



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 27 JULY 2015
COMMENCING AT 5.15pm
IN THE YORK TOWN HALL, YORK**

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SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL
HELD ON MONDAY, 27TH JULY, 2015, COMMENCING
AT 5.15PM IN THE YORK TOWN 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 Matthew Reid, Shire President, declared the meeting open at 5.15pm.

1.2 Disclaimer

The Shire President advised the following:

"I wish to draw attention to the Disclaimer Notice contained within the agenda document and advise members of the public that any decisions made at the meeting today, can be revoked, pursuant to the Local Government Act 1995.

Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received. Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material."

I would like to acknowledge the Ballardong People, the Traditional Owners of the land on which we are gathered and pay my respects to their Elders both past and present.

1.3 Standing Orders

Clause 3.2 – Order of Business

Motion not put

1.4 Announcement of Visitors

Nil

1.5 Declarations of Interest that Might Cause a Conflict

Financial Interests

Nil

Disclosure of Interest that May Affect Impartiality

Cr Denese Smythe – Item 9.2.1 – Request to Keep Livestock – Impartial Interest

2. ATTENDANCE

2.1 Members

*Cr Matthew Reid, Shire President; Cr Denese Smythe, Deputy Shire President;
Cr David Wallace*

2.2 Mentoring/Monitoring Panel

*Jenni Law, Department of Local Government & Communities, Andrew Borrett, Department
of Local Government & Communities; Daniel Simms, CEO City of Wanneroo*

2.3 Staff

*Graeme Simpson, Acting Chief Executive Officer; Allan Rourke, Manager Works &
Services, Gail Maziuk, Compliance/Human Resources; Tabitha Bateman, Financial
Controller; Helen D'Arcy-Walker, Executive Support Officer*

2.4 Apologies

Cr Pat Hooper

2.5 Leave of Absence Previously Approved

Nil

2.6 Number of People in Gallery at Commencement of Meeting

There were 40 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

Public Question Time – 22nd June, 2015 Ordinary Council Meeting

Ms Jane Elise Ferro

Question 4:

What have you been paid for your time here, acting as Commissioner these past 6 months?

Response:

\$63,933.72.

Mrs Heather Saint

Question 2:

On the same agenda item and in reference to the report from auditors Macri Partners:

- a) Can you please confirm the date of the final Macri report, when it was received, who signed to accept that there had been no wrongdoing and under what authority?
- b) Letters of advice from Macri Partners were addressed to the Chairman of the FRAC Committee, being Shire President Matthew Reid and were to be presented to and dealt with by the FRAC Committee. Could you please explain why Cr Reid was not given those letters dated July and September 2014 respectively?
- c) In light of the above, can you please tell me how and when the FRAC committee made a decision to accept the advice of Macri Partners?

- d) The Resolution of Council dated 8 September 2014 states:
"That the Committee:
1. *Investigate the attached summary, which were areas highlighted in the report from the Auditors to ensure that it was Council business conducted by former CEO;*
2. *Determine what action is required; and*
3. *If further action is required how this will be funded."*

The Auditors advice of 3 September 2014 specifically stated that it should be the Audit Committee who examine the spreadsheets with details of each transaction to determine whether they are related to Council Business, Council should then take necessary action to address the concerns of certain ratepayers.

- (i) Can you please explain why the spreadsheets referred to were examined and dealt with by Shire administration staff and not the FRAC Committee?
(ii) How is it legitimate that the very administration staff responsible for the approval of such credit card payments completed the document when it clearly states on the document itself 'Comments by Audit Committee'?

Response:

The explanation for dealing with the Credit Card enquiry was given.

It is a very basic principle of our Westminster System of Government that there is to be a clear separation of powers at all levels of Government.

It is clearly not appropriate for the then FRAC Committee to be the plaintiff, then participate in the investigation, sit in judgement and then decide on future action.

There was a very clear reference in the Minister's Show Cause Notice on this matter.

The Corruption and Crime Commission requires that the Chief Executive Officer is to review such matters and if there are issues of concern they are to be referred to the CCC for formal action.

As Acting Chief Executive Officer I reviewed the comments made by Macri Partners, the findings of the FRAC Sub-Committee and then completed my own checks before coming to a conclusion.

Question 3:

In agenda item 9.5.1 Allegations of Serious Misconduct it is stated that it is also proposed to make minor changes to the Attendance at Conferences Policy.

As part of the current policy - item 4 states:

While Elected Members have a need to be aware of industry issues and other matters it is not practical or reasonable for all Councillors or individuals to attend every activity at the expense of ratepayers, and accountable process Elected Members should advise of their intention to attend a particular event and for this to be endorsed by a majority of Councillors before any expenses are incurred on behalf of the Shire of York.

If there is no endorsement of attendance by an individual/s no payments will be made by the Shire of York for any costs associated with attendance.

In the spirit of the open and accountable promise of this policy and that of current Council, could you please provide this community with written details of each occasion over the past seven years where attendance approval has been endorsed by a majority of Councillors and where the decision is recorded?

Response:

The Shire of York has an administrative procedure titled "Procedures for payment or recoup of Elected Member costs for attending meetings, forums, training and functions" that contains the words quoted in the question.

I do not have the staff resources to pursue the attendance record of past Councillors at conferences. Councillors may give formal approval by resolution or by verbal consensus.

Question 4:

Does Council intend to deal with my complaint of 13 July 2014 which is now almost 1 year old and preceded the Fitz Gerald Report of 25 July 2014 and which seems to have been effectively 'put to bed or quarantined'?

Response:

Your complaint of 13 July 2014 has been dealt with and a response in writing has been posted to you.

Cr Matthew Reid

Question 4:

The Minority Report needs to be presented to Council otherwise it is an invalid report.

Response:

The Minority Report made to the Minister for Local Government and Communities was directly lodged with his office.

As Acting Chief Executive Officer I have not seen the document nor been requested to authenticate any of its content.

It is a matter for the Minister's office.

Mr Simon Saint

Question 1:

I lodged a formal complaint in April 2014. As the FitzGerald report was suppressed in July last year my complaint has been outstanding for 16 months.

Response:

The Commissioner stated that there are ongoing issues and reminded Mr Saint of mediation with Graham Castledine.

The Acting CEO advised the status of the mediation is still to be determined.

4. PUBLIC QUESTION TIME

The Presiding Member to read the following statement in full at the commencement of Public Question Time:

Statement by the Presiding Member at the Opening of Public Question Time at Ordinary and Special Council Meetings

"Public Question Time is provided for under the provisions of Section 5.24 of the Local Government Act and the Local Government (Administration) Regulations 1996.

To provide equal opportunity for people to ask questions a limit of two (2) questions per person per time will be applied. If there is time available in Public Question Time people may be given the opportunity to ask a further two (2) questions at a time.

Procedures

- Questions submitted in writing prior to the meeting will be dealt with initially.
- Questions from the floor will be taken in the order recorded in a register.
- Statements, opinions and attachments will not be recorded in the minutes.
- Questions requiring research will be taken on notice and a response will be prepared in a reasonable timeframe. The original questions and the response will be included in the Agenda and Minutes of the next Ordinary Council meeting.
- Questions may be deemed inappropriate because they contain defamatory remarks or offensive language, they question the competency of elected members or staff, they relate to the personal affairs of elected members or staff, they relate to legal processes and confidential matters or they have been responded to previously and these will not be accepted or recorded in the Minutes.
- The minutes may only record a summary of the question asked and the response given.
- Where possible questions asked should be submitted in writing at the completion of question time or at the end of the meeting.
- At Special Council Meetings questions must relate to the items on the Agenda.
- Shire of York guidelines for Public Question Time are included on the meeting agenda.”

PRESIDING OFFICER

21 October 2013

4.1 Written Questions – Current Agenda

Public Question Time commenced at 5.18pm

Ms Liz Christmas

Question 1(a):

How can a letter written on Shire letterhead be only a private matter between two individuals and not be a letter the Shire, in this case its senior Officer, is responsible for?

Question 1(b):

How can the Shire and its representative image that a letter full of deep insults to a ratepayer would not shock the recipient and his family to the core, potentially causing deep harm to them and/or tending to dissuade others who know about it from dealing, free of fear of intimidation, with a CEO who might write such things to them?

Response:

Taken on Notice

Question 2(a):

Do the Shire Councillors and the Acting CEO believe that every letter written by former CEO Ray Hooper on Shire letterhead were not the responsibility of him and the Shire and were only letters from one private individual to another?

Response:

The Shire President stated that correspondence on Shire letterhead is official correspondence.

Question 2(b)

That those letters are as if they never existed i.e. nul and void in reality or in their implications despite being official documents?

Response:

The Shire President stated that correspondence on Shire letterhead is official correspondence.

Question 2(c):

Do the Shire Councillors past and present and the Acting CEO, believe that all the letters they write and have written and will write on Shire letterhead are not the responsibility of themselves as Shire officials and the Shire as such and are simply 'private matters between them and the recipients?

Response:

The Shire President responded - No

Mr Simon Saint**Question 1:**

At the OCM 15 October 2012, Councillors Boyle and Scott declared an 'impartiality' interest in agenda item 9.2.6. According to Regulation 11 of the Local Government (Rules of Conduct) Regulation 2007, *a person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest.*

- (a) What was the nature of the interests declared by Councillors Boyle and Scott in agenda item 9.2.6?

Response:

The Shire President requested Mr Saint to refer to the Minutes of that meeting.

- (b) Can Council provide me with a copy of the declared interests recorded in the register?

Response:

Yes

- (c) Did Councillors Boyle and Scott disclosures comply with s5.65(1) Local Government act and Regulation 11 Local Government (Rules Of Conduct) Regulation 2007?

Response:

The Shire President stated that the Council does not provide a ruling on this matter.

Question 2

Does Council consider that due process, including natural Justice (procedural fairness) was applied at the OCM 15 Oct 2012 when it considered and voted on agenda item 9.2.6 without knowing the true nature of Councillor Boyle and Scott's interests?

- (a) Does Council consider that due process and natural Justice was applied when Council refused to allow my wife and I to ask questions at public question time regarding agenda item 9.2.6 at the OCM 15 October 2012?

Response:

The Shire President stated that the Council does not provide a ruling on this matter.

- (b) Does Council consider that due process and natural Justice was applied when Council refused to respond to questions regarding agenda item 9.2.6 submitted in writing, before the meeting?

Response:

The Shire President stated that the Council does not provide a ruling on this matter.

Question 3

At the OCM 15 April 2013, the meeting agenda included item 9.6.1 Confidential Report, Saints Diner.

Section 5.23 of the Local Government Act 1995 stipulates that all council meetings are generally open to the public. Section 5.23 goes on to identify specific situations in which the council or committee may close to members of the public the meeting, or part of the meeting.

In situations where it is deemed that a meeting or part of a meeting must be closed to the public, Section 5.23 (3) states "A decision to close a meeting or part of a meeting and the reason for the decision are to be **recorded in the minutes** of the meeting."

