



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 19 DECEMBER, 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
HELD ON MONDAY, 19 DECEMBER 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 Tony Boyle, 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 Boyle welcomed Sgt Mark Gubyani, OIC York Police and Justin Corrigan, CESM – FESA to the meeting.
- 1.4 Announcement of any Declared Financial Interests
Cr Brian Lawrance – Item 9.1.4 – Financial
Jacky Jurmann - Item 9.2.7 – Proximity
Cr Mark Duperouzel - Item 9.6.1 – Impartiality
Cr Denese Smythe - Item 9.6.1 - Impartiality

2. ATTENDANCE

- 2.1 Members
Cr Tony Boyle, Shire President, Cr Roy Scott,
Cr Brian Lawrance; Cr Pat Hooper; Cr Mark Duperouzel; Cr Denese Smythe
- 2.2 Staff
Ray Hooper, Chief Executive Officer, Gordon Tester; Manager of Health and Building Services; Jacky Jurmann, Manager Planning Services; Glen Jones, Manager Works & Projects; Gail Maziuk, Finance Officer/Project Co-Ordinator; Helen D'Arcy-Walker, Executive Support Officer
- 2.3 Apologies
Nil
- 2.4 Leave of Absence Previously Approved
Nil
- 2.5 Number of People in Gallery at Commencement of Meeting
There were 13 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
An apology was given from the CEO, Ray Hooper – due to prior commitments previous public questions taken on notice have not been addressed.
- 3.2 Written Questions
Nil

4. PUBLIC QUESTION TIME

Mrs R Paton
30 Bouverie Road
York WA 6302

Question 1:

Will Council consider postal voting for future elections?

Response:

Council will consider.

Question 2:

What is the total cost of legal fees York ratepayers have funded for 2011?

Response:

Taken on Notice

Question 3:

Why was there no Voice of York in the last Community Matters?

Response:

Taken on Notice

Mr T Oliver
43 Greg Street
York WA 6302

Question 1:

In regards to Item 9.1.1 on the Agenda – have the Councillors received a full briefing with this issue?

Response:

Yes

Mr S Saint
87 Avon Terrace
York WA 6302

Question 1:

Is there any particular reason why my question reference the opening of the Town Hall taken on notice at the last Ordinary Council meeting has not been answered?

Response:

CEO has had a heavy work load – an apology has been given.

Question 2:

Was the letter to the Australia Press Council a Council decision?

Response:

Yes

Question 3:

When did it get voted on?

Response:

At a Forward Planning meeting.

Question 4:

Is it correct the Council will not be using the Community Matters newspaper to publish the Voice of York until issues with the Australian Press Council are resolved and what are those issues?

Response:

Taken on Notice

Question 4(a):

Does Council understand that whether they agree or disagree with the contents of the letters to the Editor page, or whether the Editor should or shouldn't have printed letters, that the Community Matters newspaper has lost a considerable amount of financial support from the Shire of York and that this could have an adverse effect on the newspaper which could ultimately effect the members of the public.

Response:

Taken on Notice

Question 4(b):

Is Council aware of the fifth line of your Values Statement?

Response:

Taken on Notice

Ms T Richardson
113 Newcastle Street
York WA 6302

Question 1:

Is Council aware that once a Business Name is no longer registered it becomes available for purchase?

Response:

Yes

5. APPLICATIONS FOR LEAVE OF ABSENCE

Cr Mark Duperouzel

**RESOLUTION
011211**

Moved: Cr Scott

Seconded: Cr Hooper

“That Council grant a leave of absence to Cr Mark Duperouzel for the Special Council Meeting scheduled for 9th January, 2012.”

CARRIED: 6/0

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Minutes of the Ordinary Council Meeting held November 21, 2011

Confirmation

**RESOLUTION
021211**

Moved: Cr Hooper

Seconded: Cr Scott

“That the Minutes of the Ordinary Council Meeting held November 21, 2011 be confirmed as a correct record of proceedings subject to Public Questions Taken on Notice being answered and included in the next Ordinary Council Meeting Agenda.”

CARRIED: 6/0

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Cr Boyle expressed his thanks to Bernie Finestone for her efforts in organising the Children’s Christmas Party held on Saturday, December 10, 2011.

Cr Boyle also wished to thank Carol Littlefair and Samantha Good co-curators of the Centenary of the York Town Hall Exhibition which opened on Tuesday, 29th November, 2011 exactly 100 years from the opening day in 1911.

9. OFFICER’S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Retrospective Planning Application – Rainwater Tank at 43 Grey St, 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: GR5.9840, P729
COUNCIL DATE: 19 December 2011
REPORT DATE: 5 December 2011
LOCATION/ADDRESS: Lot 800 (43) Grey Street, York
APPLICANT: J Oliver
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES: 1 – Location and Site Plan
2 – Photograph's
DOCUMENTS TABLED: Nil

Summary:

Council is in receipt of a retrospective planning application to site a rainwater tank and associated screening in the front yard of 43 Grey Street, York.

The application proposes a variation to the provisions of the Residential Design Codes to locate the rainwater tank within the front building setback area.

It is recommended that the application be refused for the reasons outlined in this report.

Background:

On 19 September 2011, Council's Compliance Officer wrote to the owners of the subject property advising that the rainwater tank that had been installed in the front yard without prior planning approval. The owner was instructed to remove the water tank within 28 days and contact the Planning Section for advice on the appropriate location of water tanks.

Mr Oliver, in response, attended the Council offices and spoke with Council's Planning Manager regarding the letter and was advised that the location of the tank was undesirable and approval may set an undesirable precedent from a planning point of view. Mr Oliver was advised that he could submit a planning application for determination by Council.

Further correspondence was received from Mr and Mrs Oliver on 13 October 2011 outlining the discussions held at the Shire office and advising that further works, including fencing on the front boundary, had been undertaken to screen the tank from the street and advising that a 'creeper' would be planted to further screen the tank from the street. Mr Oliver also advised that he was considering the submission of a planning application.

In response, further correspondence was sent to Mr and Mrs Oliver on 20 October 2011 advising that a planning application was requiring to be submitted under the provisions of the York Town Planning Scheme No. 2 to vary the provisions of the Residential Design Codes and that he had the option to either apply for planning consent or to remove the tank. Mr Oliver was also advised that Council's Planning Manager was unlikely to support the application on planning grounds and that if Council refused the application that the tank and associated works would need to be removed.

Further correspondence was received from Mr and Mrs Oliver on 31 October 2011, in response, requesting that the order to remove the tank be delayed as the tank is full and that he would need to use the water, which would take approximately 3 months. Mr Oliver was also unfortunately misinformed regarding the status of the Residential Design Codes that area a State Policy and not a guideline.

The planning application for the location of the rainwater tank in the front yard was finally received on 7 November 2011.

Consultation:

As can be ascertained from the Background section of this report, extensive consultation has occurred with the owners of the subject property.

Following receipt of the planning application, the application was advertised in accordance with the provisions of the York Town Planning Scheme No. 2. No submissions were received regarding the proposal.

The applicant has been advised in writing of the Council meeting.

Statutory Environment:

York Town Planning Scheme No. 2 ('the Scheme')

The site is zoned Residential R10/30 under the provisions of the Scheme. The objectives of the zone are:

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

The site contains an existing dwelling and associated structures, including other rainwater tanks. The rainwater tank and associated screening is best defined as ancillary development that is permissible under the Scheme. The proposal is consistent with the objectives of the zone in that the dwelling will remain the predominant form of development on the site.

Clause 4.2 of the Scheme outlines the permitted development (i.e. development that does not require a planning application). Subclause (b) allows the erection of ancillary structures without approval under the Scheme unless the proposal requires the exercise of discretion by the local government to vary the provisions of the Residential Design Codes (R-Codes). The location of the rainwater tank in the front yard and the erection of screening exceeding 1.2 metres on the front boundary require variation of the provisions of the R-Codes and therefore requires planning approval under the Scheme. (Refer later in the report for further information regarding the provisions of the R-Codes.)

The application has been assessed in accordance with Clause 10 of the Scheme as follows:

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

The scheme objectives relevant to this application are:

- To secure the amenity health and convenience of the Scheme Area and the residents thereof;
- To make provisions as to the nature and location of buildings and the size of lots when used for certain purposes;
- The preservation of places of natural beauty, of historic buildings, and objects of historical and scientific interest;

- To make provision for other matters necessary or incidental to Town Planning and housing; and
- To recognise the special historic significance of the town of York to Western Australia and to preserve this through the implementation of Design Guidelines.

The proposal is not consistent with the objectives of the scheme, in that the placement of the rainwater tank in the front yard will create an undesirable precedent for the location of rainwater tanks in York, particularly within the townsite. Although not heritage listed, the dwelling is an older-style structure that reflects local architecture and could be included in the Municipal Inventory, such as a number of other nearby dwellings that are heritage listed.

- (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 lot.

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

Not applicable.

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

Not applicable.

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

State Planning Policy 3.1 – Residential Design Codes (R-Codes)

The R-Codes is a state planning policy made under section 26 of the *Planning and Development Act 2005* and provides the basis for the control, through local government, of residential development throughout Western Australia. The Shire must have regard to the policy when considering applications for residential development.

Clause 6.2 of the R-Codes sets out the objectives and provisions for streetscape.

The objective of Clause 6.2.1 is to ensure that buildings are setback from the street boundaries an appropriate distance to ensure they contribute to the desired streetscape; provide adequate privacy and open space for dwellings; and allow safety clearances for easements for essential service corridors.

The acceptable development provision requires that buildings are to be setback from the primary street in accordance with table 1, which in this case is 7.5m for the R10 coding, or corresponding to the average of the setback of existing dwellings on each side, or in accordance with figure 1a, reduced by up to 50 per cent provided that the area of any building, including a carport or garage, intruding into the setback area is compensated for as outlined in the R-Codes. In this case, there is a dwelling on the north, which is set back greater than 7.5m and a vacant lot on the south. Therefore, the required building setback is 7.5m (although the existing dwelling is setback less than 7.5m) under the R-Codes.

Clause 6.2.2 allows minor incursions of 1 metre into the street setback area, but does not specify rainwater tanks as a minor incursion. Therefore, this clause does not apply.

Clause 6.2.5 states that front walls and fences, including in this case the screening for the rainwater tank, within the primary street setback area that are visually permeable 1.2 metres above natural ground level. The objectives of this provision are to promote surveillance and enhance streetscape. It is considered that the rainwater tank and associated screening does not promote surveillance or enhance the streetscape.

Clause 6.10 outlines the objectives and provisions for incidental development, of which a rainwater tank could be considered to be incidental development.

Clause 6.10.2 relates to external fixtures and permits external fixtures that do not detract from the streetscape or the visual amenity of residents or neighbouring properties. The acceptable development provision A2.3 state that external fixtures cannot be visible from the primary street; must be designed integrally with the building; and must be located so as not to be visually obtrusive. The proposal does not meet any of the acceptable development requirements and therefore must be considered on its merits through the planning application process. Due to the rainwater tank being visible from the primary street, it is considered that the rainwater tank is visually obtrusive and is not designed integrally with the building.

The provisions of the R-Codes enables Council to exercise discretion in considering applications that do not meet the acceptable development provisions. However, the assessment of the proposal must have regard to the considerations, standards and requirements provided in the codes.

This assessment demonstrates that the proposal does not meet the objectives, standards and requirements provided in the R-Codes and therefore, should not be supported.

- (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.*

Local Planning Policy – Restricted Building Materials Area

The subject site is located within the Restricted Building Materials Area, which aims to provide special guidelines for the construction of dwellings in specific areas of the York townsite to ensure that new development is sympathetic. Although this Policy does not apply to Class 10 buildings, it is an important consideration with respect to the impact on streetscape of the development.

Local Planning Policy – Retrospective Planning Applications

Council at its Ordinary Meeting held on 18 July 2011 resolved to adopt the Local Planning Policy – Retrospective Planning Applications. The Policy provides guidelines on the assessment and determination of applications and fees.

This application is retrospective for the variation of the provisions of the Residential Design Codes for the installation of a rainwater tank in the front yard of the subject property that has been carried out without prior planning approval. The Policy states that the application is to be treated as if they were new proposals for planning approval.

The assessment of this application has been conducted in accordance with the Policy.

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

The lot is not reserved under the Scheme.

- (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 or located within a heritage precinct.

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

The rainwater tank and associated screening located in the front yard of the site is not compatible with the site or setting, and detracts from the dwelling.

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

No social issues identified.

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

The site is not identified as having any particular cultural significance.

