway that was requested as a condition of acceptance of the development?

Response

Council has not received a copy of the engineering design plans at this stage. When the proponent of the development applies to Council for a building permit it will be accompanied by a detailed report.

Question 2

Has a plan of the topography of the area that should be submitted as part of the materials that the Council requires with an Outline Development Plan, as per TPS2 section 4.8.3 re Development Requirements for advertising, been received as it was not in the file when viewed at Council?

Response

Council has sufficient information relating to the topography of the area through stormwater drainage plans held within the office and the topography of the land will be included as part of the building plans to be submitted eg contours.

Question 3

Will the Council be requesting the developer for a covenant or notice (as this land for the proposed development lies within the Waters and Rivers Commission designated floor plain area) to be registered upon the three titles of the land in accordance with the Council's Floor Planning Policy of 19 November 1990?

Response

Council does not utilise the policy of the 19th November 1990 and deals with all applications by referring to relevant departments, as new information is always arising. The property lies within a flood fringe area in which specific finished floor levels have been determined by the relevant authority.

4. PUBLIC QUESTION TIME

Ms Patricia Walters

Question 1

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

Included in the original application of the above report, item 9.1.1, was a letter from the developer requesting that the Chief Executive Office 'act on his behalf'.

Would the Council confirm that the Chief Executive Officer will not be acting on behalf of the developer, as any such action could seriously compromise the integrity and impartiality of not only the Chief Executive Officer but the Council as a whole?

Response

The Chief Executive Officer confirmed that he does not and would not act for any developer in the Shire of York.

Ms Yvonne Dols

Question 2

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

The plan of the development that has been submitted for public comment was incorrect.

My question is what policy and procedure allows the Council to make changes without it going back for public perusal?

Response

The Chief Executive Officer stated that advice obtained from the Department of Local Government & Regional Development was that the alterations made to the number of the units was seen as a typographical error only and no other changes had been made.

This was seen to have no bearing on the final decision by the Council.

It was confirmed that the public copy on display in the Shire Offices had been amended to show these alterations.

It was also noted that a Council Policy of up to 10% of a variation to a plan could be made without the project being re-advertised.

Ms Yvonne Dols

Question 3

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

Ms Dols asked that in all fairness to the public, the amended plans should be put back into the public arena for a further advertising & submission period.

Response

The Chief Executive Officer responded that the typographical error affected only the number of units shown and that it did not affect the total of the floor space and the structural design, which is all that Council would be considering.

Yvonne Dols

Ms Dols asked what other 'flaws' in the development application there were, that the public have not been made aware of?

Ms Roma Paton

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

Question 4

If there has been one error found by a ratepayer in the plan for the proposed development on the corner of South Street and Avon Terrace, which was

drawn up by a professional Architect Maynert & Associates on behalf of Mr. Poliwka, how may other errors are there?

Response

The Shire President stated that this question had been responded to in a previous question by Ms Yvonne Dols.

Question 5

Directed to the Chief Executive Officer.

In reply to me, by you dated 21st February 2007, you state words used by staff are not binding. Why do you respond to questions asked by ratepayers at Shire Meetings?

Response

The Chief Executive Officer confirmed that comments made by Council staff were not binding, as they are not statements on behalf of Council.

However, the comments made by the Chief Executive Officer at a Council Meeting and recorded in the minutes are statements on behalf of Council.

The Chief Executive Officer reiterated that he was not the decision maker and it was the Council who made the decisions at the end of the day.

Question 6

This question is directed to all Councillors.

As leaders of this community elected by the ratepayers of York to make educated and well informed decisions on issues of great importance for both now and into the future.

How many of the Councillors have been to see the film 'An Inconvenient Truth', by Al Gore?

Response

The Shire President Cr Pat Hooper & Cr Fisher advised Ms Paton that they had both seen the film.

Ms Sally Hasluck

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

Question 7

Is there any reason why a resident affected by the Avon Terrace commercial / mixed use development proposal should not make representations to the Minister for Planning, pursuant to S211 of the Planning & Development Act 2004, requiring the Minister to rectify the failure of the York Council to comply with York Planning Scheme No.2, bearing in mind that any approval granted by the Council will be unlawful in that Lot 26 which forms part of the development proposal is zoned for residential purposes?

Response

The Shire President responded that there was no reason why Ms Haluck or any other resident could not appeal to the Minister for Planning.

Ms Carole Bozich

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

Question 8

Why did a Councillor make changes to the plans of the development application? My understanding is it can only be done legally by either an Architect or a Developer.

If not, this is almost borderline fraud.

The correction should be done through the correct channels and then presented to ratepayers at the next Council Meeting held in York.

If the correct channels are not followed – dotting eyes and crossing tees, homework checked, if not the Minister for both Local & Regional Development will be contacted post haste.

Response

The Shire President responded that the original plans had not been altered. Cr Delich, marked in good faith the changes on a copy of the plan used for viewing by the public. There was no fraud taking place as it was not done on the original plan.

The alterations were to depict the correct numbering of the units being 5-6, 6-7 and 7-8.

Ms Carole Bozich

Also, I and ratepayers have not received apologies due to us by both Councillors Hooper and Lawrance as requested in writing, through the Community Newspaper.

I personally have lost all respect and faith for the Chief Executive Officer and the Councillors.

Response

The Shire President Cr Pat Hooper & Cr Brian Lawrance both stated that they had no intentions of offering an apology.

The Shire President stated that he only spoke the truth at Council Meetings and that if Councillors were not permitted to explain to the public what had happened, then as Councillors they had lost their democracy.

Cr Brian Lawrance confirmed that during his time as a Councillor he had not made any decisions or comments in any derogatory way and that he would not be placing an apology in the local paper.

Ms Yvonne Dols

Proposed Development Lots 1, 2 & 26 Avon Terrace, York – Mr R Poliwka

Ms Dols queried that the number of submissions received by Council was 650, however in an article in the local paper the number stated was 5.

The submissions also included the affect on the Streetscape, however there was no response in the paper by Council.

Response

The Chief Executive Officer responded that the article in the paper had been written by a reporter and not by Council Officers or Councillors.

The Chief Executive Officer responded that he would look into this matter and provide a written response to Ms Dols.

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

6. PETITIONS/PRESENTATIONS/DEPUTATIONS

Nil.

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Ordinary Council Meeting held 19th March 2007

Corrections

Confirmation

Resolution

010407

MOVED Cr Randell seconded Cr Delich

“That the minutes of the Ordinary Council Meeting held 19th March 2007 be confirmed as a correct record of proceedings.”

CARRIED (5-0)

Cr Hooper did not vote, as he did not attend the meeting on the 19th March 2007.

7.2 Special Council Meeting held 23rd March 2007

Confirmation

Resolution

020407

MOVED Cr Randell seconded Cr Boyle

“That the minutes of the Special Council Meeting held 23rd March 2007 be confirmed as a correct record of proceedings.”

CARRIED (5-0)

Cr Hooper did not vote, as he did not attend the meeting on the 23rd March 2007.

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

The Shire Presidents announcements were made at the commencement of the meeting.

9. REPORTS

9.1 Development Services

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.1 PROPOSED DEVELOPMENT

FILE NO: Av 1.9411-9413
COUNCIL DATE: 16 APRIL 2007
REPORT DATE: 30 MARCH 2007
LOCATION/ADDRESS: Lots 1, 2 & 26 Avon Terrace, York
APPLICANT: Mr R Poliwka
SENIOR OFFICER: Ray Hooper, CEO
REPORTING OFFICER: Tyhscha Woolcock, SAO
DISCLOSURE OF INTEREST: Cr A Fisher
APPENDICES: Appendix A - Plans
DOCUMENTS TABLED: Nil

When acting as a planning authority in accordance with the powers conferred by the Town Planning and Development Act 1928 and any relevant scheme, the Council of the Shire is entitled to make decisions based only on proper planning considerations.

Summary:

The applicant is seeking approval for the proposed two storey mixed use development at Lots 1, 2 & 26 Avon Terrace and Mongers Street, York.

Background:

Currently the land is being used for a carparking area and is zoned Residential/Town Centre. In relation to the carparking Council resolved the following at its meeting held on the 18th December 2006:

"That Council:

1. ***agree to lease Lots 1, 2 & 26 Avon Terrace, York for the purpose of carparking in accordance with the plans attached labelled Appendix A;***
2. ***agree to lease at the value of the rates imposed for the 2006/07 financial year up to the commencement of development effective from 1 July 2006;***
3. ***initiate a review of the carparking facilities within York; and***
4. ***Review the arrangements prior to the 2007/08 budget.***

Advice Note:

- a. ***Property to be included on Council's Insurance Policy."***

Further at the Council meeting of the 19th February 2007 it was resolved as follows:

“That Council:

- 1. Proceed with advertising of the proposed development in accordance with plans attached labelled Appendix B.***

Advice Note:

- a. Advise the applicants that the costs associated with the advertising and planning fees are required prior to the proposal being formally advertised.”***

The Council considered the overall plan for the site at its meeting held on the 19th February 2007 and the following was resolved:

“That Council advise the applicant that it supports the Outline Development Plan for Lots 1 & 2 Avon Terrace and Lot 26 Monger Street, York subject to the following:

- 1. A building licence being issued in accordance with the Building Codes of Australia;***
- 2. The submission and approval of colour schemes to be approved by Council’s Regional Heritage Advisor;***
- 3. Carparking bays for use by patrons and residents will need to be provided as per the Shire of York Town Planning Scheme No. 2. If the required number of bays cannot be provided onsite, the Council will accept a cash in lieu payment per bay;***
- 4. Stormwater being disposed of within the confines of the property or alternatively arrangements being made with the Council to utilise the Council’s stormwater system. Fees may be payable to the Council to utilise the Council’s system;***
- 5. Approval from Fire and Emergency Services prior to a building licence being issued;***
- 6. Finished Floor level is to be 500mm above the designated flood level;***
- 7. Crossover entries to be to the satisfaction of the Chief Executive Officer;***
- 8. Landscaping to complement the appearance of the proposed development to the satisfaction of the Chief Executive Officer;***
- 9. All development shall be connected to the Water Corporation’s deep sewer system.***

10. ***The Proponent to contribute 100% of the cost of imprinted concrete or brickpaved footpath for the full frontage of the development;***
11. ***A formal development application being submitted and all appropriate planning fees to be paid prior to the issue of the planning consent;***
12. ***The Ficus Hillii on the boundary of Lots 2 and 3 is not to be pruned, removed or otherwise interfered with until and unless a building licence has been issued for an approved development and a building contract has been entered into;***
13. ***The open drain on Lots 2 and Lot 26 is to be piped or culverted to a capacity to handle surface water flows from the west. This matter is to be addressed in the engineering design for the proposed buildings;***
14. ***This planning approval is issued subject to substantial development occurring within two (2) years;***
15. ***Construction work to be in accordance with the Environmental Protection (Noise) Regulations 1997; and***
16. ***Design and construction is to incorporate noise attenuation measures as detailed in AS2107.***

Advice Note:

- a. ***Finished floor level to cater for disabled access.***
- b. ***The approval of the Outline Development Plan does not negate the requirement to submit a development application and this does not constitute a building licence.”***

Letter from Mr R Poliwka dated 14 March 2007:

“Thank you for your letter and heritage advisors letter. I make the following responses on a point by point basis. First five paragraphs are noted and we concur with the general principles outlined.