- (a) Where are the stated reasons for 'confidentiality' regarding agenda item 9.6.1 recorded in the minutes for the OCM 15 April 2013?

Response:

The Shire President responded the reason was stated as to 'consider the Confidential Report'. It would have been more clear if reference to Section 5.23(2)(f)(i) of the Local Government Act was noted.

Question 4

At the same OCM, 15 April 2013, Council refused to accept questions from my wife and I regarding agenda item 9.6.1 Saints Diner, Shire President Boyle stated; "you have no forum here". Considering we were on the agenda for that meeting-

Does Council consider that it afforded natural Justice (procedural fairness) in not allowing my wife and I to ask questions regarding the above agenda item which directly affected us?

Response:

The Shire President stated the current Council could not pass comment or make a judgement on past decisions that occurred in 2013.

Mr Simon Saint

On 4 April 2014, I submitted to Council a code of conduct complaint regarding former CEO Ray Hooper.

My complaint arose from an offensive and abusive letter on Shire of York letterhead that I had received from Mr. Hooper on 2 April 2014. It would have been appropriate for Council to investigate my complaint or refer it for investigation to the DLGC. So far as I know, the Council did neither of those things.

Recently, I have received advice on the subject of my complaint from Jenni Law of the DLGC and Acting CEO Simpson.

Ms Law told me that my complaint is between the Shire of York and myself, implying that it has nothing to do with the DLGC. She went on to say that I should contact Lloyd Thomson of Local Government Insurance Services.

A/CEO Simpson told me in effect that my complaint is a personal matter between Ray Hooper and myself. In his view the Shire has no responsibility or liability for the contents of Mr. Hooper's letter to me, even though it was sent out on Shire of York letterhead and must therefore rank as an official communication from the Shire. Mr. Simpson has said publicly that since Mr. Hooper has resigned from his position with the Shire, there is nothing the Shire need do about the letter. In saying that, Mr. Simpson seems to display a precarious grasp of relevant law.

The matter has become topical because former commissioner James Best recently stated in his so-called 'open letter to residents' that 'there is absolutely no evidence of misconduct by Shire staff'. Since then, Mr. Hooper has written to a local newspaper claiming that he and his former colleagues employed by the Shire have been exonerated from all accusations of wrongdoing.

There is a good deal of evidence of wrongdoing on Mr. Hooper's part. His letter to me is part of it, but only a part. Mr. Best has claimed that he investigated all complaints about staff misconduct and that he had done so at the request of the Corruption and Crime Commission. Presumably, it was he who did the 'exonerating'.

Question 1:

When did Commissioner Best investigate my code of conduct complaint dated 4 April 2014?

Response:

Commissioner Best reported to you on 17th April, 2015 and offered as a part of the mediation process to resolve the matter.

Question 2:

Did he, and does the present Council, regard Mr. Hooper's letter to me as evidence of misconduct?

Response:

The Shire President stated the letter is what it is, a personal expression.

Question 3

When, and by what process, was former CEO Hooper cleared of misconduct with regard to my code of conduct complaint?

Response:

The Shire President stated there is no charge as such or the right of reply.

Question 4:

Does Council accept that the letter was an official communication for which the Shire of York is responsible?

Response:

No

Question 5:

It is now some 15 months since I submitted my complaint. Why has the Shire so far failed to deal with it, and does it intend ever to do so?

Response:

The Shire President responded that Council has requested the Acting CEO to prepare a detailed review of this matter and until this occurs Council cannot consider this complaint.

Mrs Tanya Richardson

Part of the Department of Local Government & Communities 'assessment Report-20120177 February 2013', identifies that the Department provided advice to the Shire in terms of clarity of member's interests in the minutes of Council meetings and appropriate complaints management procedures for the Shire. Bearing in mind this was over two years ago, and as of now, the Departments Probity Audit Report recommendations 1,2,3,4,5 & 14 have identified the very same shortfalls in the Shire's administration.

Can you please explain why these shortfalls were not addressed at the time back in February 2013?

Response:

The Shire President responded that items 1-5 have been completed and this was reported in the Probity Audit Review document.

Recommendation 14 refers to the complaints policy and at the 13 July workshop action was taken to defer the adoption of the proposed policy.

Ms Lynley Bashford**Question:**

I wish to request that the Offer and Acceptance for the Sale of the Old Convent be tabled and made available to all interested parties at the Ordinary Council Meeting and Special Electors meeting tonight.

Response:

The Acting CEO stated that as this contract and settlement are not in place it is not appropriate to table the document. If Ms Bashford wishes she may review the document at the Administration office.

Mrs Heather Saint**Question 1.**

At the Special Council meeting of 6 July 2015, Ms Liz Christmas asked with respect, earlier it was stated by the Acting CEO that the matter between Simon Saint and Ray Hooper was a private matter. As the letter was written on Shire letterhead how can this be a private matter?

In the response, Commissioner Best said that it was now a private matter as Ray Hooper no longer works for the Shire. The Acting CEO also stated that as Mr Ray Hooper no longer works for the Shire, he has no authority to insist he takes action.

- (a) Mr Hooper wrote on Shire letterhead with copies to all senior staff and members of Council, do ACEO Simpson and Council still maintain that this was and is a personal matter between two people?

The content of the letter was clearly a statement written in the first person and reflected personal views about Mr Saints behaviour.

- (b) As Commissioner Best and ACEO Simpson have declared this to be a 'private matter' as Ray Hooper is no longer with the Shire does this mean that all previous letters written by Mr Hooper to Mr Saint are of a personal nature, to include the invalid direction of 8 January 2013?
- (c) Council has now declared no wrongdoing within the Shire and appears to have washed its hands of Ray Hooper's letter and the complaint which resulted because it is perceived as a 'personal letter'. In respect of legal action that may now be taken against Ray Hooper 'personally' and as he no longer works for the Shire, can Council confirm that any future request by Ray Hooper for funding of legal financial assistance to the Shire will of course be rejected?

Response:

The Shire President stated that Council has requested that the Acting CEO provide a detailed report on this matter and until this report has been received and considered by Council, Council is not in a position to answer these questions.

Question 2:

At the ABS meeting on Monday 20 July 2015, Cr Smythe enquired whether, following the recent sale of Settlers, the car parking charges identified as an outstanding debt over 90 days old would be repaid from the proceeds. It was confirmed by the administration that this had not been taken into consideration.

As at February 2014, the outstanding debt was 7 years old and had been reduced by the Shire in 2011 from \$361,550 to \$218,580; what is the current debt, who now owns the debt and is Council intending to continue to pursue this debt?

Response:

The Acting CEO stated the outstanding debt was not part of the settlement process.

Question 3:

Has this applicant ever made any cash in lieu payment for the car parking bays to enable these other facilities to be provided for the community?

Response:

The Acting CEO responded that a\Accounts have been rendered to the principal but no payments have been received.

Question 4:

During the compliance audit carried out on 23 December 2011, did George Johnson notice and report that this business was trading contrary to Councils 16 May 2011 resolution and did he make recommendation to pursue legal action due to the non compliance as he did with a business owned by the Saints?

Response:

The Acting CEO responded that Mr George Johnson is not available for comment.

Question 5:

Council approved the agenda item by Resolution 101012, during the planning officer(s) subsequent file audit investigations and/or site visits, why didn't the Shire identify the outstanding ongoing non compliance issues at Settlers House and exercise the listed compliance options as they did with two other businesses, both owned by the Saints?

Response:

The Acting CEO stated there is no clear record of the reasoning.

Question:

- i. Why did Council spend ratepayers funds on legal advice to pursue the Saints and not Settlers House Pty Ltd for the legitimate \$218,580 recoverable debt for non payment of the cash in lieu contributions?
- ii. Since 2011 have Settlers House Pty Ltd ever received a direction or been threatened with court action for non compliance with planning conditions and if so, when?

Response:

The Acting CEO stated the issues involving Settlers House Pty Lt are in the hands of the Shire lawyers.

Question 6:

- i. Thus report clearly states that subsequent to Council's action in 2011 and in an attempt to have the premises re-opened Council agreed to reduce the amount owing for car parking from \$361,550 to \$218,580 resulting in a write-off of \$142,970 which was affected in 2011/12. Has Council offered this facility to any other business in the Shire?
- ii. It would appear that the February agenda item was put up for no other reason than to satisfy the balances for end of year financials for 2014. As it is now 2015, why has the debt not been recovered as recommended in 2011?
- iii. Do the previous owners of Settlers have a Certificate of Occupancy?
- iv. If so, when was the certificate issued, by whom and on what authority?
- v. If no certificate exists, how and why was and is accommodation being offered for sale?
- vi. Will the new owners of Settlers be granted a Certificate of Occupancy?

Response:

The Acting CEO responded some of the owners of Settlers have Certificate of Occupancy and others have made application. The certificates or lack of them are not a barrier to sale.

Question 7:

If all ratepayers in the district refuse to pay their rates or debts, will Council extend them the same courtesy of either prolonged time to pay or by simply writing off the debts as it has done with several large rates debtors recently?

Response:

The Acting CEO stated that the hypothetical scenario will not arise.

4.2 Public Question Time

- *Questions from the floor will be taken in the order recorded in a register.*
- *Statements, opinions and attachments will not be recorded in the minutes.*
- *Questions requiring research will be taken on notice and a response will be prepared in a reasonable timeframe.*

Ms Jane Ferro

Question 1:

Will all Ordinary Council Meetings and Special Council Meetings in future be held in the Town Hall rather than in licensed premises at the Recreation Centre?

Response:

The Shire President responded – Yes

Question 2:

When will Council change the Shire's representation on the JDAP to reflect the return to office of our Elected Councillors?

Response:

The Shire President stated that this would be considered at the late Item 9.5.2.

Mrs Mel Van de Pol

Question 1:

With regards to the concrete pipes on the cnr Balladong and Thorn Roads when will these be moved?

Response:

The Acting CEO responded that the Shire of York has been trying to dispose of these pipes and had a few expressions of interest to purchase.

Question 2:

Could the pipes not be moved to the Depot?

Response:

The Acting CEO stated that the Shire is reluctant to move the pipes as we do not have the correct equipment for moving them and this could cause damage to the pipes.

Question 3:

Can we please spray for weeds from Morris Edwards Drive to the Information Bay on both sides of the road.

Response:

The Acting CEO stated that the appropriate way to deal with this is to put in a Works Request at the Shire Administration office.

Question 4:

Can we please start mowing Avon Park on a Thursday or Friday instead of a Monday after the tourists have been?

Response:

The Acting CEO will raise this at the staff meeting this week.

Question 5:

Can I please go on the mailing list? I have already signed up but have not received anything.

Response:

The Shire President stated that there are two different mailing lists – an Agenda/Minutes mailing list and a Community Mailing list for all other information.

Mrs Sandra Paskett

Question 1:

In Item 9.1.2 it states that an Absolute Majority is required. What constitutes an Absolute Majority?