- (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.*
The natural environmental will not be affected by the development.
- (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 affected by any natural constraints.
- (n) *The preservation of the amenity of the locality.*
The proposal will detrimentally affect the amenity of the locality that is identified as an area of local architectural importance as it is identified in the Restricted Building Materials Area.
- (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 rainwater tank has a capacity of 20,000 litres and is a large green plastic structure approximately 2 metres in height. The bulk and scale of the tank detracts from the streetscape and the appearance of the dwelling.
- (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.*
The location of the tank does not impact on the access to the site.
- (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.*
Not applicable.
- (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.*
Scheme water is available to the site.
- (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.*
Not applicable.
- (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.*
The applicant has commenced landscaping in an attempt to screen the tank from the street and has erected a 1.8 metre lattice screen on the front boundary that he intends to cover by planting a 'creeper'. This approach is considered to detract from the appearance of the dwelling and impact on the streetscape.
- (w) *Whether the proposal is likely to cause soil erosion and degradation.*
Proposal unlikely to cause soil erosion or degradation.
- (x) *The potential loss of any community service or benefit resulting from the planning consent.*
No community service or benefit affected by the proposal.

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

The owner has made several submissions to Council regarding this issue, as outlined in the 'background' section of this report.

No public submissions were received regarding this proposal.

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

No impacts identified.

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

Not applicable.

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

The approval of this application to locate the rainwater tank in the front yard will create an undesirable precedent, not only within the Restricted Building Materials area, but within the townsite area of York. This could then impact on the preservation of the natural beauty of York and its historic significance. The approval of this application is not consistent with the objectives of the York Town Planning Scheme or the Residential Design Codes.

Clause 7.14 of the Schemes enables Council to 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 with the provisions of the Scheme. This development does not conform with the provisions of the Scheme and it is recommended that the application be refused.

Policy Implications:

Local Planning Policy – Retrospective Planning Applications

If Council approves or refuses the application, it has the choice to initiate legal proceedings for commencing development without approval. However, it is considered that legal action for commencing development is not warranted in this case as the owner has been reasonably cooperative with Council throughout this process.

Financial Implications:

The applicant has paid retrospective planning application fees in accordance with the Policy.

Strategic Implications:

As indicated in this report, the approval of this application could create an undesirable precedent and is inconsistent with the York Town Planning Scheme.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

Should Council resolve to initiate legal action for commencing development without consent or to enforce a direction for removal of the tank, costs associated with legal action may be incurred. The adopted budget has an allocation for legal fees associated with planning issues.

Social Implications:

If approved, the creation of a precedent, may have social implications associated with the affect on the amenity of the area.

Environmental Implications:

There are no environmental implications associated with this proposal.

Comment:

The State Administrative Tribunal in their decision making has stated:

*“Precedent as a consideration in development and subdivision proposals has been addressed by the Tribunal in a number of matters, including **Nicholls and Western Australian Planning Commission** [2005] WASAT 40; (2005) 149 LGERA 117 at [71] [75], where the Tribunal adopted the following criteria, from **Goldin v Minister for Transport** (2002) 121 LGERA 101, as the circumstances in which **precedent** is a relevant consideration in a **planning** assessment. These are:*

- (1) That the proposed development or subdivision is not in itself unobjectionable; and*
- (2) That there is more than a mere chance or possibility that there may be later undistinguishable applications.”*

In this proposal, the installation of a rainwater tank in itself is not unobjectionable and if fact, Council should encourage the appropriate installation of rainwater tanks, not only to capture and reuse rainwater but as a means of stormwater detention and management. However, there is more than a mere change or possibility that there may be later applications to locate a rainwater tank in a front yard of a residential property. Imagine a streetscape dominated by rainwater tanks in front yards, dominating historic houses and rose gardens.

**RESOLUTION
031211**

Moved: Cr Scott

Seconded: Cr Boyle

“That Council:

- 1. REFUSE the retrospective planning application to locate a rainwater tank and associated screening structure in the front yard of Lot 800 (43) Grey Street, York; and*
- 2. Issue a Planning Direction under the provisions of the Planning and Development Act 2005 directing the removal of the rainwater tank and associated screening structure from the front yard of Lot 800 (43) Grey Street, York.”*

DEFEATED: 0/6

**RESOLUTION
041211**

Moved: Cr Scott

Seconded: Cr Smythe

“That Council

Grant retrospective planning approval to locate a rainwater tank on the as constructed location in the front setback of Lot 800 (43) Grey Street, York.”

CARRIED: 6/0

The Officer Recommendation was changed to support the principles of rainwater capture and re-use.

Item 9.1.1 - Appendices

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
**9.1.2 Variation to the Restricted Building Materials Policy –
Proposed Dwelling at 4 Scarpia 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: SC1.7381, P717
COUNCIL DATE: 19 December 2011
REPORT DATE: 7 December 2011
LOCATION/ADDRESS: Lot 129/130 (4) Scarpia Street, York
APPLICANT: W & V Gibson
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES: 1 – Location and Site Plan
2 – Architectural Plans
DOCUMENTS TABLED: Nil

Summary:

Council is in receipt of a planning application to construct a new weatherboard dwelling at Lots 129 and 130 (4) Scarpia Street, York, which is located within the Restricted Building Materials Area.

The application was advertised in accordance with the provisions of the York Town Planning Scheme No. 2 and one submission was received objecting to the proposed variation of the Policy.

It is recommended that the application be approved subject to standard conditions, and that the validity of the Policy be reviewed.

Background:

The planning application was received by Council on 12 October 2011 to construct a weatherboard dwelling at 4 Scarpia Street, York within the Restricted Building Materials Area. The original dwelling that was in a dilapidated condition was demolished in 2010.

It is located on the western side of Scarpia Street and adjoins an existing weatherboard dwelling on a large lot on the north and a vacant lot on the south.

The proposed dwelling is a typical single storey, 3 bedroom Ross Squire designed home. The home can achieve a 6 star energy efficiency rating and the applicant argues that the weatherboard design is consistent with homes of the early settlers and therefore would comply with any heritage requirements.

Currently the property consists of 2 lots and is in the process of being amalgamated to enable the construction of the dwelling. The Western Australian Planning Commission has granted approval to the amalgamation and once the Deposited Plan is issued by Landgate, the planning and building approvals can be issued.

Consultation:

The application was advertised in accordance with the provisions of the York Town Planning Scheme No. 2 and one submission was received objecting to the proposed variation of the Policy.

The submitters have raised concerns regarding varying the Policy in general, particularly as when they purchased their lot they were informed that only brick/brick veneer buildings were permitted, which was one of the reasons that they purchased the block, the other being that there were lovely heritage brick/stone cottages in the street.

They have requested to be advised *“What is Council’s stance on keeping with the good faith that residents buying into the so called restricted buildings material would see only brick buildings constructed and if this has changed what responsibility does the council have to people like us that bought into this area with expectations of keeping with the heritage and like building materials of this area?”*

Statutory Environment:

York Town Planning Scheme No. 2

The site is zoned Residential R10/30 under the provisions of the Scheme. Single dwellings are permitted in the zone.

The Residential Design Codes set out the design requirements for residential buildings in Western Australia.

A planning application is required for the variation of provisions of the Local Planning Policy.

The matters for consideration outlined in Clause 10 of the Scheme have been assessed as follows:

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

The use of the site for residential purposes and the construction of a residential dwelling are consistent with the aims and provisions of the Scheme.

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 site.

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

There are statements 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.

State Planning Policy 3.1 – Residential Design Codes

The property is dual coded R10/R30. The higher coding can only be used if sewer is available. Sewer is not available and therefore the R10 coding must be used. The proposed dwelling complies with the minimum lot size, open space and setback requirements for the R10 code – 7.5m front, 1.5m side and 6m rear.

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.

Local Planning Policy – Restricted Building Materials

The LPP was adopted by Council on 21 August 2006 to provide guidelines addressing special conditions of planning, design, and development in certain areas of the York townsite. The Policy identifies 2 areas, of which the subject property is located in the area bounded by Henry St, Grey St, Macartney St and Ulster Road.

The Policy requires that all classes of buildings, except Class 10 (outbuildings) be constructed of brick, stone or other like substance, whether finished in facework or render and to be a minimum of 110m² in floor area.

The proposed dwelling is proposed to be clad in weatherboard, which does not comply with the requirements of the Policy.

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

The land is not reserved under the Scheme.

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 or located within a heritage precinct.

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

The construction of a single dwelling is compatible with the residential setting of Scarpia Street. The construction of the dwelling in weatherboard is considered compatible with the setting and is not considered that the use of weatherboard will detract from the aesthetic value of existing dwellings nearby.

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

There are no social issues associated with this proposal.

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

The Restricted Building Materials Policy was introduced to ensure that new development is sympathetic to existing buildings that provides an example of local architectural trends in a defined area. The construction of a weatherboard clad dwelling in the subject area is unlikely to detrimentally impact the cultural significance of the area, particularly due to the site location and taking into consideration surrounding development. However, if weatherboard dwellings become the predominant type of development in the area, the cultural significance of the area will be adversely affected.

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.

The construction of a dwelling is unlikely to detrimentally impact the natural environment. Stormwater will need to be managed to ensure that neighbouring properties are not affected.

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.

There are no natural constraints that affect the ability to construct a dwelling.

n) The preservation of the amenity of the locality.

The construction of a dwelling will not impact on 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 and size of the single storey dwelling is in context with the surrounding 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.

Sufficient area is available for off street parking of vehicles.

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.*

Scarpia Street has sufficient capacity and design to cater for traffic generated from the development.

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

Not applicable to single dwelling developments.

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

Reticulated water, electricity and telecommunication utilities are available to the site. No deep sewerage is available to the site.

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

Not applicable to single dwelling developments.

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

Not applicable to single dwelling developments.

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.*

No significant vegetation will be affected by the development.

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

Sediment and erosion controls may be required during construction of the dwelling.

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

No community services or benefits will be affected by the development.

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

As discussed in the Consultation section of this report, one submission was received objecting to the variation of the Restricted Building Materials Policy and therefore the application.

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

There are no impacts identified inconsistent with a residential use.

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

Not applicable to a single dwelling development.

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

The discussion under the Policy Implications section of this report is relevant.

Policy Implications:

Local Planning Policy – Restricted Building Materials

The weight of any Policy in a court of law is on the consistency of the application of the policy. This Policy has been varied by Council and under delegation a number of times, most recently to permit the construction of the dwelling on the corner of Ulster Road and Forbes Street, where the applicant was permitted to construct the dwelling in weatherboard, but was required to render the frontage to Ulster Road in a cement-like finish.

Additionally, a number of exemptions to the Policy have been granted if the dwelling is rendered/coated with a textured finished that have been deemed to meet the objectives of the Policy in accordance with Council's resolution and delegation.

It is recommended that Council review the validity of the Policy and resolve to uphold the provisions of the Policy consistently, or to resolve to rescind the Policy. Council should be aware that should it resolve to rescind the Policy, the Building Licence assessment does not allow for consideration of materials or appearance if the proposal complies with the provisions of the Residential Design Codes.

Financial Implications:

Complying with the Policy may place additional building costs on landowners.

For example, the most recent Cordell's Building Cost Guide for Western Australia (2011) estimates building costs for the construction of a 3 bedroom, 1 bathroom, slab on ground construction, 119m² dwelling as follows:

- Double brick @ \$1257 per square metre = \$149,583 total cost
- Brick veneer @ \$1134 per square metre = \$134,946 total cost
- Weatherboard @ \$1128 per square metre = \$134,232 total cost

It should be noted that these rates are based on city construction rates and may not be reflective of actual costs to building in York. (The subject application has an estimated cost of \$193,583.)

Strategic Implications:

As indicated earlier in this report, Policies should be applied consistently for a number of reasons, including providing the community a clear direction and position of Council, and, so that the Policy is given sufficient weight if legally challenged.

Therefore, Council needs to decide the validity of the Policy, and if considered that the Policy should remain, apply the Policy consistently.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: **Yes**

Triple bottom Line Assessment:

Economic Implications:

There are no economic implications associated with this proposal for the Shire of York.

Social Implications:

There are no social implications associated with this proposal for the Shire of York.

Environmental Implications:

There are no economic implications associated with this proposal for the Shire of York.

Comment:

In conclusion, it is not considered that the approval of this application and variation to the Restricted Building Materials Policy will have a detrimental impact on the special value of the nominated area. However, consideration needs to be given to the value of the Policy and the continued approval of variations.