SPECIFIC COMMENTS/ ISSUES:

- *We would love to have the 1 in 100 year flood imposition on design removed. The architectural design would be far more in keeping with the other buildings in the precinct without the colonnade. Please consider relaxing this planning requirement.*
- *Rails to colonnade are required under the building standards.*
- *We concur with Kris in this regard, the colonnade detracts from the front elevation.*
- *The relocation of the wheelchair access was considered and due to the building rise requirements, works best in its current situation.*

- *Southern elevation plans will be finalized in conjunction with the working drawings but will reflect the front elevation less the colonnade.*
- *We are happy to alter the corner tower element if that is the considered view of Council. The clock is optional, we believed it would add appeal to the building. We note and understand Kris's comments regards the Town Hall clock. Access to the clock would be by way of stairs or ladder depending on the final building working drawings.*

We in summary agree with Kris's alterations and recommendations.

We believe the tree issue has been exhausted as to its future. It will need to be removed.

The idea of a plaque is taken on board and will be incorporated if the Council so wishes."

Consultation:

The following submissions were received through the formal advertising periods:

Submission 1

"We have just returned from a month in Australia, during which time we visited your historic town of York.

As a European used to historic buildings, I, nonetheless, greatly admired the way much of your town has been so carefully preserved. I was, therefore, dismayed to learn that the magnificent Ficus (see attachment) on Avon Terrace is under threat of destruction as part of a redevelopment plan.

Perhaps your town planners are unaware of just how impressive this tree is to an outsider and how much it enhances your town by its sheer size and beauty. Surely any proposed development could incorporate the Ficus and, indeed, make it a focal point. To do otherwise, in my opinion, would be a tragedy.

I would be grateful if you would kindly pass on my comments to the relevant authorities and I trust that the next time we visit your town, the tree will still be standing."

Submission 2

"I wish to add my comments re the proposed destruction of the tree on the block opposite Galileo's. This block (Galileo) is my property, Although I do not visit York I was connected with it for many years with Georgia Efford, We bought Kairey Cottage and had it re-shingled with Saeore shingles, since then I have been involved with craft workshops, which with Ellie Eaton from Northam we have organised, bringing people to York for over 30 years. I am concerned at the loss to the streetscape of York that the removal of this tree will cause. I would have thought it would enhance a development area. I hope a solution can be found."

Submission 3

“As a frequent visitor to York I’m absolutely shocked to hear that the Council recently voted (3-2) to fell the Ficus Tree in the Main street.

It is a focal point in the main street as well as being a part of the history of the town. I’m further surprised that in an era discussion re the environment and human impact thereof that your Council contributes to the ethos that development comes before history and the natural world.

Further it seems to be an either/ or debate and decision when surely a development can go ahead as well as keep the tree. I would have thought that the ficus tree provides a wonderful forefront to any buildings built and the businesses, which they contain.

One can summarize that the developers are limited in their imagination if they want the tree removed and will build a structure totally bald and unsympathetic to the York Township and streetscape.

I note when I visit York that there are no other old trees in the main street and the eye is always drawn to the ficus tree. It really is a focal point in the main street.

In conclusion, I trust that common sense will prevail and the block on which the tree stands can be developed whilst retaining this wonderful shady, historical and beautiful tree. If York is to retain any integrity, as a town proud of its wonderful history both human and natural, this decision will be reversed.

Submission 4

“Thank you for your letter of 1 March 2007 with respect to York Town Planning Scheme 2. Let me repeat: the residential zoning of Lot 26 Monger Street prohibits the use of that lot as a car parking area to service the proposed commercial development.

The Department of Planning has confirmed to me that TPS 2 has the force of law until it is repealed by a subsequent scheme. They recommend that local government carry out a scheme review every five years. This means that the legal requirements of TPS2 remain in force until an amendment to the scheme is approved..

I submit that due process with respect to TPS2 and the above development has not taken place. The proposed development on Lot 26 Monger Street requires an amendment to the Scheme or an application for re-zoning. The Council did not attach any such conditions to the acceptance and support of the Overview Application for Development.

The Local Planning Strategy accepted by Council has also to be considered. In 4.3 of that document it states ‘Five local scheme amendments were

initiated in 2005 by the Shire for site specific rezonings within the town centre. The amendments proposed to rezone from residential/open space/public purpose to mixed business. The Commission and the Hon Minister has granted final approval to these proposals but was mindful that further proposals (local scheme amendments) should be considered in a strategic context through the preparation of a local planning strategy or a town site outline development plan.’ The town site strategic document has been tabled to the Council. It recommends that Lot 26 remains as Residential.

Your letter states that the use of a residential lot for parking is mute within the scheme and that Council will rely on the Objectives. Parking is not listed in the Zoning Table 3.2.4 as an acceptable use. I also note that commercial parking does not fit into the Objectives for the Residential Zone as stated in 4.8, which reads:

- (a) To encourage single houses as the predominant form of residential development.*
- (b) To require infill residential development in Heritage Precincts to be in accordance with Design Guidelines adopted by the local government.*
- (c) To achieve a high standard of development and residential amenity.*

I should also say that if you consider the predominant use of the area it should be noted that there are four residences in that small area and the land on the west side of Monger Street is all zoned residential.

The Objectives do not allow for the total land area to be used for parking. Even if the Council decided that ‘parking’ was consistent with the Objectives as per 3.2.4 (b) then the applicant needs to make a separate application to Council as per 7.3.3. It clearly states in 7.3.1 that where there is an application for development where a use is not listed in the Zoning Table then separate advertising must take place as per 7.3.3. These procedures have not been followed. Development under the Act means any act that ‘is likely to change the character of the place’.

I wish to emphasise to Council that TPS2 section 8.3 reads

A person must not:

- (a) contravene or fail to comply with the provisions of the Scheme;*
- (b) use any land or commence or continue to carry out any development within the Scheme area:
 - (i) otherwise than in accordance with the Scheme;*
 - (ii) unless all approvals required by the Scheme have been granted and issued;**

I submit that in this case the Council has not followed due process and the procedures for proper planning and all the Council decisions with respect to this development on Lot 26 Monger Street should be rescinded.”

Submission 5

“We are opposed to such a dense development on the blocks adjacent to our property. We are concerned about the height, bulk, scale and shadowing effect of the proposal.

We are also concerned that Lot 26 is zoned residential and should not be permitted to be used solely for commercial parking.

Finally we are concerned that due process has not been followed by the Council in accordance with its own planning procedures.

Effect of Development on Adjoining Properties.

Under clause 7.4 of the Shire of York Town Planning Scheme No 2 (TPS2) the Council, in considering an application for planning consent is to have due regard to “(o) the relationship of the proposal to development on adjoining land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.”

We are very concerned about the scale and density of this development. It appears to take up every available square metre of space and abuts onto our boundary with approximately one metre of space between the eastern most unit and our boundary. We are concerned about the shadowing and the noise which would come from such a development so close to our house. We would request that the development be reduced in size. We would also request that any second storey balconies which overlook our property be removed.

Zoning of Lot 26.

The current zoning of Lot 26 is residential. We do not believe that this zoning allows for a use as a commercial car park wholly unconnected with a residential property and is therefore illegal.

In a written response to a question asked by us the CEO stated: “The scheme is mute on the ability of the car park to be developed in a Residential Zone (Zoning Table in TPS No2). Council has the power to use its discretion in assessing an application in the light of the objectives of the zone.”

It is a well known maxim of statutory interpretation that expression unius est exclusion alterus. This means that anything not on a list in a statute was probably deliberately left off. If commercial parking was intended to be a permitted use of land zoned Residential, then it would have been included in the permitted list.

Even if the Council decides otherwise, under clause 3.2.4 the Council must be satisfied that the non-listed use is consistent with the objectives and purpose of that particular zone.

One of the objectives for the residential zone in 4.8 is:

- (a) to encourage single houses as the predominant form of residential development.*

The use of Lot 26 for commercial parking does not come anywhere near achieving that objective.

The proposed use of Lots 1, 2 and 26 also are not consistent with the Town Centre Outline Development Plan and Report at present tabled with Council, which recommends that Lots 1 and 2 Avon Terrace be used as part of an entrance statement to the heritage core of Avon Terrace, particularly with the creation of a roundabout (landscape node).

Lack of due process.

We are very concerned with the way that this development has been handled by the Council.

The Outline Development Plan submitted by the developer appears to have been accepted by the Council at its meeting on February 19th, subject to a list of conditions. Presumably as long as those conditions are satisfied by the developer the Council will be bound to approve the development.

However it is not legally possible for such an approval to be granted unless either the TPS2 is amended, or Lot 26 is rezoned. Either of these courses of action would require advertisement and extensive consultation with interested parties and this has not been done. We feel we have been denied the proper opportunity to have the development fully and carefully considered.

In summary therefore we respectfully request that approval for this development be rescinded, that the legalities of the use of the various lots be properly determined and that by following the proper procedures, including appropriate advertising, that full opportunity for public consideration and discussion be made available by the Council.”

Submission 6

“Objection to the proposed development.

This submission objecting to the development is based on the fact that the residential zoning of Lot 26 Monger Street prohibits the use of that Lot as a car parking area to service the proposed commercial development and the Council has not followed due process according to the Town Planning Scheme No 2.

Residential Zoning.

The Department of Planning has confirmed to me that TPS 2 has the force of law until it is repealed by a subsequent scheme. They recommend that local government carry out a scheme review every five years. This means that the legal requirements of the TPS2 remain in force until an amendment to the scheme is approved.

I wish to emphasize to Council that TPS2 section 8.3 reads

A person must not

(a) contravene or fail to comply with the provisions of the scheme.

- (b) Use any land or commence or continue to carry out any development within the scheme area:
- (i) otherwise than in accordance with the scheme;
 - (ii) unless all approvals required by the scheme have been granted and issued.

I submit that due process with respect to TPS2 and the above development has not taken place. The proposed development on Lot 26 Monger Street requires an amendment to the scheme or an application for rezoning. The Council did not attach any such conditions to the acceptance and support of the Outline Development Application.

Under 4.1 it clearly states in Note 1 that 'The planning consent of the local government is required for both the development of land and the use of the land.' These are separate procedures that have not been implemented by the administration.

Residential codes use for parking.

