



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 27 APRIL, 2011
COMMENCING AT 3.00pm
IN THE LESSER HALL, YORK**

SHIRE OF YORK

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RAY HOOPER
CHIEF EXECUTIVE OFFICER

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SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL WILL BE
HELD ON WEDNESDAY, 27TH APRIL, 2011, COMMENCING AT
3.00PM IN THE LESSER HALL, YORK.

The York Shire Council acknowledges the traditional owners of the land on which this meeting will be held.

1. OPENING

1.1 Declaration of Opening

Cr Pat Hooper, Shire President, declared the meeting open at 3.00pm.

1.2 Chief Executive Officer to read the disclaimer

Ray Hooper, Chief Executive Officer, read the disclaimer.

1.3 Announcement of Visitors

Cr Pat Hooper welcomed Jenni Law and Deb Berchill from the Department of Local Government.

1.4 Announcement of any Declared Financial Interests

Nil

2. ATTENDANCE

2.1 Members

Cr Pat Hooper, Shire President; Cr Brian Lawrance, Deputy Shire President; Cr Roy Scott; Cr Trevor Randell and Cr Tricia Walters.

2.2 Staff

Ray Hooper, Chief Executive Officer; Gordon Tester, Manager of Health and Building Services and Nicole McNamara, Development Services Officer.

2.3 Apologies

Cr Tony Boyle.

2.4 Leave of Absence Previously Approved

Nil

2.5 Number of People in Gallery at Commencement of Meeting

There were 10 people in the Gallery at the commencement of the meeting.

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

3.1 Previous Public Questions Taken on Notice

Mrs Heather Saint
87 Avon Terrace
YORK WA 6302

PUBLIC QUESTION TIME - COUNCIL MEETING 21 MARCH 2011

The response prepared in response to questions from Mrs Heather Saint were deferred to the May Council Meeting for the content of the responses to be verified and re-written if required.

3.2 Written Questions

Nil

4. PUBLIC QUESTION TIME

Mr Simon Saint
87 Avon Terrace
York WA 6302

Question 1(a):

Council, do you recall at your meeting of 21st March your Chairman, speaking for Council, ruled that he alone will determine by his absolute ruling which members of the public can or cannot present a public question to Council?

Response:

The ruling I made was for Public Question Time to be kept to 15 minutes per person. If questions are the same as previously asked and are relating to the operational nature of the Shire, I will refuse to answer them.

Question 1(b):

Council, would you agree that this ruling is a breach of both the Local Government Act 1995 and its Local Government (Administration) Regulations 1996, because the Act and Regulations specifically prescribe that ONLY “procedures” are to be determined by the discretion of the Chair and that the content and purpose of a question are not defined by statute to be a “procedure”?

Response:

I will speak to Ms Law who is in the audience (from the Department of Local Government). If the way I acted was inappropriate, I will seek advice from her.

Question 1(c):

Council, given Regulation 7(3) prescribes: “Each member of the public who wishes to ask a question at a meeting referred to in regulation 6(1) is to be given an equal and fair opportunity to ask the question and receive a response” by what authority do you set that statutory requirement aside?

Response:

Mr Saint, you are trying to make a mockery out of Council. Each community member is given 15 minutes to ask questions, and where possible a response is given.

Question 1(d):

Council, given Regulation 6(2) prescribes: “Once all the questions raised by members of the public have been asked and responded to ”, would you agree the word “all” means exactly that?

Response: Yes

Question 1(e):

Council, are you aware that Public Question Time is a core element in the execution and implementation of the “public accountability” provisions of the Local Government Act 1995?

Response:

Taken on Notice.

Question 1(f):

Council, notwithstanding the instruction documented below on this form restricting the scope and content of Public Questions, would you not agree that the role of Council is defined by Section 2.7 of the Local Government Act 1995:

2.7 Role of Council

(1) The council –

- (a) Governs the local government’s affairs; and
- (b) Is responsible for the performance of the local government’s functions.

And therefore would you not agree that Council has a statutory responsibility for operational matters, being a vital and integral part of the Local Government’s functions?

Response:

Council does have a responsibility for operational matters. I am not able to access sections of the Act as I don’t have it in front of me. If you provide your questions before the meeting, I can research and provide an appropriate answer. This is taken on notice.

Question 1(g):

Council, when do you intend to update your documented Public Question Time Procedure to reflect the policy of the Chair?

Response:

The Public Question Time Procedure in place will remain.

Question 2(a):

Was the decision to not accept question on operational matters debated before the last ordinary meeting and did the decision have the full backing of the elected members?

Response:

No it was not debated on.

Question 2(b):

If no... why did no elected member question that decision at the time the Shire President announced it?

Response:

Mr Saint, this question is for a different time and a different meeting.

Question 3:

With reference to my first question at the Ordinary Council meeting of 21st March 2011, I asked “why must I come to Council Meetings to get answers to Operational questions”, in which I received the response “you have full right to go to the Department of Local Government. There is a set policy of Governance”. The Department of Local Government have advised me of the following:

“I’m not sure what is meant by the “set policy of governance” that is mentioned in the answer to your question?

As mentioned previously, your first point of contact for any questions related to a “matter affecting the local government” should always be either the CEO or, if necessary, Council by means of written request or questions during public question time.

Contact with this Department is for advice, not to answer questions that your local government can answer.”

So, could Council therefore explain their response to this question?

Response:

Your questions relate to every day operational matters. I will not ask for a report on every meeting you or any member of the public has with staff. You have had plenty of time to raise the issues with staff, you just haven’t accepted their answers.

Question 4(a):

Are the elected members aware that I received a letter from the administration asking me to retract a statement I made in a letter to the editor of Community Matters April edition?

Response:

Yes we are all aware of the letter.

Question 4(b):

Are the elected members aware that had I been given the opportunity to ask my question at the last ordinary meeting, therefore giving the Shire the opportunity to answer those questions, there would have been no need to write to the editor of Community Matters?

Response:

Taken on Notice.

Question 4(c):

Does it then seem reasonable that, after being denied that opportunity to question the Shire, I should be asked to retract my statement to the editor of Community Matters?

Response:

Taken on Notice.

Question 5:

By what authority does the Shire have to demand a business plan when the financial implications of a project have nothing to do with them whatsoever?

Response:

Taken on Notice.

Question 6:

As the Shire acted under the incorrect Building Regulations, with reference to 89 Avon Terrace, had I complied with a Shire Officers incorrect demand and installed an excessive unnecessary amount of toilet facilities, theoretically this could have cost \$100,000 if compared to the Shires Howick Street toilet block which actually has less toilet facilities, how then would the Shire appear to be open and accountable for such gross negligence?

Response:

You have received the answers to this. You and I have spoken in regards to the toilet issues, and the situation has been corrected.

Question 7:

I understand the last one of the three “qualified shire officers” who held up our project for nine months has resigned, does this mean the Shire will follow previous form and blame ex-employees, or does the Shire still claim to be open and accountable?

Response:

Council does not and will not blame ex-employees.

Question 8(a):

Could Council explain when it becomes necessary to obtain a class 9 event licence?

Response:

Gordon Tester explained through the Chair that a class 9 event licence is for the gathering of public, or a public assembly. If it's on a Council property, Council can charge an entry fee.

Question 8(b):

In order to obtain a class 9 events licence is it a requirement to have disabled facilities, for example toilets?

Response:

Gordon Tester explained through the Chair that if the building is old, it may not be necessary however if it is a new building disabled facilities would be required.

Mrs Roma Paton
30 Bouverie Road
York WA 6302

Question 1:

Council, in page 2 of your SEAVROC Discussion Paper you declare the basic principles of the SEAVROC mode of local government will create (quote) “Retention of identity and autonomy and accountability to the local communities rather than creating another local government through the Regional Council process”.

Could you please explain how this extra tier of unelected officials will improve your claimed existing high level of accountability to local communities – ie the people of York?

What rights of remedies and redress will this proposed model deliver to disaffected electors, or will it be the case that SEAVROC will be untouchable to the electorate?

Response:

People who have been elected for Council would be eligible to stand for election.

Question 2:

Can the public look at the figures? \$200,000 was contributed by the Shire however we've never seen the figures.

Response:

That is not the case. SEAVROC projects were funded through Department of Local Government and other grants and some contributions from Member Councils.

Question 3:

Where can the public access the financial figures?

Response:

All figures are in the finance statements and reports provided by Council under the heading of SEAVROC or SEARTG.

Question 4:

The link on the Shire website for SEAVROC is a dead end. It doesn't take you anywhere.

Response:

SEAVROC is not a formal entity and it has largely been overtaken by the South East Avon Regional Transition Group with Brookton out and Tammin in and the SEAVROC website is no longer required or in use.

Question 5:

Will you look into the website issue?

Response:

Yes, we will look into it.

Mrs Heather Saint
87 Avon Terrace
York WA 6302

Question 1:

Could Council please advise when they became aware of the use of the Building Regulation 1989 with regard to older buildings in York?

Response:

Council became aware of the Regulations after it was brought to our attention by Gordon Tester following advice and notification by Mrs Saint.

Mrs Tanya Richardson
113 Newcastle Street
York WA 6302

Question 1:

What is Council doing in regards to updating the 1990 Tourism Policy?

Response:

From what I understand, Helen Hardcastle is updating the policy at present.

Question 2:

I have spoken to Helen, and she's advised that tourism is a very, very small part of the review. My question is what is the Shire doing?

Response:

Tourism will be looked into during the budget process. In 2007 the Strategic Plan was updated and amendments were made. If you would like to speak to the CEO after the meeting, I'm sure he will be able to provide you with copies of the relevant documents.

Question 3:

But what is Council going to do?

Response:

At the moment, it is not on our agenda. A lot of items are currently on hold, pending the decision to be made on 31 July in regards to amalgamations. We cannot create a policy if it may be changed in 5 – 6 months time.

Question 4:

York will still require an individual policy.

Response:

If amalgamations go ahead, there will be no individual policies. Certain aspects will be designed specifically for York; however there will be no separate policies for each Shire.

Question 5:

How will tourism for York be worked into the policy?

Response:

This will be determined by the elected members.

Question 6:

So, if a decision is made in July, a policy will be created by August (roughly)?

Response:

No.

Question 7:

I previously requested a copy of the minutes from the Town Hall committee, but as of yet I have not received them.

Response:

I will get them sent to you as soon as possible.

Question 8:

Why have the Town Hall celebrations not been listed on the website in the events calendar?

Response:

The events have only just been finalised.

Question 9:

Why has it taken this long to finalise the events when we are a quarter of the way through the year?

Response:

Events have been planned for November, and are planned to coincide with the Historical Society conference at the end of the year. Events will be held on the weekend of 25th – 27th November. The Committee has been waiting to tee up the information, and get confirmation from the various politicians to see if they are available.

Question 10:

Why are the events being held out of the tourist season? Meaning very few tourists will be able to come to the town to view the celebrations?

Response:

The events are being held to coincide with the original opening of the hall.

Question 11:

I thought it was the year of celebration? Why wasn't funding applied for in the 2008/09 or 2009/10 financial years?

Response:

As you are aware, we do not receive every grant we apply for.

Question 12:

Why weren't locals or community groups not asked for their input until now? Leaving very little time for committees to be formed in order to make a decision?

Response:

The Committee have made that decision. I was not a part of the Committee during that stage due to health reasons and other commitments.

Ms Darlene Barratt
18 Penny Street
Kuaring WA 6302

Question 1:

Are Councillors aware of the legal battle with GT Homes and will it end up the same as the case between the Shire and Rosmill? When will we be advised of the total costs of the cases against Rosmill that the Shire of York is responsible for and what are the total costs?

Response:

Councillors are aware of the current legal case with GT Homes Pty Ltd. The CEO advised through the Chair that the total cost of the Rosmill Pty Ltd case has been listed in the financial statements. It was roughly \$9,100.00 as the final payment.

Question 2:

Are Councillors aware of the technicalities in the GT Homes case?

Response:

Councillors are aware of the Supreme Court ruling.

Question 3:

Are Councillors aware that caveats have been placed on the properties, meaning they cannot be sold and the money cannot be repaid?

Response:

Yes. GT Homes have not made any submission to Council in relation to caveats.

Question 4:

Is the case still pending?

Response:

We are not aware of the case still pending, unless GT Homes has lodged an appeal.

Mrs Roma Paton
30 Bouverie Road
York WA 6302

Question 1:

Who set out the tables? Why is Cr Walters sitting at the end of the table, away from everyone?

Response:

Tables are laid out by Staff and councillors can sit where they choose.

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Minutes of the Ordinary Council Meeting held March 21, 2011
Corrections

Confirmation

RESOLUTION

010411

Moved: Cr Lawrance

Seconded: Cr Randell

“That the minutes of the Ordinary Council Meeting held 21 March, 2011 be confirmed as a correct record of proceedings subject to Resolution 210311 being changed to read “That Council hold the next Ordinary Meeting of the Council on April 27, 2011 at 3.00pm in the Lesser Hall, York”

CARRIED (4/1)

7.2 Minutes of the Special Council Meeting held April 11, 2011
Corrections

Confirmation

RESOLUTION

020411

Moved: Cr Randell

Seconded: Cr Scott

“That the minutes of the Special Council Meeting held April 11, 2011 be confirmed as a correct record of proceedings.”

CARRIED (5/0)

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Cr Hooper congratulated York and Ms Richardson for the Antique Collectors Fair held over the weekend. It was an outstanding event.

9. OFFICER'S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Proposed Development Plan for Lots 800 and 801 Mount Hardey Road, York

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.