**RESOLUTION
051211**

Moved: Cr Hooper

Seconded: Cr Duperouzel

“That Council:

1. APPROVE the planning application to construct a weatherboard dwelling on Lots 129 and 130 (4) Scarpia Street, York in a Restricted Building Materials area, subject to finalisation of the amalgamation and receipt of the approved deposited plan, 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 stamped approved plans.

Note 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.

Note 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.

Note 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.

Note 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.

CARRIED: 5/1

**RESOLUTION
061211**

Moved: Cr Scott

Seconded: Cr Hooper

“That Council:

Review the Restricted Building Materials Policy including consultation with landowners in the precincts.”

CARRIED: 6/0

The Officer Recommendation was changed to separate the approval and policy review processes.

Item 9.1.2 – Appendices

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.3 Greenhills Inn – Withdrawal of Caveat

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: GR3.3050
COUNCIL DATE: 19 December 2011
REPORT DATE: 8 December 2011
LOCATION/ADDRESS: Greenhills Inn, Lot 500 (444) Greenhills Rd, Greenhills
APPLICANT: Dick Turpin Pty Ltd
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

Summary:

As part of the sale of Lots 5, 6 and 7 Greenhills Road, the Shire of York lodged a caveat on the title in favour of the Shire to prevent sale of the land prior to the buyer fulfilling its obligations of sale.

The property has been offered for sale and will be auctioned on 16 December 2011.

Council has been approached by the real estate agent regarding the withdrawal of the caveat to enable the sale.

It is recommended that the caveat be withdrawn to enable the sale and to assist in the long term sustainability of the Greenhills Hotel.

Background:

Council resolved at its meeting held on 20 February 2006 to sell Lots 5, 6 and 7 Greenhills Road to Dick Turpin Pty Ltd. The sale was seen to assist the proprietors of the Greenhills Inn ensure the long term sustainability of their operations and as a result of the many social benefits that residents of the Greenhills area experience by virtue of the Inn.

As part of the Sale of Contract, the buyer signed a Deed of Agreement to reflect the special conditions of sale, including amalgamation of the lots, submission of an Outline Development Plan and a planning application. The Deed was signed on 20 December 2006 and the settlement occurred on 24 April 2007.

A caveat was lodged by the Shire of York, in favour of the Shire, on the land against the Certificates of Title securing the obligations of the Deed of Agreement.

Section 6 of the Deed of Agreement states that the caveat may be withdrawn subject to there being no subsisting or unremedied breach of any provision of this Deed and subject to the Buyer having complied with clause 2. It is Council's opinion that the buyer has not complied with the requirements of clause 2 and therefore, to date, the caveat has not been withdrawn.

Clause 2 of the Deed of Agreement states:

"The Buyer COVENANTS AND AGREES with the Shire:

- (a) *to prepare and lodge at the Buyer's expense an application to amalgamate the Lots and Lot 8 with the Western Australian Planning Commission ("WAPC") within 3 months of Settlement Date;*

- (b) *to prepare and lodge at the Buyer's expense a Deposited Plan for the Amalgamation with the Department of Land Information ("DLI") within 2 months of the WAPC granting approval of the Amalgamation;*
- (c) *to prepare and submit to the Shire at the Buyer's expense an Outline Development Plan for the Development that complies with the requirements of the Scheme within 12 months of the Settlement Date;*
- (d) *to prepare and submit to the Shire an Application to Commence Development for the Development that complies with the requirements of the Scheme within 12 months of the Settlement Date; and*
- (e) *to commence the Development in accordance with any approval granted by the Shire under the Scheme within two (2) years of the Settlement Date."*

To date, subclauses (a) to (d) inclusive have been satisfied. The development did not commence and planning application has now lapsed.

Consultation:

Discussions have been held with the selling agent, Elders Real Estate regarding the proposed sale.

Statutory Environment:

Transfer of Land Act 1893 (WA)

The word "Caveat" is not expressly defined in the Transfer of Land Act (TLA), but means generally "a caution or warning". A Caveat confers no proprietary interest itself. Its purpose and function is to preserve and protect the rights of a Caveator. It prohibits the Caveator's interest from being defeated by the registration of a dealing without the Caveator having first had the opportunity to invoke the assistance of a Court to give effect to the interest. The interest may arise through the application of legal rules and principles or it may arise because a specific equitable remedy exists to protect it.

Caveats lodged under the TLA have a twofold effect until removed. These are:

- a warning to a person searching the Register of an outstanding equity claimed by the Caveator against any land lease mortgage or charge; and
- a Caveat acts as a statutory injunction preventing the Registrar of Titles from registering any instrument either absolutely, or until after notice of the intended registration or dealing be given to the Caveator, or unless such instrument be expressed to be subject to the claim of the Caveator.

A caveat may be withdrawn by the Caveator by executing a withdrawal of caveat.

If the Caveator will not consent to a withdrawal of the caveat or the Caveator cannot be located than it is possible for the registered proprietor to seek an Order from the Supreme Court for the withdrawal of the caveat.

Sections 138B and section 141A of the Transfer of Land Act permit an application to be made to the Registrar of Titles for the withdrawal of a caveat without the need to apply to the Supreme Court.

Policy Implications:

There are no Council Policies applicable to this issue.

Financial Implications:

The Landgate fee for the withdrawal of a caveat is \$160.00. There may also be legal fees associated with the withdrawal.

Strategic Implications:

The objectives for the Greenhills locality in the York Local Planning Strategy are to –

- *“Retain and enhance the current rural character and lifestyle; and*
- *Encourage tourism that is complimentary to the townsite.”*

The Greenhills Inn is a significant component of the tourism of the townsite and the continued operation of the premises is important to the community socially and economically, as discussed in the Economic and Social Implications sections of this report.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

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

The Greenhills Inn has a role in the economy of the Greenhills community. The closure of the Inn would affect the economy detrimentally.

Social Implications:

As indicated in this report, the sustainability of the Greenhills Inn must be considered and the important role the operation Inn has as a meeting place and the social well-being of the community. The closure of the Inn would affect the community adversely.

Environmental Implications:

There are no environmental implications associated with this issue.

Comment:

McLeod’s Solicitors in their paper “Instruments Used in Subdivision Control” advise the following in relation to enforcement of conditions in a Deed secured by a caveat:

“The existing of an absolute caveat makes the enforcement of an obligation very easy. If a person defaults in the observance of their obligations, the most cost effective manner of enforcing the obligation is simply to refuse to lift the caveat when the owner asks for that (whether in order to sell the land, to refinance it, for a lease to be registered or for any other document to be registered against the title) unless and until the outstanding obligation is satisfied. It is an effected enforcement tool.

Of course, as the deed is a contract between the parties if an obligation is breached, the local government may sue for the performance of the obligation. Generally, however, as the local government would be seeking the remediation of a default it would invariably require the issue of a prerogative writ. This may require an action to be taken in the Supreme Court of Western Australia which would be a very expensive process.”

The objective and the outcome of the Deed of Agreement must be considered when resolving the most appropriate action. It is considered that the future sustainability of the Greenhills Inn must be considered in such deliberations, and that the withdrawal of the caveat to enable the sale may be the best option for the community.

RECOMMENDATION

071211

Moved: Cr Hooper

Seconded: Cr Lawrance

“That Council:

- 1. Resolve to withdraw the caveat from the Certificate of Title of Lot 500 Greenhills Road, Greenhills to enable the sale of the property.***
- 2. Authorise the Chief Executive Officer to execute the required documentation, and if required engage legal services, to withdraw the caveat.***
- 3. The selling agent be requested to advise any prospective purchasers be advised that the Shire will not support any subdivision of the property.”***

CARRIED: 6/0

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.4 Sea Container Compliance Program

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.2
COUNCIL DATE: 19 December 2011
REPORT DATE: 8 December 2011
LOCATION/ADDRESS: Various (See Appendix 1)
APPLICANT: N/a
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Cr Lawrance - Financial
APPENDICES: Property List
DOCUMENTS TABLED: Nil

Summary:

This report is for the purposes of resolving the next step in the Compliance Program for Sea Containers following the expiration of the moratorium period.

It is recommended that Planning Directions under the provisions of the *Planning and Development Act 2005* to remove the sea containers be served on those landowners who have sea containers located on their properties without Shire approval.

Background:

A Local Planning Policy for Sea Containers was adopted on 18 August 2008 by Council. The Policy aimed to regulate the location and appearance of sea containers located within the Shire.

Due to an increasing number of sea containers being inappropriately located within the Shire and the increasing number of complaints being received, Council resolved at its Ordinary Meeting held on 20 June 2011 to:

"That Council:

APPROVE the following course of action:

1. *A three (3) month moratorium on compliance action on unapproved sea containers.*
2. *The moratorium be advertised in newspapers, Council's website and Offices.*
3. *During the moratorium period landowners be permitted to apply for planning approval to permanently locate the sea container on site or to remove the sea container prior to the end of the moratorium period.*
4. *Where unapproved sea containers are detected during the moratorium period, written notice be provided to the landowner of the conditions of the moratorium.*
5. *At the conclusion of the moratorium, Council's Compliance Officer initiate compliance action on all unapproved sea containers within the Shire of York."*

During the moratorium, Council's Compliance Officer carried out a survey of the Shire and letters were sent to all landowners where sea containers were found advising them of the moratorium and the approval/application requirements. This approach has been adopted after the moratorium also.

To date, there are 66 landowners that had 1 to 2 sea containers located on their properties within the Shire and the status of their approval is as follows:

- 23 are exempt (i.e. they were in place prior to the introduction of the Policy);
- 4 are temporarily located in conjunction with building works;
- 15 planning approvals have been granted;
- 3 are currently being processed; and
- 17 do not have any approval (refer to the list attached at Appendix 1).

8 of the 17 sea containers that do not have any approval have been sent 3 letters during and after the moratorium advising of the planning application requirements and the penalties for non-compliance. The other 10 have been discovered more recently and have been sent an initial letter.

In accordance with Council's resolution, initial compliance action has been initiated and the action is at a stage where legal action should be instigated. There are a number of options available as follows:

- i) Issue Planning Directions under the provisions of the Planning and Development Act 2005 requiring removal of the sea container(s) within a nominated period of time (e.g. 30 or 60 days); or
- ii) Issue a \$500 Infringement Notice for non-compliance with the York Town Planning Scheme No. 2 and the Planning and Development Act 2005 and a Planning Direction as described above; or
- iii) Instigate legal action as an alternative to issuing an infringement; or
- iv) Send another letter emphasising the option and penalties.

It is important that this issue is followed up in accordance with the Council resolution to ensure that the community knows that unauthorised development is an important issue that is taken seriously. It is not recommended that any more letters are sent as it is considered that sufficient contact has been made.

Consultation:

The compliance moratorium was advertised in the Avon Valley Gazette and Council's website.

Landowners were sent letters during and after the moratorium where sea containers were identified by Council's Compliance Officer. Some landowners have been sent up to 3 letters and the Shire has not received a response or had any contact.

Statutory Environment:

York Town Planning Scheme No. 2

Clause 4.1 of the Scheme states:

"Subject to clause 4.2, all development on land zoned and reserved under the Scheme requires the prior approval of the local government. A person must not commence or carry out any development without first having applied for and obtained the planning consent of the local government under Part 7."

Sea containers are not permitted development identified in clause 4.2.

Clause 8.8 enables Council to adopt local planning policies that may make provision for any matter related to the planning or development of the Scheme Area generally or in a particular class of matter, such as sea containers, throughout the Scheme Area or in one or more parts of the Scheme Area. In this case, the Policy relating to sea containers applies throughout the Scheme Area.

Planning and Development Act 2005

Clause 162 of the Act reinforces Clause 4.1 of the Scheme requiring approved prior to the commencement of development.

A person who contravenes Clause 162 is guilty of an offence under Clause 214 of the Act and unless otherwise provided, a person who commits an offence under this Act is liable to a fine of \$200,000 and, in the case of a continuing offence, a further fine of \$25,000 for each day during which the offence continues.

An infringement notice may be issued for prescribed offences, including failing to obtain approval prior to commencement of development. The prescribed fine is \$500.00.

Section 214(3) of the Act enables the Shire, to issue a planning direction to remove, pull down, take up, or alter the development and to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority.

Policy Implications:

It is important that this issue is followed up in accordance with the Council resolution to ensure that the community knows that unauthorised development is an important issue that is taken seriously. It is not recommended that any more letters are sent as it is considered that sufficient contact has been made.

Financial Implications:

Retrospective planning applications are charged the standard application fee, plus twice that fee and an advertising fee. The total fee applicable to a retrospective application for a sea container is \$587.00, when compared with \$309.00 for a non-retrospective application.