By correspondence and as part of an answer at public question time on 19 February 2007 the CEO has stated that the use of a residential lot for parking is mute within the scheme and that Council will rely on the objectives. Parking is not listed in the zoning table 3.2.4 as an acceptable use. I also note that commercial parking does not fit into the objectives for the residential zone as stated in 4.8, which reads:

- (a) to encourage single houses as the as the predominant form of residential development.
- (b) To require infill residential development in Heritage Precincts to be in accordance with Design Guidelines adopted by the Local Government.
- (c) To achieve a high standard of development and residential amenity.

I should also say that if you consider the predominant use of the area it should be noted that there are four residences in that small area and the land on the west side of Monger Street is all zoned residential.

The objectives do not allow for the total land are to be used for parking. Even if the Council decided that 'parking' was consistent with the objectives as per 3.2.4 (b) then the applicant needs to make a separate application to Council as per 7.3.3. It clearly states in 7.3.1 that where there is an application for development where a use is not listed in the zoning table then separate advertising must take place as per 7.3.3. These procedures have not been followed. Development under the act means any act that is likely to change the character of a place.

Planning Strategy Documents.

The Local Planning Strategy accepted by Council has also to be considered. In 4.3 of the document it states "five local scheme amendments were initiated in 2005 by the shire for site specific rezonings within the Town Centre. The amendments proposed to rezone from residential/open space/ public purpose to mixed business. The Commission and the Hon Minister has granted final

approval to these proposals but was mindful that further proposals (local scheme amendments) should be considered in a strategic context through the preparation of a Local Planning Strategy or a town site Outline Development Plan. The Local Planning Strategy has been passed by Council and is presently with the commission and The Town Centre Outline Development Plan and Report has been tabled to the Council. The latter affects the use of the three lots, especially with a creation of a round about (landscape node), at the junction of South Street and Avon Terrace, as an entrance statement to the heritage core of Avon Terrace. This is shown to use land on Lots 1 and 2 Avon Terrace to achieve this vision. Both these documents should be guiding the Council for the future of York.

Planning Consent

I should like to draw the Councils attention to the procedures for an Outline Development Plan as per TPS2 section 4.8.3, which in this case has not proceeded in the correct order. However, the Council still has a right and the ability to refuse the application for a building licence.

With respect to matters that the Council must take into consideration in an application for planning consent (7.5) this Council has ignored subsection (a) the aims and provisions of the Scheme and any other relevant town planning scheme operating within the scheme area;

and other subsections 1 – q for example:

- (n) the preservation of the amenity of the locality.*
- (q) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.*
- (y) any relevant submission received on the application.*

The Council should note that this objection will again be raised by myself if the owner of Lot 26 applies for rezoning to mixed use or applies for amalgamation of Lot 1 & 2 Avon Terrace and Lot 26 Monger Street.

The Outline Development Plan now before the Council has not been amended by the applicant to take note of any of the submissions previously made to the Council. This means that if there are any future departures and alterations to these plans they will require the approval of the Planning Commission. The Council has not progressed this application according to the requirements as set out in 4.8.3 of the TPS2. It is questionable whether the Council can attach new conditions (as needed for zoning or change of use) to the application now that it has already been through that process and accepted by Council before the advertisement of the development. The whole process is therefore invalid and the decision by Council invalid.

Amenity of local residents.

The Council has given illegal consent to the developer applicant with respect to the zoning matter, and the Council has not taken advantage of the scheme to protect the amenity of adjoining landowners which the Council (4.5.2)

should have taken into account and imposed conditions as necessary. Also, any non-compliance of the development standards must not have an adverse effect on the amenity of the local residents. On both the elements the Outline Development Plan should have been refused.

By allowing this development the Council has taken a retrograde step undermining all the good work achieved over the last 2 years with the preparation of planning studies with a vision for the town. It has rejected the public consultation that took place to produce the planning strategy documents. This development does not meet the standards or the proposed zoning for the town.

I submit that in this case the Council has not followed due process and the procedures for proper planning and all the Council decisions with respect to this development on Lot 26 Monger Street.

In this case the Council should.

- 1. Rescind the present approval*
- 2. Make the owner of Lot 26 Monger Street fence the land separately from Lots 1 & 2 Avon Terrace.*
- 3. In the Short term the owner to have a 1 year lease with the Town of York for Parking on Lots 1 & 2 Avon Terrace, after this specific use has been advertised.*
- 4. The Council should discuss the vision for the three lots as outlined in the Town Centre Outline Plan and consider a joint development to secure the best outcome for York. If this is not feasible the lease for parking is extended while the proper procedures are applied to the development following the Council's adoption of the Town Centre Outline Development Plan and report 2006."*

Submission 7

"The development plans for the above parcel of land are still the original architectural plans submitted by the developer and those discussed at the 19 February 2007 Council meeting, in spite of the strong opposition to the removal of what is a significant tree in the streetscape. Whilst the Council argues that the Shire is entitled to make decisions based only on proper planning considerations, it can also be argued that the removal of objective 5. To ensure economic development does not conflict with York's heritage, lifestyle and environment, negates the planning considerations as it removes from the equation and economic impact the development will have on the viability of the town. In my opinion, it is not proper planning consideration to approve a development without taking into account the economic and environmental implications of Objective 5. Personal opinions aside I feel that the proposed development falls down in the following areas:

Drainage:

Drainage directly into the river through a covered concrete pipe, restricts

the water flowing into the river and could exacerbate the flood plain problem. Where will the volume of water that would have filled the deep drain go?

Cross Over Entries:

Assuming that the building is likely to be surrounded by water in the event of a 1:100 flood, which in all probability will have a strong flow, how do residents get to higher ground. Any crossover entry would have to be considerably higher than the expected flood level and a bridge would be out of the question. There is no mention of a crossover on the architectural drawings.

Objectivity:

Removal of objective 5 did not allow for a balanced evaluation of the development, therefore the process could be seen as biased in favour of the developer who does not appear to be in the slightest bit interested in coming up with any alternative plans. Also the only consultation was with the developer, who has a vested interest in the project.

Road Access:

Access for large delivery vehicles entering from Monger Street is going to be very difficult, and once they have reached the back of the development they will not be able to turn around and therefore will need to back out, which could be a safety hazard.

Height:

The residents on South Street that abut the proposed development are going to lose any privacy they currently have because of the height of the building. There is also a strong possibility that shade could become a problem, particularly in the winter months.

I feel that Council only sees the \$M cost of the development and paid insufficient attention to the cost to the community. Nobody seems to have asked 'where does the bulk of the income for the businesses in town come from' if the answer is not tourism then a loss of the tree comes into the equation as tourists rate the tree very highly, what social impact will the closure of more businesses have on the residents of the town of York. In other words the development provides nothing to the viability of the town, as it dilutes the available income, and will probably cost the residents of York more money in the short term than the cost of the development. If a development has the potential to undermine the financial viability of a town, then I believe consideration of this fact should be part of the planning process."

Submission 8

"I wish to object again to the above development being approved by the York Shire Council in its current form because the plan requires the removal of the historic ficus tree on the boundary of the above development property.

I would ask that Council defer the approval until a compromise can be negotiated with the owner of the land that will ensure the safety and preservation of the historic ficus tree which is bordering the proposed development site.

This tree is without any doubt an icon in the town. This was, I thought, expressed quite clearly to all Councilors by the public response to the previous advert for the same development.

This second advert is simply a duplicate and I question why the Shire of York has requested further public comment. Particularly after the verbal public rebuke by Shire President Hooper at the February Council meeting.

This verbal attack was not only undignified and unnecessary, but way out of line. We are Rate Payers not school children Mr Hooper.

Considering the Shire of York has a mission statement "to build on our history to create our future" I am somewhat confused at the vote at the February Shire meeting where Councillor Lawrance, Delich and Hooper voted to remove what is considered by over six hundred people to be important to the historic streetscape of York."

Submission 9

"Thank you for your reply, after further lengthy and detailed online searches into the benefits of keeping large trees, and the consequences of their removal, I have found the following very relevant (and non-emotive) points that apply to this tree in York. It is on all of these points that we object to the removal of the tree.

- 1. Trees actively reduce annual cooling costs of surrounding buildings. They can make buildings up to 15 degrees cooler in summer. They do this not only by providing shade but by evaporating water in their leaves which lowers atmospheric temperature of that particular microclimate. The trees removal will increase average temperature of its area affecting not only the possible new development but all of the surrounding businesses air conditioning costs.*
- 2. Trees reduce noise pollution by acting as sound barriers – unlike buildings they are soft and detailed, they absorb the noise – buildings are hard and reflect noise bouncing it and amplifying it. Trees are much needed in any town site to reduce noise pollution. Removal of the tree could increase "noise" complaints for that area.*
- 3. Trees provide impact protection from downward fall of rain, and reduce storm run-off and the possibility of flooding. This particular tree probably also actively contributes to the control of flooding in that area of the town.*
- 4. Trees located along streets act as glare and reflection control for drivers making roads safer. When large trees are removed, glare increases, which can lead to an increase in traffic incidences. Please remember the tour buses park nearby.*
- 5. The death of one 70-year-old tree would return over three tons of carbon to the atmosphere further contributing to global warming. This tree, estimated at 100 years of age combined with its three large neighbours behind it are*

holding over 13.5 tonnes of carbon. It could be seen as an environmental obligation to protect the trees. To help you visualize this 13.5 tonnes, according to Victorian Govt. initiative (www.sustainability.vic.gov.au) One party balloon can hold up to 50 grams of green house gasses. So these four trees (if destroyed) will release over 270,000 party balloons of carbon dioxide into the air.

6. Trees improve water quality by slowing and filtering rain water before it reaches rivers – such as the Avon River, this trees removal could lead to pollutants entering the Avon River that the tree had been filtering out. (eg some farmers actually plant trees to clean the soil of toxins.)
7. Tree roots stabilize soil and prevent erosion. Removing a tree of that size may very well create instability in the soil structure of the surrounding area. The roots not only hold the soil together, but in a tree of this size, they take up a lot of space, or volume within ground space. If these roots are removed, not only will the soil become unstable because there is volume missing, but the roots that remain will rot or be eaten by termites decreasing their volume over a period of years, leading to hollows in the soil, which if compacted by development may shift and possibly lead to damage of foundations and roads.
8. There may be an underground watercourse or pocket of water in the trees vicinity. If the tree is removed, the water may increase by the approximate 200 litres a day and also be able to move faster (if it is moving) causing sub surface erosion. If it is a pocket of water, the roots may be supporting the soil structure that is surrounding the water, so it does not collapse. Where is the tree getting 200 litres per day? There must be water near it.
9. Huge and healthy trees like this one, with such massive root systems, may send hundreds of suckers up after its removal in an attempt to stay alive. These suckers could come up anywhere that there are roots, they could even come up in the road. Which would lead to costly repairs.