FILE NO:	PS-TPS-23
COUNCIL DATE:	27 April 2011
REPORT DATE:	24 March 2011
LOCATION/ADDRESS:	Lots 800 and 801 of DP 64360, Top Beverley--York Road, York
APPLICANT:	David Lawn
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Jacky Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Proposed Development Plan and Location Plan, Excerpt from Town Planning Scheme No. 2
DOCUMENTS TABLED:	Proposed Development Plan

Summary:

Council has received a proposed Development Plan for Lots 800 and 801 of DP 64360, Top Beverley-York Road, York for part of the first stage of the Rural Residential development in the Mount Hardey locality.

The proposal is for the subdivision of the first stage containing 33 lots of areas ranging from one hectare to over three hectares.

Prior to the consideration of subdivision, a Development Plan shall be prepared and endorsed by Council and the Western Australian Planning Commission.

This report requests Council to endorse the proposed Development Plan for advertising for a period of 21 days prior to endorsing the final plan for approval.

Background:

The Shire of York Local Planning Strategy (LPS) identifies the Mount Hardey Rural Residential area in clause 2.4.7 and Map 4.

Council initiated Scheme Amendment No. 28 in November 2007 and was approved for gazettal by the Minister on 25 November 2010 to rezoned properties subject to the amendment from "General Agriculture" to "Rural Residential". Additionally, Schedule 6 of the Scheme was amended requiring the approval of a Development Plan prior to the subdivision of Lots 76 to 78 and 81 Top Beverley Road and Lot 79 Mount Hardey Road. The lots subject to this proposal were formerly known as Lots 80 and 81, and therefore prior to the consideration of an application for subdivision, a Development Plan must be approved by Council and the Western Australian Planning Commission.

Consultation:

The Scheme Amendment was advertised before and after adoption. The proposed Development Plan is required to be advertised for a period of 21 days to neighbours, on Council's website and in the Avon Valley Gazette.

Any submissions received will be considered prior to adoption by Council of the final Development Plan.

Statutory Environment:Planning and Development Act 2005

The proposed Development Plan has been submitted in accordance with the York Town Planning Scheme No. 2. The Scheme operates in accordance with the provisions of the Act.

York Local Planning Strategy

The site is located within the Mount Hardey Rural Residential precinct. The proposed Development Plan and subdivision is in accordance with the Strategy.

York Town Planning Scheme No. 2

The current zoning of the site is zoned Rural-Residential following the gazettal of Scheme Amendment No. 28 with the adoption of a Development Plan prior to subdivision of the subject lots required in accordance with the provisions of Schedule 6.

The matters required to be addressed in Schedule 6 in the Development Plan and have been assessed as follows:

(a) Land capability assessment and recommendation

The Land Capability Report dated June 2007 prepared by Land Assessment Pty Ltd classified the land into 13 land units with ratings for each as to suitability for rural residential, grazing, cropping and horticulture. The assessment focussed on the future change of land use to rural residential and the capability of the soils to absorb effluent and to retain nutrients and microbial pollutants against losses to groundwater. An assessment was also made for the potential of supplementary agricultural activities.

The assessment found that approximately 60% of the site has fair or better capability to support un-sewered rural-residential development, with the remainder having a lesser capability. The author has recommended that smaller lots and more intensive subdivision occur within areas assessed as having fair or higher capability for rural-residential activity.

The land capability mapping, in combination with the extent of remnant vegetation cover, has been used as a framework for the subdivision design focussing on direct impacts of development, including internal roads.

The assessment has also shown that the proposed rural-residential development will not result in a significant 'loss' of valuable farming land with the Shire.

(b) Essential services planning

Potable water supply is available to the site. It is recommended in the proposed Development Plan that rainwater tanks be installed to augment the reticulated water system.

Electricity is available to the site from the state grid.

Reticulated sewer is not available and as demonstrated in the Land Capability Assessment, sewage can be managed on-site.

(c) Municipal infrastructure planning

Top Beverley Road provides primary road access to the site. Main Roads will be consulted during the subdivision approval process, similarly with the access to and from Mount Hardey Road.

The internal road reserve is proposed to have a width of 25 metres.

Provision of public open space may be a requirement during the subdivision process.

(d) *Bushfire protection planning and management*

The Development Plan has identified the need for strategic fire breaks in the form of service roads on the eastern and southern boundaries of the subdivision area to be utilised for access and evacuation.

A Fire Management Plan will be required as part of the subdivision application process that may identify the need for additional measures, such as level of construction and asset protection zones in accordance with the provisions of the Planning for Bushfire Protection – March 2010.

(e) *Environmental protection and ecological restoration planning*

The author of the Development Plan has identified three major environmental concerns of runoff, erosion and nutrient export. Runoff and erosion can be managed during the construction of the subdivision through installation and maintenance of controls.

The concerns regarding nutrients have been identified in relation to septic systems and careful selection of the appropriate septic system utilising the land capability assessment will be required.

(f) *Visual landscape assessment and planning*

View lines to and from the development are important to retain the rural character of the site and development. The existing landform characteristics include some steep slopes and exposed ridgelines. To retain the rural living character of the development site, the recommendation of the Development Plan is supported in that buildings should not be located on prominent ridgelines and that all structures have non-reflective roofing.

(g) *Required title encumbrances*

There are no encumbrances on the existing titles. Encumbrances for easements to protect watercourses and for the strategic fire break will be required. Easements will be made in favour of Council. It is also recommended that building envelopes be imposed to protect the visual landscape and environmental protection.

(h) *Road and lot design*

The main access to the development site is the existing Mount Hardey Road. The current gravel road can be upgraded to seal formation and may require realignment for safety reasons. Access roads leading from Mount Hardey Road have been located where there is an opening in vegetation and where crossings of the watercourse will have the least impact.

Lot sizes range from one hectare to over three hectares and lot boundaries have been imposed over the location of the proposed building envelopes to avoid low capability landforms and take advantage of visual aspects.

Building envelopes have been located in the most appropriate soils types as described in the Land Capability Assessment.

Setbacks from The Top Beverley Road are recommended at a distance of 25 metres to attenuate road noise. Setbacks from internal roads and lot boundaries are recommended at 15 metres, and buildings cannot be located within 30 metres of any watercourse.

(i) *Local Water Management (stormwater) planning*

The primary watercourse runs parallel to Mount Hardey Road running east to west, to a culvert under Top Beverley Road and discharging into a wide swale to the Avon River.

The optimum outcome is to contain all stormwater on-site and that any stormwater that is discharged off-site is free of debris and nutrients.

Stormwater will be further assessed as part of the subdivision process and construction of dwellings.

(j) *Other matters deemed appropriate by Council.”*

No other specific matters have been identified. The proposed subdivision will be required to adhere to relevant State and local policies and laws.

Policy Implications:

The proposed subdivision is in accordance with the provisions of the York Town Planning Scheme No. 2.

Financial Implications:

The subdivision of the subject lots will be economically positive for the Shire through the creation of additional rateable lots. There are no negative financial implications associated with this development. The developer will be required to meet all costs for services and road construction and any need to contribute to the upgrading of Mount Hardey Road.

Strategic Implications:

Key Result Area 1: Strategic Planning

Objective 1: *To develop a framework to facilitate planning and decision-making in order to identify and meet community needs, develop opportunities and implement change.*

The Development Plan has been prepared in accordance with the requirements of the York Town Planning Scheme No. 2 and particularly the conditions of Scheme Amendment No. 28.

Key Result Area 6: The Environment

Objective 1: *To promote and ensure ecologically sustainable development.*

The Development Plan and proposed subdivision layout has been prepared taking into consideration natural features, land capability and environmental constraints to enable the development to be carried out in a sustainable way.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: A site inspection has been undertaken.

Triple bottom Line Assessment:

Economic Implications:

The provision of additional rural-residential lots is likely to have a positive impact on the York economy.

Social Implications:

There are no adverse social implications associated with the proposed subdivision.

Environmental Implications:

It is unlikely that the subdivision will result in any adverse impacts on the environment if undertaken in accordance with the proposed Development Plan and conditions of subdivision approval.

Comment:

The proposed Development Plan meets the requirements of Schedule 6 of the York Town Planning Scheme No. 2.

RESOLUTION
030411

Moved: Cr Lawrence

Seconded: Cr Scott

“That Council resolves:

To advertise the proposed Development Plan for the subdivision of part of Lots 800 and 801 Mount Hardey Road, York for a period of 21 days.”

CARRIED (5/0)

Item 9.1.1 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.2 Proposed Additions To An Existing Showroom And Warehouse Building At Lot 23 (4) Henrietta Street, York

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.

FILE NO:	He2.31370, P619
COUNCIL DATE:	27 April 2011
REPORT DATE:	8 April 2011
LOCATION/ADDRESS:	Lot 23 (4) Henrietta Street, York
APPLICANT:	R H MacKay
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Locality And Architectural Plans
DOCUMENTS TABLED:	Nil

Summary:

Council is in receipt of a planning application to construct an addition to the rear of an existing showroom and warehouse building at Lot 23 (4) Henrietta Street, York. The building is currently occupied by CDA Air Conditioning and Refrigeration.

The proposal was advertised in accordance with the provisions of the York Town Planning Scheme No. 2. One submission was received in response to the advertising.

It is recommended that Council approve the application subject to the recommended conditions of consent.

Background:

The construction of the original building was approved by Council on 16 August 1999 for the purposes of a showroom and warehouse.

It is proposed to construct an addition to the rear of the building of approximately 138m² in area and in conjunction with the additions formalise the car parking and bin storage area at the rear (Broome Street frontage).

The site is located in the York Central Heritage Precinct area, adjoins 'The Mill' and has frontages to Henrietta and Broome Streets.

Consultation:

The application was advertised in accordance with the provisions of the York Town Planning Scheme No. 2 and also referred to the WA Heritage Council.

A submission was received from the York Society objecting to the proposal.

Correspondence received from the Heritage Council advised no objections were raised to the proposal.

Both submissions are discussed later in this report.

Statutory Environment:

The Planning and Development Act 2005 and the York Town Planning Scheme No. 2 apply to the proposal. The relevant provisions are assessed as follows:

(a) *The aims and provisions of the Scheme and any other relevant town planning schemes operating within the Scheme area.*

York Town Planning Scheme No. 2

The site is zoned Town Centre under the provisions of the Scheme.

The current building was approved as a showroom and warehouse building for air conditioning products by Council on 16 August 1999 under the provisions of the current scheme.

Although, the use is not specifically defined under the scheme, the proposed extension to an existing approved building is permissible under the provisions of the scheme and is consistent with the objectives of the Town Centre zone, particularly with regards to retaining commercial uses within the district.

Section 4.5 and Schedule 4 sets out the requirements for on-site car parking. It is proposed to provide four (4) formalised car parking spaces at the rear of the building accessible from Broome Street in addition to the existing six (6) car parking spaces at the front of the building. Schedule 4 stipulates that 10 spaces are required based on the total floor area of the building (including existing and proposed). The layout of the car parking and access to the site from Broome Street will be required to comply with relevant Council and Australian Standards. Landscaping will be provided to screen the car parking and bin area from residences in Broome Street.

The site is located within the York Central Heritage Precinct under the provisions of the Local Planning Policy – Heritage Precincts and Places and therefore Clause 5.1.4 has been considered as follows:

5.1.4.1 – The proposal is considered consistent with the provisions of the Heritage Policy (refer to assessment in section (f) of this report).

5.1.4.2 – The Heritage Council has been consulted during the assessment process and has raised no objections to the approval of this proposal.

The application was advertised in accordance with the provisions of Section 7.3 of the Scheme. One submission was received in response to the advertising. Refer to section (y) of this report for assessment of the submission.

The proposal is consistent with the zone objectives and relevant provisions of TPS 2.

(b) *The requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, which has been granted consent for public submissions to be sought.*

There are no new schemes or amendments applicable to the subject property.

(c) *Any approved statement of planning policy of the Commission.*

There are no statements of planning policy applicable to the proposal.

(d) Any approved environmental protection policy under the *Environmental Protection Act 1986*.

There are no environmental protection policies applicable to the proposal.

(e) *Any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State.*

There are no State policies or strategies applicable to the proposal.

(f) *Any Planning Policy adopted by the local government under clause 8.8, any policy for a designated heritage precinct adopted under clause 5.1.3, and any other plan or guideline adopted by the local government under the Scheme.*

York Local Planning Policy – Heritage Precincts and Places

The site is located in the York Central Heritage Precinct and therefore the provisions of this policy must be considered during the assessment of this proposal. Section 4 of the Policy outlines the requirements for commercial development and the provisions have been assessed as follows:

4.4.1 – Scale and size

The addition to the existing building is in context with the scale of the existing building and will not adversely detract from 'The Mill' building adjoining the site or nearby residences.

4.4.2 – Form

The addition continues the design of the existing building.

4.4.3 – Siting

The addition to the building will enable the car parking and bin storage areas at the rear (Broome Street frontage) to be formalised, which will improve the appearance of the development from this frontage.

4.4.4 – Materials

The materials selected will be consistent with the existing building.

4.4.5 – Detailing

The detailing of the addition will be consistent with the existing building. The proposed landscaping will soften the commercial/industrial appearance of the building.

4.4.6 – Setting

The rear car parking area will be brick paved in accordance with the requirements of the Policy.

The proposal is consistent with the provisions of the Policy.

(g) *In the case of land reserved under the Scheme, the ultimate purpose intended for the reserve.*

Not applicable. The site is not reserved under TPS 2.