Non-compliance with a Planning Direction by a landowner could result in an Infringement Notice of \$500.00 being issued, or if legal action is instigated, a fine of up to \$200,000.

Strategic Implications:

Policies should be applied consistently for a number of reasons, including providing the community a clear direction and position of Council, and, so that the Policy is given sufficient weight if legally challenged.

If unapproved sea containers are permitted to remain without consequence, it will be extremely difficult for Council's Compliance Officer to carry out his duties efficiently and effectively, not only on sea containers but other compliance issues.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

The issuing of Planning Directions and the carrying out of follow-up inspections is within the capacity of Council's Compliance Officer.

Legal costs may be incurred associated with enforcing any non-compliance with the Planning Directions.

Social Implications:

Sea containers can become a social issue if they are located inappropriately, such as in a heritage precinct, where the appearance can adversely impact the area.

Environmental Implications:

There are no environmental implications associated with this issue.

Comment:

The Sea Container Compliance program has been successful, particularly due to the approach and efforts of Council's Compliance Officer. Similar approaches could be used in other compliance activities, including planning, health and building.

Cr Lawrance declared an Interest Affecting Impartiality to this item and left the room at 3.36pm

OFFICER RECOMMENDATION

"That Council resolve:

- 1. Planning Directions to be issued for removal of all unapproved sea containers by 31 January 2012.*
- 2. Authorise the Chief Executive Officer to instigate legal action, including the incurring of associated costs, to enforce the provisions of Planning Directions."*

RESOLUTION**081211****Moved: Cr Scott****Seconded: Cr Smythe**

"That Council:

Grant a further two (2) month amnesty for application for Planning approval at the standard application fee and not the retrospective fee."

CARRIED: 5/0

The Officer Recommendation was changed to allow one more opportunity for landowners to comply with the Planning requirements at the reduced rate and to avoid prosecution.

Cr Lawrance returned to the room at 3.38pm.

Item 9.1.4 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.5 Derelict Sign – Imperial Hotel, 83 Avon Terrace, 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:	AV1.12790
COUNCIL DATE:	19 December 2011
REPORT DATE:	12 December 2011
LOCATION/ADDRESS:	Lot 12, 83 Avon Terrace, York
APPLICANT:	J Saville-Wright & L Vincenti
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	1 – Photographs of Signage
DOCUMENTS TABLED:	Nil

Summary:

A Planning Direction was served on 22 September 2011 on the owners, J Saville-Wright and L Vincenti of the Imperial Hotel at 83 Avon Terrace, York to repair or otherwise restore the advertisement by replacing the missing panels of the pole sign, or to remove the advertisement, including the pole and associated footings within 60 days from the date of the Direction.

An inspection by Council's Planning Manager and Compliance Officer on 23 November 2011 revealed that the Planning Direction had not been complied with.

Correspondence was sent to the owners requesting them to 'show cause' why Council should not instigate legal proceedings for non-compliance with the Planning Direction. To date no response has been received and the works have not been completed.

It is recommended that legal action be instigated with the aim of having this issue finalised.

Background:

Compliance action was originally initiated by Council's former Planning Manager on 27 November 2009 to have the derelict sign repaired or removed.

No action was taken by the owner at this point in time and preparatory works for legal action was initiated with Council's Solicitor to the extent that Court Hearing and Prosecution Notices were drafted. However, this action was not taken any further at that point in time.

During the time between the two compliance actions, the owner has removed the broken white plastic from the sign structure. Leaving the pole and sign support with the lighting infrastructure visible to the public.

As a result of a complaint received by Council, action was again initiated regarding the sign on 26 August 2011 in the form of a letter requesting that action be taken by the owner to repair or remove the sign.

A follow up inspection by Council's Compliance Officer on 19 September 2011 revealed that no action was taken, and a check of the file indicated that no response had been received.

Accordingly, a Planning Direction was served under the provisions of the *Planning and Development Act 2005* on 22 September 2011, in person, giving the owners 60 days to repair or remove the sign. Mr Saville-Wright verbally indicated at the time of service of the Direction to Council's Planning Manager and Compliance Officer that he would be removing the sign and making application for a replacement.

A follow up inspection on 23 November 2011, again revealed that no works had been undertaken.

The owner has most recently been requested in writing to 'show cause' why Council should not instigate legal proceedings for non-compliance with the Planning Direction.

To date, no works have been carried out and no further representatives have been received from the owners.

Consultation:

The owners have been contacted numerous times, in writing and in person, regarding this issue. Council's Solicitors have also been consulted previously.

Statutory Environment:

York Town Planning Scheme No. 2

Clause 5.3.6 of the Scheme states:

"Where in the opinion of the local government, an advertisement has been permitted to deteriorate to a point where it conflicts with the objectives of the Scheme or it ceases to be effected for the purposes for which it was erected or displayed, the local government may by notice in writing require the advertiser to:

- (a) repair, repaint or otherwise restore the advertisement to a standard specified by the local government in the notice, or*
- (b) remove the advertisement."*

The owners have been given the option to repair or otherwise restore, or remove the advertisement.

Planning and Development Act 2005

Section 214(3) of the Act states:

- (3) "If a development has been undertaken in contravention of a planning scheme or interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person who undertook the development —*
 - a) to remove, pull down, take up, or alter the development; and*
 - b) to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority."*

The owners were directed in accordance with this section to repair, restore or remove the advertising sign.

Failure to comply with the Planning Direction results in an offence against section 214(7) of the Act. Offences against the Act can result in a penalty of \$50,000 for individuals or \$250,000 for corporations.

Policy Implications:

It is important that this issue is followed up in accordance with the provisions of the *Planning and Development Act 2005* to ensure that the community knows that offences against the Scheme and Act are an important issue that is taken seriously. It is not recommended that any more letters are sent as it is considered that sufficient contact has been made over an extended period of years.

Financial Implications:

Non-compliance with a Planning Direction by a landowner could result in an Infringement Notice of \$500.00 being issued, or if legal action is instigated, a fine of up to \$200,000.

Strategic Implications:

Compliance action needs to be undertaken consistently to ensure the community knows that actions that are inconsistent with the Act, Scheme or Policies are serious issues and should be taken seriously.

If compliance action is not followed up, it will become extremely difficult for Council's Compliance Officer to carry out his duties efficiently and effectively.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

The issuing of Planning Directions and the carrying out of follow-up inspections is within the capacity of Council's Compliance Officer.

Legal costs may be incurred associated with enforcing any non-compliance with the Planning Directions.

Social Implications:

Derelict signage, particularly within the Town Centre, detracts from the streetscape of the town and in this case, from a State listed heritage building, which may impact on the perception of tourists and potential residents and business operators.

Environmental Implications:

There are no environmental issues associated with this issue.

Comment:

The works associated with repairing or removal of the sign is not estimated to be costly or extensive. The sign as it is detracts from the streetscape and the Imperial Hotel itself and gives the perception that the property is not well maintained.

It would have been in the owner's interest to resolve this issue as cost efficiently as possible, which to date would have been without the involvement of legal proceedings and it is disappointing that the owner has not rectified the situation without the intervention of Council.

Should the owner provide a response to Council's correspondence dated 9 December 2011 or take action to repair or remove the sign, that this report be noted for information purposes only.

RESOLUTION

091211

Moved: Cr Lawrance

Seconded: Cr Smythe

"That Council resolve to:

Defer this item until the Ordinary Council Meeting on February 20, 2012."

CARRIED: 6/0

The Officer Recommendation was changed to allow the business more time to get appropriate machinery to remove the sign.

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.6 Proposed Outbuilding At 2 Wheeler 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: Wh1.13310, P730
COUNCIL DATE: 19 December 2011
REPORT DATE: 13 December 2011
LOCATION/ADDRESS: Lot 15, 2 Wheeler Street, York
APPLICANT: The Shed Company on behalf of C Lutze
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES:
1 – Location Plan
2 – Architectural Plans
3 – Schedule of Submissions
4 – Photographs Submitted by Objector
DOCUMENTS TABLED: Nil

Summary:

Council has received a planning application to construct an over height carport on a heritage listed building within Blandstown Heritage Precinct at 2 Wheeler Street, York.

The application was advertised in accordance with the provisions of the York Town Planning Scheme No. 2. The exhibition period closes on 13 December 2011 and at the time of writing this report, three submissions had been received objecting to the proposal. A number of conversations indicated that at least one other submission of objection would be received by the close of exhibition.

It is recommended that the application be approved subject to the height of the building being reduced to comply with Council's Outbuildings Policy and subject to conditions of consent recommended at the end of this report.

Background:

On 3 February 2010, a planning application was received by Council to construct an over height outbuilding, best described as a carport, on a heritage listed property within the Blandstown Heritage Precinct at 21 Wheeler Street, York.

No submissions were received regarding the structure, however Council's Heritage Advisor raised concerns over the bulk and scale of the proposed structure and the plans were amended to wall cladding in an effort to reduce the impact of the appearance of the structure. The plans that were approved under delegated authority were for an open carport 5.782 metres in overall height and 57.75m² in area, with one side partially enclosed and one side fully enclosed.

The structure was constructed in accordance with the approval but was destroyed in the January 2011 wind storm.

On 14 November 2011, an application was received to replace the storm damaged structure. However, the plans submitted were the original plans submitted previously and not in accordance with the approved plans. The applicant was advised that he could either re-submit the plans in accordance with the previous approval to qualify for the storm damage exemption for fees or to pay the application fee and have the submitted plans assessed as a new planning application. The applicant opted for the latter option.

Therefore, the proposal is for the construction of a carport with a floor area of 57.75m² with an overall height of 5.782 metres with two sides fully enclosed setback 1 metre from the side and rear boundary located in the north-east corner of the lot.

Consultation:

The application was advertised in accordance with the York Town Planning Scheme No. 2. The exhibition period closes on 13 December 2011 and at the time of writing this report, three submissions had been received objecting to the proposal. A number of conversations indicated that at least one other submission of objection would be received by the close of exhibition from The York Society. Any submissions received following the writing of this report will be distributed to all Councillors for consideration.

A site inspection has been carried out and discussions have been had with the property occupant who advised that the additional height was required for a truck that was occasionally parked on the property and in the future, for a mezzanine flat. The carport would also house a limousine and a number of other vehicles that are a standard height. I advised that the height was unsuitable for the area and that a mezzanine flat would be very unlikely to be approved. He agreed and stated "that he just wanted his shed back".

The applicant was advised verbally regarding the outcome of the site inspection, conversation on site, the officer's recommendation and date of the Council meeting.

All submitters have been advised in writing of the date of the Council meeting.

Refer to the Schedule of Submissions attached at Appendix 3 for details of the submissions and the planning assessment.

Statutory Environment:

York Town Planning Scheme No. 2

The subject site is zoned Residential R40 under the provisions of the Scheme. The proposed outbuilding is defined as ancillary residential development and is permitted under the Scheme. However, as the proposal includes a variation of the provisions of the Residential Design Codes, a planning application is required to be submitted.

The following is an assessment of the matters of consideration listed in clause 7.5 of the Scheme:

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

The objectives of the Scheme, relative to this proposal, are to make provisions as to the nature and location of the buildings and the size of lots when used for certain purposes; the preservation of places of natural beauty, of historic buildings, and objectives of historical and scientific interest; to make provision for other matters necessary or incidental to Town Planning and housing; and to recognise the special historic significance of the town of York to Western Australia and to preserve this through the implementation of Design Guidelines.

The height of the proposed outbuilding is consistent with the design guidelines contained in both the Heritage and Outbuildings Policies. It is considered that the proposed (and previous) building would detract (and did detract) from the heritage significance of the property and did not complement the traditional Blandstown architecture. Both Policies will be discussed later in this report.

However, if the height of the building was reduced to the height permitted in the Outbuildings Policy, then the impact would also be reduced to an acceptable level.

- (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 scheme amendments proposed affecting the property.

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

There are no approved statements applicable to the policy.

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

There are no 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.*

State Planning Policy 3.1 – Residential Design Codes

The R-Codes is a state planning policy made under section 26 of the *Planning and Development Act 2005* and provides the basis for the control, through local government, of residential development throughout Western Australia. The Shire must have regard to the policy when considering applications for residential development.

Clause 6.10.1 sets out the acceptable development criteria for outbuildings as follows:

- i. are not attached to a dwelling;
- ii. are non-habitable;
- iii. collectively do not exceed 60m² in area, or 10 percent in aggregate of the site area, whichever is the lesser;
- iv. do not exceed a wall height of 2.4m;
- v. do not exceed ridge height of 4.2m;
- vi. are not within the primary street setback area;
- vii. do not reduce the amount of open space required in table 1; and
- viii. comply with the site and design requirements for the dwelling, but do not need to meet rear setback requirements of table 1.