Response:

The Shire President stated that an Absolute Majority is four (4) people. For clarity an Absolute Majority is not required for Item 9.1.2.

Question 2:

When we put in our application to the Planning Officer we did request if we could have the marque up for longer as 2 months is not long enough. We would like some flexibility and wish to have the marque up for March, April, May and October, November, December.

Response:

The Shire President stated that he will draw this to the Councils attention later this evening.

The Shire President adjourned the meeting at 5.55pm for the Special Electors meeting to commence.

Meeting recommenced at 7.51pm.

Mrs Roma Paton

Question 1:

Is Council aware Commissioner Best tabled for publication Appendix A, B C under Item 9.2.1 of the 6th July Council meeting with incorrect information in at least one document?

Response:

Taken on Notice

Question 2:

Will Council please rescind Resolution 080715 on the grounds that at least one document has incorrect information?

Response:

Taken on Notice

Question 3:

Why was the word sacked used?

Response:

Taken on Notice

Ms Darlene Barratt

Question 1:

At the Ordinary Council Meeting on the 22nd June, 2015 is there a document to ban her from asking questions regarding her property at 4 Penny Street? Do you have documented proof that she cannot ask questions?

Response:

Taken on Notice

Question 2:

Can we please adjust the Public Question Time proforma so it relates to the Local Government Act?

Response:

The Shire President requested that the suggestion be forwarded to the Administration.

Ms Jane Ferro

On Behalf of Mr Dennis Hill who was in attendance, however he was unable to stand

Question 1:

Is Colleen Thompson of GHD currently the sole Planner dealing with the preparation of the RAR?

Response:

GHD are looking after our Planning needs.

Question 2:

Will Colleen Thompson of GHD be the Planning Liaison Officer to the Shire legal representative at the SAT?

Response:

The Shire President stated that GHD are doing the bulk of the Planning work for the Shire now, GHD will be working with McLeods our legal representative. The Shire will be working with GHD not a particular staff member.

Ms Jane Ferro

Question 3:

Do the same Town Planning conditions apply for Laurelville and Faversham House seeing that both establishments are located in areas zoned residential?

Response:

Taken on Notice

Question 4:

Are all food and accommodation providers in town required to have wheelchair access?

Response:

Taken on Notice

Question 5:

Is wheelchair access provided at the York Palace Hotel?

Response:

Taken on Notice

Question 6:

Is there one rule for favoured proprietors in York and another for the less favoured?

Response:

The Shire President replied that to his understanding the Council of the day exercised due diligence across the Shire of York as a whole.

Mrs Heather Saint**Question 1:**

With reference to the letter of response to my questions taken on notice from the June meeting the response states – *The Corruption and Crime Commission requires that the Chief Executive Officer is to review such matters and if there are issues of concern they are to be referred to the CCC for formal action and then as Acting Chief Executive Officer I reviewed the comments made by Macri Partners, the findings of the FRAC Sub-Committee and then completed my own check before coming to a conclusion.* Was it the Acting CEO who presented the conclusion and findings from his review to the CCC or was it Commissioner Best because at the last Council meeting Mr Best clearly stated he was responsible for the CCC investigation?

Response:

The Acting CEO stated that the Shire of York provided to the CCC all requested documentation.

Question 2:

Who did the investigation?

Response:

The Acting CEO stated that Commissioner Best had to sign off on the investigation, however it was the administration office that had to provide the documentation.

Question 3:

The response to question 3 – *I do not have the staff resources to pursue the attendance record of past Councillors at conferences. Councillors may give formal approval by resolution or by verbal consensus.* Does this Council intend to pursue this matter?

Response:

Yes they will.

Question 4:

The response to question 4 – *Your complaint of 13 July 2014 had been dealt with and a response in writing has been posted to you.* Is this the response of the 22nd July, 2015 and if so is this the only response I can expect from the Acting CEO.

Response:

The Acting CEO replied – Yes

Question 5:

Was this opinion based on legal advice from Dirk Feinauer or is it our personal opinion.

Response:

Taken on Notice

Question 6:

Mr Simpson, you refer to the WA Interpretation Act having provision for making changes to rectify imperfections in process but do not mention to which section of the Act you refer. However, has Council discussed or considered the abrogation of powers under section 59(1)(1) of this Act enabling Council to delegate the duty of communication to you alone in respect of insurance matters?

Response:

Taken on Notice

Question 7:

If so, would this be in conflict with sections 5.42 and 5.43 of the Local Government Act and section 9.29 for any further potential Court representation?

Response:

Taken on Notice

Ms Darlene Barratt

Question:

On the 22nd June, 2015 I submitted questions and Mr Simpson and Mr Best said I would get an answer.

Response:

The Acting CEO stated he was not aware of any outstanding responses and requested Ms Barratt to forward them via email.

Ms Lynley Bashford

Question:

Could it be considered that people who have vexatious issues have a meeting or meetings so we can move on so common ground can be established?

Response:

The Shire President replied – Yes

Ms Jane Ferro

Question 7

Why were there so many official visitors present at the 6th July, 2015 meeting.

Response:

The Shire President stated that the official visitors were invited to the meeting by Commissioner Best.

Question 8:

It was stated in the Minutes for the 6th July, 2015 Special Council Meeting – *The Commissioner welcomed guests as mentioned previously who are here today to provide advice to him.* What advice, if any, did they provide?

Response:

Taken on Notice

Question 9:

Who paid for their travel, accommodation and meals?

Response:

The Shire President stated that no one was paid to attend.

Question 10:

Why were armed police present at the meetings held on the 2nd and 6th July, 2015?

Response:

The Shire President stated the Police were invited by Commissioner Best.

The Shire President also stated that is it not appropriate to pass judgement on previous Council.

Question 11:

When was the Avon Waste Development Proposal lodged with the Shire and put up on the website?

Response:

Taken on Notice

Question 12:

Who is the author of this document?

Response:

Taken on Notice

Question 13:

When and where was the proposal advertised?

Response:

Taken on Notice

Question 14:

Have the neighbours been notified of Avon Waste's intention to turn the property known as Fairways into a transport depot? How and when were they notified?

Response:

Taken on Notice

Mr Simon Saint

Question :

When can you expect to receive the report regarding the Code of Conduct complaint?

Response:

Council has requested the Acting CEO to provide a detailed report on this matter and until this report is received and considered, Council is not in a position to respond to this question.

Public Question Time concluded at 8.18pm

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS & NOTES OF THE AGENDA SETTLEMENT BRIEFING

7.1 Minutes of the Ordinary Council Meeting held June 22, 2015

Corrections

Confirmation

“That the minutes of the Ordinary Council Meeting held June 22, 2015 be confirmed as a correct record of proceedings.”

7.2 Minutes of the Special Council Meeting held June 25, 2015

Corrections: Cr Denese Smythe – top of page 9 should read – Cr Smythe called a point of order as the Commissioner was allowing debate during public question time.

Confirmation

“That the minutes of the Special Council Meeting held June 25, 2015 be confirmed as a correct record of proceedings.”

7.3 Minutes of the Special Council Meeting held July 2, 2015

Corrections: Cr Denese Smythe disagrees with the number of people in the Gallery – Cr Smythe would like it noted that approximately 150-200 people were in attendance.

Public Question Time – Cr Denese Smythe asked two questions – the questions within the Minutes is incomplete – it should read:

Question 1 - Did Commissioner Best in his role as Council review the Long Term Financial Plan 2013-14 to 2022-23 which states on page 38 under borrowings – the Shire will be prudent and fiscally responsible when considering any proposals for new debt to deliver councils objectives. The Shire does not propose to borrow funds over the life of the plan?

Question 2 – Why is Commissioner Best putting this community into debt without consultation when he has only two days left of his contract?

Confirmation

“That the minutes of the Ordinary Council Meeting held July 2, 2015 be confirmed as a correct record of proceedings.”

7.4 Minutes of the Special Council Meeting held July 6, 2015

Corrections: Crs Denese Smythe and Pat Hooper did not attend the meeting held behind closed doors.

Confirmation

“That the minutes of the Ordinary Council Meeting held July 6, 2015 be confirmed as a correct record of proceedings.”

**RESOLUTION
090715**

Moved: Cr Smythe

Seconded: Cr Wallace

“That the minutes of the Ordinary Council meeting held June 22, 2015 the Special Council Meeting held on June 25, 2015, the Special Council Meeting held on July 2, 2015 and the Special Council Meeting held July 6, 2015 be confirmed en bloc as a correct record of proceeds with the above amendments.”

CARRIED: 3/0

Advise Note: The Shire President stated that the current Council where not part of the meetings that the confirmed Minutes pertain to.

7.5 Notes of the Agenda Settlement Briefing – July 20, 2015

Councillors reviewed reports to be considered at the July Ordinary Council Meeting at the Agenda Settlement Briefing held on July 20, 2015.

Recommendation:

**RESOLUTION
100715**

Moved: Cr Smythe

Seconded: Cr Wallace

“That the notes of the Agenda Settlement Briefing held on June 15, 2015 be received.”

CARRIED: 3/0

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

9. OFFICER’S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Lot 103 Spencers Brook – York Rd, Burges

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: SP1.60479
COUNCIL DATE: 27 July 2015
REPORT DATE: 7 July 2015
LOCATION/ADDRESS: Lot 103 Spencers Brook – York Rd, Burges
APPLICANT: M. Couzens
SENIOR OFFICER: G. Simpson, ACEO
REPORTING OFFICER: C. Thompson, Senior Planner (GHD)
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix 1 – Site Plan
Appendix 2 – Elevations
Appendix 3 – Scheme Assessment
Appendix 4 – Schedule of Submissions
DOCUMENTS TABLED: Nil
REPORT APPROVED BY THE A/CEO: Graeme Simpson

Summary:

An application for a private recreation (Go-Kart) facility has been received and assessed accordingly.

Key planning issues relate to access to the site, impacts on the Avon River and potential impacts on rural amenity. It is recommended that these matters can be effectively managed through conditions on a planning consent.

It is recommended that Council approve the application subject to the conditions listed at the end of this report.

Background:

On 13 February 2015, Council received an application for the development of a private recreation (Go-Kart) facility at Lot 103 Spencers Brook – York Road York.

At the Ordinary Meeting held 16 February 2015, the Commissioner resolved to;

“Determine that the proposed private recreation (Go-Kart) facility at Lot 103 Spencers Brook – York Road, York, may be consistent with the objectives of the General Agriculture zone in accordance with clause 3.2.4 (b) of the Shire of York Town Planning Scheme No. 2 and thereafter follow the advertising procedures of clause 8.3 in considering the application for planning consent”

The proposal was advertised in the local paper as well as referred to surrounding neighbours and relevant agencies for comment. Following a preliminary assessment of the application and the comments that were received, additional information and an amended site plan was requested of the applicant.

This subsequent information was referred to surrounding neighbours and the relevant agencies for further comment.

Consultation:

In accordance with clause 8.3.1 (b) of the Scheme, an application that is made for planning consent that is for a use not listed is to be advertised in accordance with clause 8.3.3.