Please don't underestimate the possible sever impact that removal of such large trees in a built up area can have on the soil, the ground water, surrounding buildings and humans.

All of these points are more than enough reasons to keep the tree, and on more of a heritage reason:

It was mentioned at the meeting in the Anglican Church on the 17th January that there is a photo of a man standing next to the tree in 1904 and that the tree is six feet tall. My question is WHY would a man have his photo taken next to a tree a photo in 1904 was not an easy thing to take or develop, they were costly and not many people had cameras, so people only took them on special occasions or for special reasons. What was so special about this tree that a man had his photo taken standing beside it. I have researched and found that in 1901, the Duke and Duchess of Cornwall and York toured All major settlements in Australia (except NT). The Duke later became King George the 5th. I feel it is important to research

further as the tree may have in fact been planted in honour of his visit – possibly even during a ceremony. So before the tree is destroyed, place immediate temporary protection on it, and research the history of this tree, it is of obvious heritage importance.

If all of these reasons aren't enough – it is our understanding that the York town site, and therefore this tree, are protected by the National Trust, and that it's the York Shire's responsibility to approach the National Trust on such issues when development plans (that incorporate the removal of trees) are first presented.

We believe that the York Shire has more than enough non-emotive reasons to keep this tree (and all town site trees for that matter).

Here is our suggestion on how to keep the tree and the development, why not simply redo the property boundaries around the tree – making it a small 100 m sq block (approx) and buy back that newly marked small bit of land from the developer and the other 'half owner' of the tree. Then make the new small tree area into a park for the people of York who very clearly feel this tree belongs to the town. Or better yet – buy back the entire strip of trees for shady angled parking _which is always desired).

Please work around the trees. Incorporating them into the development's design can keep everyone satisfied."

Submission from Water Corporation dated 14 March 2007

"Further to your letter dated 23 February 2007 regarding the proposed development above.

The Water Corporation has no objections to the proposed development.

It is recommended that this development be connected to scheme water supply and sewerage. The developer will be responsible for any minor works and contribute to headworks.

The attached plan indicates the position of the Corporation's sewer main. Generally no building development is permitted over or within a certain distance of the sewer main unless special building footings are constructed.

A full assessment of service requirements and related charges for the proposed development will be made on submission of building plans to the Corporation for approval."

Submission from Regional Heritage Advisor Kris Bizzaca

"I write to provide comment on the application for the proposed new commercial and residential building at the corner of Avon Terrace and South Street, York.

It is noted that the place is included in the York Town Centre Precinct, which is on the Heritage Council of WA's current assessment program.

One of the primary aspects when considering new development in a heritage area is whether the proposal responds sympathetically to the heritage values of the area as a whole and to the streetscape in its vicinity, in particular such issues as siting, scale, style and form, materials and finishes should be assessed with regard to the possible impact they might have on the heritage area.

In this case, the new development not only forms part of York's significant Avon Terrace streetscape but is situated on a pivotal corner and entry point into the commercial area proper. Therefore it is of particular importance to consider the proposal in the context of Sargent's Pharmacy (fmr) (c. 1900), the Castle Hotel (1840/1850s; c. 1900) and the Davies Buildings (1908); all of which are characteristic of buildings constructed in what is known as the Federation period.

In general, the new development is sympathetic to the existing streetscape in terms of its siting and scale. An effort also appears to have been made to ensure that it incorporates some of the main features of the other buildings at this intersection including what appears to be (see comment below re: construction materials and finishes) use of red brick to the street elevations, contrasting rendered banding and detail to the street corner, columns and parapet, verandahs to the main elevations, and an articulated street corner address.

Some specific comments/issues are as follows:

- query the 680ml foundation to the building (it is noted that this may be due to local planning and building regulations in particular flood plain levels);*
- query the need for rails to ground floor colonnade area (it is noted that this is required to the wheel chair ramp and may also be due to local planning and building regulations);*
- should rails be required ensure that the design and materials have a degree of visual permeability to the ground floor as is the case with regard to the open, ground floor aspect of the other buildings at the intersection and is characteristic of Federation buildings of this type;*
- consider possible relocation of wheel chair access from the primary street of Avon Tce (main heritage streetscape) to secondary street South St with access from the eastern side of the corner tower;*
- provide plans for other elevations of the new building, in particular the southern elevation, and confirm the proposed extension of the ground floor street verandah over the steps at the southern end of the Avon Tce elevation; and*
- consider possible changes to the design of the corner tower element. It is noted that the street corner address of the other buildings at the intersection is incorporated within the main form of the building and does not give the appearance of projecting to the street. Council may*

wish to consider whether the proposed clock is necessary given that its highly significant Town Hall already has this feature and there is also a question of how this tower will be accessed in order to maintain the clock.

I am unable to provide comment on the details of the proposed construction materials and finishes (such as its colour scheme) for the new building as this information has not as yet been supplied. It is recommended that the Shire of York clarifies these matters before any approval/licence is issued.

I understand that the Shire has previously considered an application for new development on property adjoining this site and this was refused. It may be useful to review the comments made by the then heritage advisory committee and Council so as to identify any concerns that may be consistent with the proposed new building.

I am not certain whether the Shire may have a policy or position in relation to new development on the site of a previous existing building; however, there does exist an opportunity to incorporate some form of interpretation (possibly a plaque or similar) relating the history of the former Rose Hotel and it may be possible to ask the applicant to consider this as part of their proposal.

In relation to the tree: While it is not included on any heritage lists to date, the numerous public submissions and petitions received by the Shire as part of the advertising of the Outline Development Plan indicates that the tree has a level of social significance to the community. This warrants consideration by Council as part of its deliberations.”

Submission from Department of Water dated 15 March 2007:

“The Department of Water has considered the above proposal and provides the following advice:

The Department of Water in carrying out its role in floodplain management provides advice and recommends guidelines for development on floodplains with the object of minimizing flood risk and damage.

Based on our floodplain management strategy for the area, proposed development (i.e. filling, building etc) on the lots is considered acceptable with respect to major flooding, however a minimum habitable floor level of 174.98m AHD is recommended to ensure adequate flood protection.

The Department is also aware of a drain that flows towards the Avon River through Lot 2 & 26. It would appear that the development is to occur over the top of this drain. No specific comment can be made from this office given no plans have been submitted to address this issue, however any modifications to the existing drainage system should only occur after consideration is given to downstream impacts on the receiving water body (the Avon River). Consideration should also be given to the impacts of flooding should the drain be culverted as a result of the development...”

Submission from Western Power dated 27 March 2007:

“Western Power, wish to advise that there are no objections to the changes you propose to carry out for the above-mentioned project.

Perth One call service must be contact and location details (of Western Powers underground cable) obtained prior to any excavation commencing. Worksafe requirements must be observed when excavation work is undertaken in the vicinity of Western Powers assets.

Western Power is obliged to point out that the cost of any changes to the existing power system, if required, will be the responsibility of the individual developer.”

Statutory Environment:

Shire of York Town Planning Scheme.

Planning and Development Act 2005 and Regulations.

Policy Implications:

Nil.

Financial Implications:

The planning fees have been received, which totaled \$4,750 and relevant advertising fees. Building licence fees will be generated if the project proceeds.

Strategic Implications:

The preliminary advertising period results in an informed community.

Strategic Plan Key Result Area 2 – Economic Development & Tourism:

Objective 1 To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.

Objective 5 To ensure economic development does not conflict with York’s heritage, lifestyle and environment.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

Commercial and residential development in the town centre will enhance CBD viability.

If approved additional commercial floor space will be provided in the CBD giving greater choice to potential small business investors. New businesses may improve local employment opportunities.

A large-scale investment of this nature would improve investor confidence in York as it grows and develops.

Social Implications:

An enhanced streetscape rather than vacant land may be of long-term social benefit through local business choice, employment opportunities and new residents for the town.

The loss of a de facto parking area will impact on the community until other facilities are provided.

Environmental Implications:

The meeting revealed that the drainage through the property does not pose a concern for the applicant.

The southern boundary alignment runs through the centre of the Ficus Hillii tree, which will need to be removed under this development proposal. The tree does not fit into the overall picture, as it is not commercially viable for the applicant.

The Ficus Hillii tree is not heritage listed and does not have any other protection for its retention.

Any design approved will need to take into account finished floor levels in relation to the flood zone and drainage system.

Comment:

Discussions with the Department for Planning and Infrastructure have provided additional information in regards to the use of residential land for carparking. This use may be considered in two areas of the Shire of York Town Planning Scheme No. 2, being:

3.2.4 Use not listed on the zoning table.

6.1 Non-conforming use Rights.

This development has been in the public arena for some time now, with various issues being identified. By placing the appropriate conditions on the development a satisfactory compromise may be met.

OFFICER RECOMMENDATION

Cr Fisher left the meeting the time being 3.25pm.

Resolution
030407

MOVED Cr Delich seconded Cr Lawrance

“That Council advise the applicant:

- A) *that it supports the proposed development for Lots 1 & 2 Avon Terrace, York subject to the following:***
- 1. *A building licence being issued in accordance with the Building Codes of Australia;***
 - 2. *The submission and approval of colour schemes to be approved by Council’s Regional Heritage Advisor;***
 - 3. *Carparking bays for use by patrons and residents will need to be provided as per the Shire of York Town Planning Scheme No. 2. If the required number of bays cannot be provided onsite, the Council will accept a cash in lieu payment per bay;***
 - 4. *Stormwater being disposed of within the confines of the property or alternatively arrangements being made with the Council to utilise the Council’s stormwater system. Fees may be payable to the Council to utilise the Council’s system;***
 - 5. *Approval from Fire and Emergency Services prior to a building licence being issued;***
 - 6. *A minimum habitable floor level of 174.98m AHD is required;***
 - 7. *Crossover entries to be to the satisfaction of the Chief Executive Officer;***
 - 8. *Landscaping to complement the appearance of the proposed development to the satisfaction of the Chief Executive Officer;***
 - 9. *All development shall be connected to the Water Corporation’s deep sewer system;***
 - 10. *The Proponent to contribute 100% of the cost of imprinted concrete or brickpaved footpath for the full frontage of the development;***

11. ***The Ficus Hillii on the boundary of Lots 2 and 3 is not to be pruned, removed or otherwise interfered with until and unless a building licence has been issued for an approved development and a building contract has been entered into;***
12. ***The open drain on Lots 2 and Lot 26 is to be piped or culverted to a capacity to handle surface water flows from the west. This matter is to be addressed in the engineering design for the proposed buildings;***
13. ***This planning approval is issued subject to substantial development occurring within two (2) years;***
14. ***Construction work to be in accordance with the Environmental Protection (Noise) Regulations 1997; and***
15. ***Design and construction is to incorporate noise attenuation measures as detailed in AS2107.***

B) that it supports the use of Lot 26 Monger Street, York, as carparking in accordance with the Shire of York Town Planning Scheme, Section 6.1 which states as follows:

The continued use of any land or building for the purpose for which it was being lawfully used at the gazettal date of the Scheme.