(h) *The conservation of any place that has been entered in the Register within the meaning of the Heritage of Western Australia Act 1990, or which is included in the Heritage List under clause 5.1.2, and the effect of the proposal on the character or appearance of a heritage precinct.*

The site is not heritage listed. Although, it adjoins 'The Mill' that is State heritage listed. Accordingly, the application was referred to the Heritage Office for comment. No objections were raised by the Heritage Office to approval of the application. It is considered that the development will not have any detrimental impact on the heritage precinct.

(i) *The compatibility or a use or development with its setting.*

The proposal is consistent with the use and setting of the site and locality.

(j) *Any social issues that have an effect on the amenity of the locality.*

The proposal will enable a local business to expand. No social issues have been identified in the assessment of this proposal.

(k) *The cultural significance of any place or area affected by the development.*

The site is located in a heritage precinct. As discussed earlier in this report, the proposal will not detrimentally impact on the heritage precinct.

(l) *The likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment.*

Sediment and erosion controls will be required during construction. The paving of the existing rear car parking will prevent further soil degradation and minimise dust emissions.

(m) *Whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bushfire or any other risk.*

The site is not subject to any natural constraints.

(n) *The preservation of the amenity of the locality.*

The proposal will not detrimentally affect the amenity of the locality.

(o) *The relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.*

The design of the proposal is considered in context with the existing setting of the site and neighbouring development.

(p) *Whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles.*

Access to the site will be formalised as a result of the proposal. It is recommended that a condition be imposed to ensure that the access and car parking is designed in accordance with Council and Australian Standards.

(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.*

The addition is unlikely to result in significant traffic generation that will impact on the road system. No changes are proposed to the Henrietta Street frontage.

(r) *Whether public transport services are necessary and, if so, whether they are available and adequate for the proposal.*

Not applicable.

(s) *Whether public utility services are available and adequate for the proposal.*

Existing public utility services are available and adequate to cater for the addition.

(t) *Whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities).*

Not applicable.

(u) *Whether adequate provision has been made for access by disabled persons.*

Existing unisex disabled toilet facility satisfactory.

(v) *Whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved.*

Landscaping is proposed on the Broome Street frontage that will improve the streetscape.

(w) *Whether the proposal is likely to cause soil erosion and degradation.*

Sediment and erosion controls will be required during construction. The paving of the existing rear car parking will prevent further soil degradation and minimise dust emissions.

(x) *The potential loss of any community service or benefit resulting from the planning consent.*

The proposal will not affect any community services or benefits.

(y) *Any relevant submissions received on the application.*

One submission was received from the York Society raising concerns that the proposed extension was too large and could create a lack of parking space for company vehicles and that the parking issue and the industrial character of the development could impinge on the amenity of houses in Broome Street.

The parking provided meets the requirements of the Town Planning Scheme and it is considered that the proposed landscaping and formalisation of the car parking area will result in an improved streetscape and aesthetic outcome when viewed from Broome Street. The Heritage Council have raised no objections to the proposal and therefore, it is considered that the development will not detrimentally affect the amenity of the houses in Broome Street.

(z) *The potential impacts of noise, dust, light, risk, and other pollutants on surrounding land uses.*

It is unlikely that the proposal will result in any impacts on surrounding land uses. No land use conflicts have been identified during this assessment.

(aa) *The comments or submissions received from any authority consulted under clause 7.4.*

The Heritage Council were requested to provide comments on this proposal. The site is located next to 'The Mill', a State listed heritage building and is within the York Central Heritage Precinct. The Heritage Council in their correspondence dated 4 April 2011 raise no objections to the proposal.

(bb) *Any other planning consideration the local government considers relevant.*

There are no other planning considerations relevant to the proposal.

Policy Implications:

The proposal is consistent with the York Town Planning Scheme No. 2 and the Local Planning Policy – Heritage Precincts and Places.

Financial Implications:

There are no financial implications for Council. The appropriate application fees have been paid by the applicant.

Strategic Implications:

Key Result Area 2: Economic Development & Tourism

Objectives:

1. *To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.*
5. *To ensure economic development does not conflict with York's heritage, lifestyle and environment.*

The proposal will enable a local business to operate more efficiently and potentially create additional employment opportunities through growth of the business. The design of the addition is sympathetic to the existing development on site and in the locality.

Key Result Area 5: History and Heritage

Objectives:

1. *To safeguard York's history and heritage.*
4. *To encourage development which is appropriate to York's history and heritage.*

The proposal has been designed to match the existing building and will not impact on nearby buildings of heritage significance, including 'The Mill' and dwellings in Broome Street.

Key Result Area 6: The Environment

Objectives:

1. *To promote and ensure ecologically sustainable development.*
2. *To encourage buildings which are ecologically sound and energy efficient.*

The building will be required to be designed in accordance with Section J of the Building Code of Australia, which will result in an energy efficient constructed building.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: **Yes**

Triple bottom Line Assessment:

Economic Implications:

There are no economic implications for the Shire relevant to this proposal.

Social Implications:

There are no adverse social implications relative to this proposal.

Environmental Implications:

The proposal will not have any adverse environmental implications.

Comment:

This assessment demonstrates that the proposal meets the relevant provisions of the York Town Planning Scheme No. 2 and the York Local Planning Policy – Heritage Precincts and Places.

The submissions have been considered during the assessment.

Accordingly, it is recommended that the application be granted conditional approval.

RESOLUTION
040411

Moved: Cr Lawrance

Seconded: Cr Randell

"That Council:

APPROVE the planning application to construct an addition to the existing showroom and warehouse building at Lot 23 (4) Henrietta Street, York, subject to the following recommended conditions:

- 1. Development must take place in accordance with the approved plans, including any amended plans that are required as part of this consent.**
- 2. Development must substantially commence within two (2) years from the date of this determination.**
- 3. Prior to the issue of a building licence, detailed landscaping plans shall be submitted to Council for approval. The landscaping shall be designed to provide screening to the car parking and bin storage area on the Broome Street frontage.**
- 4. Disabled access shall be provided to the building in accordance with the requirements of the Building Code of Australia and Australian Standard AS 1428.**
- 5. The design of off-street car parking areas being in accordance with Australian Standard 2890.1 and A2890.2. Car parking areas shall be constructed and maintained to the satisfaction of Council and shall include adequate provision for customers, staff parking, and for manoeuvring, loading and unloading of vehicles. The car parking and crossovers shall be constructed prior to occupation.**
- 6. The development shall be carried out in accordance with the York Local Planning Policy – Heritage Precincts and Places.**

Notes to this consent:

- 1. If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval will lapse and be of no further effect.**
- 2. Where an approval has so lapsed, no development is to be carried out without the further approval of the local government having first been sought and obtained.**
- 3. If an applicant is aggrieved by this determination there is a right of appeal under the Planning & Development Act 2005. An appeal must be lodged within 28 days of the determination.**
- 4. This approval is not a building licence. In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1960, an application for a building licence must be submitted to, and approval granted by the local government prior to any change of classification or prior to the commencement of any structural works within the development hereby permitted.**
- 5. The development is to comply with the provisions of the Building Code of Australia."**

CARRIED (5/0)

Item 9.1.2 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.3 Retrospective Approval - Construction of Additional Section of Verandah and Decking Area and Application for a Stone Wall on a Heritage Listed Property

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.

FILE NO:	Po1.7980
COUNCIL DATE:	27 April 2011
REPORT DATE:	12 April 2011
LOCATION/ADDRESS:	Lot 6 (23) Pool Street, York
APPLICANT:	Gregory Lewis
SENIOR OFFICER:	Jacky Jurmann, MPS
REPORTING OFFICER:	Brooke Newman, Planning Officer
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Plans, Locality Map
DOCUMENTS TABLED:	Nil

Summary:

Council is in receipt of an application to construct an extension to the existing verandah and decking and to construct a new stone wall at a heritage listed property at Lot 6 (23) Pool Street, York.

A site inspection as revealed that the works to extend the verandah and decking have commenced prior to the determination of this application. Accordingly, the component commenced is now required to be considered as a 'retrospective approval'.

The proposal was advertised in accordance with the provisions of the York Town Planning Scheme No. 2. No submissions were received in response to the advertising.

It is recommended that Council approve the application subject to the recommended conditions of consent.

Background:

An application for the demolition of the existing verandah and the majority of the existing dwelling (rear portion) to be replaced with an extension and a new verandah was approved by Council on 3 August 2010. These works are currently under construction.

A further application has been received by Council to construct an extension to the side verandah and decking and to construct a stone wall adjacent to the decking.

A site inspection has revealed that the works have commenced on not only the works approved under the previous application but the works proposed by the current application subject to this report. Consequently, the component of works commenced is now required to be considered as a 'retrospective approval'.

Lot 6 is registered on the Shire's Municipal Heritage Inventory and, as such, any works proposed to be undertaken on the property requires the landowner to apply for planning consent.

Consultation:

The proposed development has been advertised in accordance with clause 7.3.3 of the Scheme, i.e. advert in local newspaper, letter to adjoining landowners and sign erected on site. Detailed plans of the proposed development and relevant documentation have been on display at the Council offices during the advertising period.

No submissions were received during the consultation period.

Statutory Environment:York Town Planning Scheme No. 2

Lot 6 is zoned “Residential R40” under the provisions of the Shire of York Town Planning Scheme No 2 (“TPS2”), is approximately 865m² and is not located within the 1 in 100 year floodplain for the Avon River.

The site is listed on the Shire of York’s Municipal Heritage Inventory as a Category 3 building and the proposed works are permissible under the provisions of the Scheme with consent in accordance with Clause 4.2.

The proposal is consistent with the objectives and provisions of Clause 4.8 of the Scheme, including meeting the requirements of the R-Codes with regards to height and setbacks.

The site is listed in the Municipal Heritage Inventory and therefore Clause 5.1 of the Scheme applies. The proposal is consistent with the objectives of the Scheme and the Local Planning Policy Heritage Precincts and Places.

Planning and Development Act 2005

Section 164 of the *Planning and Development Act 2005* enables Council to grant approval to development that has already commenced.

Policy Implications:

Shire of York Town Planning Scheme No 2

Local Planning Policy - Heritage Precincts and Places

Financial Implications:

Planning application fees have been paid. Building licence and building certificate fees will be required. A retrospective planning penalty may also be imposed.

Strategic Implications:**Key Result Area 1 – Objective 1:**

“To develop a framework to facilitate planning and decision-making in order to identify and meet community needs, develop opportunities and implement change.”

The imposition of retrospective planning fees is necessary to establish a planning framework to ensure that development occurs in accordance with planning legislation, Council Policy and the Heritage Act.

Key Result Area 2 - Objective 5:

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

The granting of a retrospective approval for the unapproved commenced development on Lot 6 it is considered not to have any negative impacts on the heritage value of the property.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: **Yes**

As at the date of writing this report, the section of verandah and decking highlighted on the attached plan has been commenced.

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Imposing penalty fees to unapproved development is aimed at being a deterrent and a preventative for further unapproved development from taking place.

Environmental Implications:

Nil

Comment:

The applicant has commenced construction of an additional section of verandah and a small decking area on the western side of the existing dwelling on Lot 6 without approval.

The works were not included as part of the previous planning approval and, as the property is on the Shire's Municipal Heritage Inventory, a planning application was required to be lodged prior to the commencement of the unapproved works.

The extension to the verandah and decking area together with the proposed stone wall are appropriate development and will result in improvement to a property of local heritage significance and as such, it is recommended that a retrospective planning consent be given for the completion of the development, subject to the recommended conditions of consent.

It is also recommended appropriate to apply a retrospective planning fee of \$270.00, similar to previous Council resolutions when determining retrospective approvals.

**RESOLUTION
050411**

Moved: Cr Randell

Seconded: Cr Scott

"That Council

- 1. Issue retrospective planning consent for the completion of the commenced verandah and decking area on the western side of the existing dwelling at Lot 6 (23) Pool Street, York, subject to the following conditions:**
 - (a) Development must substantially commence within two (2) years from the date of this decision;**
 - (b) Development must take place in accordance with the approved plans;**
 - (c) The development hereby permitted being in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts and the requirements of the Heritage Council of Western Australia; and**
 - (d) Prior to the issue of a building licence or amended building licence for the additional verandah and decking area or within one month from the date of determination, a retrospective planning fee of \$270.00 shall be paid by the applicant for the unapproved commencement of construction of the verandah and decking area on Lot 6.**
- 2. Issue planning consent for a stone wall proposed to be constructed adjoining the decking area on the western side of the existing dwelling at Lot 6 (23) Pool Street, York, subject to the following conditions:**
 - (a) Development must substantially commence within two (2) years from the date of this decision;**
 - (b) Development must take place in accordance with the approved plans;**
 - (c) The development hereby permitted being in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts and the requirements of the Heritage Council of Western Australia; and**
 - (d) The stone wall shall not exceed 1.8m in height at any given point.**
 - (e) Works shall not commence until a building licence has been issued and the stone wall design has been certified by a practicing structural engineer."**

CARRIED (5/0)

Item 9.1.3 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.4 Proposed Planning Policy For Retrospective Planning Applications

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.

FILE NO:

COUNCIL DATE:	27 April 2011
REPORT DATE:	12 April 2011
LOCATION/ADDRESS:	Shire of York
APPLICANT:	N/A
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Draft Policy and Information Sheet
DOCUMENTS TABLED:	Nil

Summary:

The Shire's Town Planning Scheme No. 2 sets out the instances where the development or use of a property requires planning approval to be obtained, prior to the development/use taking place. However, it is unfortunately a common occurrence that the development/use often takes place prior to planning approval being obtained.

There are an increasing number of applications being received by Council for retrospective development and land use on land within the Shire. These applications are either initiated by the landowner or as a result of Council compliance investigation.

