



Our Ref: Y1-18#12 E1436957

Mr James Best
 Commissioner
 Shire of York
 PO Box 22
 YORK WA 6302

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1.	JAMES
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3.	

SHIRE OF YORK	
FILE	FI.FRP.AO
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REFERRED TO COUNCIL	
DATE	INITIALS

Dear Commissioner Best

Please find attached a final copy of the Probity Compliance Audit Report for the Probity Compliance Audit undertaken at the Shire of York by the Department of Local Government and Communities in September 2014.

The report's conclusion identifies concerns with the Shire's level of probity compliance in particular areas where processes and procedures require prompt attention.

The areas of particular concern include:

- the Council's decision making framework including meeting processes and practices, especially in regard to statutory compliance for declarations of interest and the standard of information recorded in the minutes of meetings;
- the standard and manner of general and statutory record keeping by the Shire, especially in relation to the retention of records, recording information in the minutes of meetings and in registers, such as the register of financial interests;
- policy manual and Council policies, which are in need of review in order to upgrade and introduce additional policies to improve the quality of the Shire's policy structure;
- delegations register and delegations, which are in need of review due to the out of date information, legislative references and relevancy of a number of delegations; and
- improvement of complaints handling policy and procedures to provide guidance in supporting a more effective and reliable system of handling complaints.

The Department provides guidance, through our guideline series, on a number of issues identified, which are available to download from the Department's website at www.dlgc.wa.gov.au.

The guidelines provide a valuable source of information to assist local governments and elected members in complying with their statutory obligations including matters raised in the report.

I would ask that the report and this letter be tabled at the next ordinary meeting of council and that I receive Council's formal response and a detailed action plan and timeframe on how the report recommendations will be implemented.

Please note that since the completion of this report the Minister for Local Government, by Governor's Order suspended the council, requiring each elected member of the council to undertake training which now supersedes the recommendations included in this report relating to elected member training. This training will be coordinated by the department.

It would be appreciated if Council's response could be provided as soon as possible after the meeting, but no later than 30 April 2015.

Yours sincerely



Jennifer Mathews
DIRECTOR GENERAL

7 April 2015

enc

cc: Mr G Simpson
A/Chief Executive Officer
Shire of York



Government of **Western Australia**
Department of Local Government and Communities

SHIRE OF YORK

2014

PROBITY COMPLIANCE AUDIT

REPORT

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1. INTRODUCTION

The Shire of York covers an area of 2010 square kilometres and is situated in the Avon Valley region 97 km east of Perth. York has an estimated population of approximately 3,439 persons.

Agriculture remains a significant contributor to York's economy, accounting for 38% of registered businesses in 2009. Manufacturing, transport and logistics accounts for 5.2% of local businesses in York and there is 109,606 hectares of zoned industrial land.

The York Shire Council consists of six elected member positions representing the district of York and has no wards. The Shire administration office is located in the York town site, the Shire's total revenue is approximately \$9,254,488 and it has approximately 63 employees.

The Department of Local Government and Communities (DLGC) decided to monitor Council meetings and conduct a targeted Probity Compliance Audit to determine whether the Shire's processes and procedures are of a standard expected of a local government for the provision of good governance to persons in its district.

The Probity Compliance Audit was conducted by Mr Stuart Fraser, Principal Advisory Officer who visited the Shire's offices in York on 15 and 16 September 2014 to undertake the Probity Compliance Audit.

During that visit relevant documents and registers were examined together with the Shires' processes and procedures. This report examines certain areas of statutory compliance and also comments on matters relating to administrative best practice.

As a result of the Probity Compliance Audit, this report has been prepared which deals with the probity processes of the Shire and examines its standards of compliance with the *Local Government Act 1995* (the Act) and associated regulations in relation to those processes. The report makes specific recommendations in circumstances where the Shire is not compliant with statutory requirements. The report also makes recommended process improvements where the Shire's processes do not appear to reflect best practice.

It should be noted that the Probity Compliance Audit was conducted over a period of only two days and does not represent a detailed examination of any specific issues that may need addressing by the Shire. Any other specific issues may be the subject of a more detailed investigation if this is considered to be warranted.

2. THE IMPORTANCE OF PROBITY

Probity is the evidence of ethical behaviour in a particular process. Probity is defined as complete and confirmed integrity, uprightness and honesty. It contributes to sound processes that accord equal opportunities for all participants.

Processes must be conducted with probity in mind to enable all parties to deal with each other on the basis of mutual trust and respect. Adopting an ethical, transparent approach enables the business of government to be conducted fairly, reasonably and with integrity.

Probity rules must be clear, open, well understood and applied equally to all parties to the process.

It is accepted that conflicts of interest may arise in the course of business operations, especially during the decision making process. Possible conflicts are extremely varied but include pecuniary (financial) and non-financial interests, associations with external groups or bodies and non-direct personal interests. In carrying out one's duties, public officials must not allow themselves to be improperly influenced by family, personal or business relationships.

Maintaining a high level of probity in a local government's processes protects the reputation of not only the Council, but also the administration. This is important as a local government's activities involve the management and control of public money, and may be subject to considerable public scrutiny.

3. SCOPE OF THE AUDIT

The following areas of compliance were examined for the purpose of the Audit and specifically for the period 1 January 2014 to 31 August 2014. It should be noted that in some instances it was necessary to examine information outside that time frame:

- Policies – Policy/Procedures Manual;
- Delegations – Register of Delegations;
- Meeting Structure and Process (information recorded in the minutes of meetings);
- Financial Interest – Register for Disclosures at Meetings and in Returns; and
- Complaints – Register of Complaints and General Complaints.

This report identifies a number of matters but is not an exhaustive examination of all the compliance issues identified as a result of conducting the Probity Compliance Audit.