The proposal meets the requirements of (i), (ii), (iii), (vi) and (vii), but does not meet the requirements of (iv), (v) and (viii) for the following reasons:

- The proposed wall height is 4.5m, exceeding the criteria by 2.1m.
- The proposed ridge height is 5.782m, exceeding the criteria by 1.582m.
- Clause 6.3.1 of the R-Codes sets out the acceptable development criteria for the setback of buildings from the boundary as follows:
 - Buildings setback from boundaries other than street boundaries in accordance with table 1, tables 2a and 2b. The requirements of tables 1, 2a and 2b for the R40 zone for walls with no major openings are as follows:
 - Wall length 10.5m and wall height 4.5m – 1.5m.
 - Wall length 5.5m and wall height 4.5m – 1.1m.

It is proposed to setback the structure 1m from the side and rear boundary. The setbacks proposed do not meet the acceptable development criteria of the R-Codes.

The provisions of the Local Planning Policy for Outbuildings must also be considered in the assessment of the proposal, as it provides for variations of some of the above provisions relevant to this 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.*

Local Planning Policy – Heritage Precincts and Places

The subject site is located in the Blandstown Heritage Precinct and is also listed on the Municipal Heritage List under the provisions of the Policy.

Blandstown is described in the Policy as an area comprising approximately 37 buildings constructed from local materials, two bridges, Bland's Brook, a section of Avon River and a street layout that dates from the end of the 19th century.

The dwelling constructed on the subject site is listed in Category 1B of the Municipal Heritage Inventory. Category 1B is the highest municipal category and is allocated to those buildings that are very important to the heritage of the locality and have a high degree of integrity and authenticity. Category 1A is reserved for state listed buildings.

The residence was known as 'Whittler's Cottage' and is estimated to be constructed between 1860 and 1865 and is described as a small, single storey Victorian Georgian style dwelling. However, unfortunately the dwelling is not currently being very well maintained and could be classified as in poor condition. At the time of inspection the front door was nearly inaccessible and wasn't able to be used.

The Policy Guidelines state that the scale of all residential development must respect:

- a) the scale of adjoining and nearby buildings in the street;
- b) the surrounding landscape; and
- c) the scale of the existing building, in the case of additions, extensions or modifications.

It is considered that the proposed outbuilding is not respectful of the scale of the building on the subject site or surrounding buildings that are all single storey dwellings. As indicated earlier in this report, a reduced height may be more sympathetic to the existing development.

Local Planning Policy – Outbuildings in Residential Zones

Recently Council adopted a Local Planning Policy to provide criteria consistent with the provisions of the R-Codes for the construction of outbuildings in Residential, Rural Town Site and Rural Residential zones.

If a proposed outbuilding meets the requirements of the Policy, then it is deemed that the objectives of the R-Codes have been met and a planning application is not required prior to the issue of a Building Licence.

For Residential zones, the following criteria, relevant to this proposal, were adopted:

- Floor area – Up to 80m² for properties coded R12.5 and higher. The proposal meets this requirement.
- Height – Maximum wall height of 3m and ridge height of 4.2m, or within 5%, on properties coded R12.5 and higher. The proposal does not meet this requirement and exceeds the requirement by 14%.

The proposal is not consistent with the provisions of the policy and therefore, it can be concluded the proposal is not consistent with the objectives. As indicated earlier, it is again considered that the reduction in height would be consistent with the provisions of the policy and Council's position in relation to the bulk and scale of outbuildings in residential areas.

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

The land is not reserved under the Scheme.

(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 included in the Heritage list under Clause 5.1.2 of the Scheme. Refer to comments earlier in this report for assessment of the issue of heritage.

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

It is not considered that the proposed structure is compatible with its setting. A reduction in the height may increase its compatibility.

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

The structure has the potential to cause social issues in the neighbourhood, particularly if seen as a precedent for the acceptable height of buildings in the Blandstown precinct.

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

As indicated earlier in this report, the Blandstown precinct has a high cultural significance for York and all applications for development should be considered carefully in context of the significance of the locality.

(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.*

It is unlikely that the proposal will have a detrimental impact on the natural environment, particularly if stormwater is managed effectively.

(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.*

There are no natural constraints identified that would affect the viability of the proposal.

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

As discussed earlier in this report, the Blandstown precinct is an important cultural and heritage precinct. Any development has the potential to impact on the amenity of the locality. The reduction in height of the proposal would reduce any impacts to an acceptable level.

(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 bulk and scale of the proposal, including the reduced boundary setbacks, is considered unacceptable when taking into consideration the surrounding development and potential impacts on neighbouring land. Discussions with adjoining landowners indicate that the previous structure was considered obtrusive when viewed from neighbouring properties.

(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 is sufficient for the development.

(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.*

Not applicable to this proposal.

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

Not applicable to this proposal.

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

Not applicable to this proposal.

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

Not applicable to this proposal.

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

Not applicable to this proposal.

- (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.*

The proposed structure is to replace a similar sized structure.

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

Sediment and erosion controls may be required during construction.

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

Not applicable to this proposal.

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

At the time of writing, one submission had been received objecting to the proposal and suggesting that if the proposal was approved that Blandstown should be delisted as a heritage precinct. Refer to the Schedule of Submissions for further details.

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

Not applicable to this proposal.

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

Not applicable to this proposal.

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

There are no other planning considerations relevant to this proposal.

Policy Implications:

The approval of this proposal as submitted would be contrary to the York Town Planning Scheme No. 2, the Local Planning Policies for Heritage and Outbuildings.

It is recommended that the proposed be approved with a reduced height that complies with the Outbuildings Policy.

Financial Implications:

The appropriate planning application fees have been paid by the applicant.

Strategic Implications:

The Outbuildings Policy was adopted by Council to provide flexibility for outbuilding size and to ensure that outbuildings are constructed and located in such a way as to minimise their impact on the amenity of the locality.

If the height of the proposed outbuildings was reduced to meet the requirements of the Policy, it could then be considered that the structure is unlikely to adversely impact the amenity of the locality.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

It is unlikely that there will be any economic implications associated with the proposal for Council, unless the applicant challenges Council's decision in the State Administrative Tribunal and legal representative is required.

Social Implications:

If approved as submitted, the proposal may have adverse social implications for the community and particularly the residents of Blandstown for the reasons discussed in this report.

Environmental Implications:

There are no environmental implications associated with this proposal.

Comment:

The assessment of this proposal has shown that the height of the proposed outbuilding is excessive, particularly as no sufficient justification has been provided for the increased height other than to cater for truck that is occasionally parked on the property.

It is considered that the height of the outbuilding is not suitable for a heritage listed property or a property located in the Blandstown precinct and a reduction in height will reduce the impact of the structure on the existing dwelling, the heritage precinct and neighbouring properties.

OFFICER RECOMMENDATION

Application has been withdrawn by the proponent.

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 Information Services

FILE NO: CS.LCS.8.1
COUNCIL DATE: 19 December, 2011
REPORT DATE: 8 December, 2011
LOCATION/ADDRESS: N/A
APPLICANT: Shire of York
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: P Law, Information Officer
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix A, B and C
DOCUMENTS TABLED: Nil

Summary:

The following is a summary of items for York Information Services for the month of November 2011.

Visitor Numbers- November (Appendix A): As compared to the same period 2010, the number of visitors coming through the doors has increased slightly from 1229 to 1276. These numbers were gained without major annual town events for the month, such as the York Healing Fayre.

Product Sales- November (Appendix B) Product sales are steady. Net sales for the month of November 2011 were \$1201.80, compared to \$1161.85 for the same period 2010.

Sales figures include sale of stock items left from York Tourist Bureau, the prices of which have been heavily discounted.

Street Signs- Awaiting notification on delivery of new "I" street signs and sign for Avon Terrace in front of Town Hall.

Calendar of Events- This is emailed to a state wide data base. The focus of this is events based in York, which are aimed at attracting visitor numbers to our town. Regular weekly events held by local community, social and sporting groups, or groups of this kind, are not advertised.

Weekend Internet Access- Delays in getting this service operational due to the delay in recovering a computer on loan to an outside party. The asset recovery is necessary to provide hardware for the Internet Access service. Refer to Council Resolution 140410 Ordinary Meeting 19th April 2010, *(13) The York Tourist Bureau and the Shire of York agree that from 1 July 2010 all the assets of the Bureau are to be transferred to the Shire.*

Summer Trading Hours- (Appendix C) Attached is a copy of the most up to date list of trading hours for local businesses.

Lunchtime Closures- All local information and maps are available through the Shire of York office during lunch breaks. Signs on Town Hall doors clearly indicate this.

Request for services-

There are certain services that visitors ask for, verbally, on a regular basis, these include; (statistics taken from 14/11/11):

Pay for use public showers -2
Heritage Rose Garden – 3
Balladong Farm – 6
Old York Hospital – 5
Budget Backpacker Accommodation – 3
Mt Bakewell Access – 4

Internet Access (weekend) – 2
Laundry – 2
Working Farm – 1
Update to yorkwa.org – 3
Bin on Avon Terrace outside Town Hall - 1

Complaints-

There are regular types of complaints that are received within this office. These are usually received by way of verbal feedback, with the occasional Council Action Request form, letter or email received. The most common this month were:

Lack of food service outlets open Monday nights.
Lack of Business open during the day, early in the week.
Lack of businesses open from 3pm each afternoon.

Background:

York Information Services Officers have spent the month of November personally canvassing local business owners to gain information on closing times over the holiday period. There has been a decreased response to email requests for information from business owners, which has left no option but out of hours foot work by staff.

Although visitor numbers coming to York seem to be increasing, these visitors are requesting budget, often free accommodation. They are bringing picnic lunches with them. There is little income making its way to many local businesses.

Consultation:

Shire of York and local business proprietors

Statutory Environment:

Nil

Policy Implications:

Not Applicable

Financial Implications:

Nil

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Comment:

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

**RESOLUTION
101211**

Moved: Cr Smythe

Seconded: Cr Hooper

“That Council:

Receive the York Information Services Report.”

CARRIED: 6/0

Item 9.2.1 - Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.2 York Community Resource Centre

FILE NO: CS.NCS.2
COUNCIL DATE: 19 December 2011
REPORT DATE: 8 December 2011
LOCATION/ADDRESS: Joaquina Street
APPLICANT: York CRC
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Letter from CRC –
Allocation of Land for CRC Building
DOCUMENTS TABLED: Nil

Summary:

The York CRC requests Council to support their funding applications by a specific resolution as a commitment to the project.

Background:

Council has previously agreed to allocate \$250,000 from the 2011/12 Country Local Government Fund towards the cost of constructing a Community Resource Centre in York.

Council has also agreed to rezone one lot of land in Joaquina Street and to make this available to the York Community Resource Centre on a long term peppercorn lease.

Consultation:

York CRC
Department of Regional Development
Business Plan Consultant
Council

Statutory Environment:

Not relevant to this report as the funding and land details have been dealt with previously.

Policy Implications:

Nil

Financial Implications:

Nil at this stage other than for budget allocations.

Strategic Implications:

Key Result Area 7: Community Services - Objectives:

- 1. To meet community needs in terms of physical infrastructure and overall community services.*
- 2. To provide and maintain high quality services and infrastructure in an efficient and cost effective way.*
- 3. To ensure a safe community environment.*
- 4. To align the Town Planning Scheme with the strategic plan.*

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

A Community Resource Centre supports government service delivery to the community.

Environmental Implications:

Nil

Comment:

A Council commitment for a needed community asset and service is not an issue and the only concern would relate to whether the project will actually proceed and when.

As Council will have to acquit the CLGF fund allocation it is imperative that the York CRC set and adhere to a development timeframe acceptable to Council and other funding providers.

RECOMMENDATION

111211

Moved: Cr Hooper

Seconded: Cr Smythe

“That Council:

Advise the York Community Resource Centre of its commitment to the development of the York Community Resource Centre by:

- (a) Guaranteeing a financial contribution of \$250,000 from the Country Local Government Fund allocation to the Shire of York (currently to be made from the 2011/12 allocation)***
- (b) Guaranteeing that a minimum of one lot of Shire owned land in Joaquina Street, York will be provided to the York Community Resource Centre on a peppercorn long term lease and that appropriate land use zoning will be in place at the time of entering into a lease.***

Subject to the York Community Resource Centre providing Council with an acceptable development timeframe by the 10th February, 2012.”