Currently, each retrospective application is considered on its merits in accordance with the provisions of the York Town Planning Scheme No. 2 and are all determined by Council at an Ordinary Meeting. This has caused concern, especially as many illegal structures only come to light when properties are being sold.

Due to the increasing number of these applications, it is recommended that Council adopt a policy to establish its position regarding the retrospective planning applications and to amend delegations to enable retrospective planning applications that do not receive any submissions to be determined under delegated authority (similar to general planning applications).

The formulation and existence of this policy should not be interpreted as any endorsement by Council that the failure to obtain planning approval is an acceptable practice. Rather, this Policy seeks to set out a framework for the assessment of applications for retrospective approval to ensure timely assessment and determination of such applications.

Background:

Retrospective planning applications are applied for developments within the Shire that have been commenced or completed without first obtaining approval for a variety of reasons.

Clause 7.14 of the York Town Planning Scheme No. 2 states that Council may grant planning consent to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme.

The development which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of planning consent, and the continuation of the development unlawfully commenced is taken to be lawful only upon the granting of planning consent.

If the application relates to a building, then a retrospective Building License will also be required. The application requirements should be discussed with Council's Building Surveyors.

Consultation:

Should Council resolve to adopt the draft Local Planning Policy for Retrospective Planning Applications, the draft Policy will be advertised in accordance with Clause 8.8.2 of Town Planning Scheme through the placement of an advertisement in the Avon Gazette once a week for two consecutive weeks.

Following conclusion of the advertising period, any submissions will be considered and the final Policy will be presented to Council for adoption.

Statutory Environment:

Planning and Development Act 2005

Planning and Development Regulations 2009 – Schedule 2

York Town Planning Scheme No. 2

Policy Implications:

The creation of a Local Planning Policy for Retrospective Planning Applications is in accordance with the provisions of the Planning and Development Act, Regulations and the Town Planning Scheme. It will provide Council staff and landowners a consistent manner for dealing with applications.

Financial Implications:

Costs involved with the advertising process in relation to circulating advertisements.

Income will be obtained from the retrospective application and advertising fees.

Strategic Implications:

Key Result Area 1 – Objective 1:

“To develop a framework to facilitate planning and decision-making in order to identify and meet community needs, develop opportunities and implement change.”

The creation of a Local Planning Policy for Retrospective Planning Applications is directly related to creating a framework to enable Shire staff to meet community expectations of a fair and consistent assessment process.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

The application fees for retrospective planning applications are stipulated in Schedule 2 of the *Planning and Development Regulations 2009*. The fees are set at twice the normal application fee. Application fees, together with the advertising fee, are paid upfront by the applicant.

Social Implications:

The adoption of this Policy will enable Council staff to assess retrospective planning applications, and therefore all landowners, in a fair and consistent manner to meet community expectations.

Environmental Implications:

Nil

Comment:

The development and adoption of a Local Planning Policy for Retrospective Planning Applications will enable these applications to be dealt with in a fair and consistent manner. It will also provide the community with information regarding consequences for commencing development without first obtaining the appropriate approvals.

RESOLUTION

060411

Moved: Cr Scott

Seconded: Cr Randell

"That Council:

- 1. Adopt the draft Planning Policy and accompanying Information Sheet for advertising in accordance with Clause 8.8.2 of the York Town Planning Scheme No. 2; and**
- 2. Amend delegations to enable retrospective planning applications that do not receive any submissions to be determined under delegated authority."**

Advice Note:

This Policy does not negate the right of the Shire of York to prosecute breaches of the York Town Planning Scheme No. 2 for unlawful or unapproved development.

AMENDMENT

Moved: Cr Walters

Seconded: Cr Randell

"That Council:

Amend the Officer Recommendation to read:

"That Council:

- 1. Adopt the draft Planning Policy and accompanying Information Sheet for advertising in accordance with Clause 8.8.2 of the York Town Planning Scheme No. 2; and**
- 2. Amend delegations to enable retrospective planning applications that do not receive any submissions to be determined under delegated authority."**
- 3. Advertise the Draft Planning Policy for a period of 42 days.**

Advice Note:

This Policy does not negate the right of the Shire of York to prosecute breaches of the York Town Planning Scheme No. 2 for unlawful or unapproved development.

CARRIED (5/0)

RESOLUTION

070411

The amendment became the motion.

CARRIED (5/0)

Item 9.1.4 – Appendices

9.2 Administration Reports

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.1 Proposal to Make Dogs Amendment Local Law 2011

FILE NO:	LE.LLW.9
COUNCIL DATE:	27 April 2011
REPORT DATE:	15 April 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Dogs Amendment Local Law 2011
DOCUMENTS TABLED:	Dog Local Law with Amendments Public Submissions and Petitions received Department of Local Government submission

Summary:

The purpose of this report is to:

- (1) consider the submissions (if any) received on the proposed Shire of York Dogs Amendment Local Law 2011 and determine if any drafting amendment(s) are required to the Amendment local law as a result of the submissions received;
- (2) give notice of the purpose and effect of the Shire of York Dogs Amendment Local Law 2011;
- (3) make the Shire of York Dogs Amendment Local Law 2011, incorporating all amendments;
- (4) authorise the local law's gazettal in the *Government Gazette*;
- (5) give local public notice, (after gazettal), of the date the Shire of York Dogs Local Law 2011 will come into effect; and
- (6) authorise the affixing of the Common Seal to the local law.

Background:

At its Ordinary Council meeting of 20 September 2010, Council resolved to commence the process to make a Shire of York Dogs Amendment Local Law.

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

After resolving to make the local law, it is to publish the local law in the *Government Gazette* and provide a copy of it to the Minister for Local Government.

Local public notice of the commencement of the local law is then to occur. Notification regarding the amended local law was placed in the *West Australian* – 24 November 2010. The submission period for public comment closed Wednesday 19 January 2011.

Consultation:

As required by section 3.12 the Local Government Act 1995, an advertisement is to be placed, in a state-wide newspaper, inviting the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks (42 days).

In addition, copies of the proposed Local Law, as amended, (gazettal copy), and the National Competition Policy review (if applicable) must be sent to the relevant Minister for comment.

Statutory Environment:

Local Government Act 1995

Section 3.16 of the Act requires the Council to carry out a formal review of its Local Laws every 8 years. The Act provides that after the last day for submissions the Council is to consider any submissions received and cause a report of the review to be prepared and considered by the Council. The Council must adopt the report on the review at which time it determines whether the Local Laws should be repealed or amended.

Dog Act 1976 and associated regulations.

Dogs (Restricted Breeds) Regulations 2002.

Policy Implications:

There are no policy implications for this item.

Financial Implications:

Advertising costs associated with publication of local law in Government Gazette and placement of local advertising.

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: YES

Site Inspection:

Site Inspection Undertaken: Not Applicable.

Triple bottom Line Assessment:**Economic Implications:**

Not applicable.

Social Implications:

Up to date and relevant local laws are an important cornerstone of good governance. Local Government has a statutory and moral obligation to ensure that the regulation of local matters is conducted in a fair, efficient and reasonable manner.

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the draft Dogs Amendment Local Law 2011. At the close of the submission period, one petition with 14 signatures, and two public submissions relating to proposed changes to the Dogs Local Law had been received.

A summary of the public submissions relating to the proposed changes to the Dogs Local Laws are detailed in the following table.

Submission/Applicant Name	Comment	Officer/Consultant Comment	Action to be Taken
Various Petition with 14 Signatures. strongly object to the proposed changes to the Dogs	The advertising period for comment was, we believe chosen to coincide with the Christmas to ensure limited or no objections from the people of York. Councillors voted to advertise the proposed changes at August Council meeting. It took until November 24 for the advert to appear in the West Australian. No advert was placed in the free York and Districts Community Matters.	Proposed changes were considered at the September 2010 Council meeting. The review of local laws has been undertaken by SEAVROC as a joint initiative. This meant that all member local governments needed to have completed the relevant statutory procedures before the joint advertisement could be placed. Some SEAVROC member local governments were only able to progress all local law proposals during October and November 2010. This resulted in the placement of the advertisement occurring in November 2010. The advertisement was placed in the Avon Valley Gazette also on the 4 th December 2010 as this is a free publication distributed throughout the district.	No action required.
	Proposed changes to "Dog Laws" discriminate against dog owners who walk/exercise and socialise their dogs in Avon Park early in the morning without any harm to the Community.	The proposed amendments to the Dogs Local Law do not prevent dog owners from walking their dogs in Avon Park. The owners can walk their dog in Avon Park, but the dog must remain on a leash or lead whilst there – as is the case with other public places with the exception of dog exercise areas. It would seem that there is some misunderstanding as to what constitutes a dog exercise area. Dog Exercise areas are	Reject submission and no change be made to the Dogs Amendment Local Law. It is suggested that Council consider the preparation of some information brochures to assist dog owners interpret and understand the terminology within the local law so there is no confusion.

		where dog owners can release their dog from being on a leash or lead, whilst still maintaining control of the dog.	
	The area set aside within the proposed local laws (cr Barker & Henrietta Sts) is barren with no shade or seats for residents to rest. This is a disgusting and disrespectful way to treat dogs and their owners.	<p>Dog exercise areas are where dog owners can release their dog from being on a leash or lead, whilst still maintaining control of the dog. This allows owners to throw balls, etc for their dog(s) to fetch whilst off the lead.</p> <p>The area proposed is considered suitable for this type of activity as the land is not used for any other purpose.</p>	<p>Reject submission and no change be made to the Dogs Amendment Local Law.</p> <p>Council may wish to consider the installation of seating and a shade structure to accommodate users of the land.</p>
	If you live in rural residential (with over 5 acres of land) they want to change the regulation in the Dog Act 1976 and the local laws as in place now that you can only keep 2 dogs, not 4 dogs as it is now. Families move to rural towns for the prime reason to be able to keep animals.	<p>The proposed amendments to the local law will automatically permit land owners within the rural residential area to keep two dogs. However this will not remove the right of the land owner to apply, under section 26(3) of the Dog Act, to Council to keep up to 6 dogs. Rural residential properties are closer in proximity than rural properties, and generally are more representative of residential form than rural. It is considered appropriate that rural residential areas have a as of right limit of 2 dogs, with more than 2 requiring approval by Council in accordance with section 26(3) of the Dog Act.</p>	<p>Reject submission and no change be made to the Dogs Amendment Local Law.</p>
	We object to dogs not being permitted to be tethered in the CBD whilst owners are shopping enjoying alfresco coffee. This will see even more tourists give York a miss. These proposed	These comments relate to the amendments proposed for the Shire of York Local Government Property Local Law and do not relate to the provisions in the Dogs Local Law.	Comments will be considered in the report dealing with the proposed amendments for the Local Government Property Local Law.

	changes contradict the attitude of both Perth and Fremantle tourist precincts.		
Mr D Paton	For many years dog lovers and owners have been using Avon Park to exercise their dogs. This has evolved into a social occasion for the owners to meet together and enjoy each others company. For very hot days there is shade for both animals and people to use and public toilets for the humans. All of the dog owners are responsible and take away waste from their animals. The new gazetted dog exercise area is a wasteland; it has no facilities for either humans or animals.	The proposed amendments to the Dogs Local Law do not prevent dog owners from walking their dogs in Avon Park. The owners can walk their dog in Avon Park, but the dog must remain on a leash or lead whilst there – as is the case with other public places with the exception of dog exercise areas.	Reject submission and no change be made to the Dogs Amendment Local Law. Council may wish to consider the installation of seating and a shade structure to accommodate users of the land.

One submission from the Department of Local Government was received on 19 January 2011. The following comments from the Department have been incorporated into the final draft of the local law:

Department Comment	Officer/Consultant Comment	Action Taken
It is recommended that as your laws will not be gazetted until 2011 – that the year in the title of the proposed law be changed to “2011”.	Agreed.	The title of the local law and the Citation refer to the year the local law was made as “2010”. These references have been amended to “2011”. This change is considered minor and does not significantly change the local law.
It is recommended that clause 2 be reworded to reflect current drafting standards.	Agreed.	The word fourteen has been replaced with the number “14”. This change is considered minor and does not significantly change the local law.
Clause 3- (a) the reference to the title of the principal local law in clause 4 should be italicised; and (b) delete the words “as follows.” and replace with a full stop.	Agreed.	Title has been italicised. The words “as follows.” have been deleted and a full stop inserted. These changes are considered minor and do not significantly change the local law.
Subclause 4(1) - appears to be more of a note/instruction rather than part of the actual law. As such it is	Agreed. To meet contemporary drafting standards, this	Subclause has been deleted from local law.

recommended this clause be deleted.	subclause has been removed and the redesignation of divisions, clauses and paragraphs is included at the end of the Amendment local law.	This change is considered minor and does not significantly change the local law.
Clause 5 - The current formatting for defined terms is bold and italicised with no surrounding quotation marks – please amend.	Agreed.	All defined terms in clause 5 are now italicised and not contained in quotation marks. This change is considered minor and does not significantly change the local law.
Clause 5 – (a) in subclause (1) replace the word “local government” with “officer” and delete the words “and includes an” and insert “or”; (b) the definition of “local planning scheme” appears to be different to this definition in the other local government (Beverley, Cunderdin, Brookton etc) Dogs Local Laws. The others make reference to the superseded <i>Town Planning and Development Act 1928</i> .	Agreed. Agreed.	Subclause (1) has been reworded to read “ CEO means the Chief Executive Officer or an acting Chief Executive Officer of the local government;”. The definition local planning scheme has been amended to incorporate the reference to the old legislation. These changes are considered minor and do not significantly change the local law.
Clause 2.3 - In subclause (2) – (a) Delete the “-“ and substitute with: of her or his ownership of the dog or of her or his authority to take delivery of it. (b) Delete paragraphs (a) and (b).	Agreed.	Subclause (2) amended as per recommendation to reflect contemporary drafting standards. This change is considered minor and does not significantly change the local law.
Clause 3.1 – In subclause (1) reword to read as follows– (a) Insert after “premises” within a townsite (b) Insert new paragraph (d): (d) ensure that every gate or door in the fence or wall...	Agreed.	Subclause (1) amended as per recommendation to reflect contemporary drafting standards. This change is considered minor and does not significantly change the local law.
Clause 3.1 (d) - delete the colon at the end of the words “fitted with” and replace with an em-dash.	Agreed.	Clause 3.1(d) amended to reflect contemporary drafting standards. This change is considered minor and does not significantly change the local law.