4. STATUTORY COMPLIANCE

The following is concluded from an examination of the registers and documents listed in the above scope of the Audit. Specific matters of concern identified in this probity audit are:

- The Council decision making framework including processes and practices;
- The standard and manner of general and statutory record keeping by the Shire, especially in relation to the retention of records, recording information in the minutes of meetings, registers such as the register of financial interest;
- Statutory compliance in relation to the standard of information recorded and meeting processes;
- Policy manual and council policies which are in need of review in order to upgrade and introduce additional policies to improve the quality of the Shire's policy structure;
- Delegations register and delegations which are in need of review due to the out of date information, legislative references and relevancy of a number of delegations; and

- Improvement of complaints handling policy and procedures to provide guidance in supporting a more effective and reliable system of handling complaints.

5. FINANCIAL INTEREST

5.1 Disclosure of Interests at Meetings

A register of financial interests is kept by the CEO of the Shire of York which contains a record of the disclosures made at council and committee meetings.

The register was examined to determine whether all written disclosures in relation to declarations made at meetings were contained in the register. The declarations recorded in the minutes of meetings were also examined to ensure that the required information was recorded in the minutes in accordance with the relevant provisions of the Act.

Statutory Requirements

Section 5.88(1) & (2) of the *Local Government Act 1995* (the Act) states:

A CEO is to keep a register of financial interests.

The register is to contain —

(a) the returns lodged under section 5.75 and 5.76; and

*(b) a record of the disclosures made under sections 5.65, 5.70 and 5.71, and
be in the form that is prescribed (if any).*

Regulation 28 of the *Local Government (Administration) Regulation 1996* (LGAR) states:

The register of financial interests is to be in a form that sets out —

(a) in relation to each disclosure made under section 5.65, 5.70 or 5.71 —

(i) the date of the disclosure; and

(ii) the nature of the interest disclosed; and

(b) in relation to each disclosure made under section 5.65 or 5.70 where the extent of the interest has also been disclosed, the extent of the interest; and

(c) in relation to each disclosure made under section 5.65 or 5.70 —

(i) the date of the meeting at which the matter will be or was discussed; and

(ii) the number and details of the matter's agenda item at the meeting.

The term member: *in relation to a council or committee, means a council member or a member of the committee.*

The term relevant person: *means a person who is either a member or a person to whom section 5.70 or 5.71 applies.*

Section 5.65(1) of the Act states:

A member who has an interest in any matter to be discussed at a council or committee meeting that will be attended by the member must disclose the nature of the interest —

(a) in a written notice given to the CEO before the meeting;

or

(b) at the meeting immediately before the matter is discussed.

(NB: The disclosure requirements in section 5.65(1) apply to financial interest and impartiality interest)

Issues Identified

The register of Financial Interest kept by the CEO was examined and was found to contain disclosures of interest made at meetings by council members and employees.

The register sets out the information in the required form in accordance with regulation 28 of the *Local Government (Administration) Regulations 1996*, except for details of the agenda item relevant to the declaration at the meeting. For example the register should set out the item number and details of the item in the following manner: "**Item 9.1.2 Proposed Scheme Amendment No. 53**". The Shire's register only provides for the item number in the following manner:

Disclosure of Financial Interests/ Interests Affecting Impartiality

Memorandum

To: Chief Executive Officer

From CR XXXXX

Date: 23/7/2014

Meeting (Ordinary/Special)	Date of Meeting	Item Number	Type of Interest (Financial/Impartial)	Nature of Interest
ORDINARY	23/7/2014	9.1.2	IMPARTIAL	PROXIMITY

The following example indicates how the information should be set out in the register:

Meeting (Ordinary/Special)	Date of Meeting	Item Number	Type of Interest (Financial/Impartial)	Nature of Interest
Ordinary	23/7/2014	9.1.2 Propose Scheme Amendment No.53	Financial (proximity)	Have an interest in Lot 41 York Rd that adjoins land affected by scheme amendment.

An impartiality interest is not a financial interest, but a proximity interest constitutes a financial interest where any land that is affected by the scheme amendment is in close proximity to land in which a council member has any estate or interest.

Elected member disclosures are recorded in the council minutes at Item 1.5 under “**Declarations of Interest that Might Cause a Conflict**”. The disclosure recorded at this point of the meeting usually contains:

- the elected member’s name;
- the type of interest; and
- the nature of the interest.

In most cases a two word description is used for the purpose of stating the nature of the interest. This is not considered to adequately describe the actual nature of the interest held in the matter by the elected member or employee.

It is also noted that the recording of the disclosure at the correct juncture in the meeting is considered not to reflect the proper timing required for the making of the disclosure. The Act provides that any disclosure, whether it is in writing or verbal, is to be disclosed immediately before the matter, in which the person has an interest, is discussed.

There is nothing preventing the disclosures from being recorded at the commencement of the meeting such as at item 1.5, but the disclosures also need to be made immediately before the matter is discussed.

The minutes indicate that the disclosures are not recorded immediately before the matter is discussed, but are disclosed during the course of the matter being dealt with by council. The manner in which the disclosures are recorded gives the impression that council members only disclosed, left and returned to the meeting immediately before and immediately after the resolution is passed by council.

It is council’s responsibility, when confirming the minutes, to ensure that the information recorded is clear, accurate, concise and a complete record of the business and decisions of the meeting.

Conclusion

The information in the recorded disclosures both at the meeting and in the register is not sufficient in relation to the description of the nature of the interest and is considered not to comply with section 5.65(1) of the Act in relation to disclosing the nature of the interest.

The manner and timing in which the disclosures of interest are recorded in the minutes does not clearly reflect that the disclosures were made immediately before the matter is discussed in accordance with section 5.65(1) of the Act.