C) That an amalgamation of the lots is required to be initiated.

Advice Note:

- a. ***Finished floor level to cater for disabled access.***
- b. ***The approval of the development proposal does not constitute a building licence.***
- c. ***In reference to Condition 12 any modifications to the existing drainage system need to be done in liaison with the Department of Water.***
- d. ***Please note that generally no building development is permitted over or within a certain distance of the sewer main unless special building footings are constructed.***
- e. ***In relation to Condition C, please liaise with the WA Planning Commission.***

Amendment

MOVED Cr Boyle seconded Cr Lawrance

“That the Officer’s Recommendation be adopted, subject to including a new Section 16 to read:

- 16. *One way traffic system to be instigated into the parking layout on Lot 26 to minimise the impact of vehicle lights on adjoining properties eg: entry (North) exit (South).***

The amendment was put and ***CARRIED (5-0)***

The amendment became the substantive motion and was put and ***CARRIED (5-0)***

Cr Fisher returned to the meeting at 3.37pm.

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.2 HEALTH LOCAL LAW REVIEW

FILE NO: LE.LLW.1
COUNCIL DATE: 16 April 2007
REPORT DATE: 22 March 2007
LOCATION/ADDRESS: N/A
APPLICANT: N/A
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Peter Stevens, EHO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: No

Summary:

Council resolved at its ordinary meeting of June 2006 to review the Shire of York Health Local Laws at the end of the amnesty period of September 30 2006.

Background:

At Councils ordinary meeting held on 12 June 2006 it was resolved to;

Grant a three (3) month amnesty from the provisions of the Shire of York Health Local Laws Provision 4 – Keeping of Poultry and Pigeons to enable all residents of the gazetted York Townsite to: -

- (a) apply for Council approval to keep more than the permitted number of birds allowed under the Local Law;*
 - (b) to relocate the birds to alternative locations outside the York Townsite boundary;*
- 2. Review the Shire of York Health Local Laws following the expiry of the amnesty period to address issues of keeping animals, poultry and other designated stock in the townsite. The review is to be based on the growth and development needs of York for the next 5 – 8 years and to minimise potential neighbourhood conflicts while recognising that York is a rural town.*
 - 3. Undertake a community education programme to explain the requirements for compliance with the Health Local Law for the keeping of animals in the townsite."*

The amnesty period has now passed with a number of residents submitting applications to keep animals.

In order to progress to the next stage of the resolution and initiate a review of the Health Local Law the following information must first be published statewide;

- a) that the Shire of York proposes to review its Health Local Laws gazetted in 2000;
- b) where the local law may be inspected or copies obtained; and
- c) call for submissions to be made to the Shire of York for a period of at least 6 weeks from the date that notice was first given.

The above notice should also be published and exhibited as if it were a local public notice.

After the last day of the submission period the Shire of York is to consider any submissions made and cause a report of the review to be prepared and submitted to Council. Council may then consider any amendments to the local law.

Consultation:

Nil.

Statutory Environment:

The Local Government Act 1995, s3.16.
Health Act 1911.

Policy Implications:

Consultation and Communication Policy.

Financial Implications:

Statewide advertising costs will be incurred.

Strategic Implications:

Nil.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Statewide advertising costs will be incurred.

Social Implications:

Provide an opportunity for residents to comment on the Health Local Laws.

Environmental Implications:

Nil.

Comment:

This report relates to Council's statutory obligation to advertise its intent to review its Health Local Law. Once advertised, submissions may be made to the Shire for a period of 6 weeks after which a report will be prepared on the review and submitted to Council.

Regardless of Council's desire to review the Health Local Law now it should be noted that it is a requirement of the Local Government Act 1995 that all local laws be reviewed after a period of 8 years. This means that the Health Local Law would need to be reviewed in 2008 if this review is not initiated.

OFFICER RECOMMENDATION

Resolution

040407

MOVED Cr Delich seconded Cr Randell

“That Council gives Statewide public notice that it intends to review the Shire of York Health Local Law in accordance with s3.16(2) of the Local Government Act 1995.”

CARRIED (6-0)

9.
9.1
9.1.3

**OFFICER'S REPORTS
DEVELOPMENT REPORTS
OUTLINE DEVELOPMENT PLAN
PANMURE ROAD PRECINCT**

FILE NO: PS.PPD.4.3
COUNCIL DATE: 16 April 2007
REPORT DATE: 30 March 2007
LOCATION/ADDRESS: Panmure Road Precinct
APPLICANT: Shire of York
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: David Lawn– Planning Consultant
Tyhscha Cochrane - SAO
DISCLOSURE OF INTEREST: Cr. Ashley Fisher - Financial
APPENDICES: Nil
DOCUMENTS TABLED: Mapping and Panmure Road Precinct
Outline Development Plan

When acting as a planning authority in accordance with the powers conferred by the Planning and Development Act 2005 and any relevant scheme, the Council of the Shire is entitled to make decisions based only on proper planning considerations.

Summary:

This is the third agenda item (18 December 2006 and 19 February 2007) relating to this proposal. The first was to initiate the preparation of the Outline Development Plan. The second was for the Council to assess the Draft Outline Development Plan (ODP) and this report is to modify, adopt and forward to the WA Planning Commission for endorsement.

The area is developed for residential purposes only on the periphery leaving large unused lots in the centre of the precinct.

The ODP proposes a development layout suitable for R5 (2000m²) lots without sewerage with the potential for further subdivision to R10/30 when and if a reticulated sewerage system is installed.

Wherever possible the existing lot boundaries have been acknowledged minimizing the need for land amalgamations from two or more landowners.

Management of land drainage is the most important issue.

Background:

This precinct is nominated in the Local Planning Strategy as part of the residential infill program.

Consultation:

Landowners and Government Departments have been notified of the ODP requesting submissions.

Statutory Environment:

Current zoning in TPS No 2 is residential Zone with an R5 Code. This allows for subdivision and development to 2000m² lots.

The existing smaller lots, primarily along New Street are not affected and will remain legitimate as under the scheme provisions for Non-Confirming Uses Rights.

A Scheme Amendment is not required at this time and may only be considered when deep sewerage reticulation is available.

Financial Implications:

Advertising the ODP and assessing the submissions are the only costs attributable to this procedure.

Council may impose a Schedule of fees to future subdividers to cover the costs of the ODP, advertising and per lot contributions for drainage. Standard Public Open Space contributions and road construction and crossovers will apply.

Voting Requirements:

Absolute Majority Required: No

Site Inspection: Yes

Site Inspection Undertaken: January 2007

Triple Bottom Line Assessment:**Economic Implications:**

The adopted Outline Development Plan will allow for cohesive development of the whole precinct to the benefit of the landowners and the Shire. Use of existing infrastructure has cost savings to both developers and the Council.

With wide frontage lots at this time, further subdivision is possible with sewerage reticulation without any additional infrastructure, therefore the proposals have inbuilt cost savings.

Council may receive contributions from developers for Public Open Space commitment. It is recommended that these contributions be in the form of cash-in-lieu and to be held in trust by Council for expenditure in the vicinity. The statutory 10% of net subdividable area shall apply.

Social Implications:

Release of additional lots may ease the pressure on York in providing for more choice of home site and locations.

An increase in lots for future residents close to existing amenities in the town centre is a sensible approach as part of a development infill program.

Environmental Implications:

Improved land drainage management is the main issue. Residential development on the land will reduce erosion and dust. With further residential development revegetation is likely to occur in the form of gardens for aesthetic value and soil stabilisation.

Comment:

The adoption and implementation of the Outline Development Plan will allow cohesive development and arrest ad hoc subdivisions which often have an adverse effect on land development and land values.

The principles of costs sharing will apply so that each landowner/developer is treated fairly and equitably.

The Western Australian Planning Commission required an Outline Development Plan for the area prior to considering the subdivisions before them.

It is up to Council to resolve either to adopt the plan with or without the modifications shown in the attached schedule of modifications and forward the document onto the WAPC for endorsement. This document will then be used for future planning determinations in this area.

Officers Recommendation:

“That Council:

- 1. adopt the Outline Development Plan for the Panmure Road Precinct in accordance with the modifications as shown in Appendix A; and*
- 2. forward the Outline Development Plan for the Panmure Road Precinct to the WA Planning Commission for endorsement.”*

Resolution

050407

MOVED Cr Hooper seconded Cr Lawrance

“That Council:

defer this item to the May Council Meeting so that further information can be obtained on drainage & other issues.”

CARRIED (6-0)

Reason

Council has recently attained the professional services of an Engineering Consultant and also a Planning Consultant.

The deferring of this item to the May Council Meeting is so that further information can be obtained on the drainage & other issues associated with this area.

It was also noted that the Outline Development Plan would be made available to the public within the next two (2) weeks.

9.
9.1
9.1.4

**OFFICER'S REPORTS
DEVELOPMENT REPORTS
LOCAL PLANNING STRATEGY -
MODIFICATIONS**

FILE NO: PS.TPS.1
COUNCIL DATE: 16 April 2007
REPORT DATE: 2 April 2007
LOCATION/ADDRESS: Shire of York
APPLICANT: Shire of York
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Tyhscha Cochrane - SAO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix A - Modifications
DOCUMENTS TABLED: Nil

When acting as a planning authority in accordance with the powers conferred by the Planning and Development Act 2005 and any relevant scheme, the Council of the Shire is entitled to make decisions based only on proper planning considerations.

Summary:

Discussions with the Department for Planning and Infrastructure to finalise the Local Planning Strategy prior to referral to the WA Planning Commission for endorsement defined some modifications to be made to the document as per the attached document (Appendix A).

Background:

Council adopted the LPS for final approval and forwarded the document to the Department for Planning and Infrastructure (DPI) for endorsement. Discussions have occurred between Shire and DPI officers to resolve a number of outstanding issues, prior to the strategy being considered by the Western Australian Planning Commission. Some of these issues have arisen as a result of the time it has taken for DPI to assess the strategy and it is therefore timely to address these matters now before it is finalised.

Most of the outstanding issues are of a minor nature and seek to improve the effectiveness of the strategy. Although negotiations have been ongoing between the Shire and DPI, it is necessary for Council to adopt a position on these matters and therefore endorsement is sought for attached modifications. None of the modifications are considered significant enough to require readvertising.

It should be noted that as the Shire has had assistance from DPI in preparing the LPS, it is necessary for an independent officer to assess the strategy and therefore it is essential that Council clearly convey its position on the outstanding issues.

Consultation:

Sean Collingwood - Department for Planning and Infrastructure.
David Lawn – Planning Consultant.

Statutory Environment:

Planning and Development Act 2005 and Town Planning Regulations 1967.

Financial Implications:

Nil at this stage.