Clause 3.2(2) – Redraft to meet current drafting standards.	Agreed.	Clause 3.2(2) redrafted to read as follows- In subclause (2) delete paragraphs (a) and (b) and substitute with– (a) on land, within a townsite, or zoned “rural residential” or “rural smallholdings” under a local planning scheme, 2 dogs over the age of 3 months and the young of those dogs under that age; and (b) on land zoned “general agriculture” under the local planning scheme, 4 dogs over the age of 3 months and the young of those dogs under that age.
Clause 5.1 – (a) italicise the reference to the <i>Equal Opportunity Act 1984</i> in subclause (1); and (b) replace wording in paragraph (a) so that it is consistent with the other SEAVROC Councils; (c) In paragraph (d) delete the full stop and substituting a semi-colon	Agreed.	Clause 5.1 amended as per recommendation to reflect contemporary drafting standards.
Clause 5.2(1) – Reword to read- Subject to clause 5.1 and subclause (1)(b) and (2), for the purposes of sections 31 and 32 of the Act, Part Lots 52,53, 54 and 55 Henrietta Street, York (corner of Barker and Ulster Roads and Henrietta Street) are dog exercise areas.	Agreed.	Clause 5.1 amended as per recommendation to reflect contemporary drafting standards.
Clause 5.2(2) – (a) The word metres should be abbreviated to “m”. (b) the word “or” needs to be inserted at the end of paragraph (b) in the newly inserted subclause (2)	Agreed.	Clause 5.2 amended as per recommendation to reflect contemporary drafting standards.
Schedule 1 – Delete the reference to a model Code of Practice for Dogs as there is none.	Agreed.	Schedule 1 amended as per recommendation.
Schedule 2 – In paragraph (c) the word metres should be abbreviated to “m”.	Agreed.	Schedule 2 amended as per recommendation.
Schedule 3 –	Agreed.	Schedule 2 amended as per

Delete “&(c)” reference in Row 2 as there is no paragraph (c) in clause 2.4.		recommendation.
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In addition to the above changes, a number of minor formatting and setting out errors have been corrected in the local law.

The attached local law incorporating all identified amendments is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

The purpose of this local law is to bring the Dogs local law into alignment with current legislation and terminology.

The effect is to ensure that the Dogs local law can be enforced in an effective manner.

RESOLUTION
080411

Moved: Cr Scott

Seconded: Cr Lawrence

“That Council:

1. *notes the public submissions received from the submission writers in relation to the proposed Shire of York Dogs Amendment Local Law 2011 and rejects them on the basis of the reasons outlined in the table contained in report 9.2.1;*
2. *notes the submission received from the Department of Local Government in relation to the proposed Shire of York Dogs Amendment Local Law 2010 and agrees to the amendments recommended as outlined in the table contained in report 9.2.1;*
3. *resolves to make the Shire of York Dogs Amendment Local Law 2011, as per Attachment 1, incorporating all amendments identified by the Department of Local Government, in accordance with section 3.12 of the Local Government Act 1995:*
 - (a) *the purpose of which is to bring the Dogs local law into alignment with current legislation and terminology; and*
 - (b) *the effect is to ensure that the Dogs local law can be enforced in an effective manner.*
4. *publish the Shire of York Dogs Amendment Local Law 2011, as per (3) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government;*
5. *forward a copy of the gazetted Dogs Amendment Local Law 2011, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review;*
6. *after gazettal of the amendment local law, provide local public notice of the date the local law takes effect; and*
7. *authorise the affixing of the Common Seal of the Shire of York to the Shire of York Dogs Amendment Local Law 2011.”*

CARRIED (4/1)

Item 9.2.1 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.2 Proposal to Make Extractive Industries Amendment Local Law 2011

FILE NO:	LE.LLW.11
COUNCIL DATE:	27 April 2011
REPORT DATE:	15 April 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Extractive Industries Amendment Local Law 2011
DOCUMENTS TABLED:	Nil

Summary:

To allow:

- (1) consider the submissions (if any) received on the proposed Shire of York Extractive Industries Amendment Local Law 2011 and determine if any drafting amendment(s) are required to the Amendment local law as a result of the submissions received;
- (2) give notice of the purpose and effect of the Shire of York Extractive Industries Amendment Local Law 2011;
- (3) make the Shire of York Extractive Industries Amendment Local Law 2011, incorporating all amendments;
- (4) authorise the local law's gazettal in the *Government Gazette*;
- (5) give local public notice, (after gazettal), of the date the Shire of York Extractive Industries Amendment Local Law 2011 will come into effect; and
- (6) authorise the affixing of the Common Seal to the local law.

Background:

At its Ordinary Council meeting of 20 September 2010 Council resolved to commence the process to make a Shire of York Extractive Industries Amendment local law.

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

After resolving to make the local law, it is to publish the local law in the *Government Gazette* and provide a copy of it to the Minister for Local Government.

Local public notice of the commencement of the local law is then to occur.

An advertisement was placed in the *West Australian* on 24 November 2010, with the submission period for public comment closing on Wednesday 19 January 2011.

Consultation:

As required by section 3.12 the Local Government Act 1995, an advertisement is to be placed, in a state-wide newspaper, inviting the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks (42 days).

In addition, copies of the proposed Extractive Industries Amendment local law 2011, (gazettal copy), and the National Competition Policy review must be sent to the relevant Minister for comment.

Statutory Environment:

Local Government Act 1995

Section 3.12(2) of the Local Government Act 1995 and the Local Government (Functions and General) Regulations (Regulation 3) which states that for the purpose of Section 3.12(2) of the Local Government Act the person presiding at a council meeting is to give notice of the purpose of the local law by ensuring that the purpose and effect of the proposed local law is included in the agenda for that purpose and the minutes of the meeting of the council include the purpose and effect of the proposed local law.

Policy Implications:

There are no policy implications for this item.

Financial Implications:

Advertising costs associated with state-wide advertising.

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable.

Triple bottom Line Assessment:**Economic Implications:**

Not applicable.

Social Implications:

Up to date and relevant local laws are an important cornerstone of good governance. Local Government has a statutory and moral obligation to ensure that the regulation of local matters is conducted in a fair, efficient and reasonable manner.

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the draft Extractive Industries Local Law 2011. At the close of the submission period, no public submissions had been received.

One submission from the Department of Local Government was received on 14 January 2011. The comments from the Department of Local Government, set out in the table below, have been incorporated into the final draft of the local law:

Department Comment	Action Taken
Clause 6.2 – Please check for name change of Department of Minerals and Energy to “Department of Mines and Petroleum”.	Clause 6.2 amended to refer to “Department of Mines and Petroleum”. Considered only a minor change to the local law
Part 8 – “Appeals” are now “Reviews” and regulation “34” has been repealed.	Part 8 heading and clause 8.1 amended. Change reflects current legislative terminology and is considered minor in nature.
Part 9 – Updated references now refer to Regulations as “General Regulations”. This is suggested as a good example to follow – if adopted a new definition for “General Regulations” will need to be inserted into clause 1.2	Part 9 and clause 1.2 amended as suggested. Change assists in making the local law text easier to read; restricts lengthy wording to the ‘Interpretation’ section of the local law. Change is considered minor in nature.
Schedule – Descriptions of modified penalties should reflect the wording in the text of the relevant clause in the local law for clarity purposes.	Modified penalty descriptions amended. Change results in better clarity in describing modified penalties and aligns better with text of local law. Change considered minor in nature.

The Department has also provided advice on a range of drafting errors relating to the local law. These drafting changes, and others that have been identified in the local law are detailed in the table below.

Clause to be amended	Action Taken
Year references amended	The title of the local law and the Citation refer to the year the local law was made as “2010”. These references have been amended to “2011”.
Clause 1.3 – Content and Intent	Title changed to “Purpose and effect” to reflect the legislative requirements, with subclause (1) defining the purpose of the local law and subclause (2) defining the effect of the local law.
Clause 1.4 - Definition	Title changed to “Interpretation”.
Clause 1.4 – Definition – “carry on an extractive industry”	Definition amended to include materials “clay, limestone and loam” as these are referred to in clause 7.4.
Various clauses - References to “Penalty” deleted and replaced with new clause 9.1(2).	The wording relating to “Penalty” after clauses 2.1, 6.1, 6.2, 6.3(1), 6.3(2), 6.4 and 7.4 has been deleted. A new subclause (2) has been inserted in clause 9.1 to deal with penalties, providing one reference area for penalties relating to an offence.
Clause 2.3 – Application for licence	Subclause (3) has been amended by removing “5000m ² ” and “5000m ³ ” and replacing with “5000 square metres” and “5000 cubic metres” to avoid unintended typographical errors.
Clause 9.1 - General	Title amended to “Offences” to better reflect wording of clause.
Clause 9.2 – Modified penalties	Title amended to “Prescribed offences” to better reflect the wording of the clause.
Schedule	Title of schedule has been amended to reflect contemporary drafting standards

Schedule	New prescribed offence has been included at Item (1) to address “Excavating without a valid and current licence”.
Schedule	New prescribed offence included at item 14 to address “All other offences not specified”.

In addition to the above changes, a number of minor formatting and setting out errors have been corrected in the amendment local law.

The attached amendment local law incorporating all identified drafting changes is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

The purpose of the proposed Extractive Industries Amendment Local Law 2011 is to provide provisions for the granting of exemptions and waiving certain requirements of the local law in specific circumstances, require additional information to be provided to support the application for an extractive industry, allow for the imposition of additional conditions in certain circumstances and review modified penalties.

The effect of the proposed Extractive Industries Amendment Local Law 2011 is to ensure that extractive industries operating in the Shire of York are licensed and their operation is regulated.

**RESOLUTION
090411**

Moved: Cr Lawrence

Seconded: Cr Randell

“That Council:

1. *Notes the submission from the Department of Local Government in relation to the proposed Shire of York Extractive Industries Amendment Local Law 2011;*
2. *Council resolves to make the Shire of York Extractive Industries Amendment Local Law 2011, as per Attachment 1 incorporating all amendments, in accordance with section 3.12 of the Local Government Act 1995;*
 - a) *the purpose of which is to provide provisions for the granting of exemptions and waiving certain requirements of the local law in specific circumstances, require additional information to be provided to support the application for an extractive industry, allow for the imposition of additional conditions in certain circumstances and review modified penalties; and*
 - b) *the effect is to ensure that extractive industries operating in the Shire of York are licensed and their operation is regulated.*
3. *Publish the Shire of York Extractive Industries Amendment Local Law 2011, as per (2) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government;*
4. *Forward a copy of the gazetted local law, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review; and*
5. *Authorise the affixing of the Common Seal of the Shire of York to the Shire of York Extractive Industries Amendment Local Law 2011.”*

CARRIED (5/0)

Item 9.2.2 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.3 Proposal to Make Cemeteries Amendment Local Law 2011

FILE NO:	LE.LLW.10
COUNCIL DATE:	27 April 2011
REPORT DATE:	15 April 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	A - Cemeteries Amendment Local Law 2011
DOCUMENTS TABLED:	Nil

Summary:

The purpose of this report is to:

- (1) consider the submissions (if any) received on the proposed Shire of York Cemeteries Amendment Local Law 2011 and determine if any drafting amendment(s) are required to the Amendment local law as a result of the submissions received;
- (2) give notice of the purpose and effect of the Shire of York Cemeteries Amendment Local Law 2011;
- (3) make the Shire of York Cemeteries Amendment Local Law 2011, incorporating all amendments;
- (4) authorise the local law's gazettal in the *Government Gazette*;
- (5) give local public notice, (after gazettal), of the date the Shire of York Cemeteries Local Law 2011 will come into effect; and
- (6) authorise the affixing of the Common Seal to the local law.

Background:

At its Ordinary Council meeting of 19 July 2010, Council resolved to commence the process to make a Shire of York Cemeteries Amendment local law.

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

An advertisement was placed in the West Australian on 24 November 2010, with the submission period for public comment closing on Wednesday 19 January 2011.

Consultation:

As required by section 3.12 the Local Government Act 1995, an advertisement is to be placed, in a state-wide newspaper, inviting the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks (42 days). The proposal was advertised in a free community newspaper Avon Valley Gazette circulating in the district and placed on the Council's noticeboard.

In addition, copies of the proposed Local Law, as amended, (gazettal copy), and the National Competition Policy review (if applicable) must be sent to the relevant Minister for comment.

Statutory Environment:

Local Government Act 1995

Section 3.16 of the Act requires the Council to carry out a formal review of its Local Laws every 8 years. The Act provides that after the last day for submissions the Council is to consider any submissions received and cause a report of the review to be prepared and considered by the Council. The Council must adopt the report on the review at which time it determines whether the Local Laws should be repealed or amended.