Recommendation 1

That council members and key members of staff receive training on declarations of interest at council meetings, and the proper recording of the declarations in the minutes of those meetings.

Please note: Council members will receive training on these matters as part of the Governance Training required by the Governor’s Order.

Recommendation 2

The CEO amend the register of financial interests and disclosure forms to provide for the disclosure of information which complies with the Act.

5.2 Disclosure of Interest in Financial Interest Returns

The Register of Financial Interests kept by the CEO contains the completed primary and annual Returns of elected members and designated employees. The register also contains the primary returns of other persons who are committee members.

Financial interest returns are to be completed and kept as if they are pages in a book so that they present the entire story of the persons' interests for the period of office or employment with the local government.

The primary and annual returns were examined to determine whether all returns had been completed correctly and lodged within the required time.

Statutory Requirements

The term designated employee means —

- (a) a CEO; and
- (b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4; and
- (c) an employee who is a member of a committee comprising council members and employees; and
- (d) an employee nominated by the local government to be a designated employee;

The term relevant person means a person who is a council member or a designated employee.

Section 5.75 of the Act states:

A relevant person other than the CEO must lodge with the CEO a primary return in the prescribed form within 3 months of the start day.

A CEO must lodge with the mayor or president a primary return in the prescribed form within 3 months of the start day.

Section 5.76 of the Act states:

Each year, a relevant person other than the CEO must lodge with the CEO an annual return in the prescribed form by 31 August of that year.

Each year, a CEO must lodge with the mayor or president an annual return in the prescribed form by 31 August of that year.

Issues Identified

The dates stated for the return period in a number of annual returns is for the incorrect period. The return period for annual returns is for the financial year 1 July to 30 June immediately prior to the 31 August in the year for which the return is required to be lodged. For example, the current completed annual return period is from 1 July 2013 to 30 June 2014, completed returns and acknowledgement forms showed a return period of 1 July 2014 to 30 June 2015.

The register is missing annual returns that need to be completed for the interim return period between the day after the primary return "start day" and the current financial year ending 30 June.

For example, primary returns were also completed by "other persons" who are not elected members or employees of the local government. As other persons are not defined as "relevant persons" under the Act for the purpose of completing financial interest returns there is no statutory requirement for them to complete returns.

The other persons who completed returns are members of the committees that included Michael York, Yva Kane, Guy Lehmann, Ian Crombie, Donald Randell and Ronald MacKay.

Other issues that were identified included:

- an unsigned primary return;
- some returns with sections of the return not completed (left blank);
- an annual return was lodged 3 days late on 3 September;
- two returns had the return period left blank; and
- an employee's annual return still needs to be lodged.

Conclusion

The completion of financial interest returns in regard to the correctness of information such as dates and the manner in which the return is completed requires improvement. The standard of record keeping indicates that council members and staff lack some knowledge and understanding of timeframes applicable to returns including the legislative framework and good practice governing the process for proper completion of the returns.

Recommendation 3

That council members and key members of staff receive training on the recording of information in financial interest returns.

Please note: Council members will receive training on these matters as part of the Governance Training required by the Governor's Order.

Recommendation 4

That relevant council members and employees make the necessary corrections to time periods, dates, missing signatures and blank sections of their returns by amending each return or replacing the return with the correct information where applicable.

Recommendation 5

The CEO implements a process that checks for discrepancies in the manner in which information is completed in financial interest returns with any discrepancies being brought to the relevant elected member's attention for correction.

6. DECISION MAKING: MEETING STRUCTURE AND MINUTES

The Shire's ordinary council meetings are held on the third Monday in each month with special meetings being held when required. The Shire also has the following three committees that predominantly meet on a monthly basis:

- Finance, Risk & Audit Committee;
- Works Committee; and
- Heritage Advisory Committee.

The committees' membership comprises of council members and external persons or as referred to in the Act "other Persons".

6.1 Recording Information and Meeting Procedures

Whilst the order of business in the council agenda and minutes for council meetings is of a common standard format it is noted that a resolution is passed at the commencement of meetings to suspend standing order clause 3.2 – order of business. The order of business stated in the *Shire of York Local Law (Standing Orders) 1999* (the orders) does not entirely conform to the actual order of business followed at the meeting.

Statutory Requirements

Section 5.3 of the Act states:

Ordinary and special council meetings

A council is to hold ordinary meetings and may hold special meetings.

Ordinary meetings are to be held not more than 3 months apart.

Section 5.16 of the Act states:

Delegation of some powers and duties to certain committees

Under and subject to section 5.17, a local government may delegate to a committee any of its powers and duties other than this power of delegation.*

* Absolute majority required.

A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

Section 5.17 of the Act states:

Limits on delegation of powers and duties to certain

A local government can delegate —

to a committee referred to in section 5.9(2)(c), (d) or (e), any of the local government's powers or duties that are necessary or convenient for the proper management of —

(i) the local government's property; or

(ii) an event in which the local government is involved.

Issues Identified

The recording of information and procedures in the minutes raises some issues of concern. As previously identified under disclosures of interest at meetings the timing of disclosures and the details are in question. The following examples illustrate the types of issues identified in regard to procedures and the recording of information.

6.1.2 Dealing with Committee Recommendations by Council

Council passed resolutions at its Ordinary Meeting of 23 July 2014 that indicated it considered the minutes of its committees such as the Finance, Risk & Audit Committee (FRAC) as follows:

10. COMMITTEES OF COUNCIL

10.1 FINANCE, RISK & AUDIT COMMITTEE

FILE NO:

COUNCIL DATE: 23 July 2014

REPORT DATE: 18 July 2014

SENIOR OFFICER: Michael Keeble, CEO

AUTHOR: Helen D'Arcy-Walker, ESO

DISCLOSURE OF INTEREST: Nil

APPENDICES: Minutes of the Finance, Risk & Audit Committee

DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE CEO: *Michael Keeble*

RESOLUTION

230714

Moved: Cr Hooper

Seconded: Cr Boyle

"That Council:

Considers the Minutes of the Finance, Risk & Audit Committee held on 23 June, 2014, 30 June, 2014 and 7 July, 2014. ||

CARRIED: 6/0

It is not clear what is meant by "considers the minutes" and does not promote clarity in the motion put to council.