Therefore, notice was given in accordance with clause 8.3.3 of the Scheme.

The applicant was responsible for the cost associated with the newspaper advertisement in accordance with our current fees and charges.

In accordance with clause 8.4, the local government consulted with other agencies and authorities it considered appropriate.

A summary of the submissions received can be found in Appendix 4

Statutory Environment:

Shire of York Delegation Manual 2012

DE5 Approval of Statutory Planning

The delegation for determining a 'use not listed' is with Council. For the purposes of this meeting, the Commissioner is currently in place of Council and therefore holds all relevant delegations.

Shire of York Town Planning Scheme No. 2

A full assessment against the relevant provisions of the Scheme can be found in Appendix 3.

Policy Implications:

There are no policy implications associated with this proposal.

Financial Implications:

There are no financial implications associated with this proposal.

Strategic Implications:

York Local Planning Strategy (LPS)

The property is identified in the LPS as being within the Western Slopes Precinct (Production) (2a).

The objectives of the precinct are;

- *Protect sustainable agriculture production.*
- *Promote farm diversification.*
- *Preserve and enhance the environment and natural resources.*

It is considered that the proposal is consistent with the intent of the LPS as the proposal has considered the objectives.

Shire of York Community Strategic Plan

The Shire of York's 2012 Strategic Community Plan goals are:

Social

- *Manage population growth, through planned provision of services and infrastructure.*
- *Strengthen community interactions and a sense of a united, cohesive and safe community.*
- *Build and strengthen community, culture, vibrancy and energy.*

Environmental

- *Maintain and preserve the natural environment during growth, enhancing the 'rural' nature of York, and ensuring a sustainable environment for the future.*
- *Support sustainable energy and renewable resource choices.*

Economic

- *Build population base through economic prosperity.*
- *Value, protect and preserve our heritage and past.*
- *Grow the economic base and actively support local businesses and service provision.*

The proposal is consistent with the objectives of the Community Strategic Plan, specifically the social and economic elements.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: **Yes**

Triple bottom Line Assessment:

Economic Implications:

It is expected that the proposal may bring economic benefit to the community of York.

Social Implications:

It is expected that there may be positive social implications to the community of York however proposals of this nature may also mean negative impacts, particularly to surrounding landowners.

It is considered that any negative impacts can be managed through conditions of consent.

Environmental Implications:

The property is partly located within a flood affected area is adjacent to the Avon River.

There are no environmental implications.

Officer Comment:

The application has been considered against the objectives of the General Agriculture Zone. The proposed development does not relate to broad-hectare agriculture; however it does provide a benefit for the district – in accordance with Objective b) - by providing a new facility which does not exist in the locality that could encourage tourists and visitors to the area. On this basis, it is considered capable of approval subject to managing any impacts on amenity or the environment.

Assessment of the application documentation and information provided in submissions received during advertising identified the following key planning issues relevant to the proposal:

Access to the site

Access and egress to the site is across the freight railway line (an occupational crossing) and via an easement on the adjacent lot.

The landowner of 3151 York/Spencers Brook Road, Burges Siding has granted permission for the landowner of Lot 103 York/Spencers Brook Road to have access to his land through their property along the marked track. However the statement does not related to potential patrons of the proposed go kart facility. This permission will need to be provided as part of a traffic management plan to be prepared as condition of planning approval.

Brookfield Rail and the Public Transport Authority raised safety and liability concerns with use of the occupational crossing for public access, and requested additional information regarding the number of vehicles. They advised if large numbers of vehicles would access the property, upgrading the crossing to a public access crossing may be required.

Subsequent advice from the applicant suggests that an officer at Brookfield Rail has agreed that a suitably trained traffic warden will control vehicle entry and exit to the property. The officer is currently on field work and this agreement cannot be confirmed. However, on the basis of such advice it is likely that management practices can be employed to ensure safety can be maintained. A suitable access and egress management plan can be required, to be prepared by a suitably qualified professional, as a condition of approval.

Management of the access and egress will require further detail and consultation with Brookfield Rail and PTA. It is recommended that these agencies be engaged in reviewing the required management plans, to ensure their concerns are alleviated through management practices.

Impacts on the Avon River

There are concerns from the Department of Water (DoW) relating to stormwater runoff and separation distances to the Avon River.

In relation to an appropriate buffer, advice from the Department of Water (DoW) recommended a biophysical assessment be undertaken, or that a minimum 30 metre foreshore reserve be provided. The cost of a biophysical assessment is considered unreasonable for the scale of the development, therefore the applicant was advised to provide a 30 metre setback to the Avon River. The applicant has provided a site plan and advised that the development is set back 76 metres from the centrepoint of the Avon River. This does not confirm that the minimum 30 metre buffer is achieved, however it is likely. A condition of approval specifying that no development is to occur within 30 metres of the Avon River bank will ensure that the minimum buffer distance is retained.

Irrespective of the delineation of a separation distance/buffer to the Avon River, potential impacts are presented through stormwater runoff which may introduce pollutants including nutrients, litter, and other environmental threats including Phytophthora dieback which can be introduced to the site by earthworks, contaminated dirt/fill, and contaminated soil on the tyres of go karts and other vehicles. Phytophthora dieback is a key potential impact of developments of this kind; this soil-borne water mould causes dieback in native trees and plants. It can easily be spread through vehicles, soil disturbance, and stormwater runoff from dirt track motor sport facilities.

The applicant has suggested that stormwater impacts would be negligible as the natural fall of the land is away from the Avon River, and has provided a "Task Based Risk Assessment" to suggest that hydrocarbon contamination is unlikely. However the risk assessment provided does not include any confirmation that it has been prepared by a suitably qualified professional, and the information submitted is insufficient to demonstrate how potential impacts will be managed. Management plans will be necessary to manage potential environmental impacts, and these can be prepared as a condition of approval.

The amended application was referred to the Department of Water, however no further comment was received prior to Council meeting. It is recommended that the Department of Water be engaged in reviewing the required management plans, to ensure their concerns are alleviated through management practices.

Potential impacts on rural amenity

A concern was raised by a submission in relation to the potential noise generated by the development.

Irrespective of any development approval, any development is required to comply with the Environmental Protection (Noise) Regulations 1997. However, potential noise impacts can have a significant impact on the amenity of the locality and are also a planning consideration.

The applicant has provided noise monitoring results; the details of the noise assessment are not clear and does not include information such as the location of adjacent houses, the weather conditions, how the noise was measured if the facility does not currently exist.

Greater information is needed to ensure noise impacts can be managed, and that noise does not impact on the rural amenity experienced by neighbouring properties. Conditions should require an acoustic report prepared by a suitably qualified professional demonstrating that the noise regulations will not be exceeded at any sensitive receptor (i.e. neighbouring houses) that also provides management techniques to manage noise. Additional conditions on the approval should be included to manage the duration and frequency of events that may impact on amenity, including cessation of evening events before 10pm, no commencement of any events prior to 9am, and no events to occur on weekdays.

An advice note should be included on the approval advising the applicant that, irrespective of the development approval or the endorsement of management plans, the applicant is required to comply at all times with the Environmental Protection (Noise) Regulations 1997.

In summary, potential impacts of the proposal are capable of management through detailed management plans, to be prepared in consultation with key agency stakeholders.

ASB Comment

Cr Smythe requested that the mention of the Commissioner under the Statutory Environment requires to be updated. The Acting CEO stated that this will be updated in future reports.

Cr Hooper supports the applicant in principle, however there are many unanswered questions regarding right of way access across a private property and requested that more information be provided.

The Acting CEO stated he has spoken to the applicant and has also written to him suggesting he resolve the right of way issues before the Ordinary Council Meeting. The Acting CEO referred to Item 6 of the Officer Recommendation and also stated that the applicant would require written approval from Brookfield Rail.

Cr Reid requested the Acting CEO to obtain information on what Councils action where with regards to the railway crossing for Skydive Express.

OFFICER RECOMMENDATION

"That Council:

Approve the application for a private recreation (Go Kart) facility at Lot 103 Spencers Brook – York Road, Burges, subject to the following conditions:

- 1. Development must substantially commence within two (2) years from the date of this decision.*
- 2. The development shall take place in accordance with the stamped approved plans.*
- 3. No vegetation is to be removed or damaged as part of the approved works.*
- 4. No development is to occur within 30 metres of the bank of the Avon River.*
- 5. Prior to the commencement of development, the applicant is to submit a stormwater and dieback management plan, to be approved by the Shire of York on the advice of the Department of Water, and thereafter implemented (Note 5)*
- 6. Prior to the commencement of development, the applicant is to submit a traffic access and parking management plan, to be approved by the Shire of York on the advice of the Public Transport Authority, and thereafter implemented (Note 6)*
- 7. Prior to the commencement of development, the applicant is to submit an acoustic report and management plan, to be approved by the Shire of York on the advice of the Department of Environmental Regulation, and thereafter implemented (Note 7)*
- 8. Evening race events are to cease by 10pm, unless otherwise approved by the Shire of York in writing.*
- 9. Race events are not to commence before 9am and are not to occur on weekdays, unless otherwise approved by the Shire of York in writing.*
- 10. Prior to the commencement of development, the applicant is to submit a dust management plan, to be approved by the Shire of York, and thereafter implemented.*
- 11. Lighting provided on site shall be directional to minimise light spill to surrounding properties.*
- 12. The fire and emergency plan prepared by the applicant shall be kept on the premise and implemented as specified.*

ADVICE NOTES

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 permit. In accordance with the provisions of the Building Act 2011, an application for a building permit 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.

Note 5: The stormwater management plan is to be prepared by a suitably qualified professional, and include:

- *Management of stormwater quality and quantity from the track, access, parking areas, and structures;*
- *Implementation of requirements to prevent introduction or spread of *Phytophthora cinnamoni* to the site, including importation of clean fill and vehicle hygiene/wash down requirements.*

Note 6: The traffic access and parking management plan is to be prepared by a suitably qualified professional, and include:

- *The mechanisms employed to ensure safe railway crossing for all activities on the site attended by the general public;*
- *Written permission from the land owner of No.3151 York-Spencers Brook Road, Burges Siding to allow the participants, patrons and spectators of the dirt go-kart track to access the facility via an easement over their land; and*
- *Compliance with the Australian Standards 2890 for all car bays and manoeuvring throughout the car park.*

Note 7: The acoustic report and management plan is to be prepared by a suitably qualified professional, and include:

- *Noise monitoring or modelling , including go kart and generator noise, to demonstrate compliance with the Environmental Protection (Noise) Regulations 1997 at all surrounding receptors;*
- *Appropriate management techniques to be employed to ensure that noise levels will not exceed the Environmental Protection (Noise) Regulations 1997*

Note 8: As per the advice of the Water Corporation, a new Special Service Agreement will be required for the additional water demand. This will be done at the building application stage for water supply.

Note 9: Approval is required from the Department of Health for the on-site waste water treatment process.