Cemeteries Act 1986

Policy Implications:

The introduction of the proposed new local law will require Council to adopt new policies relating to the administration of the cemetery as follows -

- (1) Specifications relating to the construction of monuments; and
- (2) Specifications relating to the types of material that can be used for, and size of, memorial plaques.

The adoption of such policies should be undertaken after the final adoption of the local law.

Financial Implications:

Advertising costs associated with placement of the amendment local law in the Government Gazette and giving local notice of the date the local law takes effect.

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: YES

Site Inspection:

Site Inspection Undertaken: Not Applicable.

Triple bottom Line Assessment:**Economic Implications:**

Not applicable.

Social Implications:

Up to date and relevant local laws are an important cornerstone of good governance. Local Government has a statutory and moral obligation to ensure that the regulation of local matters is conducted in a fair, efficient and reasonable manner.

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the draft Cemeteries Amendment Local Law 2011. At the close of the submission period, no public submissions had been received.

One submission from the Department of Local Government was received on 14 January 2011. The comments from the Department of Local Government, set out in the table below, have been incorporated into the final draft of the local law:

Department Comment	Officer/Consultant Comment	Action Taken
Clause 1.3 – Application Insert new clause the purpose of which is to state where the local laws applies and to what area of the district (whole or part of).	Agreed	New clause inserted.
Clause 1.5 (a) Cemetery should be edited to reflect a general reference to any one or any part of the public cemeteries. (b) Defined terms should be in lower case; (c) Full name of legislation in guide dog definition should be italicised. (d) Words 6.16 to 6.19 of the should not be italicised	Agreed. Agreed. Agreed. Agreed.	Cemetery definition amended to include reference to any one or any part of the public cemeteries. New defined terms are now in lower case. Font amended to italicised. Font amended to remove italicisation.
Clause 5.3(3) –Speed limit not given in this provision. It is necessary to specify exactly what the speed limit is.	Agreed, however it is preferred to refer the speed limit to that indicated by a sign.	Clause amended to read – <i>'Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed indicated by signs.'</i>

Clause 5.6(d) – The complete name of the Cemeteries Act should be replaced by one word “Act” as the term is already defined in clause 1.5.	Agreed.	Clauses amended as recommended.
Clause 6.1 – For an updated version of this clause, please refer to Shire of Collie’s Cemetery local law.	The wording contained in the Shire of Collie’s Cemetery local law is preferred as it is more succinct.	<p>Clause amended to read –</p> <p>(1) A person shall not bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is not less than 750 mm.</p> <p>(2) A person, with the permission of the CEO or authorised officer may bury a coffin so that the distance from the top of the coffin to the original surface of the ground is not less than 600 mm.</p>
<p>Clause 7.20 –</p> <p>(a) Subclause (3) makes reference to section 19(2) of the Act. This section only applies to the licensing of funeral directors and not monumental masons.</p> <p>(b) Subclause (1)(a) refers to the Act; this needs to be deleted as there is no head of power in the Act relating to monumental masons.</p>	<p>Agreed.</p> <p>Agreed.</p>	<p>Subclause (3) has been deleted.</p> <p>Wording referring to “the Act” has been deleted.</p>
Clause 7.19 – This clause refers to the Act. This needs to be deleted as there is no head of power in the Act relating to monumental masons.	Agreed	Wording referring to “the Act” has been deleted.

<p>Schedule 1 –</p> <p>(a) Amend schedule title to reflect contemporary drafting standards; and</p> <p>(b) Alter descriptions of offences so they match the text in the clauses and are therefore easier to enforce.</p>	<p>Agreed.</p> <p>Agreed.</p>	<p>Schedule title amended to reflect contemporary drafting standards.</p> <p>Offence descriptions amended and aligned to relevant clauses.</p>
<p>Schedule 2 - If the descriptions in Schedule 1 are amended, these descriptions should be reflected in the offences in Schedule 2.</p>	<p>Agreed.</p>	<p>Schedule 2 offence descriptions amended to reflect those used in Schedule 1.</p>

The Department has also provided advice on a range of drafting errors relating to the local law. These drafting changes, and others that have been identified in the local law are detailed in the table below.

Clause to be amended	Action Taken
Year references amended	The title of the local law and the Citation refer to the year the local law was made as “2010”. These references have been amended to “2011”.
Clause 1.2 – Content and Intent	Title changed to “Purpose and effect” to reflect the legislative requirements, with subclause (1) defining the purpose of the local law and subclause (2) defining the effect of the local law.
Time references amended	Time references through-out the local law have been amended to include a space in between the time and the abbreviation (e.g. 8:00am to 8:00 a.m.).
Date references amended	Dates have been amended to be straight forward from 30 th day of June to “30 June”.
Various Clause Titles	Clause titles have been amended so that one the first letter of the first word is capitalised, the remainder are all lower case.
Various measurement references	References to measurement have been amended to include a space between the number and the measurement abbreviation.

In addition to the above changes, a number of minor formatting and setting out errors have been corrected in the amendment local law.

The attached amendment local law incorporating all identified drafting changes is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

The purpose of this local law is to amend the Shire of York Local Law relating to York Public Cemetery and provide additional provisions for the management of certain activities in the cemetery.

The effect is to allow for better regulation of activities within cemeteries in the Shire of York.

**RESOLUTION
100411**

Moved: Cr Randell **Seconded: Cr Lawrence**

“That Council:

1. *Notes the submission from the Department of Local Government in relation to the proposed Shire of York Cemeteries Amendment Local Law 2011;*
2. *Council resolves to make the Shire of York Cemeteries Amendment Local Law 2011, as per Attachment A incorporating all amendments, in accordance with section 3.12 of the Local Government Act 1995;*
 - a) *the purpose of which is to amend the Shire of York Local Law relating to York Public Cemetery and provide additional provisions for the management of certain activities in the cemetery; and*
 - b) *the effect is to allow for better regulation of activities within cemeteries in the Shire of York.*
3. *Publish the Shire of York Cemeteries Amendment Local Law 2011, as per (2) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government;*
4. *Forward a copy of the gazetted local law, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review; and*
5. *Authorise the affixing of the Common Seal of the Shire of York to the Shire of York Cemeteries Amendment Local Law 2011.”*

CARRIED (5/0)

Item 9.2.3 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.4 York Museum – Reference & Management Committee

FILE NO:	CCP.11
COUNCIL DATE:	27 April, 2011
REPORT DATE:	5 April, 2011
LOCATION/ADDRESS:	York Residency Museum
APPLICANT:	Curator
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	R Hooper, CEO
DISCLOSURE OF INTEREST:	Cr Boyle – Proximity Interest
APPENDICES:	Draft Terms of Reference
DOCUMENTS TABLED:	Nil

Summary:

The York Residency Museum Committee has prepared Terms of Reference to set the parameters for future governance, operations and management functions.

Background:

The York Residency Museum Committee has acted as an Advisory Committee of Council under the provisions of Section 5.8 of the Local Government Act.

Consultation:

- York Residency Museum Members
- Councillors
- Claremont & Mandurah Museums

Statutory Environment:

Local Government Act Sections 5.8; 5.9; 5.10; 5.11; 5.11A; 5.12; 5.13; 5.14; 5.15; 5.16; 5.17; 5.18; 5.19; 5.20; 5.21; 5.22; 5.23; 5.24; 5.25 and Sections 5.59 to 5.73.

Policy Implications:

Not Applicable

Financial Implications:

Nil at this stage over and above financial allocations within the adopted budget.

Strategic Implications:

Key Result Area 5 - History and Heritage

Scope - *Recognising the importance of York's history and heritage and taking action to ensure it is preserved and forms the basis for York's future development.*

Objectives:

- *To safeguard York's history and heritage.*
- *To raise awareness of the economic and cultural value of York's history and heritage.*

Voting Requirements:

Absolute Majority Required: Yes

In addition the appointment of all members shall be by an absolute majority.

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Not Applicable

Social Implications:

History and heritage are important parts of the social fabric and the Residency Museum is integral to the collection and preservation of historical artefacts and records.

Environmental Implications:

Not Applicable

Comment:

It is important to attract and retain community interest in and input to the significance of York's history and heritage and the appointment of a Committee through the provisions of the Local Government Act will assist in this.

RESOLUTION

110411

Moved: Cr Scott

Seconded: Cr Randell

"That Council:

1. *Agree to appoint a York Residency Museum Advisory Committee under the provisions of Section 5.9(a)(c) of the Local Government Act 1995*
2. *Approve and adopt the Terms of Reference as provided*
3. *Provide guidelines to the Committee when elected on the compliance requirements for members under Interest Declarations, public access to meetings, Meetings and Minutes and other accountability processes under the Local Government Act."*

CARRIED (5/0)

Item 9.2.4 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.5 Proposal to Make Local Government Property Amendment Local Law 2011

FILE NO:	LE.LLW
COUNCIL DATE:	27 April 2011
REPORT DATE:	15 April 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Local Government Property Amendment Local Law 2011
DOCUMENTS TABLED:	Nil

Summary:

The purpose of this report is to:

- (7) consider the submissions (if any) received on the proposed Shire of York Local Government Property Amendment Local Law 2011 and determine if any drafting amendment(s) are required to the Amendment local law as a result of the submissions received;
- (8) give notice of the purpose and effect of the Shire of York Local Government Property Amendment Local Law 2011;
- (9) make the Shire of York Local Government Property Amendment Local Law 2011, incorporating all amendments;
- (10) authorise the local law's gazettal in the *Government Gazette*;
- (11) give local public notice, (after gazettal), of the date the Shire of York Local Government Property Local Law 2011 will come into effect; and
- (12) authorise the affixing of the Common Seal to the local law.

Background:

At its Ordinary Council meeting of 16 August 2010 Council resolved to commence the process to make a Shire of York Local Government Property Amendment local law.

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

An advertisement was placed in the West Australian on 24 November 2010, with the submission period for public comment closing on Wednesday 19 January 2011.

Consultation:

As required by section 3.12 the Local Government Act 1995, an advertisement is to be placed, in a state-wide newspaper, inviting the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks (42 days).

Council advertised on the Council's noticeboards and placed the advert in a newspaper circulating in the district free of charge.

In addition, copies of the proposed Local Government Property Amendment Local Law 2011, (gazettal copy), and the National Competition Policy review (if applicable) must be sent to the relevant Minister for comment.

Statutory Environment:

Local Government Act 1995

Section 3.12(2) of the Local Government Act 1995 and the Local Government (Functions and General) Regulations (Regulation 3) which states that for the purpose of Section 3.12(2) of the Local Government Act the person presiding at a council meeting is to give notice of the purpose of the local law by ensuring that the purpose and effect of the proposed local law is included in the agenda for that purpose and the minutes of the meeting of the council include the purpose and effect of the proposed local law.

Policy Implications:

There are no policy implications for this item.

Financial Implications:

Advertising costs associated with placement of the amendment local law in the Government Gazette and giving local notice of the date the local law takes effect.

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: YES

Site Inspection:

Site Inspection Undertaken: Not Applicable.

Triple bottom Line Assessment:**Economic Implications:**

Not applicable.

Social Implications:

Up to date and relevant local laws are an important cornerstone of good governance. Local Government has a statutory and moral obligation to ensure that the regulation of local matters is conducted in a fair, efficient and reasonable manner.

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the proposed Local Government Property Amendment Local Law 2011. At the close of the submission period, one petition with 14 signatures, and two public submissions relating to proposed changes to the Property Local Law had been received. A summary of the public submissions relating to the proposed changes to the Property Local Law are detailed in the following table.

Submission/Applicant Name	Comment	Officer/Consultant Comment	Recommended Action
Submission 1 - Various – Petition with 14 Signatories.	<p>New Clause 4.6 – Refusal of entry to local government property.</p> <p>This local law (amendment) will see any targeted resident exiled from all Shire owned land and buildings, therefore making life un-liveable within the Shire boundaries. Also children of parents who are banned will be suffering unfairly.</p>	<p>(1) The Department of Local Government has advised that the words “or is likely to behave” need to be deleted from the clause as the Joint Standing Committee has advised the wording is open to subjective interpretation.</p> <p>(2) Given the above amendment, the application of the clause will only apply in circumstances where a person is behaving in an inappropriate manner contrary to those listed in Part 4 of the local law. It does not permit an authorised officer to suspend a person based on personal bias, as the authorised officer would need to be able to produce evidence to back up their decision.</p> <p>(3) If a suspension is applied under this clause it would only relate to the property at which the inappropriate behaviour occurred – it is not intended that the suspension would apply to every single local government property.</p>	<p>It is recommended that Council reject the submission.</p> <p>It is recommended that the words “or is likely to behave” be deleted from clause 4.6.</p>
Submission 2 - R Paton	<p>Clause 4.6 - Refusal of entry to local government property.</p> <p>(1) Introduction of Clause 4.6 is in breach of the Universal Declaration of Human Rights Articles 9, 10 and 13.</p> <p>(2) On 14th January 2011</p>	<p>The following comments are made in relation to the points raised-</p> <p>(1) Noted - See Officer/Consultant comment (1) in Submission 1 above.</p> <p>(2) Local laws are subsidiary</p>	<p>It is recommended that Council note points (1), (3) and (4) of the submission and delete the words “or is likely to behave” from clause 4.6.</p>