The committee recommendation should either be framed so that council may adopt each committee recommendation or be presented to council in the form of an "en-bloc" adoption of recommendation by council.

The following recommendations were made to Council by the FRAC and Works Committee, but no corresponding resolutions made by Council adopting the recommendations of the FRAC or Works Committee could be found in the ordinary council meeting minutes for 23 July or 18 August 2014.

This does not necessarily infer that the recommendations will not be dealt with by council at future meetings. However, unless the recommendations from the committees are carefully tracked there is concern that they may be overlooked entirely.

RESOLUTION

040614

Moved: Cr Boyle Seconded: Cr Duperouzel

*"That the Finance, Risk & Audit Committee Recommend to Council to:
Remove YRCC Membership from budget \$42,000 and review fees and charges with an emphasis on Sport and Recreation to include all Clubs e.g. Pony Club, Croquet etc. Review application of levy on Rates after budget adoption in preparation for 2015/16."*

CARRIED: 8-0

RESOLUTION

050614

Moved: Cr Hooper Seconded: Cr Wallace

*"That the Finance, Risk & Audit Committee Recommend to Council to:
Remove current fee of \$50 from 2014/15 budget. Propose YRCC membership no longer be charged."*

CARRIED: 8-0

WORKS COMMITTEE RECOMMENDATION

Moved: Cr Duperouzel Seconded: Cr Wallace

*"That the Works Committee recommend to Council that it:
1. Continue to maintain the eastern car park at the school for the community for a further 12 months until 30 June 2015."*

CARRIED 8-0

Conclusion

Council's consideration of the committee minutes is not sufficient to be accepted as a valid decision of Council. Recommendations must be adopted or rejected or amended as the matter requires. Clear direction must be given to enable the CEO to implement the resolution.

The framing of council motions requires improvement to ensure the CEO has a clear understanding of actions required to implement council's decisions.

Recommendation 6

Council members undertake training in council meeting process and statutory meeting procedure.

Please note: Council members will receive training on these matters as part of the Governance Training required by the Governor's Order.

Recommendation 7

That council ensures all of its motions are in a form that is clear in the intent. Each motion should stand alone and allow a person to understand exactly what decision has been made without the need to refer to any other document.

Recommendation 8

That key members of staff undertake training in report writing and the framing of recommendations that support clarity in council motions.

6.1.3 Granting approval for Retrospective Leave of Absence

Council may approve a request for leave of absence in advance for a meeting requested in the application.

Statutory Requirement

Section 2.25(3A) of the Act states:

*Leave is not to be granted in respect of —
a meeting that has concluded;*

Council passed the following resolution in regard to Item 2.4 at its ordinary council meeting of 16 June 2014:

Issues Identified

2.4 Leave of Absence Previously Approved

Cr Pat Hooper – Retrospective for Special Council Meeting held 29th May, 2014

RESOLUTION

010614

Moved: Cr Duperouzel

Seconded: Cr Smythe

“That retrospective approval be given to Cr Pat Hooper for the Special Council Meeting held on 29th May, 2014.”

CARRIED: 6/0

Conclusion

Section 2.25(3A) of the Act does not allow for retrospective approval to be granted for leave of absence. Leave should not have been granted in respect of a meeting that has concluded.

6.1.4 Review of Local Law (Standing Orders)

The Shire’s Local Law (Standing Orders) dates back to 1999 and there is no record of any review since that date.

The following is an extract from the Department’s Local Laws Register:

Dated: 15 November 1999.

The Common Seal of the Shire of York was hereunto affixed by authority of the Council in the presence of—

GORDON W. MARWICK JP, Shire President.
ELIOT FISHER JP, Chief Executive Officer.

Section 3.16 of the Act provides that a local law is to be reviewed within a period of 8 years from the day when the local law commenced to determine whether or not it considers that it should be repealed or amended.

Statutory Requirement

Section 3.16(1) of the Act states:

Within a period of 8 years from the day when a local law commenced or a report of a review of the local law was accepted under this section, as the case requires, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended.

Issues Identified

It is noted that council is suspending clause 3: order of business in its standing orders at each meeting as they do not reflect the current order of business for the meeting.

Conclusion

The Shire's Local Law (Standing Orders) is out of date and not entirely relevant for the purpose intended of providing meaningful standards and guidance for the conduct of meetings.

Recommendation 9

That council undertakes a review of its Local Law (Standing Orders) to reflect contemporary meeting processes, legislative changes and the manner in which the Council wishes to conduct its meetings.

6.2 Information Relevant to the Council Resolution

Council passed the following resolution at its ordinary meeting of 14 April 2014:

"That Council:

RESOLVE to:

- 1. Endorse the Shire President's response to a letter of complaint dated 4th April, 2014 as confidentially circulated to members.*
- 2. Appoint Fitz Gerald Strategies and if necessary Jackson Macdonald as consultants to provide Council with relevant professional advice by way of reporting to Council on its legal position and any responsibilities or obligations it may have in relation to the above-mentioned letter of complaint and other relevant matters.*
- 3. Adopt the consultant's brief as confidentially circulated to members.*
- 4. Expenditure for this matter to be allocated to Budgeted items Consultants, Governance.*

5. *Authorise the Shire President to liaise with the consultants and direct on this matter.*
6. *Council to seek guidance from LGIS.*

CARRIED: 6/0

Issues Identified

The resolution refers to documents that include the Shire President's response confidentially circulated to members and the consultant's brief that was also confidentially circulated to members.