Voting Requirements:

Absolute Majority Required: No

Site Inspection: No

Site Inspection Undertaken: N/A

Triple Bottom Line Assessment:

Economic Implications:

Not relevant to this report.

Social Implications:

Not relevant to this report.

Environmental Implications:

Not relevant to this report.

Comment:

To progress further Council needs to consider the proposed modifications and endorse these changes in order for the document to be forwarded to the WA Planning Commission for formal endorsement.

Officers Recommendation:

“That Council endorse the modifications as outlined in Appendix A.”

Resolution

060407

MOVED Cr Hooper seconded Cr Boyle

“That Council:

defer this item to the May Council Meeting so that further information can be obtained on drainage & other issues.”

CARRIED (6-0)

Reason

Council has recently attained the professional services of an Engineering Consultant and also a Planning Consultant.

The deferring of this item to the May Council Meeting is so that further information can be obtained on the proposed modifications.

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.5 DRAFT OUTLINE DEVELOPMENT PLAN –
YORK ESTATES - MODIFICATIONS

FILE NO: PS.PPD.4.4
COUNCIL DATE: 16 April 2007
REPORT DATE: 4 April 2007
LOCATION/ADDRESS: York Estates Precinct -Modifications
APPLICANT: Shire of York
SENIOR OFFICER: Ray Hooper – Chief Executive Officer
REPORTING OFFICER: David Lawn – Planning Consultant
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Mapping & ODP

When acting as a planning authority in accordance with the powers conferred by the Planning and Development Act 2005 and any relevant scheme, the Council of the Shire is entitled to make decisions based only on proper planning considerations.

Summary:

To readvertise the draft York Estates Precinct Outline Development Plan.

The York Estates Precinct is one with potential to increase the number of residential lots based on the existing road framework and without excessive infrastructure costs.

The recent subdivision (Stage 2) with a mix of lot sizes ranging from 2000m² to over one hectare has been successfully sold but with little building activity to date.

The land has water reticulation available.

The suggested future subdivision pattern uses, wherever possible, existing lot boundaries in order to allow for simple individual subdivision applications.

The existing development holds 123 lots. The suggested re-subdivision can yield 222 lots of 2000m² an increase of 99 lots. It must be kept in mind that the suggested subdivisional layout is both notional and conservative and bears verification or perhaps minor changes at the detail design stage.

Background:

The proposals had been forecast by the Local Planning Strategy with the intention of concentrating development potential within the serviced areas of the townsite.

The Western Australian Planning Commission has deferred at least three (3) recent subdivision applications until an Outline Development Plan is in place to enforce sustainable land use and planning principles.

Consultation:

To be undertaken by general advertising and informing each landowner and government/servicing departments.

Statutory Environment:

The land is zoned Residential with development permitted in accordance with the R5 Code.

No scheme amendment is required to pursue the proposals.

Financial Implications:

The developers of the recent Stage 2 subdivision have already contributed cash-in-lieu for public open space and the contribution is currently held in trust by Council.

Further public open space and community infrastructure may be obtained.

Voting Requirements

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple Bottom Line Assessment:**Economic Implications:**

Engineering advice is required to determine the effectiveness of a stormwater management program. Increased lot densities and population growth may increase land values and affect local businesses.

Social Implications:

An increase in population will increase demand for services in the town and community facilities may need to be provided or enhanced.

Environmental Implications:

Stormwater runoff needs to be managed to prevent adverse affects on the proposed lots and further towards the Avon River. Nutrient stripping and litter capture is essential prior to discharge into the riverine system. A settlement pond is in place in Stage 1 of the York Estates.

Comment:

Council was provided mapping from the Department for Planning and Infrastructure, which showed the wrong cadastral boundaries therefore resulting in incorrect layouts. Council has since been provided with the latest mapping and needs to go through the process of advertising the document again.

This is an opportune time to consider the suggested modifications to the development layout due to the very little building that has taken place.

Not all landowners with the potential to re-subdivide will want to do so at this time, therefore full implementation of the proposals may take several years to achieve.

The Western Australian Planning Commission required an Outline Development Plan for the area prior to considering the subdivisions before them. The purpose of this item is to proceed as soon as the relevant mapping has been produced.

Whilst it was intended to complete a preliminary advertising period, it is now appropriate that Council proceed to a formal advertising period in accordance with the Shire of York Town Planning Scheme process, as all relevant information relating to drainage, keeping of animals and so forth have been acknowledged through prior Outline Development Plans.

The plan will go out to formal advertising and then be revisited after the submissions have been considered from landowners and governmental departments.

Council will then resolve either to adopt the plan with or without modifications and forward the document onto the WAPC for endorsement. This document will then be used for future planning determinations in this area.

Officer Recommendation:

“That Council:

Re-advertise the proposed York Estates Outline Development Plan for a 28 day period and assess the responses according to the procedures prescribed in the Town Planning Scheme.”

Resolution

070407

MOVED Cr Hooper seconded Cr Fisher

“That Council:

defer this item to the May Council Meeting so that further information can be obtained on drainage & other issues.”

CARRIED (6-0)

Reason

Council has recently attained the professional services of an Engineering Consultant and also a Planning Consultant.

The deferring of this item to the May Council Meeting is so that further information can be obtained on the drainage & other issues associated with this area.

It was also noted that the Outline Development Plan would be made available to the public within the next two (2) weeks.

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.6 PROPOSED DEVELOPMENT

FILE NO: Av 1.6660/Ho 3.31230
COUNCIL DATE: 16 April 2007
REPORT DATE: 3 April 2007
LOCATION/ADDRESS: Reserve 39603
APPLICANT: Mr D Mullins
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Tyhscha Woolcock, SAO
DISCLOSURE OF INTEREST: Cr T Randell
APPENDICES: Appendix A – Plans
Appendix B – Sewerage Plan
DOCUMENTS TABLED: No

When acting as a planning authority in accordance with the powers conferred by the Town Planning and Development Act 1928 and any relevant scheme, the Council of the Shire is entitled to make decisions based only on proper planning considerations.

Summary:

The applicant is seeking approval for a two storey mixed use development on Reserve 39603 (portion of Howick Street carpark) in accordance with the plans attached and labelled Appendix A.

Background:

Currently the land is being used for a carparking area and is zoned public purposes.

Council considered a proposal for the applicant to purchase a portion of the carpark at its Ordinary Council meeting held on the 18 September 2006 where it resolved as follows:

“That Council:

1. ***Proceed with the subdivision of two (2) sections of the Howick Street carpark to provide lots of sufficient size to meet the needs of the proponents.***
2. ***Proceed with the sale of the two lots under the provisions of Section 3.58 (3) and (4) of the Local Government Act 1995 (as amended) for land sale by private treaty.***
3. ***Initiate a Scheme Amendment to rezone the lots to Mixed Business or Town Centre to cater for the designated development.***
4. ***Utilise the proceeds of the land transaction for the acquisition or development of infrastructure and assets to support the sustainability of the Central Business District Precinct in the long term. (All funds received to be held in a cash backed Reserve Fund until required).***

5. **Advise the proponents to provide a sworn valuation for the area of land they intend to purchase.**
6. **The proponents to meet the cost of subdivision, Survey and issue of titles.**
7. **The land sales to be subject to the following conditions:**
 - (a) **Development plans to be lodged and approval by Council within four (4) months of the date of settlement.**
 - (b) **The development to be substantially commenced within (12) months of the date of settlement.**
 - (c) **Failure to comply with items (a) and (b) will result in the land reverting to Council ownership at nil cost to Council.”**

Whilst it was always understood that the carpark belonged to the Council this evidently was not the case, when a search of Council's records indicated that the land was in fact a vested reserve with Council having the power to only lease all or any part for a period of 21 years subject to the Minister for Lands approval.

Correspondence provided to the Minister for Planning and Infrastructure was sent requesting assistance in making part of the reserve available as freehold titles in November 2006.

Correspondence dated 1 December 2006 from the Office of the Minister for Planning and Infrastructure revealed the following:

“The Minister for Planning and Infrastructure, Hon Alannah MacTiernan MLA, has asked me to thank you for your letter of 9 November 2006 regarding redevelopment of Reserve 39603 and to respond on her behalf.

I confirm that the current reservation and vesting over this reserve limit its use to “Park, Vehicle Parking and Tourist Purposes”. To accommodate the provision of a medical centre and extension of the Settlers Complex would require subdivision and sale of the land in freehold. An amendment to the Shire's Town Planning Scheme No 2 would also be necessary, as the land is also zoned Public Purposes and Recreation.

The Department for Planning and Infrastructure (DPI) could excise two lots from the reserve for sale in freehold, but public competition policy would require the lots be made available on the open market. Alternatively, DPI may be able to sell the land direct to the Shire of York.

DPI will investigate these options and liaise directly with you on this matter.”

Further correspondence from the Department for Planning and Infrastructure dated 8 January 2007 revealed the following:

“I refer to your letter to the Minister for Planning and Infrastructure dated 9 November 2006 seeking to subdivide York Lot 595 (Reserve 39603) to provide a medical centre

and allow expansion of the Settlers Complex. This Office has been asked to investigate and liaise directly with you on the matter.

Comments are currently being sought from the Services Authorities and Department of Industry and Resources in respect to the proposal. A valuation is also being sought from the Valuer General in respect to the current unimproved market value for the land.

Subject to comments from the above agencies it is possible for this Office to sell the land either in total or individual lots direct to the Shire of York. Similarly, it is possible to amalgamate the portion adjacent to Settlers Complex with their existing lot. As advised by the Minister's Office the land is current zoned for 'Public Purposes' and rezoning to commercial or other appropriate zoning would likely be a condition of any contract of sale.

May I suggest that, upon receipt of the above comments and valuations, I arrange to meet with you to discuss the various options that may be available to redevelop this reserve."

Following the above correspondence further correspondence was received from the Office of the Minister for Planning and Infrastructure dated the 16th February 2007, which is detailed below:

"The Minister for Planning and Infrastructure, Hon Alannah MacTiernan MLA, has asked me to thank you for your letter of 20 December 2006 regarding the sale of the above Reserve and to respond on her behalf.

As advised in my letter dated 1 December 2006, two designated areas could be surveyed and excised from Reserve 39603 for direct sale to the Shire of York. Alternatively, all of the land in Reserve 39603 could be sold in freehold to the Shire. In either case, the sale price would be the current unimproved market value as determined by the Valuer General.

As previously advised, the land would require rezoning under the Shire's Town Planning Scheme and this may be a condition in the contract of sale. I have asked Steve Burgess, Manager Midwest, State Land Services in the Department for Planning and Infrastructure to seek an indicative valuation and to meet with you to discuss this matter further."