	<p>the Commissioner of WA Police announced new laws provided to WA Police, eliminating the need for the Shire of York to implement clause 4.6 as it is a duplication of Police Laws.</p> <p>(3) The existing local law clearly details reasons and behaviour by which a person may be refused entry to Loc Gov. Property. The proposed new law is open to interpretation by individual 'Shire appointed person' and definitely open to abuse.</p> <p>(4) The wording 'believes has or is likely' in clause 4.6 is subjective. This could allow personal vendettas against residents and ratepayers to be carried out from within the Administration.</p> <p>(5) Targeted people will have no fair hearing or right of appeal as it appears the Administration will have the final say on whom and how long a person can be banned.</p>	<p>legislation and are an extension of state legislation, so that local governments can regulate 'local issues'. Where local governments have the head of power to make local laws, the content of the local law often mirrors state legislation. Examples include Parking local laws (which mirror the Traffic Code) and Dog local laws. However, where the head of power exists, the local laws often go further than what is in state legislation, so that local governments can tailor their local laws to what they see as the needs of their district. Clause 4.6 provides the Shire with the ability to impose a suspension if a person contravenes the provisions of Part 4 of the local law. Part 4 of the local law is very clear in which circumstances a suspension may be imposed-</p> <ul style="list-style-type: none"> (a) Behaviour that interferes with others; (b) Behaviour that is detrimental to property; (c) A person under the influence of alcohol or a prohibited drug; or (d) A person taking or consuming a prohibited drug on local government property. 	
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		<p>(3) Noted – See Officer/Consultant comment (1) in Submission 1 above.</p> <p>(4) Noted – See Officer/Consultant comment (1) in Submission 1 above.</p> <p>(5) This statement is incorrect as subclause (3) provides that any decision made under this clause is subject to objection and review pursuant to clause 7.1 of the local law.</p>	
Submission 3 – D Paton	<p>Clause 4.6 – Refusal of entry to local government property.</p> <p>(1) This law is to be enacted to ban some selected citizens from any Shire property.</p> <p>(2) This law as it is written seems to have as its purpose to bestow even more power to the administration.</p> <p>(3) The proposed law cannot be administered as it is written. It is against Australia's freedom of movement which applies to all residents. The way the law is framed, and the words "or is likely to behave" is ambiguous and could not be counted on to be complied with in a court of law.</p>	<p>The following comments are made in relation to the issued raised in the submission.</p> <p>(1) This clause has been proposed to provide the ability to suspend a person where that person behaves contrary to the requirements of Part 4. It applies to all persons who may use local government property within the Shire of York.</p> <p>(2) Clause 4.6 whilst providing power to an authorised officer to suspend a person in breach of the provisions of Part 4 of the local law, is also subject to the provisions contained in Clause 7.1. Clause 7.1 allows a person to lodge an objection and request a review of the decision if they feel that they have been unjustly dealt with.</p> <p>(3) Noted. See Officer/Consultant comment (1) in Submission 1 above.</p>	<p>It is recommended that Council note point (3) of the submission and delete the words "or is likely to behave" from clause 4.6.</p>

One submission from the Department of Local Government was received on 19 January 2011. The following comments from the Department have been incorporated into the final draft of the Amendment local law.

Clause No.	Department Comment	Officer/Consultant Comment	Action Taken
1.1	It is recommended that as your laws will not be gazetted until 2011 – that the year in the title of the proposed law be changed to “2011”.	Agreed.	The title of the local law and the Citation refer to the year the local law was made as “2010”. These references have been amended to “2011”. This change is considered minor and does not significantly change the local law.
1.2	It is suggested that the following terms be incorporated- (a) “local public notice”; (b) “costs”	Agreed. The inclusion of these terms will make it easier to interpret the local law.	Definition of terms incorporated into local law.
1.2 and 4.1	As this clause is about Behaviour which interferes with others , you may wish to include an updated provision that deals with creating a nuisance.	Agreed. The inclusion of the term “nuisance” and its application in clause 4.1 will provide a better mechanism in dealing with behaviour that is deemed to be causing a nuisance.	The term “nuisance” has been incorporated into clause 1.2. A new paragraph (c) has been included in clause 4.1 as follows- “(c) creates a nuisance”.
Part 7	Due to changes in legislation, appeals are now a “review” procedure. For an updated version, please refer to Part 7 in the gazette example.	Agreed.	Part 7 title amended to “OBJECTIONS & REVIEW”. Clause 7.1 amended to- 7.1 Objections & review Division 1 of Part 9 of the Act applies to a decision of the local government, under this local law, as to whether it will - (a) grant a person a permit or consent under this local law; or

			(b) renew, vary, or cancel a permit or consent that a person has under this local law.
8.4(2)	This is an averment clause – please refer to the Joint Standing Committee on Delegated Legislation Report 16 for details about this issue.	Agreed. Subclause required to be deleted.	Deletion of subclause (2) from clause 8.4.
Schedule 2	Please be advised that the Joint Standing Committee has issued undertakings to other local governments to remove certain references to “determinations” in Schedule 2.	Agreed.	Deletion of words “or determination from clauses 2.1(1), 2.2(1) and 2.3(1).

Other drafting changes identified during the review process which have been inserted into the amendment local law are listed in the table below.

Clause No.	Clause Title	Proposed Amendment	Officer/Consultant Comment
1.2	Definitions	Insertion of new term “closely related adult” in definitions.	Allows for better compliance and enforcement in relation to clause 5.4.
4.4	Intoxicated persons not to enter local government property.	Renumber first sentence to subclause (1) and insert new subclause (2)- (2) A person found in contravention of subclause (1) may be removed from local government property by an authorised person or a member of the Police service.	Clause provides better enforcement and compliance mechanism.
5.4	Only specified gender to use entry of toilet block or change room	Rewording of subclause (2) to- (2) Paragraphs (a) and (b) of subclause (1) do not apply to a child under the age of 7 years that is accompanied by a closely related adult, or care giver, of the gender specified on the particular entry of the toilet block or change room as the gender that may use that entry of the toilet block or change room.	The simplified wording provides a much more concise description of those persons who can use a toilet block or change room and provides an exemption for a child under 7 years.

Schedule 2 – clause 2.4	Deposit of refuse, rubbish or liquid waste	<p>Remove duplication of wording and amend clause to-</p> <p>A person must not, on local government property-</p> <p>(1) deposit or discard the waste or rubbish from any animal.</p> <p>(2) deposit or discard refuse, rubbish or liquid waste, except in a place or receptacle set aside by the local government for that purpose and subject to any conditions that may be specified on the receptacle or a sign in relation to the type of waste that may be deposited or other conditions.</p>	
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In addition to the above changes, a number of minor formatting and setting out errors have been corrected in the local law.

The attached local law incorporating all identified amendments is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

The purpose of the proposed Local Government Property Amendment Local Law 2011 is to restrict and prohibit certain activities on local government property and review the modified penalties.

The effect of the proposed Local Government Property Amendment Local Law 2011 is to control the use of local government property and create offences for inappropriate behaviour in or on local government property.

RESOLUTION
120411

Moved: Cr Hooper

Seconded: Cr Scott

“That Council:

- 1. notes the public submissions received from the submission writers in relation to the proposed Shire of York Local Government Property Amendment Local Law 2011 and takes the recommended action in response to each submission as outlined in the table contained in report 9.2.5.**
- 2. notes the submission received from the Department of Local Government in relation to the proposed Shire of York Local Government Property Amendment Local Law 2011 and agrees to the amendments recommended as outlined in the table contained in report 9.2.5.**
- 3. resolves to make the Shire of York Local Government Property Amendment Local Law 2011, as per Attachment 1, incorporating all amendments, in accordance with section 3.12 of the Local Government Act 1995:**
 - (a) the purpose of which is to restrict and prohibit certain activities on local government property and review the modified penalties; and**
 - (b) the effect is to control the use of local government property and create offences for inappropriate behaviour in or on local government property.**
- 4. publish the Shire of York Local Government Property Amendment Local Law 2011, as per (3) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government.**
- 5. forward a copy of the gazetted Local Government Property Amendment Local Law 2011, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review.**
- 6. after gazettal of the Local Government Property amendment local law, provide local public notice of the date the local law takes effect.**
- 7. authorise the affixing of the Common Seal of the Shire of York to the Shire of York Local Government Property Amendment Local Law 2011.”**

CARRIED (4/1)

Item 9.2.5 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.6 Application to Keep Three (3) Dogs, 35 Langford Crescent, York

FILE NO:	RS.ANC.1
COUNCIL DATE:	27 April 2011
REPORT DATE:	1 April 2011
LOCATION/ADDRESS:	Lot 106 No 35 Langford Crescent, YORK
APPLICANT:	Mr and Mrs Hopkins
SENIOR OFFICER:	Mr R Hooper, CEO
REPORTING OFFICER:	Mr M Sharpe, Ranger
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appendix A – Photographs
DOCUMENTS TABLED:	Letters from adjoining neighbours

Summary:

An application has been received from Alison and Graeme Hopkins requesting permission to keep three dogs on her property at 35 Langford Crescent, York.

Background:

Lot 106 No 35 Langford Street York is zoned residential R5/R10 and is 0.2504 hectares in area.

It is a requirement of the York Shire Council's Dogs Local Law (2000) that the maximum number of dogs that can be kept on a premise within a townsite is two unless an exemption is granted by Council under the provisions of section 26(3) of the Dog Act 1976 (as Amended).

Council has approved similar applications in the past where all adjoining neighbours have agreed to the request and the Shire Ranger or other authorised Council Officer has considered that there are no valid reasons for withholding such approval.

Consultation:

The applicant has advised all adjoining neighbours of the request to Council who have provided correspondence that they have no objections to the proposal.

Statutory Environment:

Dog Act 1976 (As Amended)

York Shire Council Dogs Local Law (2000)

Policy Implications:

Not Applicable

Financial Implications:

Not Applicable

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Yes

The Shire Ranger has inspected the property at 35 Langford Crescent and has advised that there are no reasons to withhold the granting of an exemption to keep three dogs at the property, given the neighbours consent and that no verbal or written complaints have been received.

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Keeping of dogs in a townsite may impact on the social cohesion of a community if the dogs create a nuisance.

Environmental Implications:

Nil

Comment:

It is recommended that Council agree to the granting of an exemption for the keeping of three dogs at 35 Langford Crescent subject to the following conditions:

- That the exemption be reviewed in twelve months to ensure that no adverse problems have been experienced as a result of the exemption, and
- That Council reserve the right to withdraw the exemption at anytime if any complaints or problems are experienced prior to the review period.
- That the exemption applies only to the dogs nominated by the applicant.
- Upon the death or permanent removal of any of the nominated dogs a maximum of two dogs only will be permitted to be kept on this property.

RESOLUTION

130411

Moved: Cr Randell

Seconded: Cr Scott

"That Council:

Approve an exemption for the keeping of three dogs at 35 Langford Crescent subject to the following conditions:

1. ***The exemption be reviewed in twelve months time to ensure that no adverse problems have been experienced as a result of the exemption, and***
2. ***Council reserves the right to withdraw the exemption at any time if any complaints or problems are experienced prior to the review period.***
3. ***The exemption applies only to the dogs nominated by the applicant .***
4. ***Upon the death or permanent removal of any of the nominated dogs a maximum of two dogs only will be permitted to be kept on this property."***

CARRIED (4/1)

Item 9.2.6 – Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.7 Road Name Register

FILE NO:	PS.NAM.2
COUNCIL DATE:	27 April 2011
REPORT DATE:	17 April 2011
LOCATION/ADDRESS:	Various
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	T Cochrane, DCEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil

Summary:

To approve a list of names that can be used as a register for road names. There are several unnamed roads and therefore a list has been submitted for approval. This will allow for emergency services and the like to promptly arrive at a request.

Background:

Council from time to time get requests to name roads. A register is available, however these were for certain areas within the district.

Consultation:

Consultation was undertaken with Landgate – Geographic Names Committee.

Statutory Environment:

Land Administration Act.

The Geographic Names Committee – WA (Landgate) provides the following information:

“Procedure for Naming and Renaming Roads

New Roads - Survey documents require approved road names before the survey can be approved. The developer or their agent should be prompt in lodging a concept plan and a proposal for road names conforming to the above guidelines with the relevant local government. It may also be helpful to supply a copy to the Secretary, Geographic Names Committee. Local governments then propose the names to LANDGATE for approval. Following agreement between the Department and the local government, the names will be approved and all interested parties advised.

The selection of names is at local government discretion, and many local governments maintain lists of preferred names. There must be sound justification to propose alternative names, but some local governments allow developers discretion, particularly with larger developments. Short names are encouraged for short roads.

Existing Roads — Unnamed roads should be treated in a like manner to new roads. Proposals for renaming roads should follow the above guideline and be submitted through local government. Proposals should be accompanied by a map showing the extent of the name and full details on the name, including the reason for the selection.”

Policy Implications:

Nil.

Financial Implications:

Administration costs associated with staff time.

Strategic Implications:

Nil.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: No

Triple bottom Line Assessment:

Economic Implications:

Not applicable at this time.

Social Implications:

The naming of roads should have a tangible connection to the community.

Environmental Implications:

Nil.

Comment:

The names have been taken from the War Memorial Plaque. Unfortunately due to some names being overused they were required to be deleted from the list.

Once Council endorses the names then road names can be referred to the Geographic Names Committee for final approval.

RESOLUTION

140411

Moved: Cr Scott

Seconded: Cr Walters

"That Council:

- 1. advise the Geographic Names Committee that it approves the use of the following names to be added to the Road Name Register:**

AUBREY

BIRELL

BUDGE

DAWKINS

DICKERSON

DOMSELLA

DUCKHAM

EYRE

COLLAN

INGRAM

KETT

LAIDLER

LAMB

LEY

LINDHAM

LONGBOTTOM

MCGINN

**MCINERNEY
MERRICK
RANDELL
RUSH
STANNARD
STOREY
WASHER
WIGHAM
WILKINSON**

2. list the following names on the register, however confirmation to be obtained by the Geographic Names Committee to ensure that the road name has not been used within 50 kilometres of a neighbouring shire:

**CHIPPER
COLE
GREGSON
HAYDEN
LAWSON
OLSEN
PETIT
SERMON
TURVEY
WALLACE**

3. Provide a list of names to The York Society Inc. and request a search of historic records to provide as much information to the Geographic Names Committee as possible.