Documents that form part of the minutes and are required to be kept as a record of the local government include:

- any notice papers and agenda relating to any council or committee meeting and reports and other documents that have been:
 - (i) tabled at a council or committee meeting; or
 - (ii) produced by the local government or a committee for presentation at a council or committee meeting and which have been presented at the meeting;

The record keeping requirements of a local government are set out in the *State Records Act 2000* and in the Shire's Recordkeeping Plan. Whilst a copy of the President's response was obtained from the Shire President upon request, a copy of the consultant's brief was unable to be found even after the President searched his personal records. Other council members could not recall retaining a copy and concluded that any circulated copies were collected after consideration of the item.

The following is an extract from the Shire's Recordkeeping Plan:

This Recordkeeping Plan applies to all of the Shire of York:

- Employees;
- Contractors;
- Organisations performing outsourced services on behalf of the Shire of York; and
- Elected members.

NOTE: The policy approach of the State Records Commission in monitoring the recordkeeping obligations in respect to Local Government elected members is:

"In relation to the recordkeeping requirements of Local Government elected members, records must be created and kept which properly and adequately record the performance of member functions arising from their participation in the decision making processes of Council and Committees of Council.

This requirement should be met through the creation and retention of records of meetings of Council and Committees of Council of local government and other communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business.

Local governments must ensure that appropriate practices are established to facilitate the ease of capture and management of elected members' records up to and including the decision making processes of Council."

POLICY STATEMENT

All Elected Members, staff and contractors will create full and accurate records, in the appropriate format, of the Shire's business decisions and transactions to meet all legislative, business, administrative, financial, evidential and historical requirements.

Conclusion

As these documents were not retained in the Shire's recordkeeping system it is considered this constitutes non-compliance with the *State Records Act 2000* and also does not adhere to the Shire's Recordkeeping Plan.

Recommendation 10

That Council members and key members of staff receive training in regard to the Shire's recordkeeping plan for recording and retaining information and relevant provisions in the *State Records Act 2000* regarding the keeping of records.

Please note: Council members will receive training on these matters as part of the Governance Training required by the Governor's Order.

6.3 Committees of Council

Council has established three committees under the provisions of Part 5 Division 2 of the Act.

The three committees are:

1. Finance, Risk and Audit Committee;

Membership consists of:

Cr Matthew Reid (chairperson)

Cr Tony Boyle;

Cr Denese Smythe;

Cr Mark Duperouzel

Cr Pat Hooper;

Cr David Wallace;

Mr Guy Lehmann;

Ms Yva Kane

2. Works Committee;
 Membership consists of:
 Cr Matthew Reid (chairperson) Cr David Wallace
 Mr Mike Gill Mr Ron MacKay
 Mr Ian Crombie Mr Don Randell
 Cr Mark Douperouzel Cr Tony Boyle
3. Heritage Advisory Committee.
 Membership consists of:
- Professor Duncan Steed (chairperson); Mr Simon Neville;
 - Mr Frank Ralph; Ms Lois Ralph;
 - Cr Matthew Reid; Ms Cathy Clarke;
 - Ms Liz Christmas; Ms Cheryl Russo;
 - Cr Denese Smythe; Ms Sandra McKenzie

According to the Shire's Terms of Reference for each committee they are to operate as advisory committees only making recommendations to council and have no delegated powers.

None of the committees have any management functions and cannot be involved in management processes or procedures.

The Terms of Reference for each committee states under "powers of Committee" that:

"The committee does not have executive powers or authority to implement actions in areas over which the CEO has legislative responsibility and does not have any delegated financial responsibility. The committee does not have any management functions and cannot involve itself in management processes or procedures"

Statutory Requirements

Section 5.8 of the Act states:

Establishment of committees

A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.*

* Absolute majority required.

Section 5.9 of the Act states:

Committees, types of

In this section —

other person means a person who is not a council member or an employee.

A committee is to comprise —

- (a) council members only; or*
- (b) council members and employees; or*
- (c) council members, employees and other persons; or*
- (d) council members and other persons; or*
- (e) employees and other persons; or*
- (f) other persons only.*

Section 5.59 of the Act states:

Terms used

In this Subdivision, unless the contrary intention appears —

extent, in relation to an interest, includes the value and amount of the interest;

member, in relation to a council or committee, means a council member or a member of the committee;

relevant person means a person who is either a member or a person to whom section 5.70 or 5.71 applies.

Section 5.60 of the Act states:

When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

(a) the relevant person;

Section 5.100 of the Act states:

A person who is a committee member but who is not a council member or an employee is not to be paid a fee for attending any committee meeting.

Where —

a local government decides that any person who is a committee member but who is not a council member or an employee is to be reimbursed by the local government for an expense incurred by the person in relation to a matter affecting the local government; and

a maximum amount for reimbursement of expenses has been determined for the purposes of section 5.98(3)(b), the local government must ensure that the amount reimbursed to that person does not exceed that maximum.

Issues Identified

Resolutions of the committees were examined and the following resolutions were passed by the Finance, Risk and Audit Committee (FRAC) on 8 September 2014:

RESOLUTION

FRAC 030914

Moved: Cr Hooper

Seconded: Cr Boyle

“That the Committee:

1. Investigate the attached summary, which were areas highlighted in the report from the Auditors to ensure that it was Council Business conducted by the former CEO;

2. Determine what action is required; and

3. If further action is required how this will be funded.”

CARRIED: 6/0

RESOLUTION
FRAC 080914

Moved: Cr Hooper

Seconded: Cr Wallace

"That the Committee considers the process that should be used to determine how sponsorship is disseminated between groups/organisations and that the process is advertised for public comment for a period of 14 days."