Council resolved at its Ordinary Council meeting of the 19th March 2007 the following:

"That Council:

- a) *Initiate a Scheme Amendment (Amendment No 20) to rezone Reserve No 39603 from Public Purpose Reserve to Town Centre Zone and add Medical Centre to the Use Class Table the Scheme as a "Permitted Use" in the Town Centre and Mixed Business Zones.*

- b) *To request of the Hon. Minister for Planning and Infrastructure to accept the surrender of the Vesting Order for Lot 595 (Reserve No 39603) and convert the land to freehold title/s for the purpose of a Medical Centre”.*

Council held a meeting with the Hon Alannah MacTiernan and progressed the issue where it was announced that the Department could sign off a subdivision application and that a scheme amendment could be initiated.

The above is underway in accordance with advice received from both the Department for Planning and Infrastructure and the Office of the Minister for Planning and Infrastructure.

Consultation:

Council advertised the development application in accordance with a direction from the Minister for Planning and Infrastructure. A sign was placed on the property and adjoining landowners were notified.

The following submissions were received:

Water Corporation – Received 4 April 2007

“Further to your letter dated 14 March 2007 regarding the proposed development above.

The Water Corporation has no objections to the proposed development.

It is recommended that this development be connected to scheme water supply and sewerage.

The proposed development would appear to be located on part Reserve 39603. The Corporation is not aware of any formal application to Western Australian Planning Commission to subdivide the subject land. Further assessment may be required depending on application for freehold or strata title.

The developers will be responsible for the provision of water supply and sewerage and any upgrading required to the existing scheme to meet the proposed demands of the development. In addition the proponent will be required to fund the full cost of protecting, relocating or modifying any existing Water Corporation facilities or infrastructure which may be affected by a development.

The attached plan indicates the position of the Corporation’s sewer main. Building over sewers is not permitted unless special provisions are made for the sewer main. Furthermore no building development is permitted within 2.5 metres of the sewer main unless special building footings are constructed.

A full assessment of service requirements and related charges for the proposed development will be made on the submission of a formal development proposal by the applicant.”

Statutory Environment:

Shire of York Town Planning Scheme.

Policy Implications:

Nil.

Financial Implications:

The financial implications are unknown at this time and will depend on the result of Council on selling the property.

Planning fees have been paid to a value of \$3,016.00. Building fees will be forthcoming.

Strategic Implications:

The preliminary advertising period results in an informed community.

Strategic Plan Key Result Area 2 – Economic Development & Tourism:

Objective 1 To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.

Objective 5 To ensure economic development does not conflict with York's heritage, lifestyle and environment.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

Commercial and residential development in the town centre will enhance CBD viability.

If approved additional commercial floor space will be provided in the CBD giving greater choice to potential small business investors. New businesses may improve local employment opportunities.

A large-scale investment of this nature would improve investor confidence in York as it grows and develops.

Social Implications:

An enhanced streetscape rather than vacant land may be of long-term social benefit through local business choice, employment opportunities and new residents for the town.

The loss of a de facto parking area will impact on the community until other facilities are provided.

Environmental Implications:

Any design approved will need to take into account finished floor levels.

Comment:

Hames Sharley provided a plan for the Central Business District and whilst this may not be going ahead at this time the use of the existing land for the purposes contained within this report are considered beneficial for the growth and development of York and therefore it is recommended for approval.

OFFICER RECOMMENDATION

Cr Randell left the meeting at 3.55pm.

Resolution
080407

MOVED Cr Lawrance seconded Cr Fisher

“That Council advise the applicant that it approves the proposed development in accordance with the attached plan labelled “Appendix A” for Reserve 39603, York subject to the following:

- 1. A building licence being issued in accordance with the Building Codes of Australia;***
- 2. The submission and approval of colour schemes by Council’s Regional Heritage Advisor;***
- 3. Carparking bays for use by patrons and residents will need to be provided as per the Shire of York Town Planning Scheme No. 2. If the required number of bays cannot be provided onsite, the Council will accept a cash in lieu payment per bay;***
- 4. Stormwater being disposed of within the confines of the property or alternatively arrangements being made with the Council to utilise the Council’s stormwater system. Fees may be payable to the Council to utilise the Council’s system;***
- 5. Approval from Fire and Emergency Services prior to a building licence being issued;***
- 6. Crossover entries and traffic management to be to the satisfaction of the Chief Executive Officer;***
- 7. Landscaping to complement the appearance of the proposed development to the satisfaction of the Chief Executive Officer;***

8. ***All development shall be connected to the Water Corporation's deep sewer system;***
9. ***The proponent to contribute 100% of the cost of imprinted concrete or brickpaved footpath for the full frontage of development on Howick Street and appropriate connection to the existing Settlers House walkway;***
10. ***This planning approval is issued subject to substantial development occurring within two (2) years;***
11. ***Construction work to be in accordance with the Environmental Protection (Noise) Regulations 1997;***
12. ***Design and construction is to incorporate noise attenuation measures as detailed in AS2107; and***
13. ***This development approval only comes into force when the subdivision is completed and freehold title is obtained and the title is transferred to the proponent.***

Advice Note:

- a. ***Finished floor level to cater for disabled access.***
- b. ***The approval of the Development does not constitute a building licence.***
- c. ***The following information is provided from the Water Corporation and relates to Appendix B:***

The developers will be responsible for the provision of water supply and sewerage and any upgrading required to the existing scheme to meet the proposed demands of the development. In addition the proponent will be required to fund the full cost of protecting, relocating or modifying any existing Water Corporation facilities or infrastructure which may be affected by a development.

The attached plan indicates the position of the Corporation's sewer main. Building over sewers is not permitted unless special provisions are made for the sewer main. Furthermore no building development is permitted within 2.5 metres of the sewer main unless special building footings are constructed."

CARRIED (5-0)

Cr Randell returned to the meeting at 4.00pm.

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 LOCAL GOVERNMENT OFFICIAL CONDUCT
BILL 2005

FILE NO: LE.ACT.1
COUNCIL DATE: 16 April 2007
REPORT DATE: 27 March 2007
LOCATION/ADDRESS: Not Applicable
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Ray Hooper, Chief Executive Officer
DISCLOSURE OF INTEREST: Nil
APPENDICES: (1) Amendment Bill 2005 (2) WALGA
Summary
DOCUMENTS TABLED: Nil

Summary:

The State Government has adopted the Local Government Official Conduct Bill 2005 and this will now be in force and operational for the next ordinary election to be held in October 2007. The Bill introduces a new Code of Conduct by elected members.

Background:

This matter has been debated for a considerable period as a result of some instances of impropriety by elected members.

Consultation:

Not Applicable

Statutory Environment:

The new Bill will have the force of Law and it will establish a Statewide Standards Panel to deal with complaints about minor breaches under the new code and give the State Administrative Tribunal powers to review the conduct of elected members where the act or regulations have been breached. Penalties for minor breaches will include public censure, public apology or an order to undertake training. The State Administrative Tribunal will have additional powers to suspend a member for a period of up to 6 months or to disqualify a member from holding office in Local Government for up to 5 years

Policy Implications:

No relevant policies applicable to this report.

Financial Implications:

The Minister has agreed to pay 50% of the panels sitting fees in addition to the cost of administration and travel for the panel. No advice has been received on cost contributions if a matter is referred to the State Administrative Tribunal.

Strategic Implications:

No relevant implications applicable to this report.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: N/A

Triple bottom Line Assessment:

Economic Implications:

Nil.

Social Implications:

The intent of the legislation is to provide for more open and accountable Local Governance.

Environmental Implications:

Nil.

Comment:

Local Government has been singled out for a Code of Conduct which is not applied at State or Federal levels or in private industry and which may impact on the community members considering nominating for Council. The Legislation places another compliance burden on Local Government in the form of a register of complaints and inclusion of complaints in the Annual Report.

There is some degree of protection against vexatious complaints with penalties of up to \$5000 in providing false or misleading information.

OFFICER RECOMMENDATION

Resolution

090407

MOVED Cr Delich seconded Cr Randell

“That Council:

Note the Legislation to come into effect for the ordinary elections to be conducted in October 2007 in relation to the Local Government (official conduct) Amendment Bill 2005”.

CARRIED (6-0)

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9.2.2

**OFFICER'S REPORTS
ADMINISTRATION REPORTS
DISCUSSION PAPER – WHEATBELT
HEALTH SERVICE PLAN**

FILE NO: HS:GEN:3
COUNCIL DATE: 16 April 2007
REPORT DATE: 27 March 2007
LOCATION/ADDRESS: Wheatbelt
APPLICANT: WA Country Health Service - Wheatbelt
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Ray Hooper, Chief Executive Officer
DISCLOSURE OF INTEREST: Nil
APPENDICES: Discussion Paper – December 2006
DOCUMENTS TABLED: Nil

Summary:

The Wheatbelt Health Service Plan was received on the 8th March 2007 and responses are requested by the 20th April 2007.

The Discussion Paper covers the health issues across the Wheatbelt and provides a reform agenda for consideration. The reform agenda covers matters such as – Medical Cover, Emergency Services, Protocols, Small Hospitals, Coastal Communities, Relationship with Midland Health Campus, improved Communication and Information Systems, Mental Health Services, District Hospitals and Regional Health Networks.

Background:

The Discussion Papers follows on from the Reid Report, the Country Health Service Review 2004 and the Foundations for Country Health between 2007-2010 paper.

Consultation:

The discussion paper has been circulated throughout the Wheatbelt.

Statutory Environment:

Not applicable at this stage.

Policy Implications:

Not relevant.

Financial Implications:

Nil at this stage for Local Governments above existing contributions for Health and Medical Services.

Strategic Implications:

Not relevant.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: N/A

Triple bottom Line Assessment:

Economic Implications:

None are identified at this stage but obviously changes to facilities and services could have large-scale economic impacts on local economies.

Social Implications:

Health well being and access to emergency services are basic components of rural living and any changes (positive or negative) can have profound impacts on social stability and cohesion.

Environmental Implications: Nil

Comment:

The discussion paper addresses the issues relevant to Health Services in the Wheatbelt and provides a platform for change dependent on realism and not parochialism.

Of the reform agenda items the proposal for medical cover may be the most difficult to implement as it ties private medical practice to hospitals where these are located. The principles behind the proposal are sound however some concern and opposition should be accepted.

OFFICER RECOMMENDATION

Resolution

100407

MOVED Cr Lawrance seconded Cr Delich

“That Council:

- (1) Receive the discussion paper – Wheatbelt Health Service Plan.***
- (2) Endorse and support the reform agenda (items 1-10) contained in the report.***
- (3) Offer to assist the WA Country Health Service – Wheatbelt with the preparation and implementation of pilot and demonstration projects of value locally and regionally to underpin, sustainable health and medical services.”***

CARRIED (6-0)

9.
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**OFFICER'S REPORTS
ADMINISTRATION REPORTS
REPORT 8 – STANDING COMMITTEE ON
ENVIRONMENT & PUBLIC AFFAIRS**

FILE NO: LE.ACT.1
COUNCIL DATE: 16 April 2007
REPORT DATE: 11 April 2007
LOCATION/ADDRESS: Not Applicable
APPLICANT: State Government
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Natasha Brennan, Executive Assistant
DISCLOSURE OF INTEREST: Nil
APPENDICES: Findings & Recommendations from the Report
DOCUMENTS TABLED: Report 8 Local Government Amendment Bill (No.2) 2006

Summary:

The Standing Committee on Environment and Public Affairs have provided Council with a copy of the Committee's Report into the Local Government Amendment (Bill No.2) 2006.