CARRIED: 6/0

Item 9.2.2 - Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.3 Shire of York Local Emergency Management Arrangements / Shire of York Local Recovery Management Arrangements

FILE NO:	RS.FES.5
COUNCIL DATE:	19 December 2011
REPORT DATE:	12 December 2011
LOCATION/ADDRESS:	Shire of York
APPLICANT:	Shire of York's Local Emergency Management Committee
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Corrigan, CESM
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Shire of York's Local Emergency Management Arrangements / Shire of York's Local Recovery Management Arrangements
DOCUMENTS TABLED:	Nil

Summary:

Council is to receive this information bulletin from the Local Emergency Management Committee.

Background:

On 22 November 2011, the final draft Local Emergency Management Arrangements (LEMA) was tabled at the Local Emergency Management Committee (LEMC). The Draft Arrangements outlined the Shires responsibility and understanding of Emergency Prevention, Preparedness, Response and Recovery and includes contact lists for Local, District and State Emergency Management/Response stakeholders.

The LEMC have met quarterly to discuss a range of Emergency Management issues, and in order to progress the Arrangements into an easy to use reference in Emergency Situations. In addition to this, the draft Local Recovery Management Arrangements was also tabled at the LEMC for consideration. These Arrangements are specifically about the requirement

The next stage in this process is to refer the draft arrangements to the District Emergency Management Committee (DEMC) who have reviewed the documents and provided feedback to the LEMC. Alterations were suggested during this process, and once those alterations have been actioned the Final version of arrangements will be forwarded to the State Emergency Management Committee (SEMC) and Council for final adoption.

Consultation:

Extensive consultation has been undertaken in the preparation of these two documents with the Fire and Emergency Services Authority (FESA), members of the LEMC which has representatives from all key stakeholders within the Shire of York. These representatives include: York Police, FESA, St. John Ambulance, York Volunteer Fire and Rescue, York Volunteer Emergency Service Unit, York District High School, York Bush Fire Brigades, the Department for Child Protection and the Shire of York Administration.

Statutory Environment:

41. Emergency management arrangements in local government district

- (1) A local government is to ensure that arrangements ("local emergency management arrangements") for emergency management in the local government's district are prepared.

- (2) The local emergency management arrangements are to set out —
- (a) The local government's policies for emergency management;
 - (b) The roles and responsibilities of public authorities and other persons involved in emergency management in the local government district;
 - (c) Provisions about the coordination of emergency operations and activities relating to emergency management performed by the persons mentioned in paragraph (b);
 - (d) A description of emergencies that is likely to occur in the local government district;
 - (e) Strategies and priorities for emergency management in the local government district;
 - (f) Other matters about emergency management in the local government district prescribed by the regulations; and
 - (g) Other matters about emergency management in the local government district the local government considers appropriate.
- (3) Local emergency management arrangements are to be consistent with the State emergency management policies and State emergency management plans.

Policy Implications:

Nil

Financial Implications:

There are no financial implications in considering this item.

The documents have been produced by council staff, based on FESA templates.

Strategic Implications:

These arrangements will better enable and empower the community and the responding Hazard Management Agencies (HMAs) to deal with, and then to recover from, a varied array of emergencies that may impact upon the Shire of York both now and long into the future.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

All businesses need a degree of surety in emergency management procedures.

Social Implications:

There are no adverse social implications associated with the adoption of the Draft Shire of York Local Emergency Management Arrangement and the Draft Shire of York Local Recovery Management Arrangements only positive benefits.

Environmental Implications:

The endorsement of these Arrangements has no notable environmental implications.

Comment:

The Community Emergency Services Manager is of the view that the Draft Shire of York Local Emergency Management Arrangements and the Draft Shire of York Local Recovery Management Arrangements as attached appropriately respond to the identified risks within the Shire of York. It has to be noted that the documents are to be considered as “living documents” and as such are open to review as people’s roles or as circumstances change. Both documents are in line with and fulfil Councils legislative requirements under the Local Government Act and the Emergency Management Act with respect to emergency management. The endorsement and subsequent implementation of these arrangements will greatly improve the Shire’s and the Community’s management and recovery from emergencies as they occur.

RESOLUTION

121211

Moved: Cr Lawrance

Seconded: Cr Hooper

“That Council:

Endorse the Local Emergency Management Arrangement and the Local Recovery Management Arrangement to advertise the document for a 28 day period for public comment.”

CARRIED: 6/0

Item 9.2.3 - Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.4 Youth Report for December, 2011

FILE NO: CS.LCS.6
COUNCIL DATE: 19 December, 2011
REPORT DATE: 12 December,, 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 in November 2011.

• **Active After School Programme:**

Term 4 with the Years 1, 2 & 3 finished with all in attendance receiving their Certificates, stickers and wristbands after lots of fun learning the basic skills of basketball. Mrs. Judy Davies and Brodie Read helped the Youth Development Officer with all duties including supplying fruit for the children.

• **Term 4 Karaoke/Disco:**

Youth Development Officer held a Disco on Friday 9th December at the Town Hall and would like to thank Bill Collins for attending as 'Father Christmas', all children received lollies and were very excited to see him arrive.

The Youth Development Officer would also like to thank Orana, Holly, Emily and Daniel for helping run the kiosk and help with the entertainment for the children.

The Youth Development Officer had organised prizes for the best 'Xmas' outfit for the different age groups and also had a Xmas tree and tinsel as part of the theme for the day.

• **Youth Centre Opening:**

The Opening was held on Thursday, 8th December, 2011 and attended by up to 80 guests, including the Hon. Mrs. Robyn McSweeney, Minister for Youth who cut the ribbon to officially open the Centre.

The Youth Development Officer would like to thank everyone at the Shire for their wonderful support, especially Gordon Tester and Tim Jurmann, Glen Jones and the Depot workers for all their hard work in getting the outside looking fantastic and the Contractors who all worked hard to have everything finished in time.

Our main Sponsors were in attendance:
Tony Hunter-Manager, Bendigo Bank
Lindsay McNeil-Chairman, Bendigo Bank
Carolyn Brooks-Office of Crime Prevention

York Shire Councillors, Beverley Shire President and CEO, York District High School Representatives and other special guests were also in attendance and the catering was done by the ladies from the CWA.

It was a fantastic afternoon and the Centre looked great with all the Urban Artist's works on display, Banner in the Terrace also hanging and the Youth Development Officer also had disks and photos showing the excursions, Holiday programs, Disco's and other events throughout the year on display.

The Youth Development Officer would also like to thank -
Mandurah Muscateers - 6 Computers
Mia Flora Nursery - fridge
Pam Law - 4 computer chairs
Phil Furey - 6 Computer desks and Pool table

The Youth Development Officer along with the Shire will now develop a timetable for opening hours and Holiday Programme for January.

- **Salvation Army Breakfast:**

The Youth Development Officer and the Salvation Army had their last breakfast on the 2nd December and served cereals, bacon, eggs, tomatoes, toast and juice and with the 12 children who attended had a wonderful morning.

The breakfast will begin again next year in Term 1.

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

131211

Moved: Cr Duperouzel

Seconded: Cr Hooper

“That Council:

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

CARRIED: 6/0

Item 9.2.4 - Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.5 Building Act 2011 – Proposed New Delegations and Fees

FILE NO:	OR.CMA.1
COUNCIL DATE:	19 November 2011
REPORT DATE:	12 November 2011
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Not Applicable
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	G Tester, MHB
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Schedule of Fee Comparisons

Summary:

Council to consideration new delegations and the adoption of fees of new fees and charges under the Building Act 2011.

Background:

- *The Act*

The *Building Act 2011* (the Act) was passed by Parliament on 23 June 2011. The original proclamation date was 31 October 2011. There is now regulations, that have been deferred until 1 April 2012. The Act will be the principal legislation that regulates building control in Western Australia; amending provisions of the *Local Government (Miscellaneous Provisions) Act 1960* and repealing the *Building Regulations 1989*. The National Construction Code (ie Building Code of Australia) will continue to be the minimum building standards referenced in the Western Australian legislation.

- *Key Changes*

The Act will bind all building work within Western Australia, including Crown land and provides for "Permit Authorities" to be established. Permit authorities can be a local government, a group of local governments ("Special Permit Authority") or State Government. Private certification will be introduced which will remove Local Government as the sole building licence assessors.

The Act will provide project owners with different options of applying for a building licence; to be termed under the new Act a "building permit". The application types are termed "uncertified" and "certified". "Certified" applications enable the involvement of Private building practitioners (eg private certifiers). Certification services include providing a Certificate of Design Compliance, which will accompany a certified building permit application and a Certificate of Construction Compliance or a Certificate of Building Compliance which will accompany applications for occupancy permits, building approval certificates, or applications to strata title.

Applicant's choosing the "certified" application process will be required to have obtained all necessary approvals (eg planning, heritage, environmental health) prior to lodging an application. These applications are required to be assessed by the Shire and permits issued within 14 days of the date of lodgement. "Uncertified" applications are essentially the same applications that are currently received and assessed by the Shire; that require processing within 35 days.

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

Consultation:

Nil

Statutory Environment:

Building Act 2011

Local Government Act 1995

Policy Implications:

Nil

Financial Implications:

Advertising would be required for the introduction of new fees.

An upgrade to existing computer record systems will likely be required to accommodate the additional range of approvals available under the Act.

Strategic Implications:

Addressing the requirements of the *Building Act 2011*, prior to its proclamation, will enable a smooth transition into the new Building framework.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Officers Comment:

- *The Permit Authority*

The role of the Permit Authority is to issue permits, ensure building works within its district comply with the relevant permits and to assess and issue (or arrange for the assessment and issue) Certificates of Design compliance for Class 1 (single houses) and 10 (eg sheds, patios, carports).

Section 127 of the Act enables a local government to delegate any of its powers or duties as a permit authority to a person employed by the local government. To enable the continuation of the building services currently available, the following delegations are recommended to be added to Council's existing delegation register:

A. Delegations to Chief Executive Officer

Powers and Duties – Building Act 2011

Authority: Building Act 2011

Delegation:

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

Section 96	Authority to appoint authorised persons
Section 110	Authority to issue Building Orders in relation to: 1. Stop work, alter a building or evacuate a building where there is a contravention of the provision of the Act 2. Take specific action to prevent contravention of the Act; 3. Finish an outward facing side of a wall;
Section 117	Authority to revoke Building Orders
Section 139	Authority to commence prosecution

B. Delegations to Councils Registered Building Surveyors

Powers and Duties – Building Act 2011

Authority: Building Act 2011

Delegation:

Council delegates its authority and powers to the Councils Registered Building Surveyors the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the Building Act:

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

As the proclamation date is still considered to be fluid, it is not recommended that the existing delegations relating to building services be removed at this stage. It is intended that these be reviewed during the next scheduled review period.

- *Certification Services*

The introduction of private certifiers may have an impact on the income previously generated by Building Applications. Private certifiers have been operating within other States of Australia, with the local governments (or Permit Authority) role being primarily enforcement. The introduction of private certifiers may also make it more challenging to attract and retain suitably qualified staff for the statutory role within local government.

Local governments are able to provide certification services. It is recommended that Council establish a building certification service, in addition to its required role as a Permit Authority, so that it can continue to offer a level of service to its ratepayers and the community. It may also assist in providing a balance of workload for the officers involved providing more job satisfaction ie than purely enforcement. The level of service offered will be limited by the qualifications of staff; as imposed by the new *Building Services (Registration) Act 2011* (the Registration Act). The Registration Act requires that all building service providers, including Building Surveyors, be registered an appropriately qualified.

- *Fees & Charges*

The Act allows for permit authorities to receive fees for applications for building, demolition and occupancy permits as well as a number of associated services. While the Regulations have yet to be proclaimed, the proposed fee model for permit authorities, as outlined by the Building Commission, are summarised in the attachment.

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

Section 6.16 (3) of the *Local Government Act 1995* enables Council to impose fees during a financial year.

The proposed fees will apply when the Act is proclaimed. The regulations are due to be commenced as of 1 April 2012. For Council to consider introducing additional fees, an absolute majority of Councillors must support the introduction of the charge.

Section 6.17(4)(b) of the *Local Government Act 1995* states:

Regulations may limit the amount of a fee or charge in prescribed circumstances

6.18(1) further states:

"If the amount of a fee or charge for a service or for goods is determined under another written law a local government may not –

- (a) determine an amount that is inconsistent with the amount determined under the other written law; or
- (b) charge a fee or charge in addition to the amount determined by or under the other written law".

The Statutory fees as outlined in the recommendation are prescribed by Regulation and can therefore not be altered.