CARRIED: 6/0

RESOLUTION
FRAC 090914

Moved: Cr Wallace Seconded: Cr Hooper

"That this Committee instruct the Executive to investigate compliance with the terms and conditions of the Tavern Licence issued to the York Recreation and Convention Centre and report the findings back to the next meeting of this committee."

CARRIED: 6/0

The above FRAC committee resolutions are not framed in terms of *"That the Committee recommends that Council"* as are most other committee recommendations that comply with its terms of reference which states: *"to report to Council and provide appropriate advice and recommendations on matters relevant to its term of reference in order to facilitate informed decision making by Council in relation to the legislative functions and duties of the local government that have not been delegated to the CEO"*. The above decisions are clearly recorded as decisions made by the committee.

The terms of reference for the FRAC committee did not provide for the committee to have delegated authority and therefore it is not permitted to make its own decisions, other than to make recommendations to Council.

Furthermore, in the case of Resolution 090914 the FRAC committee instructed the executive to perform a management function.

The committees' terms of reference prepared by the Shire also states: *"Council may resolve to *pay remuneration, reimburse expenses and /or provide facilities to Members of Advisory Committees pursuant to the Local Government Act 1995"*.

***Emphasis added**

Council members are entitled to meeting fees or an annual fee for attendance at council or committee meetings. A local government cannot pay any remuneration to other persons or employees who are members of a committee.

However, section 5.100 of the Act does provide for the reimbursement of an expense for any person who is not a council member or employee and section 5.101 of the Act also allows for employee members of committees to be reimbursed for an expense, but not the payment of a meeting attendance fee.

It is understood that no community committee member or employee has been paid any remuneration to date in performing their role as a member of a committee.

Conclusion

The FRAC is making its own decisions and performing a management function which involves the committee in management processes and procedures. This is outside the committee's terms of reference and beyond the committee's statutory powers. Any decision made by the three committees is contrary to the decision making process provided for in the Act and does not constitute a valid decision that lawfully empowers the administration to implement.

While the Shire has terms of reference in place for each committee it is considered that there is a lack of understanding or appreciation by some members of the committees and employees as to a committees' statutory powers and role, and function in a local government's decision making framework.

Irrespective of the underlying reasons for this situation, it is considered this demonstrates there is a need for each member of a committee to have a clear appreciation of their statutory obligations and for staff to have an effective process for checking the quality, and correctness of the minutes to ensure compliance with the provisions of the Act.

Recommendation 11

That council review its committee structure and each committees' terms of reference to ensure that its function and operation complies with the Act and that all members of committees are made aware of their statutory obligations, and the proper role that committees are to play in the decision making process.

Recommendation 12

As part of the review undertaken, in accordance with recommendation 13, that council consider the option of disbanding its advisory committees, except for its FRAC, and hold two council meetings per month to deal with matters previously dealt with by the committees.

7. COMPLAINTS

A complaints register is maintained by the Complaints Officer of the Shire of York as required by section 5.121(1) of the Act. This register is to contain information in regard to complaints of a minor breach that are made to the Local Government Standards Panel about council members and where the Panel makes a finding that results in an order in accordance with section 5.110(6)(b) or (c) of the Act.

The Shire also has a complaints policy that outlines the Shire's position and provides some guidance in the handling of general complaints. The policy is dated "*Policy Final Sept 2012*" and was originally introduced in June 2006.

7.1 Complaints Register

Statutory Requirements

Section 5.121 of the Act states:

Register of certain complaints of minor breaches

The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in action under section 5.110(6)(b) or (c) of the Act.

The register of complaints is to include, for each recorded complaint —

- (a) the name of the council member about whom the complaint is made; and*
- (b) the name of the person who makes the complaint; and*
- (c) a description of the minor breach that the standards panel finds has occurred; and*
- (d) details of the action taken under section 5.110(6)(b) or (c).*

Issues Identified

The following is an extract from the Standard's Panel findings:

<i>Description of minor breach the Panel found has occurred</i>
<p>[In effect] That at the Shire's Ordinary Council Meeting 17 September 2012 Cr made certain announcements and in so doing:</p> <ul style="list-style-type: none"> (a) breached clause 8.4(2) of the <i>Shire of York Standing Orders Local Law</i>, by using offensive or objectionable expressions in reference to either of the Complainants or both of them, a minor breach by virtue of regulation 4 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>; (b) breached regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> by making improper use of his office as Councillor of the Shire to cause detriment to the Complainants; and (c) breached regulation 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> in that he undertook a task that contributes to the administration of the Shire which had not been authorised by the Shire or the CEO of the Shire – namely, he purported to determine the manner in which the Shire would deal with access requests by the Complainants under the <i>Freedom of Information Act 1992</i>.

The Shire's complaints register contains the required information in regard to:

- the name of the council member about whom the complaint is made;
- the name of the person who made the complaint;
- details of the action taken under section 5.110(6)(b) or (c).

Information concerning a description of the minor breach that the standards panel finds has occurred is recorded in the complaints register as "minor".

Conclusion

It is concluded that the information recorded in the Shire's complaints register in regard to a description of the minor breach is insufficient and does not meet the required description in accordance with section 5.121(2)(c) of the Act.

Recommendation 13

That the Shire's complaints officer reviews the information contained in the complaints register regarding the description recorded for a minor breach and amends the information to ensure that it complies with section 5.121(2)(c) of the Act.