Their recommendation from the report is:

Recommendation 1:

"The Committee, by a majority (comprising Hons Louise Pratt, Kate Doust and Paul Llewellyn MLCs) recommends that the Local Government Amendment Bill (No.2) 2006 be passed without amendment."

Background:

The Standing Committee was first appointed on the 17 August 2005 and consists of 5 members.

The functions of the Committee was to inquire into and report on –

- (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment
- (b) any bill referred by the House; and
- (c) petitions.

The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.

The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.

In this order "environment" has the meaning assigned to it under section 3(1), (2) of the Environmental Protection Act 1986

Consultation:

Local Governments
WALGA
LGMA

Statutory Environment:

Not applicable at this stage until the recommendations have been passed.

Policy Implications:

Not relevant.

Financial Implications:

Voting would be required to be done either in-house or by postal voting, which would be conducted by the WA Electoral Commission.

Strategic Implications:

Not relevant.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Nil.

Social Implications:

Voting changes will need to be fully explained to the community.

Environmental Implications:

Nil.

Comment:

Proportional Preferential voting will be used at the 2007 and future elections.

OFFICER RECOMMENDATION

Resolution
110407

MOVED Cr Lawrance seconded Cr Randell

“That Council receive the Eighth Report of the Standing Committee on Environment & Public Affairs in relation to the Local Government Amendment Bill (No.2) 2006.”

CARRIED (6-0)

9.3 Finance Reports

9. OFFICER'S REPORTS
9.3 FINANCE REPORTS
9.3.1 FINANCIAL REPORT MARCH 2007

FILE: FI.FRP
COUNCIL DATE: 16 April 2007
REPORT DATE: 3 April 2007
LOCATION/ADDRESS: Not Applicable
ACTION OFFICER: Annette Hunt, Finance Officer
SENIOR OFFICER: Graham Stanley, Deputy Chief Executive Officer
DISCLOSURE OF INTEREST: No
APPENDICES: Yes
DOCUMENTS TABLED: Nil

Summary:

The Financial Report for the period ending 31 March 2007 is hereby presented for the consideration of the Council.

The Financial Statement is based on a similar format to that used in the Municipal Budget to aid interpretation and allow consistent comparison and analysis.

The Financial Income and Expenditure Report is attached in Appendix A. Variation reporting is predicated on Council adopting a materiality variance of 10% and / or \$10,000 as adopted in the October 2006 ordinary meeting of Council.

Also included in Appendix A are the following:

- Bank Account Reconciliations
- Income and Expenditure Variation Report
- Cheque drawings on the Municipal Account
- EFT drawings on the Municipal Account
- Cheque drawings on the Trust Account
- Reserve Accounts Balances Summary
- Payroll Direct Bank Debits
- Shell Card Statement
- Corporate Credit Card Statements
- Capital Works / Major Projects Report

The Capital Works and Major Projects Report is presented to monitor the ongoing progress towards Councils budgeted Capital Works and non-recurrent type projects. It provides a summary of costs incurred to date and a brief summary of the current status of the project.

Consultation:

Department of Local Government and Regional Development

Statutory Environment:

Local Government Act 1996 (As Amended)

Local Government (Financial Management) Regulations 1996 (As Amended)

Policy Implications:

Nil.

Financial Implications:

The following information provides balances for key financial areas for the Shire of York's financial position as at 31 March,2007

Sundry Creditors as per General Ledger	\$	447.15
Sundry Debtors as per General Ledger	\$	91,417.92
Unpaid rates and services current year (incl ESL)	\$	297,747.77
Unpaid rates and services previous years (incl ESL)	\$	149,158.93

Strategic Implications:

Not Applicable.

Voting Requirements:

Simple Majority.

Site Inspection:

Site Inspection Undertaken: Not applicable.

Triple bottom Line Assessment:

Nil.

Economic Implications:

A zero balance or surplus end of year financial position will increase community confidence and cohesion and provide an opportunity for improved community benefits in 2006/07 and future years.

Environmental Implications:

Not applicable.

Comment:

1. Attached as an Appendix to this item is a variance report on the Shire's financial activity. The comments provided are based on a comparison of year to date budgets and actuals by line item. This is in accordance Financial Management Regulation 34.

OFFICER RECOMMENDATION

Resolution
120407

MOVED Cr Fisher seconded Cr Randell

“That Council:

Receive the Monthly Financial Report and payments drawn from the Municipal and Trust accounts for the period ending 31 March, 2007

	<u>VOUCHER</u>	<u>AMOUNT</u>
MUNICIPAL FUND		
Cheque Payments	27087-27125	\$ 100,556.39
Electronic Funds Payments	3112-3203	\$ 219,828.99
Direct Debits Payroll		\$ 77,737.00
Bank Fees		\$ 478.21
Corporate Cards		\$ 495.75
Photocopier Lease		\$ 1,037.22
Shell Cards		\$ 718.84
TOTAL		<u>\$ 400,852.40</u>
TRUST FUND		
Cheque Payments	3372-3375	\$ 7,193.38
Direct Debits Licensing		\$ 159,223.45
TOTAL		<u>\$ 166,416.83</u>
TOTAL DISBURSEMENTS		<u>\$ 567,269.23</u>

CARRIED (6-0)

Note to this item

The Chief Executive Officer has delegated authority under Delegation DE1 (Council Meeting 10 August 2006) to make payments from the Municipal and Trust accounts.

9. OFFICER'S REPORTS
9.3 FINANCE REPORTS
9.3.2 SWIMMING POOL BOWL PAINTING

FILE NO: CCP.8
COUNCIL DATE: 16 April 2007
REPORT DATE: 29 March 2007
LOCATION/ADDRESS: Georgiana Street, York
APPLICANT: Shire of York
SENIOR OFFICER: Ray Hooper, Chief Executive Officer
REPORTING OFFICER: Peter Stevens - EHO/ BS
DISCLOSURE OF INTEREST: Nil
APPENDICES: Yes
DOCUMENTS TABLED: Nil

Summary:

Council has \$12,000 allocated for painting of the swimming pool bowls in this year's budget. Attempts to get firm quotes for the work have been made over the last 5 months with only one written quote received. The cost of supply of paint and labour to complete the work has been quoted at \$17,435. This leaves a shortfall of \$5435.

In order to undertake the work a budget variation will need to be approved by Council.

Background:

The York War Memorial Swimming Pool is approximately 41 years old. An audit of the facility was undertaken as part of the Regional Aquatic Centre Audit Programme (RACAP) (Appendix A) in 2002. The audit was completed on behalf of the Department of Sport and Recreation by GHD consultants.

The audit rated the facility in overall good condition however the pool itself was rated as average and indicated that some items would need attention within 5 years. These items included painting of the pool bowls (last done in 1998), rendering to starting blocks, depth marker repainting, repair of copings around pool and some jointing adhesive failure. The walls and floors of the pool bowl were reported as in good condition and this has been confirmed with the pool manager.

There is a small leak believed to be on the inlet side of the pool, this may be able to be fixed whilst the pool bowl is drained. The leak has existed for at least 6 years and does not appear to have gotten worse.

The other items listed as average in the audit were the fence posts, light poles, some cracked concrete paving slabs and areas of the perimeter fence. These items will need attention in the near future and will be considered as part of the budgeting process for the next financial year.

Other items that have been identified as in need attention in the near future are repainting and upgrading of the change room facilities, entrance and office area refurbishment, barbeque area refurbishment (possibly relocate) and attention to paving around kiosk and barbeque areas.

The swimming pool pump was refurbished last year and should be serviceable for at least another 5 years. The chemical dosing system will need a major overhaul prior to the start of next season.

The pool shade structure and shade is in good condition and no expenditure is anticipated for that for the next 3-4 years.

It is anticipated that the swimming pool has at least another 10 years of life and possibly much longer if maintained. The current pool painting has lasted 9 years and there is no reason why the repainting, if undertaken, would not last another 9 years. The contractor that has quoted on the work has extensive experience recoating pools and will also undertake acid washing and resealing of coping as part of the job. Attempts have been made to gain other quotes for the work but unfortunately none have been forthcoming. The price quoted for the job is fair considering the material component is around \$10,000.

Consultation:

Swimming Pool Manager
Megaspool
Shenton Pools

Statutory Environment:

Health Act 1911.

Policy Implications:

Nil.

Financial Implications:

A budget variation of \$5435 is required to undertake the painting of the pool bowls this financial year.

Strategic Implications:

Resource Management – Long term planning and financial management
To provide services in the most cost- effective way

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

The swimming pool is a valuable asset of the Shire of York and without continued maintenance it will deteriorate beyond a reasonable state of repair.

Social Implications:

The York Memorial Swimming Pool has an average of 19 – 20,000 customers a year and is highly valued by the York community.

Environmental Implications:

Nil.

Comment:

The pool bowls are in need of recoating and it is preferred to undertake the work prior to the onset of winter because of problems with soil dampness. If undertaken this year the pool bowl should not require major work for at least another 5-7 years.

The pool is a considerable asset to the Shire and with ongoing maintenance should service the community for the next 10 years.

There are items identified in this report that will require attention next financial year and in the years to come however it is considered that the recoating of the pool bowls is a priority task that should be completed as soon as possible. The contractor has indicated that he can commence work in April and expects the work to take 2- 3 weeks.

If Council considers building a new aquatic facility for the Shire it should realise that it would cost in between \$3 to \$5 million dollars depending on size, whether it was heated and whether it was indoor or outdoor.

OFFICER RECOMMENDATION

Resolution

120407

MOVED Cr Lawrance seconded Cr Fisher

“That Council:

Approve a budget variation to the General Ledger Account, 112303, of \$5435 to allow painting of the swimming pool bowls at York War Memorial Swimming Pool to enable the works to be completed this financial year.”

CARRIED (6-0)

9.4 Confidential Reports

Nil.

9.5 Late Reports

Nil.

10. NEXT MEETING

Resolution

130407

MOVED Cr Fisher seconded Cr Randell

“That Council

hold the next Ordinary Meeting of the Council on the 21st May 2007, commencing at 3.00pm in the Lesser Hall, York.”

CARRIED (6-0)

11. CLOSURE

There being no further business, the President closed the meeting at 4.10pm.

The minutes were confirmed by the Council as a true and accurate record at the Council Meeting held on 16 April 2007.

PRESIDENT