Note 10: Irrespective of the approval and implementation of the management plan referred to in Condition 7, the applicant is required to comply at all times with the Environmental Protection (Noise) Regulations 1997.

Note 11: The development is to have access to a sufficient supply of potable water that is of the quality specified under the Australian Drinking Water Quality Guidelines 2004.

Note 12: All food related aspects to comply with the provisions of the Food Act 2008 and related code, regulations and guidelines."

The Council Moved the Officer Recommendation:

Motion to Amend:

Delete Advice Note 6 above due to the owner of the property withdrawing his support of access to his property.

RESOLUTION 110715

Moved: Cr Wallace

Seconded: Cr Reid

"That Council:

Approve the application for a private recreation (Go Kart) facility at Lot 103 Spencers Brook – York Road, Burges, subject to the following conditions:

- 1. Development must substantially commence within two (2) years from the date of this decision.**
- 2. The development shall take place in accordance with the stamped approved plans.**
- 3. No vegetation is to be removed or damaged as part of the approved works.**
- 4. No development is to occur within 30 metres of the bank of the Avon River.**
- 5. Prior to the commencement of development, the applicant is to submit a stormwater and dieback management plan, to be approved by the Shire of York on the advice of the Department of Water, and thereafter implemented (Note 5)**

6. ***Prior to the commencement of development, the applicant is to submit a traffic access and parking management plan, to be approved by the Shire of York on the advice of the Public Transport Authority, and thereafter implemented (Note 6)***
7. ***Prior to the commencement of development, the applicant is to submit an acoustic report and management plan, to be approved by the Shire of York on the advice of the Department of Environmental Regulation, and thereafter implemented (Note 7)***
8. ***Evening race events are to cease by 10pm, unless otherwise approved by the Shire of York in writing.***
9. ***Race events are not to commence before 9am and are not to occur on weekdays, unless otherwise approved by the Shire of York in writing.***
10. ***Prior to the commencement of development, the applicant is to submit a dust management plan, to be approved by the Shire of York, and thereafter implemented.***
11. ***Lighting provided on site shall be directional to minimise light spill to surrounding properties.***
12. ***The fire and emergency plan prepared by the applicant shall be kept on the premise and implemented as specified.***

ADVICE NOTES

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 permit. In accordance with the provisions of the Building Act 2011, an application for a building permit 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.

Note 5: The stormwater management plan is to be prepared by a suitably qualified professional, and include:

- ***Management of stormwater quality and quantity from the track, access, parking areas, and structures;***
- ***Implementation of requirements to prevent introduction or spread of *Phytophthora cinnamoni* to the site, including importation of clean fill and vehicle hygiene/wash down requirements.***

Note 6: Deleted

Note 7: The acoustic report and management plan is to be prepared by a suitably qualified professional, and include:

- ***Noise monitoring or modelling , including go kart and generator noise, to demonstrate compliance with the Environmental Protection (Noise) Regulations 1997 at all surrounding receptors;***
- ***Appropriate management techniques to be employed to ensure that noise levels will not exceed the Environmental Protection (Noise) Regulations 1997***

Note 8: As per the advice of the Water Corporation, a new Special Service Agreement will be required for the additional water demand. This will be done at the building application stage for water supply.

Note 9: Approval is required from the Department of Health for the on-site waste water treatment process.

Note 10: Irrespective of the approval and implementation of the management plan referred to in Condition 7, the applicant is required to comply at all times with the Environmental Protection (Noise) Regulations 1997.

Note 11: The development is to have access to a sufficient supply of potable water that is of the quality specified under the Australian Drinking Water Quality Guidelines 2004.

Note 12: All food related aspects to comply with the provisions of the Food Act 2008 and related code, regulations and guidelines."

CARRIED: 2/1

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.2 Lot 1 & 2 (18) Panmure Road, York

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

FILE NO:	PA1.9910
COUNCIL DATE:	27 July 2015
REPORT DATE:	10 July 2015
LOCATION/ADDRESS:	Lot 1 & 2 (18) Panmure Road, York
APPLICANT:	Glenwarra Development Services
SENIOR OFFICER:	G. Simpson, ACEO
REPORTING OFFICER:	C. Thompson, Senior Planner (GHD)
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appendix 1 – Scheme Amendment 53 Appendix 2 – Site Plans Appendix 3 – Scheme Assessment Appendix 4 – Schedule of Submissions
DOCUMENTS TABLED:	Nil

Summary:

An application for of “Reception Centre”, “Exhibition Centre”, “Guest House”, and “Residential” has been received and assessed accordingly.

Key planning issues relate to impacts on amenity due to noise emissions and visual impact of temporary structures.

It is recommended that Council approve the application subject to the conditions listed at the end of this report.

Background:

On 5 March 2015, the Minister for Planning approved Scheme Amendment 53 which including the rezoning of Lot 1 and 2 (18) Panmure Road, York (known as Laurelvile), from Residential to Special Use Zone 7 to include the following uses;

- Exhibition Centre
- Guest House
- Reception Centre
- Residential

The owners of the land received a temporary conditional planning consent in April 2011 for to hold functions at the property. The approval was given conditionally and temporarily as a way to trial the use and gauge any impacts on the surrounding area.

In November 2012, the Shire of York initiated Omnibus Scheme Amendment 50 for the purposes of modifying both the Scheme text and map to correct a number of anomalies as well as progress a number of rezoning proposals to properties. Within this Scheme Amendment, there were four private properties, one of which was Laurelvile. This Amendment was adopted by Council in April 2013 and forwarded to the Minister for Planning for final approval.

Due to a number of factors beyond the Shire’s control, the final decision on the Omnibus was delayed (and continues to be delayed). Therefore, it was recommended that a new Amendment be initiated to progress these four property proposals independently to ensure a timely process for the affected landowners.

In July 2014, Council resolved to initiate Scheme Amendment 53 which was subsequently advertised and adopted by Council in August 2014. The Amendment was forwarded to the Minister and approved on 5 March 2015 (see appendix 1).

At the time, there were a significant amount of letters of support for the proposed use however there were also a number of concerns, particularly from surrounding landowners regarding the impact of this use, specifically noise emissions.

Further to this, throughout the duration of the temporary consent there has been a number of regular complaints received regarding the impact, predominantly of noise, on the surrounding area. The Planner and the Environmental Health Officer (EHO) have noted these complaints.

It was considered that the concerns associated with the use could be addressed through assessment of a planning application and subsequent conditions of consent. This was reflected in the Schedule of Modifications in the Scheme Amendment as Conditions were included on the particulars of the land.

In the meantime due to these delays, Laurelville's temporary planning approval was subsequently extended three times under delegation to give an expiration date of 31 December 2015.

With the gazettal of the Special Use Zone, the operator of Laurelville has applied for permanent development consent for the uses of "Reception Centre", "Exhibition Centre", "Guest House", and "Residential" (note – Guest House and Residential are existing approved uses on the property).

Consultation:

In accordance with clause 8.3.1 (b) of the Scheme, an application that is made for planning consent that is for a use not listed is to be advertised in accordance with clause 8.3.3.

Therefore, notice was given in accordance with clause 8.3.3 of the Scheme.

The applicant was responsible for the cost associated with the newspaper advertisement in accordance with our current fees and charges.

In accordance with clause 8.4, the local government consulted with other agencies and authorities it considered appropriate.

A summary of the submissions received can be found in Appendix 4.

Statutory Environment:

Shire of York Town Planning Scheme No. 2

A full assessment against the relevant provisions of the Scheme can be found in Appendix 3.

Policy Implications:

There are no policy implications associated with this proposal.

Financial Implications:

There are no financial implications associated with this proposal.

Strategic Implications:

Shire of York Community Strategic Plan

The Shire of York's 2012 Strategic Community Plan goals are:

Social

- *Manage population growth, through planned provision of services and infrastructure.*
- *Strengthen community interactions and a sense of a united, cohesive and safe community.*
- *Build and strengthen community, culture, vibrancy and energy.*

Environmental

- *Maintain and preserve the natural environment during growth, enhancing the 'rural' nature of York, and ensuring a sustainable environment for the future.*
- *Support sustainable energy and renewable resource choices.*

Economic

- *Build population base through economic prosperity.*
- *Value, protect and preserve our heritage and past.*
- *Grow the economic base and actively support local businesses and service provision.*

The proposal is consistent with the objectives of the Community Strategic Plan, specifically the economic elements.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: **Yes**

Triple bottom Line Assessment:

Economic Implications:

It is expected that the proposal may bring economic benefit to the community of York.

Social Implications:

It is expected that there may be positive social implications to the community of York however proposals of this nature may also mean negative impacts, particularly to surrounding landowners.

It is considered that any negative impacts can be managed through conditions of consent.

Environmental Implications:

There are no environmental implications.

Officer Comment:

The proposed use falls within the specified special use classes of "Reception Centre", "Exhibition Centre", "Guest House", and "Residential".

The application refers to a number of other uses desired on the property to make the subject land a "destination" experience, and attract visitors to enjoy and experience the York area. These uses – which were the intention behind the special use zone prepared for the property – can be considered subsidiary to the overall special uses, and include: club days [photography classes, cooking or health education], corporate retreats, conferences, open days, heritage afternoon teas, arranged tours, heritage seminars/presentations. As subsidiary uses within the broader special use classes, it is considered that this approval will be sufficient to facilitate those uses on the subject land.

The application has been considered against the provisions of the Special Use Zone, which facilitates the proposed uses on the site. On this basis of the special use zone, it is considered capable of approval subject to managing any impacts on amenity.

Assessment of the application documentation and information provided in submissions received during advertising identified the following key planning issues relevant to the proposal:

Impact of noise on surrounding residential amenity:

Irrespective of any development approval, any development is required to comply with the Environmental Protection (Noise) Regulations 1997. However, potential noise impacts can have a significant impact on the amenity of the locality and are also a planning consideration.

The application was referred to the Department of Environment and Regulation to access available noise monitoring for the property to compare it against noise regulations and conditions on the previous temporary planning consent. Previous noise monitoring results have been provided by the Department of Environmental Regulation for one event. This monitoring event – based on setting up of a monitoring device by a neighbour at their property - showed that the noise regulations had been exceeded at the monitoring site. The applicant has suggested that this is inconsistent with results of their own noise measurements, undertaken during events on a hand held noise monitor. Noise measurements provided by the applicant were unable to be independently reviewed prior to agenda settlement timeframes. There is a need for an independent acoustic report to remedy the discrepancy between applicant and neighbour monitored results, and determine accurately the noise levels to be managed.

The applicant has provided a noise management plan to implement noise management techniques to ensure the noise regulations are not exceeded at neighbouring premises. The management plan presents a framework by which amplified noise is turned down if levels are exceeded. Overall, such an approach will ensure that noise emissions stay within regulated levels, as noise would be turned down until they comply. This approach is complaint based, and only operates if an affected resident complains directly to the operator during an event. Furthermore, the approach only manages amplified sound based noise, and does not address crowd noise. Discrepancy between applicant and other stakeholder noise monitoring is necessary to resolve before the efficacy of this management approach can be confirmed. The Department of Environmental Regulation will be an important stakeholder in such a process.