7.2 Shire's General Complaints Handling Process

The Shire has a policy in place for dealing with general complaints. Complaints policy No.4.2 states that the purpose of the policy *is to establish a Shire position about complaints received and the approach to be taken in their resolution.*

The policy defines a complaint as:

"an expression of dissatisfaction about:

A decision of the Council or Shire staff;

*the standard of quality of a Shire service, action or lack of action; or
the behaviour of Shire representatives".*

Statutory Requirements

There are no statutory requirements or provisions that relate to the handling of general complaints by local governments. It is a matter of best practice that a local government maintains high standards in dealing with stakeholder or customer complaints.

Both the Department of Local Government and Communities, and the Office of the Ombudsman WA recommend that local governments adopt an effective complaints handling process which includes relevant policies and procedures.

Issues Identified

It is understood that the Shire has recently engaged a consultant to review existing council policies.

The consultant has referred to the need to develop a draft complaints policy as it appears that this area of policy has been identified as requiring more immediate attention.

It is noted that the council's current policy does not make reference to any guidance on how to deal with complaints made against the CEO.

Council should satisfy itself that the policy it has in place deals with complaints in a fair and transparent process. That process should also specifically contemplate scenarios in which a complaint is made against the CEO whether by a councillor, an officer or somebody else and then detail the manner in which such a complaint is to be dealt with.

In certain circumstances, these provisions will be a very effective shield against, for example, accusations an investigation was not conducted impartially or was not sufficiently thorough, or against an accusation the correct procedure was not followed.

Conclusion

Without effective guidance, the Council is left relatively unprepared to deal with a complaint of this nature.

Recommendation 14

That council gives priority to the preparation of a new draft comprehensive complaints policy that is to contain guidance on the process and procedure to be followed when dealing with complaints made to the Shire.

8. DELEGATIONS

A register of delegations made by council is kept by the CEO which indicates that it was last updated on 17 September 2012. It is understood that the Shire is conducting discussions with the consultant that is engaged to review the Shire's policy manual in regard to undertaking a review of the delegations.

Statutory Requirements

Section 5.46 of the Act states:

The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.

At least once every financial year, delegations made under this Division are to be reviewed by the delegator.

A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Issues Identified

The instrument of delegation in a number of instances is not sufficiently clear and does not provide enough detail to determine the exact powers that are being delegated and under which particular piece of legislation the delegation is made.

For example, council delegation DE17 Appointment of Authorised Officers – Food Act as set out below states that council resolved to approve the delegation of the power to appoint authorised officers under the provisions of the *Food Act 2008* and the *Food Regulations 2009*.

DE17 Appointment of Authorised Officers – Food Act

Legislation

5.42. Delegation of Some Powers and Duties to CEO

The Council resolved that the following delegations be approved:

TO: Chief Executive Officer

DELEGATIONS: Appointment of authorised officers under the provisions of the Food Act 2008 and Food Regulations 2009.

GUIDELINES OR CONDITIONS: Nil

The delegation does not state any reference to the provision that provides the power under the *Food Act 2008*. Section 122 of the *Food Act 2008* provides the power to appoint authorised persons, but does not allow for that power to be delegated to the CEO.

The following delegation is considered unnecessary or redundant as the power to speak on behalf of the local government is already provided in section 5.41(f) of the Act which states that one of the functions of the CEO is to speak on behalf of the local government, but only if the mayor or president agrees. It is noted that the delegation also does not refer to the condition that the CEO's exercise of that function is subject to the mayor's or president's agreement.

DE2 Power to Speak on Behalf of Local Government

Legislation

Local Government Act 1995

5.41. Functions of CEO

TO: Chief Executive Officer

DELEGATIONS: The power to speak on behalf of the local government.

GUIDELINES OR CONDITIONS:
Nil.

Council's delegation DE8 – Approval of Strata Applications/Certificates as set out below refers to the power to approve strata title applications under section 23 of the *Strata Titles Act 1985*. Section 23 was deleted by amendment No.24 of 2011. The relevant head of power is now found in the *Building Act 2011*, section 50, 54 and *Building Regulations 2012*, regulation 4.

DE8 Approval of Strata Applications/Certificates

Legislation

Local Government Act 1995

5.42. Delegation of Some Powers and Duties to CEO
Strata Titles Act 1985

23.4 & 23.5 Certificate of Local Government

The Council resolved that the following delegations be approved:

TO: Chief Executive Officer

The Chief Executive Officer may sub delegate this approval to the appropriate officer eg: Manager of Planning Services.

DELEGATIONS: Approve strata title applications subject to the building/s being in compliance with all relevant building and planning controls.

GUIDELINES OR CONDITIONS:

Excludes modifications to existing buildings.

Conclusion

The Shire's register of delegations contains a number of delegations that are no longer valid, unnecessary or out of date. The council and CEO being the delegators of legislative powers have not complied with section 5.46(2) of the Act by not reviewing the delegations they have made at least once a year.

Recommendation 15

That council and the CEO give priority to undertaking a review of delegations that includes updating the register by amending out of date delegations and deleting invalid or unnecessary delegations.

9. COUNCIL POLICIES

The Shire has a policy manual that was considered by council at its ordinary meeting of 18 August 2014. Prior to that, the policy manual in place was effective from September 2012. The council passed the following resolution at its meeting of 18 August 2014:

RESOLUTION 090814

Moved: Cr Smythe

Seconded: Cr Hooper

That Council refer the following Policy Manuals to the Finance, Risk & Audit Committee for consideration and review:

*Policy Manual – Version 1 – Existing Policies
Policy Manual – Version 2 – New Policies.*

CARRIED: 5/0

The council has undertaken to engage a consultant as from 3 September 2014 to review the Shire's existing policies. It has also sought policy advice from its committees.