Fees for certification services are permitted, under the Act, to be market driven. Local Government, under the *Local Government Act 1995*, are required to consider the price available from an alternative provider ie private certifiers. This is currently difficult to establish as this information has not been widely published. The fees proposed, as outlined in the recommendation, reflect the current fees charged for building licence applications and may need to be refined once the new Act has been in operation for at least 12 months

RESOLUTION 141211	
Moved: Cr Hooper	
Seconded: Cr Scott	
“That Council:	
1. Adopts the following statutory fees to be applicable from the proclamation date of 1st April, 2012:	
1. Building permit	
(a) or the grant of a building permit to do building work in respect of a building or incidental structure of Class 1 & 10	
- Uncertified application	0.32% of estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90
- Certified application	0.19% of estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90
(b) or the grant of a building permit to do building work in respect of a building or incidental structure of Class 2 to 9 for a certified application	0.09% of estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90
(c) or the grant of a building permit to do building work in respect of a building or incidental structure for an <u>amended</u> application in relation to which a building permit has already been granted	Modified fee – the relevant building permit application fee methodology outlined in 1(a) and (b) is to be applied, except that the estimated value of the proposed building work as determined by the permit authority is to be calculated by determining the estimated value of the building work as amended, minus the estimated value of the building work as determined by the permit authority declared for the purposes of the calculation of the fee for the building permit already granted but not less than \$90.

2. Demolition permit (a) or the grant of a demolition permit to do demolition work in respect of a building or incidental structure of Class 1 & 10	\$100
(b) or the grant of a demolition permit to do demolition work in respect of a building or incidental structure of Class 2 to 9	\$100 for each storey
3. Application to extend the time during which a building or demolition permit has effect	\$90 (inclusive of GST)
4. Application for occupancy permit for completed building (Class 2 to 9 buildings)	\$90 (inclusive of GST) per application
5. Application for temporary occupancy permit for incomplete buildings	\$90 (inclusive of GST) per application
6. Application for modification of occupancy permit for additional use of building on temporary basis	\$90 (inclusive of GST) per application
7. Application for replacement occupancy permit for permanent change of building's use, classification	\$90 (inclusive of GST) per application
8. Application for occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision – Class 2 to 9 buildings	\$100 (inclusive of GST) or \$10 per strata unit, whichever is greater
9. Application for Occupancy Permit for unauthorised Class 2 to 9 buildings - certified	0.18% of the estimated value (inclusive of GST) of the building work as determined by the permit authority but not less than \$90
10. Building approval certificate for unauthorised Class 1 and 10 - certified	0.38% of the estimated current value (inclusive of GST) of the unauthorized building work as determined by the permit authority, but not less than \$90
11. Application for occupancy permit for building with existing authorisation	\$90 (inclusive of GST) per application
12. Application for building approval certificate for building with existing authorisation (Class 1 & 10 buildings)	\$90 (inclusive of GST) per application
13. Application to extend the time during which an occupancy permit or building approval certificate has effect	\$90 (inclusive of GST) per application

<p>2. Endorses the proposal for the Shire of York to provide a building certification service in addition to its statutory role as Permit Authority in accordance with the Building Act 2011.</p> <p>3. Adopts the following Shire certification fees; to be applicable from the proclamation date of the Building Act 2011, for requests relating to land within the District of the Shire of York:</p>	
Request for Certificate of Design Compliance – Class 1 and 10 building	0.13% estimated value of construction but not less than \$90
Request for Certificate of Design Compliance – Class 2 – 9 buildings	0.11% estimated value of construction but not less than \$90
Inspection Service for Certificate of Construction Compliance, Building Compliance, or other	\$160
• Additional or aborted inspections charged at an hourly rate	\$80
• When inspection period exceeds 2 hours, additional time charged at an hourly rate	\$80
• For applicant requests for inspections out of normal working hours, charged at an hourly rate	\$120
•	
Request seeking confirmation that Planning, Environmental Health and Shire Engineering requirements have been met	\$80
Request for additional Building Service/Advice	\$80/hour
<p>4. Adopts the following delegations</p> <p>A. <u>Delegations to Chief Executive Officer</u></p> <p>Powers and Duties – Building Act 2011</p> <p>Authority: Building Act 2011</p> <p>Delegation:</p> <p>Council delegates its authority and powers to the Chief Executive Officer the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the Building Act:</p>	
Section 96	Authority to appoint authorised persons
Section 110	<p>Authority to issue Building Orders in relation to:</p> <p>5. Stop work, alter a building or evacuate a building where there is a contravention of the provision of the Act</p> <p>6. Take specific action to prevent contravention of the Act;</p> <p>7. Finish an outward facing side of a wall;</p>

Section 117	Authority to revoke Building Orders
Section 139	Authority to commence prosecution
<p><u>B. Delegations to Manager of Health and Building Services</u></p> <p>Powers and Duties – Building Act 2011</p> <p>Authority: Building Act 2011</p> <p>Delegation:</p> <p>Council delegates its authority and powers to the Councils Registered Building Surveyors and Building Services the capacity to exercise and discharge all or any of the powers and functions of the permit authority in regard to the following sections of the Building Act:</p>	
Section 20	Authority to grant or refuse to grant building permits
Section 21	Authority to grant or refuse to grant demolition permits
Section 22	<p>Authority to refuse to grant Building Permits or Demolition Permits if:</p> <p>14. There appears to be an error in the documents or information provided in the application; or</p> <p>15. If an application is inconsistent with:</p> <p>(c) A function that the Permit Authority has under written law; or</p> <p>(d) An agreement between the Permit Authority and the applicant</p> <p>(e)</p>
Section 58	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates
Section 65	Authority to extend the period to which the occupancy permit or modification or the building approval certificate has effect”.
CARRIED: 6/0	

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.6 York DHS – Parents & Citizens Association

FILE NO: FI.DON
COUNCIL DATE: 19 November 2011
REPORT DATE: 13 November 2011
LOCATION/ADDRESS: Not Applicable
APPLICANT: Not Applicable
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Correspondence Dated 8 December 2011
DOCUMENTS TABLED: Nil

Summary:

The York P&C requests the re-allocation of recurrent community grant funding from Crosswalk Attendant to a programme aimed as curbing obesity in students under the 'Swap It, Don't Stop It' campaign.

The re-allocation of funding would allow the School Canteen to re-open on a Wednesday to offer more healthy eating choices.

Background:

The Shire of York has provided funding to meet the costs of a crosswalk attendant at the South Street/Ulster Road intersection for a number of years as a road safety initiative.

Consultation:

Not applicable.

Statutory Environment:

Not applicable.

Policy Implications:

Nil

Financial Implications:

Nil in the 2011/12 budget as no additional funds are requested.

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Decisions to support a School Canteen may impact on commercial food premises.

Social Implications:

The community has greater awareness of obesity issues and healthy eating programmes and support for this request should gain community support.

Environmental Implications:

Nil

Officers Comment:

While it may be disappointing that the School Canteen operates at a financial loss this is generally not a burden which should be placed on the wider community however as funding had been allocated to a School based project a transfer as requested may be of high short term benefit to students.

RESOLUTION

151211

Moved: Cr Hooper

Seconded: Cr Smythe

“That Council:

Agree to the re-allocation of community grant funding to the York District High School Parents & Citizens Association for the support of the healthy eating programme and the operations of the school canteen of the 2011/12 allocation of \$3,000.00 subject to the following:

- The re-allocation is not to be taken as a precedence for an ongoing funding commitment by the Shire of York to the operations of the school canteen.”***

CARRIED: 6/0

Item 9.2.6 - Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.7 Application To Keep A Horse At 75 Osnaburg Rd, York

FILE NO: OS2.12246
COUNCIL DATE: 19 December 2011
REPORT DATE: 14 December 2011
LOCATION/ADDRESS: 75 Osnaburg Rd, York
APPLICANT: Jacky and Tim Jurmann
SENIOR OFFICER: Gordon Tester, Manager for Health and Building
REPORTING OFFICER: Judith Anderson, Environmental Health Officer
DISCLOSURE OF INTEREST: Jacky Jurmann
APPENDICES: Site Plan – Application to Keep a Horse at 75 Osnaburg Rd, York
DOCUMENTS TABLED: Nil

Summary:

An application was received on the 29 November 2011 to keep a horse at 75 Osnaburg Road, York.

The Shire of York Health Local Laws requires that an owner or occupier of premises, within a townsite shall not keep a horse, cow or large animal on those premises without approval of the Council.

The applicant seeks Council approval for the keeping of a horse.

Background:

The house at 75 Osnaburg Rd, York is a Shire owned house.

The applicants have provided two locations, Option 1 and Option 2 for the keeping of a horse as indicated in the Site Plan.

The preferred location is Option 1 as land at Option 2 is contaminated with glass and would be hazardous for the horse.

The Health Local Laws required an approved animal not approach within 30 metres of a dwelling. and has an area of not less than 0.2 hectares.

Preliminary measurements of Option 1 do not meet the requirements of an approved animal not approach within 30 metres of a dwelling and has an area of not less than 0.2 hectares.

The applicant has stated that if approval to keep the house is granted the applicant intends to construct a stable and provide for a manure receptacle in accordance with the requirements of the Health Local Laws.

Consultation:

The occupant of the adjoining house has been consulted for Option 1 and the occupant does not have any objections with the horse being located at Option 1. There are no adjoining dwellings with Option 2.

Statutory Environment:

Shire of York Health Local Laws

Division 3—Keeping of Large Animals

Interpretation

5.3.1 In this Division, unless the context otherwise requires—

“approved animal” includes a horse, cow or large animal the subject of an approval by Council under Section 5.3.2;

“cow” includes an ox, calf, or bull;

*“horse” includes an ass, mule, donkey or pony; and
“large animal” includes a pig, sheep, goat, deer or camel.*

Conditions for keeping of an animal

5.3.2 (1) An owner or occupier of premises, within a townsite shall not keep a horse, cow or large

animal on those premises without approval of the Council.

(2) An owner or occupier of premises who has an approved animal shall ensure—

(a) the premises has an area of not less than 0.2 hectares for the exclusive use of the approved animal; and

(b) the approved animal does not approach within 30 metres of a dwelling.

Stables

5.3.3 (1) The owner or occupier of premises within a townsite, who has an approved animal shall

provide for its use a stable which shall—

(a) not be situated within 30 metres of a house or other premises;

(b) have a proper separate stall—

(i) for each horse or cow; and

(ii) with walls measuring not less than 3 metres, both horizontally and vertically, unless it has a sand floor provided in accordance with subsection (2);

(iii) with a floor area of not less than 11 square metres, unless it has a sand floor provided in accordance with subsection (2);

(c) have each wall and roof constructed of an approved impervious material;

(d) have a roof that covers the entire floor area of the stall;

(e) have on all sides of the building between the wall and the roof a clear opening of at least 150 millimetres in height;

(f) subject to subsection (2), have a floor, the upper surface of which shall—

(i) be at least 75 millimetre above the surface of the ground;

(ii) be constructed of cement, concrete or other similar impervious materials;

(iii) have a fall of 1 in 100 to a drain, which shall empty, into a trapped gully situated outside the stable and shall discharge in a manner approved by the Council.

(2) A stable constructed with a sand floor may be permitted by the Council, subject to the following—

(i) the site must be well drained with the highest known water table at least 1.5 metres below the sand floor level, which may be achieved artificially;

(ii) a 300mm thick bed of crushed limestone shall be layed under the sand of the stable

(iii) sand, whether natural or imported, must be clean, coarse and free from dust;

(iv) footings to each stable shall be a minimum of 450mm below ground level;

(v) the stable design must allow for the access of small earth moving machinery, such as a skid steer loader, into each individual stall, to maintain the correct floor height;

(vi) the minimum floor area of each stall shall be not less than 28 square metres and walls shall not be less than 3 metres vertically or 4 metres horizontally;

(vii) the roofed area of each stall shall not be less than 50 percent of the floor area of the stall.

(3) The owner or occupier of any premises on which a stable is located shall—

(a) maintain the stable in a clean condition and when so directed by an Environmental Health Officer, clean, wash and disinfect it;

(b) keep all parts of the stable so far as possible, free from flies or other vectors of disease by spraying with a residual insecticide or other effective means; and

(c) when so ordered by an Environmental Health Officer, spray the stable or such parts as may be

directed, with a residual insecticide.