Because the issue of exceedance of noise regulations is covered by other legislation, and the use of “reception centre” is a contemplated use on the subject land, the most appropriate response is through planning conditions that require an acoustic report and updated management plan to assist the applicant comply with the regulations, ease the concerns of affected neighbours, and ensure the development and implementation of a management plan that minimises amenity impacts on the surrounding residential area. An advice note should be included on the approval advising the applicant that, irrespective of the development approval or the endorsement of management plans, the applicant is required to comply at all times with the Environmental Protection (Noise) Regulations 1997.

Appropriate management techniques present potential to ensure that exceedances of the noise regulations do not occur, although compliance with regulations are only one component of managing the amenity impacts of noise. Hours of operation and complaints management are key components which manage amenity impacts, beyond simply the level of noise being experienced.

The site management plan restricts reception events to Fridays and Saturdays, with a conclusion of amplified music at 11.30pm and cessation of the event at 12am.

Greater restriction of operation, for the reception centre use, is necessary considering the location of the use in a residential area. Whilst the current operator does not host more than one event per weekend, this should be confirmed as a condition of approval to ensure that only 1 reception event be hosted per weekend, and no reception events to be hosted from Monday to Thursday. Events should cease at 11.30pm, with the cessation of amplified sound, to ensure that crowd noise does not create amenity impacts beyond 11.30pm when events are held.

A previous, temporary approval for the reception centre use included a restriction on the maximum number of people present at any time. This is an appropriate manner to assist in the management of crowd noise, and should be placed on any new, permanent approval.

The site management plan includes a complaints management procedure. The approach provides contact details of the operator to all neighbouring premises, and involves the operator visiting premises to measure noise levels, and adjust volumes if exceedances are identified. The approach requires some clarification, in respect of:

- The procedure refers to “legislated requirements” which should be “the Environmental Protection (Noise) Regulations 1997”. The maximum noise levels in the regulations vary with time of day/evening. These levels should be specified in the procedure for clarity.
- The procedure identifies that if more than 3 unsubstantiated complaints are received from a complainant, then the complainant’s premises will not be visited and a “standard noise monitoring measurement” will be taken. This should be clarified, as the noise regulations relate to exceedances at a sensitive receptor; unless measurements at the boundary of the property show emissions within the levels set by the noise regulations.
- The procedure identifies that the complaints register will be provided to the Shire upon request. This should be provided in all instances where a complaint is made, so the Shire is aware of issues before complaints are elevated to their attention.

These clarifications should be addressed in a revised complaints management plan, prepared as a condition of any approval.

Should the complaints management procedure not adequately address neighbour issues, then the noise regulations provide a formal process by which noise exceedances can be addressed by the regulators. Should the applicant not adequately manage their own complaints, they risk higher level action through these formal procedures.

Visual impact of temporary structures:

The residential, exhibition centre, and guest house uses are all proposed within existing buildings on the property.

The reception centre use proposes two temporary structures:

- Marquees for reception events; and
- A temporary ablutions block.

The site management plan identifies that marquees are erected only for the duration of the event, plus set up and dismantle time. The location of the temporary marquees is well set back from the street, although will be visible from the public realm. Conditions on any approval should ensure that marquees do not remain erected between events, outside the busy events period of Spring and Autumn.

With regard to the temporary ablutions facility, the site management plan has identified that screening has been erected around the building to soften the appearance, however long-term it is proposed to construct a permanent amenities building setback further on the property that will be designed sympathetically to the main dwelling. Despite the screening, the facility is still visually obvious from the street, and has a presentation inconsistent with the visual quality of the locality.

The presence of the facility cannot be avoided in the short term, and it is required for upcoming events booked by the applicant. It would be unreasonable to require the immediate construction of a permanent ablutions facility keeping with the visual quality of the subject land. Additional screening can remediate the visual impact of the facility in the short term, and a condition on any approval given can confirm the temporary nature of the facility and require their removal in an appropriate timeframe, following the 2015 spring and summer season.

In summary, potential impacts of the proposal are capable of management through detailed management plans, to be prepared in consultation with key agency stakeholders.

ASB Comment

Cr Smythe believed the applicant asked for a Function Centre, an Education Centre and a Restaurant and these are not part of the recommendation and not part of the Town Planning Omnibus 53. Are the conditions recommended to the applicant the same conditions applied to restaurants in the CBD?

The Acting CEO stated the history of this application goes back quite some time. The original application went to the Ministers office and was taken over by that office. The Ministers office is of the view that restaurants are for the main street. The application needs to comply with the new rules. Conditions are far more onerous on this application. As the property is in a residential area an acoustic report is required.

OFFICER RECOMMENDATION

"That Council:

Pursuant to clause 8.6 of the Shire of York Town Planning Scheme No. 2 GRANT planning consent for the uses of "Reception Centre", "Exhibition Centre", "Guest House", and "Residential" at Lot 1 & 2 (18) Panmure Road, York subject to the following conditions:

- 1. Development must substantially commence within two (2) years from the date of this decision. This approval is only valid from the date of this decision and does not retrospectively authorise any previous unapproved development on the subject land*
- 2. The development shall take place in accordance with the stamped approved plans.*
- 3. The Traffic Management Plan provided as Appendix 6 of the Site Management Plan, dated May 2015 shall be implemented to the satisfaction of the Shire of York.*
- 4. No outdoor evening reception events are to be hosted from Sunday to Thursday.*
- 5. Outside of the periods from 1 March to 30 April and 1 October to 30 November, any temporary structures associated with reception events (such as tents or marquees) shall not be erected earlier than the Thursday prior to the event and shall be removed no later than the Tuesday following the event.*
- 6. The temporary ablutions block is to be screened to the satisfaction of the Shire of York.*
- 7. The temporary ablutions block is to be removed from the property no later than 31 December 2016.*
- 8. Prior to 31 December 2015, the applicant is to submit a revised acoustic report and management plan, to be approved by the Shire of York on the advice of the Department of Environmental Regulation, and thereafter implemented (Note 5)*
- 9. The maximum number of people present at any given time be limited to 130 inclusive of guests, staff, subcontractors and the residents of the land.*
- 10. Only one evening reception event with amplified sound is to be hosted in any weekend, and events shall conclude no later than midnight.*
- 11. Any amplified music or amplified speaking shall cease by 11.30pm.*
- 12. Prior to the commencement of development, the applicant is to submit a revised complaints management procedure, to be approved by the Shire of York, and thereafter implemented.*

ADVICE NOTES:

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 permit. In accordance with the provisions of the Building Act 2011, an application for a building permit 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.

Note 5: The acoustic report and management plan is to be prepared by a suitably qualified professional, and include:

- *Noise monitoring or modelling, including amplified and crowd noise, to demonstrate compliance with the Environmental Protection (Noise) Regulations 1997, at all surrounding receptors;*
- *Appropriate management techniques to be employed to ensure that noise levels will not exceed the Environmental Protection (Noise) Regulations 1997*

Note 6: The Department of Health advises that the lots will need to be amalgamated as the on-site wastewater system serving the development is located on both lots. An effluent disposal system is required to be wholly contained on the same lot as the development it is serving.

Note 7: All food related aspects to comply with the provisions of the Food Act 2008 and related code, regulations and guidelines.

Note 8: All public related developments (reception centre) to comply with the provisions of the Health Act 1911, related regulations and guidelines and in particular Part VI – Public Buildings.

Note 9: Irrespective of the approval and implementation of the management plan referred to in Condition 7, the applicant is required to comply at all times with the Environmental Protection (Noise) Regulations 1997.

The Council Moved the Officer Recommendation:

Motion to Amend:

Amend Condition 5 above to allow an extended time for the temporary structures to be in place from 1 March to 31 May and 1 October to 31 December.

RESOLUTION 120715

Moved: Cr Smythe

Carried: Cr Wallace

“That Council:

Pursuant to clause 8.6 of the Shire of York Town Planning Scheme No. 2 GRANT planning consent for the uses of “Reception Centre”, “Exhibition Centre”, “Guest House”, and “Residential” at Lot 1 & 2 (18) Panmure Road, York subject to the following conditions:

- 1. Development must substantially commence within two (2) years from the date of this decision. This approval is only valid from the date of this decision and does not retrospectively authorise any previous unapproved development on the subject land***
- 2. The development shall take place in accordance with the stamped approved plans.***
- 3. The Traffic Management Plan provided as Appendix 6 of the Site Management Plan, dated May 2015 shall be implemented to the satisfaction of the Shire of York.***

4. ***No outdoor evening reception events are to be hosted from Sunday to Thursday.***
5. ***Outside of the periods from 1 March to 31 May and 1 October to 31 December, any temporary structures associated with reception events (such as tents or marquees) shall not be erected earlier than the Thursday prior to the event and shall be removed no later than the Tuesday following the event.***
6. ***The temporary ablutions block is to be screened to the satisfaction of the Shire of York.***
7. ***The temporary ablutions block is to be removed from the property no later than 31 December 2016.***
8. ***Prior to 31 December 2015, the applicant is to submit a revised acoustic report and management plan, to be approved by the Shire of York on the advice of the Department of Environmental Regulation, and thereafter implemented (Note 5)***
9. ***The maximum number of people present at any given time be limited to 130 inclusive of guests, staff, subcontractors and the residents of the land.***
10. ***Only one evening reception event with amplified sound is to be hosted in any weekend, and events shall conclude no later than midnight.***
11. ***Any amplified music or amplified speaking shall cease by 11.30pm.***
12. ***Prior to the commencement of development, the applicant is to submit a revised complaints management procedure, to be approved by the Shire of York, and thereafter implemented.***

ADVICE NOTES:

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 permit. In accordance with the provisions of the Building Act 2011, an application for a building permit 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.

Note 5: The acoustic report and management plan is to be prepared by a suitably qualified professional, and include:

- ***Noise monitoring or modelling , including amplified and crowd noise, to demonstrate compliance with the Environmental Protection (Noise) Regulations 1997, at all surrounding receptors;***
- ***Appropriate management techniques to be employed to ensure that noise levels will not exceed the Environmental Protection (Noise) Regulations 1997***

Note 6: The Department of Health advises that the lots will need to be amalgamated as the on-site wastewater system serving the development is located on both lots. An effluent disposal system is required to be wholly contained on the same lot as the development it is serving.

Note 7: All food related aspects to comply with the provisions of the Food Act 2008 and related code, regulations and guidelines.

Note 8: All public related developments (reception centre) to comply with the provisions of the Health Act 1911, related regulations and guidelines and in particular Part VI – Public Buildings.

Note 9: Irrespective of the approval and implementation of the management plan referred to in Condition 7, the applicant is required to comply at all times with the Environmental Protection (Noise) Regulations 1997.