Statutory Requirements

Section 2.7(2) of the Act states:

*The council is to —
determine the local government's policies.*

Issues Identified

Council appears to have recognised that its current policies which have been in place since September 2012 are in need of review. There are also indications that some policies are inadequate or not available to deal with matters requiring council's attention.

The following council resolutions passed at its ordinary meeting of 19 May 2014 reflect that up until August 2014 the approach on dealing with council policy was fragmented.

RESOLUTION
270514

Moved: Cr Boyle

Seconded: Cr Duperouzel

"That Council:

1. Request the Works Committee develop a policy and strategy on town verge vegetation management."

CARRIED: 6/0

RESOLUTION
260514

Moved: Cr Duperouzel

Seconded: Cr Boyle

"That Council:

1. Request the proposed Works Committee develop a policy on roadside vegetation management in rural areas;

2. Invite the Department of Environmental Regulation, Roadside Conservation Commission and other interested stakeholders to a workshop session to discuss opportunities and expectations."

CARRIED: 6/0

Other council resolutions, comments in reports and public question time responses as indicated below demonstrate that the Shire's policy development is an important matter that requires prompt attention.

Question Taken on Notice – Council Meeting – 19 May 2014

There are two types of event policies, one dealing with regulatory matters and the second dealing with financial support. The Application for Public Events Policy 13.1 was reviewed and adopted by Council on 16 May 2011.

Please note the Events Support Policy was adopted February 18 2013.

It was noted that there was conflict of the two policies and therefore a review was recommended. This review is yet to be undertaken and therefore compliance is in accordance with the Department of Health, as attached. Resulting in the plans that you have previously referred, being at the Council's discretion.

OCM 23 July 2014

Policy Implications:

Council has an old '2005 York Roadscape Plan' and 'Road Development Standards' which do not specify a Shire practice on spraying.

There are various precedent setting decisions and work practices in place such as all sealed road verges are sprayed to the width of the drain annually; residents may register their verge to not be sprayed provided they undertake to maintain it and similar. A comprehensive policy by Council setting clear guidelines and community expectations would be helpful.

OCM 15 September 2014

Policy Implications:

Council's policies are all under review and enhancement.

RESOLUTION

220914

Moved: Cr Hooper

Seconded: Cr Wallace

—That the Council Endorse and Receive the Recommendation of the FRAC Committee:

—That the Finance, Risk and Audit Committee endorses the actions of staff in setting up the Policy and Procedures with the assistance of the Local Government Insurance Service for Risk Management, as attached.

CARRIED: 6/0

Conclusion

The Shire's current policies are not fully supporting an effective council decision making process. It is considered that the approach in developing and reviewing policies is in need of clear direction and co-ordination. This process should be expedited in order to provide an efficient and effective policy structure for the Shire.

Recommendation 16

That council give priority to reviewing its policy manual and policies to support a high standard of direction and guidance in its decision making processes.

10. CONCLUSIONS

It is considered that the main areas of concern identified in this probity audit relate to:

- The Council decision making framework including meeting processes and practices, especially in regard to statutory compliance implications, and the standard of information recorded in the minutes of meetings;
- The standard and manner of general and statutory record keeping by the Shire, especially in relation to the retention of records, recording information in the minutes of meetings and in registers such as the register of financial interests;
- Policy manual and council policies which are in need of review in order to upgrade and introduce additional policies to improve the quality of the Shire's policy structure;
- Delegations register and delegations which are in need of review due to the out of date information, legislative references and relevancy of a number of delegations; and
- Improvement of complaints handling policy and procedures to provide guidance in supporting a more effective and reliable system of handling complaints.

There are concerns with the decision making framework including processes and practices as there were issues identified with statutory compliance in the meeting process, the manner in which information is recorded in the minutes, the operation of committees and interaction with council in supporting, and dealing with the decision making process. This also includes the procedure followed by council in dealing with the recommendations from the committees and the interaction between committees and council in the decision making process.

There is an indication that council, committee members and key staff need to have a clear appreciation of the statutory meeting practice and procedures and the ability to identify and raise issues they may have about the quality and correctness of the minutes to ensure compliance with the provisions of the Act.

Further training will, not only assist council members, but also relevant staff to improve the correctness of information recorded for declarations at meetings and in financial interest returns. This information relates to dates and the manner in which the return is completed. It is concluded that the standard of record keeping indicates that council members and staff lack knowledge and understanding of timeframes applicable to returns including the legislative framework and good practice governing the process for proper completion of the returns.

Council and committee members require further training on declarations of interest, meeting practice and procedure, the role and function of committees, and council in the decision making framework.

A further concern is that important documents were not retained in accordance with the Shire's recordkeeping plan and *State Records Act 2000* which also demonstrates the need for training in this area.

Council staff and in particular key members of staff, require training in areas of declarations of interest, recording declarations of interest in the minutes of meetings, report writing including the framing of recommendations and record keeping, and the retention of information.

The last date that delegations were reviewed and the identification of unnecessary and irrelevant delegations indicates that the delegations register is overdue for a thorough review.

A review of council policies is an added priority that requires council's prompt attention, especially its complaints handling policy, which requires procedures and guidance in dealing with complaints made against the CEO.

The probity audit was not an exhaustive examination of all matters. Many of the matters on their own may not be serious issues. However, when considered together, the extent of non-compliance with the Act and concerns with procedures and practices at both council and officer level raises some concerns with the governance processes at the Shire.

Recommendation 17

That the Director General of the Department of Local Government and Communities presents the Shire of York Probity Compliance Audit Report 2014 to the Council of the Shire of York for its comment and response, which is to include what action it proposes to take in implementing the report recommendations.

Please note that since the completion of this report the Minister for Local Government, by Governor's Order suspended the council, requiring each elected member of the council to undertake training which now supersedes the recommendations included in this report relating to elected member training.