Manure Receptacle

5.3.4 An owner or occupier of premises on which an approved animal is kept shall—

(a) provide in a position convenient to the stable a receptacle for manure, which is constructed of

smooth, impervious, durable, easily cleanable materials and, provided with a tight-fitting cover, and with no part of the receptacle base being lower than the surface of the adjoining ground;

(b) keep the lid of the receptacle closed except when manure is being deposited or removed;

(c) cause the receptacle to be emptied at least once a week and as often as may be necessary to prevent it becoming offensive or a breeding place for flies or other vectors of disease;
(d) keep the receptacle so far as possible free from flies or other vectors of disease by spraying with a residual insecticide or other effective means; and
(e) cause all manure produced on the premises to be collected daily and placed in the receptacle.

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: No

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Environmental implications will be controlled by the provision of a manure receptacle.

Comment:

The location for the keeping of the horse at Option 1 contravenes the Health Local Laws in relation the approved animal does not approach within 30 metres of a dwelling.

Jacky Jurmann declared an Interest Affecting Impartiality to this item and left the room at 3.57pm.

RESOLUTION

161211

Moved: Cr Lawrance

Seconded: Cr Duperouzel

“That Council:

Approve the keeping of a horse at 75 Osnaburg Road York at Option 2 subject to strict compliance with all health requirements for the keeping of horses unless and until the land is required for housing development”

CARRIED: 6/0

Jacky Jurmann returned to the room at 4.00pm

Item 9.2.7 - Appendices

9.3 Works Reports

9.4 Financial Reports

9. OFFICER'S REPORTS

9.4 FINANCE REPORTS

9.4.1 Monthly Financial Reports – November 2011

FILE NO:	FI.FRP
COUNCIL DATE:	19 November 2011
REPORT DATE:	12 November 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:	Nil

Summary:

The Financial Report for the period ending 30 November 2011 is hereby presented for the consideration of the Council.

Appendix A includes the following:

- Monthly Statements for the period ended 30 November 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 30 November 2011;

Sundry Creditors as per General Ledger	\$18,403.64
Sundry Debtors as per General Ledger	\$329,061.37
Unpaid rates and services current year (paid in advance inc. ESL)	\$1,134,805.44
Unpaid rates and services previous years (inc. ESL)	\$414,475.82

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:

Not applicable

**RESOLUTION
171211**

Moved: Cr Lawrance

Seconded: Cr Hooper

“That Council:

Receive the Monthly Financial Report for November and ratify payments drawn from the Municipal and Trust accounts for the period ending 30 November 2011:

	<u>VOUCHER</u>	<u>AMOUNT</u>
MUNICIPAL FUND		
<i>Cheque Payments</i>	29762 - 29809	\$ 96,796.96
<i>Electronic Funds Payments</i>	8639 - 8755	\$ 461,804.46
<i>Direct Debits Payroll</i>		\$ 167,494.23
<i>Bank Fees</i>		\$ 829.71
<i>Corporate Cards</i>		\$ 2,454.22
<i>Shell Cards</i>		\$ 251.31
TOTAL		<u>\$ 729,630.89</u>
 TRUST FUND		
<i>Cheque Payments</i>	3894 - 3909	\$ 4,170.52
<i>Direct Debits Licensing</i>		<u>\$ 142,227.25</u>
TOTAL		<u>\$ 146,397.77</u>
 TOTAL DISBURSEMENTS		 <u>\$ 876,028.66”</u>

CARRIED: 6/0

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. OFFICERS' REPORTS

9.4 FINANCE REPORTS

9.4.2 Annual Report and Electors Meeting

FILE:	FI.FRP.2
COUNCIL DATE:	19 December 2011
REPORT DATE:	12 December 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	N/A
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Tabitha Bateman, Administration Officer
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	2010/11 Annual Financial Report & Auditors' Statement
DOCUMENTS TABLED:	Nil

Summary:

This report recommends that the Annual Report for the Shire of York for the Year ended 30 June 2011 be accepted and that the Annual General Meeting of Electors' be held on Monday 9 January 2012.

Background:

The Council prepares an annual report for each financial year ending 30 June. Items to be included in the annual report are prescribed in the Local Government Act 1995.

It includes a summary of the Council's annual activities, including the audited annual financial statements and Independent Audit Report.

Consultation:

Auditors
Dominic Carbone
Staff and Councillors

Statutory Environment:

Local Government Act, 1995 (As Amended) - the following sections of the Act are relevant to the receipt of the Annual Report and the convening of the Annual Electors Meeting:

5.53. Annual reports

- (1) *The local government is to prepare an annual report for each financial year.*
- (2) *The annual report is to contain —*
 - (a) *a report from the mayor or president;*
 - (b) *a report from the CEO;*
 - [(c), (d) *deleted*]
 - (e) *an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year;*
 - (f) *the financial report for the financial year;*
 - (g) *such information as may be prescribed in relation to the payments made to employees;*
 - (h) *the auditor's report for the financial year;*
 - (ha) *a matter on which a report must be made under section 29(2) of the Disability Services Act 1993;*

- (hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —
- (i) the number of complaints recorded in the register of complaints;
 - (ii) how the recorded complaints were dealt with; and
 - (iii) any other details that the regulations may require;
- and
- (i) such other information as may be prescribed.

[Section 5.53 amended by No. 44 of 1999 s. 28(3); No. 49 of 2004 s. 42(4) and (5); No. 1 of 2007 s. 6.]

5.54. Acceptance of annual reports

- (1) Subject to subsection (2), the annual report for a financial year is to be accepted* by the local government no later than 31 December after that financial year.

* Absolute majority required.

- (2) If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.

[Section 5.54 amended by No. 49 of 2004 s. 49.]

5.55. Notice of annual reports

The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.

5.27. Electors' general meetings

- (1) A general meeting of the electors of a district is to be held once every financial year.
- (2) A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.
- (3) The matters to be discussed at general electors' meetings are to be those prescribed.

5.29. Convening electors' meetings

- (1) The CEO is to convene an electors' meeting by giving —
- (a) at least 14 days' local public notice; and
 - (b) each council member at least 14 days' notice,
- of the date, time, place and purpose of the meeting.
- (2) The local public notice referred to in subsection (1)(a) is to be treated as having commenced at the time of publication of the notice under section 1.7(1)(a) and is to continue by way of exhibition under section 1.7(1)(b) and (c) until the meeting has been held.

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Comment:

As required by legislation Council's accounts for the year ended 30 June 2011 were audited by Council's Auditors Macri Partners.

Council has met the statutory requirements thus far and to complete the processes it is recommended that Council receive the report and progress to advertising for a period not less than 14 days and convene an Electors' Meeting commencing at 5pm on the 9 January 2012.

RESOLUTION

181211

Moved: Cr Smythe

Seconded: Cr Boyle

"That Council

- 1. Accepts the Annual Financial Report and the Audit Report for the year ended 30 June 2011;***
- 2. Gives local public notice of the availability of the Annual Report; and***
- 3. Authorises the Chief Executive Officer to convene the Annual Electors' Meeting, providing a minimum of 14 days' local public notice, to be held on Monday 9 January 2012 at 5.00pm in Chambers at the Town Hall, York."***

CARRIED: 6/0

Item 9.4.2 – Appendices

9.5 Late Reports

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.1 York Events

FILE NO:	FI.DON
COUNCIL DATE:	19 December 2011
REPORT DATE:	15 December 2011
LOCATION/ADDRESS:	Shire Property
APPLICANT:	Avon Events & Marketing
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	R Hooper, CEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Correspondence of 21 November 2011
DOCUMENTS TABLED:	Nil

Summary:

Avon Events & Marketing requests that Council only charge one fee for the York Antique & Collectors Fee and the York Gourmet Food & Wine Festival rather than separate fees for the hire of the Town Hall and Peace Park as the events venue.

Background:

Previous commercial type events have hired one venue and not both. Avon Events & Marketing acquired ownership of these events and conducted them in 2011.

Consultation:

Councillors – (5th December, 2011)

Statutory Environment:

2011/12 Municipal Budget – Adopted Schedule of Fees and Charges

Policy Implications:

Policy No. 13.1 - Policy Manual - Events For York

Objectives

- *To promote and encourage public events in the Shire of York.*
- *To enable the efficient administration of public events in the Shire of York.*
- *To protect the community from hazards associated with public events.*
- *To ensure that public events that are held in the Shire of York are conducted in accordance with statutory requirements and risk management guidelines.*
- *To ensure that “public event organisers” and “Council” exposure to risk is managed and appropriately minimised.*
- *To ensure that all events are covered by appropriate insurances.*

Financial Implications:

No financial provisions have been made in the 2011/12 budget for contributions above the \$1,000 per event already committed.

The nominated events do have tourism and business benefits for York.

No financial or profit/loss statements have been provided to support an increased level of community contribution.

Avon Events & Marketing has been approved for Regional Events promotion through the Department of Regional Development.

Stallholders licences can be annual rather than per event significantly reducing the claimed costs to host the event.

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.
2. To increase tourism to achieve business viability and growth.
3. To increase the net disposable income of the York community and investigate ways of increasing spending within the Shire.
4. To utilise the unique features of York's heritage and rural lifestyle, where appropriate, as the basis for economic development.
5. To ensure economic development does not conflict with York's heritage, lifestyle and environment.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

The loss of events to York would have both a local and a regional impact.

Social Implications:

The community may or may not accept their funds being used to support a commercial entity.

Environmental Implications:

Nil

Comment:

Council previously considered the request by Avon Events & Marketing on the 5th December, 2011 and the consensus was to not provide additional subsidies/contributions as it related to a commercial entity, no financial statements were provided and questioned how the Antique Fair came to be owned by Avon Event & Marketing.

If Council resolves to support the application for a combined venue fee for these events it will set a very strong precedent for the future.

At this stage Avon Events & Marketing have booked four days for the Antiques & Collectors Fair (6-9 April, 2012) and have nominated two weekends in June as dates for the Gourmet Food & Wine Festival.

The approved fees and charges for the venues are:

Town Hall

Hall Hire (Main Hall, Lesser Hall & Kitchen)	\$550 per day incl. GST
Setting Up Fees – Hall	\$66 per day incl. GST
Hall & Key Bond – per hire	\$220 (No GST)

Peace Park

Commercial Hire	\$500 per day incl. GST
Bond	\$500 (No GST)
Electricity	\$35 per day incl. GST

Stall Holder Permits

Application Fee	Nil
Single Day Permit	\$15 (No GST)
Annual Permit	\$35 (No GST)

Event Application Fee

Not adopted by Council	Nil
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The above fees are comparable with other local governments of a similar size which hold events.

**RESOLUTION
191211****Moved: Cr Lawrance****Seconded: Cr Hooper*****“That Council:***

Not combine the hire fees for the Town Hall and Peace Park to a single rate for the holding of the York Antiques & Collectors Fair and the York Gourmet Food & Wine Festival to be conducted by Avon Events & Marketing in 2012.

Advice Note:

Consider package deals for continuous multi-day events in future budgets”

CARRIED: 5/1

The Public left the meeting at 4.11pm for Council to “Go Into Committee.”

Item 9.5.1 – Appendices

9.6 Confidential Reports

9.6.1 Australia Day Awards

**RESOLUTION
201211**

Moved: Cr Smythe

Seconded: Cr Hooper

“That Council:

Go “Into Committee” to consider the Confidential Report at 4.11pm.”

CARRIED: 6/0

Cr Duperouzel and Cr Smythe declared an Interest Affecting Impartiality to this item.

**RESOLUTION
211211**

Moved: Cr Scott

Seconded: Cr Hooper

“That Council:

- (1) receive the Notes from the York Honours Reference for the Meeting held on the 5th December, 2011;***
- (2) endorse the recommendations from the York Honours Reference Group for the Junior Sports Star of the Year Award and the Senior Sports Star of the Year Award, for the Year 2011;***
- (3) endorse the recommendations from the York Honours Reference Group for the Under 25 Citizen of the Year Award; Community Group or Event Award and Senior Citizen of the Year Award;***

CARRIED: 6/0

**RESOLUTION
221211**

Moved: Cr Smythe

Seconded: Cr Hooper

“That Council:

Come ‘Out of Committee’ at 4.19pm”.

CARRIED: 6/0

10. NEXT MEETING

RESOLUTION
231211

Moved: Cr Hooper

Seconded: Cr Lawrance

“That Council:

hold a Special Meeting of the Council on February 9, 2012 at 4.00pm in Chambers at the Town Hall, York.”

CARRIED: 6/0

RESOLUTION
241211

Moved: Cr Hooper

Seconded: Cr Smythe

“That Council:

hold the next Ordinary Meeting of the Council on February 20, 2012 at 3.00pm in Chambers at the Town Hall, York.”

CARRIED: 6/0

11. CLOSURE

Cr Boyle thanked everyone for their attendance and declared the meeting closed at 4.25pm.