CARRIED: 3/0

9.2 Administration Reports

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

Disclosure of Interest: *Cr Denese Smythe – Impartial Interest*

Cr Smythe stated in her capacity as a Board Member of the York CRC she is in frequent contact with the applicant who is an employee of the York CRC

9.2.1 Request to Keep Livestock

FILE NO:	RS.ANC.3
COUNCIL DATE:	27 th July 2015
REPORT DATE:	10 th June 2015
LOCATION/ADDRESS:	31 Andrews Avenue, York
APPLICANT:	Karina Leonhardt
SENIOR OFFICER:	Graeme Simpson, A/CEO
REPORTING OFFICER:	George Johnson, EHO
DISCLOSURE OF INTEREST:	Cr Denese Smythe - Impartial
APPENDICES:	Nil
DOCUMENTS TABLED:	Aerial Map

REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

Summary:

An application was received on Thursday 4th June 2015 to keep approximately 6 Dorper Sheep at 31 Andrews Avenue, York.

The keeping of sheep within the town site requires the approval of Council under the *Shire of York Health Local Laws 2000*.

Background:

The property at 31 Andrews Avenue, York and is owned by Scott & Karina Leonhardt.

The property is located in a residential zoning of R5/R10 and is 1.003 hectares in size.

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.

The applicant has stated that once approved they intend to fence the rear vacant half of the property for the sheep for the purpose of weed and fire control.

Consultation:

The adjoining property owners have been consulted and no objections have been received.

Statutory Environment:

Shire of York Health Local Laws
Division 3—Keeping of Large Animals

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications: Nil

Social Implications:

Nil

Environmental Implications:

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

Officer Comment:

The applicant is willing and has the land area to comply with Division 3 - Keeping of Large Animals of the Shire of York Local Health Laws 2000.

ASB Comment

Cr Smythe noted that the adjoining property owners have been consulted and requested that this information be provided.

Cr Hooper stated he is aware of a number of applications for keeping live stock. However some property owners have indicated they would like to subdivide their lots. There is a need to be aware that subdivisions could occur in this area and wishes to know what is currently happening regarding subdivision in this estate.

Cr Reid requested an aerial view be provided for this report. Also requests information on lot sizes surrounding this block as a precedent may be set.

Following the ASB it was found that no subdivisions with the adjoining properties are currently been undertaken or will be in the near future. The Officer Recommendation has been amended to include a condition relating to future subdivisions. An aerial map of the site has been tabled for further information.

OFFICER RECOMMENDATION

“That Council:

Approve the keeping of 6 Dorper sheep for the purpose of weed and fire control at 31 Andrews Avenue, York.

Advice Note:

1. *If any future subdivision occurs within the area then the applicant will be required to re-apply for permission to carry stock.”*

The Council Moved the Officer Recommendation:

Motion to Amend:

Include additional Advice Notes to clarify the conditions of the keeping of livestock and a Policy to be drafted for review by Council within the next three months.

RESOLUTION

130715

Moved: Cr Wallace

Seconded: Cr Smythe

“That Council:

Approve the keeping of 6 Dorper sheep for the purpose of weed and fire control at 31 Andrews Avenue, York.

Advice Note:

1. *If any future subdivision occurs within the area then the applicant will be required to re-apply for permission to carry stock.*
2. *Approval being limited to 12 months and a report being presented to Council prior to the conclusion of the 12 month period.*
3. *A policy be drafted for review by Council within the next three months.”*

CARRIED: 3/0

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.2 Shire President Application for Legal Cost/Reimbursement

FILE NO:
COUNCIL DATE: 27 July 2015
REPORT DATE: 8 July 2015
LOCATION/ADDRESS: N/A
APPLICANT: Shire President Matthew Reid
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: G K Simpson, A/CEO
DISCLOSURE OF INTEREST: Shire President Cr Matthew Reid
APPENDICES: Nil
DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

ASB Comment

Due to advice from the Department of Local Government & Communities this report is to be withdrawn.

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.3 Tabling of Probity Audit Report

FILE NO: FI.FRP.PPO
COUNCIL DATE: 27 July 2015
REPORT DATE: 9 July 2015
LOCATION/ADDRESS: N/A
APPLICANT: N/A
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: G K Simpson, A/CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Probity Audit Report
REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

Summary:

The York Councillors, Commissioner, Officers of the Department of Local Government and the Acting Chief Executive Officer have agreed that the Probity Audit Report may be tabled at the July 2015 Council meeting.

Background:

The Probity Audit was conducted mid 2014 and delivered to the Shire on 16 April 2015. The Shire's response was compiled and tabled at the May 2015 Ordinary Council Meeting and then conveyed to the Department.

Consultation:

Local Government Department Officers

Statutory Environment:

Local Government Act

Policy Implications:

Policies are scheduled for review

Financial Implications:

Nil

Strategic Implications:

Nil

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

Officer Comment:

The detailed report considered at the May meeting included the Departmental summary and the Shires formal response.

ASB Comment

Councillors did not have any queries regarding this report.

RESOLUTION

140715

Moved: Cr Wallace

Seconded: Cr Smythe

“That Council:

Table the report as requested.”

CARRIED: 3/0

9.3 Works Reports

Nil

9.4 Financial Reports

9. OFFICER'S REPORTS

9.4 FINANCE REPORTS

9.4.1 Monthly Financial Reports – June 2015

FILE NO:	FI.FRP
COUNCIL DATE:	27 July 2015
REPORT DATE:	7 July 2015
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Not Applicable
SENIOR OFFICER:	Graeme Simpson, Acting CEO
REPORTING OFFICER:	Tabitha Bateman, Financial Controller
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Yes – Appendix A as detailed in Summary
DOCUMENTS TABLED:	Nil

REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

Summary:

The Financial Report for the period ending 30 June 2015 is presented for consideration.

Appendix A includes the following:

- Monthly Statements for the period ended 30 June 2015
- List of Creditors Payments
- Corporate Credit Card Transaction Listing

Statutory Environment:

Local Government Act 1995 (As Amended).

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

Australian Accounting Standards.

Financial Implications:

The following information provides balances for key financial areas for the Shire of York's financial position as at 30 June 2015;

Outstanding Rates and Services

Total outstanding rates as at 30 June 2015 are \$ 795,047 compared to \$1,015,156 as at 31 May.

3 Years & over	\$ 258,185	32.47% of rates outstanding
2 Years & over	\$ 129,469	16.28% of rates outstanding
1 Years & over	<u>\$ 143,370</u>	18.03% of rates outstanding
Total Prior Years	\$ 531,024	66.79% of rates outstanding
Current rates	\$ 264,023	33.21% of rates outstanding

Outstanding Sundry Debtors

Total outstanding sundry debtors as at 30 June 2015 are \$396,611 compared to \$591,728 as at 31 May 2015.

90 days & over	\$335,913	85.34% of sundry debtors outstanding
60 days & over	\$ 125	0.03% of sundry debtors outstanding
30 days & over	\$ 1,211	0.31% of sundry debtors outstanding
Current	\$ 59,361	14.32% of sundry debtors outstanding

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:

It should be noted that the 2014/15 figures reflected in the following reports are an estimate of the end of year position only and are subject to year end adjustments.

ASB Comment

Cr Smythe requested further information regarding outstanding rates and services of 3 years and over with 32% of outstanding rates and 2 years and over with 16% of outstanding rates. Do these figures include the two lots of rates we are about to write off?

The Financial Controller replied the outstanding balance does not include the Redmile property, however it does include the Carter Road land.

Cr Smythe requested further information on outstanding sundry debtors – 90 days and over – is this the car parking debt, as Cr Smythe believed the property had been sold?

The Financial Controller stated that the outstanding sundry debtors of 90 days and over included the car park debt. The debt has not been written off as it is not conclusive that the Shire won't collect the debt.

Following the ASB it was confirmed that the details surrounding collection of a large portion of the Sundry Debtors owed in the 90 days & over category were still to be determined by the Courts.

**RESOLUTION
150715**

Moved: Cr Smythe

Seconded: Cr Wallace

“That Council:

Receive the Monthly Financial Report for June and the list of payments drawn from the Municipal and Trust accounts for the period ending 30 June 2015 as summarised below:

	<u>AMOUNT</u>
<u>MUNICIPAL FUND</u>	
<i>Cheque Payments</i>	\$ 43,582.35
<i>Electronic Funds Payments</i>	\$ 441,341.91
<i>Direct Debits Payroll</i>	\$ 161,736.61
<i>Bank Fees</i>	\$ 515.98
<i>Corporate Cards</i>	\$ 383.98
<i>Fire Messaging Service</i>	<u>\$ 252.78</u>
TOTAL	<u>\$ 647,826.11</u>
 <u>TRUST FUND</u>	
<i>Cheque Payments</i>	\$ 3,019.45
<i>Electronic Funds Payments</i>	\$ 5,347.50
<i>Direct Debits Licensing</i>	<u>\$ 140,957.65</u>
TOTAL	<u>\$ 149,324.60</u>
 TOTAL DISBURSEMENTS	<u>\$ 797,150.71”</u>

CARRIED: 3/0

9. OFFICER'S REPORTS
9.4 FINANCE REPORTS
9.4.2 Roads to Recovery – Budget Amendment

FILE NO: FI.FAG.2.2
COUNCIL DATE: 27 July 2015
REPORT DATE: 13 July 2015
LOCATION/ADDRESS: N/A
APPLICANT: N/A
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: T Bateman, FC
DISCLOSURE OF INTEREST: Nil
APPENDICES: Extract 'Roads to Recovery Allocations 2015'
DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: Graeme Simpson

Summary:

Each year Roads to Recovery funding is provided by the federal government for the purpose of upgrading local and regional roads. Funding programmes span over a five year period in which Council manages the use of these funds.

Background:

In the 2014-2019 funding period the Shire of York was granted \$1,699,213. Advice was received that funding would be allocated as follows;

<u>Financial Year</u>	<u>Allocation</u>
2014/15	\$283,202
2015/16	\$566,404
2016/17	\$283,202
2017/18	\$283,202
2018/19	\$283,202

An announcement on 23 June 2015 confirmed that Council's allocation for the 2015/16 financial year would increase from \$566,404 to \$809,306.

A variation to the adopted budget of \$242,902 is required to increase the income and expenditure in line with the available funding from Roads to Recovery.

Below is the statement released on 23 June 2015 from the Federal Government to Councils;

"The objective of Roads to Recovery is to contribute to the Infrastructure Investment Programme through supporting maintenance of the nation's local road infrastructure asset, which facilitates greater access for Australians and improved safety, economic and social outcomes. The Roads to Recovery programme does not contain a sunset clause under the new National Land Transport Act 2014 meaning no new legislation will be required for the continuation of the programme.

From 2014-15 to 2018-19 the Government will provide \$3.2 billion under the Roads to Recovery programme, to be distributed to Australia's local councils, state and territory Governments responsible for local roads in the unincorporated areas (where there are no councils) and the Indian Ocean Territories.