4. authorise the Chief Executive Officer to allocate names from the Road Name Register to roads within the Shire of York, as required.

Advice Note:

It should be noted that the Geographic Names Committee is the decision making authority and no changes will be made until final approval through a Ministerial Order is issued.”

CARRIED (5/0)

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.8 Road Closure – Unnamed Road

FILE NO:

COUNCIL DATE: 27 April 2011
REPORT DATE: 17 April 2011
LOCATION/ADDRESS: Unnamed Road (adjoining Lot 55 and 1 Grt Southern Hwy)
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: T Cochrane, DCEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix A – Map
DOCUMENTS TABLED: Nil

Summary:

A request was made by the owner of Lot 55 Great Southern Highway, York for Council to consider closing a portion of an unnamed road reserve, as shown on Appendix A.

Background:

Not applicable.

Consultation:

Landowner - S Sykes.

The landowner advised that she had been in contact with Landgate.

In relation to the road closure consultation is required to be carried out and Government Departments notified of Council's intent for a period of 35 days, if Council were to support the road closure.

Statutory Environment:

Land Administration Act.

Land Administration Act, 1997 (as amended) Section 58.

“Closure of roads

58.

- (1) *When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.*
- (2) *When a local government resolved to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.*
- (3) *A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.*
- (4) *On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) -*

- (a) by order grant the request;
- (b) direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or
- (c) refuse the request.

(5) If the Minister grants a result under subsection (4) -

- (a) the road concerned is closed on and from the day on which the relevant order is registered;
- (b) any rights suspended under section 55 (3) (a) cease to be so suspended; and
- (c) the Minister must cause notice of the registration of the relevant order to be published in a newspaper circulating in the district of the relevant local government.

(6) When a road is closed under this section, the land comprising the former road -

- (a) becomes unallocated Crown land; or
- (b) if a lease continues to subsist in that land by virtue of section 57 (2), remains Crown land.”

Land Administration Regulations, 1998 (as amended), Part 2 – General, Regulation 9 – Preparation and Delivery by Local Government of Request to close a road permanently.

“9. Preparation and delivery by local government of request to close a road permanently

For the purposes of preparing and delivering under section 58(2) of the Act a request to the Minister to close a road permanently, a local government must include with the request;

- (a) written confirmation that the local government has resolved to make the request, details of the date when the relevant resolution was passed and any other information relating to that resolution that the Minister may require;
- (b) sketch plans showing the location of the road and the proposed future disposition of the land comprising the road after it has been closed;
- (c) copies of any submissions relating to the request that, after complying with the requirement to publish the relevant notice of motion under section 58(3) of the Act, the local government has received, and the local government's comments on those submissions;
- (d) a copy of the relevant notice of motion referred to in paragraph (c);
- (e) any other information the local government considers relevant to the Minister's consideration of the request; and
- (f) written confirmation that the local government has complied with section 58(2) and (3) of the Act.”

Policy Implications:

Nil.

Financial Implications:

Should Council proceed with the road closure it will incur administration costs associated with staff time and advertising.

Strategic Implications:

Community Services – Key Result Area 7 – Objective 1 states:

“To meet community needs in terms of physical infrastructure and overall community services.”

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: No

Triple bottom Line Assessment:**Economic Implications:**

If the Council agrees to proceed with the closure, the road reserve becomes Crown land and then negotiations may begin.

Social Implications:

The road closure would not appear to impact on future developments within this area, however an advertising period will flush out any concerns.

Environmental Implications:

The unnamed road reserve extends from the Great Southern Highway to the Avon River.

Comment:

It is proposed at this time that Council proceeds to advertising.

RESOLUTION**150411****Moved: Cr Lawrance****Seconded: Cr Randell****“That Council:**

1. ***advise the applicant that it supports the proposed road closure of Unnamed Road Reserve, as shown on the attached map labelled “Appendix A”; and***
2. ***accede to the proposed road closure of the road reserve, as shown on the attached map labelled “Appendix A”, for the purpose of facilitating public advertising in accordance with Section 58 of the Land Administration Act 1997 (as amended).***
3. ***in the event that no adverse submissions are received during the advertising period, delegate authority to the Chief Executive Officer to finalise the road closure.”***

CARRIED (5/0)

Item 9.2.8 – Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.9 Development Assessment Panels

FILE NO:

COUNCIL DATE: 27 April 2011
REPORT DATE: 15 April 2011
LOCATION/ADDRESS: Not Applicable
APPLICANT: Department of Planning
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Exempted –
Section 5.63(1)(g) of the Local Government Act
APPENDICES: Department of Planning Advice Note 13/4/11
Department of Planning 23/3/11
Information Note 106/2011
DOCUMENTS TABLED: Nil

Summary:

The Department of Planning has enacted legislation for the formation of Development Assessment Panels to deal with specific value planning and development applications.

Each local government is required to nominate two (2) elected members to act as DAP members and two (2) deputy members.

Background:

Consultation:

Not applicable as this is a requirement of legislation.

Statutory Environment:

Planning & Development (Development Assessment Panels) Regulations 2011

Policy Implications:

Not applicable

Financial Implications:

There will be costs associated with elected members attending training sessions which would be covered under Members – Training allocations. Development Assessment Panel application fees are in addition to any normal local government planning fees.

Strategic Implications:

Not applicable

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

The objective of the Development Assessment Panels is to streamline application and assessment processes for large scale projects. For rural areas the project value is \$3-\$7 million.

Social Implications:

The community may have a sense of loss of local decision making however this may be offset by the external decision process which may expedite assessments.

Environmental Implications:

All environmental issues will be considered in any assessment whether a DAP or a local government.

Comment:

Nominations must be submitted by the 13th June, 2011 for a ministerial decision on appointments on the 15th June, 2011.

Training is compulsory for DAP members and training courses will roll out from 2nd May, 2011.

Appointments are for a two year term and they must be held by elected members. If an elected member resigns from a local government or is not re-elected the appointment is void.

RESOLUTION
160411

Moved: Cr Walters

Seconded: Cr Hooper

“That Council:

Hold a ballot to nominate four Councillors as members and deputies of the local Development Assessment Panel”

CARRIED (5/0)

As per the above, a ballot was held and the votes were tallied by Ms Jenni Law from the Department of Local Government.

RESOLUTION
170411

Moved: Cr Randell

Seconded: Cr Scott

“That Council:

- 1. Nominate Cr Scott and Cr Boyle as Members of the local Development Assessment Panel and nominate Cr Hooper and Cr Lawrence to be deputy members of the DAP.**
- 2. Forward nominations to the Department of Planning.”**

CARRIED (5/0)

Item 9.2.9 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.10 Youth Report for April 2011

FILE NO:	CS.LCS.6
COUNCIL DATE:	20 April, 2011
REPORT DATE:	18 April, 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	Lyn Kay, YDO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appendix A
DOCUMENTS TABLED:	Nil

Summary:

The following is a summary of the activities undertaken by the Youth Development Officer since the last report submitted in March 2011.

- **Youth Health Forum-York 2011**

The Forum was held on the 7th April, 2011. Cost of the Forum was \$15,275; IGA Co-Operative donated \$3,150 for the cost of 140 T Shirts.

120 Years 7, 8, 9 & 10 attended from Beverley and York District High Schools.

It was a very successful day with presenters covering subjects such as Drugs, Alcohol, Depression, Suicide, Cyber bullying, Texting, Sexual behaviour etc.

CWA did the catering for the day, 190 rounds of sandwiches, we supplied lots of fruit and water and there was nothing left at the end of the day!

There is also a competition being run with a chance to win a \$500 voucher from Midland Cycles for the best comic strip, based on the theme of road safety and drink driving.

- **Youth Centre:**

Plans are being drawn up at the moment, we have quotes for Shed, slab and installation.

Weekly "Hang Out" program is going well and averaging 12-15 children with 20 attending the last one.

- **Holiday Programme:**

On the 26th April we will be going to the Cockburn Ice Arena and then down to Fremantle for lunch and then on the 3rd May we will be going to Noble Falls for Paintballing and a sausage sizzle.

We will also have our "Hang Out" at the Recreation Centre on Thursday's during the holiday period.

- **Active after School Program:**

This program went for 7 weeks with all children who attended received a participation Certificate. This was very well received, lots of fruit consumed and wonderful help from Brenda Treloar and Leanne Chapman from York District High School.

- **Graffiti Art Project:**

Stage 1 will be run over 3 days, 20th, 21st and 22nd May. Stage 2 has now been confirmed on the 4th June. We are in the process of getting 12 Youth together to participate in the mural at the Police Station.

- **Karaoke Disco:**

This was held on Friday 15th April, with approximately 200 children attending from Pre Primary through to Youth. We had Karaoke and lots of participation plus games and lots of prizes. We sold cool drinks, lollies and hot dogs plus an entrance fee of \$2.50, all profits going to the Youth Centre.

- **Wheelchair Basketball:**

Workshop dates have been confirmed for 24th May at Beverley District High and 25th May for York District High.

Background:

Youth Development Officer is building strong relationships with the appropriate partners in all fields of youth development, including education, police and health partnerships. Trust and integrity is being developed with York youth and their parents/guardians as quality programs are being introduced and activated.

Consultation:

Youth
School
Police
Health
Councillors
Council Staff
Community Members

Statutory Environment:

Nil

Policy Implications:

Not Applicable

Financial Implications:

Activities and initiatives are funded in SOY budget and through grants, fundraising activities and 'user pays' arrangements.

Strategic Implications:

Key Result Area 4 - Youth - Objectives:

1. *To facilitate an increase in the employment and education opportunities for the young people of the Shire.*
2. *To enhance recreational and cultural opportunities for young people.*
3. *To involve young people in decision-making and in taking a responsible role in our community.*
4. *To develop strategic alliances with other organisations working with young people.*

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

A strong focus on Youth activities will support community cohesion and interaction through the recognition and valuing of this section of the community.

Environmental Implications:

Not applicable

Comment:

This report serves to keep the community informed of the activities in place.

RESOLUTION

180411

Moved: Cr Scott

Seconded: Cr Randell

“That Council:

Receives this report and acknowledges and endorses the activities and initiatives of the Youth Development Officer.”

CARRIED (5/0)

Item 9.2.10 – Appendices

9.3 Works Reports

9.4 Financial Reports

9. OFFICER'S REPORTS

9.4 FINANCE REPORTS

9.4.1 Monthly Financial Reports – March 2011

FILE NO:	FI.FRP
COUNCIL DATE:	27 April 2011
REPORT DATE:	11 April 2011
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Not Applicable
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Tabitha Bateman, Administration Officer
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Yes – Appendix A as detailed in Summary
DOCUMENTS TABLED:	No

Summary:

The Financial Report for the period ending 31 March 2011 is hereby presented for the consideration of the Council.

Appendix A includes the following:

- Monthly Statements for the period ended 31 March 2011
- Bank Account Reconciliations
- Cheque drawings on the Municipal Account
- EFT drawings on the Municipal Account
- Cheque drawings on the Trust Account
- Payroll Direct Debits Summary
- Corporate Credit Card Summary
- Fuel Card Summary

Consultation:

Dominic Carbone;

Statutory Environment:

Local Government Act 1995 (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 2011;

Sundry Creditors as per General Ledger	\$ 428,365.41
Sundry Debtors as per General Ledger	\$ 405,825.86
Unpaid rates and services current year (paid in advance inc. ESL)	\$ 592,667.83
Unpaid rates and services previous years (inc. ESL)	\$ 268,673.76

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: No

Site Inspection:
Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

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 future years.

Social Implications:

Not applicable.

Environmental Implications:

Not applicable.

Comment:

The new format in which the report is now presented was discussed at a Forward Planning Meeting with Councillors.

RESOLUTION
190411

Moved: Cr Scott

Seconded: Cr Randell

"That Council:

Receive the Monthly Financial Report for March and ratify payments drawn from the Municipal and Trust accounts for the period ending 31 March 2011:

	<u>VOUCHER</u>	<u>AMOUNT</u>
MUNICIPAL FUND		
Cheque Payments	29354-29392	\$ 103,687.22
Electronic Funds Payments	7795-7878	\$ 792,501.84
Direct Debits Payroll		\$ 139,169.85
Bank Fees		\$ 966.33
Corporate Cards		\$ 1,328.69
Shell Cards		\$ 212.75
TOTAL		\$ 1,037,866.68

TRUST FUND

Cheque Payments	3791-3806	\$ 2,415.50
Direct Debits Licensing		\$ 117,582.30
TOTAL		\$ 119,997.80

TOTAL DISBURSEMENTS

\$ 1,157,864.48

CARRIED (5/0)

Note to this item

The Chief Executive Officer has delegated authority under Delegation DE1 (Council Meeting 21 September 2009) to make payments from the Municipal and Trust accounts.

Item 9.4.1 – Appendices

9.5 Late Reports

9.6 Confidential Reports

10. NEXT MEETING

RESOLUTION
200411

Moved: Cr Randell

Seconded: Cr Lawrence

"That Council:

hold the next Ordinary Meeting of the Council on May 16, 2011 at 3.00pm in the Talbot Hall, Talbot"

CARRIED (5/0)

11. CLOSURE

Cr Hooper thanked everyone for their attendance and declared the meeting closed at 4.27pm.