Roads to Recovery allocations for the councils in each jurisdiction (except the ACT as it is a unitary jurisdiction) have been determined on the basis of the recommendations of the Local Government Grants Commissions in each state and the Northern Territory for the

roads component of the Financial Assistance Grants. This is the same methodology as was used for this purpose in previous Roads to Recovery programmes.

As announced on 23 June 2015, Councils across Australia will receive an extra \$1.105 billion over the next two years.

Local governments will receive an extra \$300 million in 2015-16 under Roads to Recovery, on top of the \$700 million they are already receiving—a \$1 billion cash injection in local roads over the next 12 months.

In 2016-17, local government will receive an extra \$805 million in addition to the \$350 million they were already scheduled to receive under Roads to Recovery—\$1.155 billion next financial year.”

Consultation:

Manager Works and Services
Roads to Recovery

Statutory Environment:

Local Government Act 1995
Part 1 Section 1.4

1.4. Terms used

In this Act, unless the contrary intention appears —

***absolute majority* —**

- (a) in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council.

(b)

Financial Implications:

This amendment will increase budgeted expenditure on Council roads in 2015/16 by \$242,902 however income will increase to match resulting in a nil effect on the budget.

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

Officer Comment:

The increased funding provided by Roads to Recovery of \$242,902 will be allocated to Council roads in the 2015-16 year. Expenditure will be allocated to eligible roads as per the Roads to Recovery funding guidelines and priorities identified in the Shire of York Road and Bridges Asset Management Plan and Long Term Financial Plan.

The guidelines state;

“3 PROJECT CRITERIA**3.1 Eligibility of projects**

Payments under the Programme may be used on any project for the construction and/or maintenance of a road.

As defined by the Act, the term ‘roads’, includes each of the following when in association with a road:

- (a) traffic signs and control equipment;
- (b) street lighting equipment;
- (c) vehicular ferries;
- (d) bridges or tunnels, including pedestrian bridges (for the purpose of crossing from one side of the road to the other – not from one public area to another eg parks etc) ;
- (e) bicycle paths;

A bicycle path ‘associated with a road’ is one that:

- is located within the road reservation; or
- where removed from the road reservation, provides a route between points on the road that is shorter than or broadly similar in distance to the road route.

To list a bicycle path on your work schedule, with the exception of on-road delineated cycle paths, you must first contact a Roads to Recovery team member providing detailed evidence including plans and maps to confirm eligibility.

Footpaths are only eligible where they are part of a wider road project. A project to solely upgrade a foot path will not be considered.

Drainage projects are allowed where the purpose of the project is connected with the road, e.g. to stop flooding in wet weather or to stop pooling of water which affects the road’s sub-structure. Projects will not always be in the road reserve. Where a project has several objectives, only one of which is the road, it can be partially funded. The project would need to be entered as a jointly funded road with an appropriate proportion listed against the road.

The purchase of land for compensatory habitat, where required by an environmental permit, is an allowable expense but should be listed against the project to which it relates and not shown as a separate item.

3.2 Excluded items

For further advice about whether an intended project can be funded by the programme, the LGA should contact the R2R Section. Examples of items that cannot be funded under this programme include:

- (a) transport planning studies (except road planning studies relating to a specific project);
- (b) street sweeping;
- (c) rehabilitation studies;
- (d) general administrative overheads and staff salaries not connected with specific projects funded under the programme;

- (e) road building plant or other capital equipment especially moveable equipment (e.g. graders). However, note that bores for water for road building in remote areas have been allowed in association with complying projects;
- (f) training;
- (g) footpaths which are not part of the construction or upgrade of the road itself;
- (h) off road car parks;
- (j) street furniture;
- (k) landscaping such as beatification of roundabouts, verges etc
- (l) public liability insurance;
- (m) fringe benefits tax;
- (n) LGA expenses such as light, power, stationery, IT support, telephone, cleaning and all other expenses which the LGA would have incurred anyway, regardless of whether or not the Roads to Recovery programme was underway;
- (o) finance leases on equipment;
- (p) operating lease charges where the rental expense cannot be directly linked to the Roads to Recovery project, e.g. a grader may be hired for a period for a variety of tasks. Only the component that relates specifically to Roads to Recovery jobs can be charged against Roads to Recovery funds;
- (q) depreciation, except for depreciation of plant and equipment directly attributable to a Roads to Recovery funded project;
- (r) resealing of regional airport tarmacs; and
- (s) stand-alone design and preliminary works (refer clause 4.5(d))
- ...

4 PROJECT SELECTION AND WORK SCHEDULES

4.1 Project selection and standards

LGAs are entitled to select the projects to be funded within their jurisdiction according to their own priorities, with the exception as set out under clause 4.2. They are responsible for all aspects of each project including the scope, design, the technical standards to which they are built, their construction and the subsequent management of the works involved.

LGAs are encouraged to maintain an appropriate balance between funding for urban and rural roads. Where funding is provided for LGAs in remote areas, the needs of Indigenous communities should be considered.

Councils are encouraged to lodge a small number of larger projects rather than a larger number of small projects (eg less than \$10,000)."

ASB Comment

Cr Reid requested that information regarding where funds will be applied be included in the Agenda item for the Ordinary Council Meeting.

Requested information has been included in the report under Officers Comments.

OFFICER RECOMMENDATION

“That Council:

Accept the increase of \$242,902 funding from Roads to Recovery to be allocated to Council roads in the 2015/16 financial year.”

RESOLUTION

160715

“That Council:

Defer this item as an Absolute Majority is required.”

Note: Dispensation application to be forwarded to the Department of Local Government & Communities

9.5 Late Reports

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.1 Appointment of Committees

FILE NO:
COUNCIL DATE: 27 July 2015
REPORT DATE: 23 July 2015
LOCATION/ADDRESS: N/A
APPLICANT: Shire of York
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: G K Simpson, A/CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Previous Register of Council Representatives
DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: Graeme Simpson

Summary:

There is a need for elected members to be appointed to represent the Council on local and regional committees.

Background:

The attached list became inactive at the commencement of 2015 year because of the suspension of Council and the resignation of two other members.

Consultation:

Not Applicable

Statutory Environment:

Various State Government Agencies have legislative requirements to invite Local Governments in the region to participate in meetings.

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Appointment of delegates will allow the Shire to have voting representation at regional forums.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications: Not Applicable

Social Implications:

Nil

Environmental Implications:

Nil

Officers Comment:

The appointments will be for the period ending 17 October, 2015.

The newly elected Council will be required to elect representatives for a further two year period.

ASB Comment

Not Applicable

OFFICER RECOMMENDATION

“That for the period up to 17th October, 2015 Council:

- 1. Appoint an Audit Committee.*
- 2. Nominate Council Representatives for regional committees.*
- 3. Appoint Emergency Services Recovery Co-Ordinator.”*

RESOLUTION

170715

That Council:

Defer this item as an Absolute Majority is required.”

Note: Dispensation application to be forwarded to the Department of Local Government & Communities

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.2 Joint Development Assessment Panel

FILE NO:	PS.GEN.PPO.3.1
COUNCIL DATE:	27 July, 2015
REPORT DATE:	24 July, 2015
LOCATION/ADDRESS:	N/A
APPLICANT:	N/A
SENIOR OFFICER:	G K Simpson, A/CEO
REPORTING OFFICER:	G K Simpson, A/CEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil

REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

Summary:

The membership of the Joint Development Assessment Panel (JDAP) lies with the Minister's Office. The Shire has been concerned that a meeting of the Panel maybe called to assess the SITA waste disposal application and action has been taken to ensure there is a panel of names for the Minister to choose from.

Background:

Councillors Reid and Smythe are the two nominated members but because of the suspension were unable to participate. Their terms of office was extended to 26th July, 2015.

Prior to the original expiry day the process was commenced to find local persons to fill the pending vacancies caused by the suspension and on 22nd June, 2015 Council confirmed the following nominations:

- Commissioner James Best
- Hon Christopher Pullin
- Dr Duncan Steed
- Ms Bairbre Lewis

Consultation:

Community Advertisement

Statutory Environment:

Appointments to the Development Assessment Panel lay with the Minister for Planning.

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

It is important for York to have representation at the forum where the decision is made on the SITA proposal.

Voting Requirements:
Absolute Majority Required: **No**

Site Inspection:
Site Inspection Undertaken: **Not Applicable**

Triple bottom Line Assessment:
Economic Implications: **Not Applicable**

Social Implications:
York involvement on the Panel is required and needs to be seen to be included.

Environmental Implications:
Nil

Officers Comment:
The issue of membership has been regularly raised with the Minister's Office and the most recent information is that –

“It is anticipated that the appointment of Local Government members to the relevant Joint Development Assessment Panel is expected to take place on Monday 27 July. Appointed members will be notified in writing by the Minister. I note that it is generally preferred that two local government members attend DAP meetings, and this consideration is factored into the scheduling of DAP meetings.

ASB Comment
Not Applicable

Meeting was adjourned at 8.35pm for Councillors to seek advice from the Department of Local Government & Communities representatives.

Meeting recommenced at 8.40pm

OFFICER RECOMMENDATION

“That Council:

Note the information contained in the JDAP Project Officers statement in the appointment of members to the Joint Development Assessment Panel.”

The Council Moved the Officer Recommendation:

Motion to Amend:

Council request the Acting Chief Executive Officer to write to the Minister for Planning.

RESOLUTION

180715

Moved: Cr Smythe

Seconded: Cr Wallace

“That Council:

Request the Acting Chief Executive Officer to write to the Minister for Planning advising of the re-instatement of Council and their position to re-visit the proposed nomination to ensure Council is represented on the DAP.”

CARRIED: 3/0

Cr Smythe put forward a Motion from the floor:

That the Shire of York Council support the motion put forward by the Shire of Toodyay at the WA Local Government Association Annual General Meeting being held on Wednesday, 5th August, 2015.

Background:

The Shire of Toodyay will be moving a motion at the WALGA Annual General Meeting.

Motion:

That WALGA request the State Government as a matter of urgency:

- *Develop a waste management infrastructure plan for Western Australia*
- *Progress regulatory reforms to establish a framework for planning and siting of landfills*
- *Implement a moratorium on new private landfill approvals until adoption of a durable planning framework.*

**RESOLUTION
190715**

Moved: Cr Smythe

Seconded: Cr Wallace

“That Council”

Support the motion put forward by the Shire of Toodyay at the WA Local Government Association Annual General Meeting being held on Wednesday, 5th August, 2015.”

CARRIED: 3/0

9.6 Confidential Reports

Nil

10. NEXT MEETING

**RESOLUTION
200715**

Moved: Cr Smythe

Seconded: Cr Wallace

“That Council:

holds the Agenda Settlement Briefing on Monday, August 17, 2015 at 5.00pm in the Lesser Hall, York Town Hall, York and the next Ordinary Meeting of the Council on Monday, August 24, 2015 at 5.00pm in the Lesser Hall, York Town Hall, York.”

CARRIED: 3/0

11. CLOSURE

The Shire President thanked everyone for their attendance and closed the meeting at 8.44pm