



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 22 JUNE 2015
COMMENCING AT 5.00pm
AT THE YORK RECREATION &
CONVENTION CENTRE, YORK**

Table of Contents

1. OPENING	5
1.1 Declaration of Opening	5
1.2 Disclaimer.....	5
1.3 Standing Orders.....	5
1.4 Announcement of Visitors	5
1.5 Declarations of Interest that Might Cause a Conflict.....	5
Financial Interests	5
Disclosure of Interest that May Affect Impartiality	5
2. ATTENDANCE	6
2.1 Commissioner.....	6
2.2 Staff.....	6
2.3 Apologies.....	6
2.4 Leave of Absence Previously Approved.....	6
2.5 Number of People in Gallery at Commencement of Meeting.....	6
3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	6
3.1 Previous Public Questions Taken on Notice.....	6
4. PUBLIC QUESTION TIME.....	6
4.1 Written Questions – Current Agenda	7
4.2 Public Question Time.....	12
5. APPLICATIONS FOR LEAVE OF ABSENCE	21
6. PETITIONS / PRESENTATIONS / DEPUTATIONS.....	21
7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS & NOTES OF THE AGENDA SETTLEMENT BRIEFING	21
7.1 Minutes of the Ordinary Council Meeting held May 25, 2015	21
7.2 Notes of the Agenda Settlement Briefing – June 15, 2015.....	21
8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION.....	21
8.1.1 Shire President Application for Legal Cost/ Reimbursement.....	23
8.1.2 Development of Policy for Rates Remission for Non-Contiguous Agricultural Land.....	25
8.1.3 No Same Or Similar Questions In Connection With Lot 4, Penny Street, Kauring To Be Responded To At Public Question Time.....	27
9. OFFICER’S REPORTS.....	29
9.1 Development Services.....	29
9.1.1 Wheatbelt Joint Development Assessment Panel Nominations	29
9.1.2 11 Broome Street, York – The Mill	33
9.1.3 Lot 4 (6) South Street - Showroom	37
9.1.4 Lot 257 (151) Avon Terrace, York	41
9.2 Administration Reports	45
9.2.1 2015 October Biennial Election	45
9.2.2 Disbandment of Committees	49
9.2.3 York Cemetery Interment Niche Wall	51
9.2.4 Policy Manual Review	55
9.2.5 Application To Keep Three (3) Dogs	57

9.3	Works Reports	61
9.4	Financial Reports.....	61
9.4.1	York Men’s Shed – Request for Sponsorship.....	61
9.4.2	York Racecourse	63
9.4.3	Global Care Group (Inc) – Rating of Land.....	71
9.4.4	Daliak Structure Plan - Invoice	75
9.4.5	Monthly Financial Reports – May 2015	79
9.5	Late Reports.....	81
9.5.1	Allegations of Serious Misconduct	81
9.6	Confidential Reports.....	85
10.	NEXT MEETING	85
11.	CLOSURE	85



SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL
HELD ON MONDAY, 22ND JUNE, 2015, COMMENCING AT
5.00PM AT THE YORK RECREATION & CONVENTION CENTRE, 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

Commissioner, James Best, declared the meeting open at 5.00pm.

1.2 Disclaimer

The Commissioner 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."

1.3 Standing Orders

Clause 3.2 – Order of Business

Commissioner declared current Standing Orders will apply.

1.4 Announcement of Visitors

Commissioner, James Best welcomed Crs Reid, Smythe and Hooper, Freeman Gordon Marwick

1.5 Declarations of Interest that Might Cause a Conflict

Financial Interests

Nil

Disclosure of Interest that May Affect Impartiality

Nil

2. ATTENDANCE

2.1 Commissioner
James Best

2.2 Staff
Graeme Simpson, Acting Chief Executive Officer; Allan Rourke, Manager Works & Services, Gail Maziuk, Compliance/Human Resources; Tabitha Bateman, Financial Controller; Kira Strange, Town Planner; Helen D’Arcy-Walker, Executive Support Officer

2.3 Apologies
Nil

2.4 Leave of Absence Previously Approved
Nil

2.5 Number of People in Gallery at Commencement of Meeting
There were 22 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

Ms Jane Ferro

Public Question Time - 25 May 2015

Question:

From the applicants put forward who has been shortlisted to represent the Shire of York at the JDAP hearing?

Response:

The following nominations for the Wheatbelt Joint Development Assessment Panel (JDAP) have been put forward for consideration by the Minister for Planning; Culture and the Arts:

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

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 5.07pm

Commissioner Best stated that written questions received with a minimum of 24 hours notice will be guaranteed a response.

Ms Darlene Barratt

Question 1:

I refer to the Shire Council’s resolution 111014 of 20 October 2013 (*should read October 2014*), providing for the refunding to me of interest charges of \$375.93 and legal costs amounting to \$3438.51.

So far I have received only \$800, with respect to legal costs.

In a letter to me dated 5 February 2015, the Acting CEO described that resolution as ‘non-compliant’.

With what sections or provisions of any legislation did the resolution fail to comply?

Response:

Local Government (Administration) Regulations 1996

11. Minutes, content of (Act s.5.25 (1)(f))

- (da) written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration

Question 2:

In a letter to me dated 22 January 2015, the Acting CEO reported that my Bank had relinquished any claim it may have had to any of the money in question and that he was 'seeking a ruling on the legality of the Council decision'.

Did he receive such a ruling, and if so, what was it?

Response:

Yes – verbal – which confirmed all charges under the Local Government Act.

These charges were claimable under Section 6.56 whilst Ms Barratt was the owner of the property.

Then Section 6.55 once the bank became mortgage in possession. As at that time your bank had taken the position of being owner and therefore responsible for all debts.

Your bank did not at any time dispute any charges therefore there is no claim for any refund to be answered.

Question 3:

Is the A/CEO aware that in a letter to me dated 6 February 2015, the Hon. Tony Simpson, Minister for Local Government and Communities, wrote the following:

"My Department has advised the Shire that it would be reasonable for the refund to be apportioned in proportion to the amount of interest and legal costs that you and the bank paid respectively ... I note that the (xxxx) Bank has advised the Shire that the monies can be distributed to you and it is assumed that the Shire will action this accordingly.'

Would the Acting CEO agree that this statement from the Minister effectively rules that resolution 111014 is *not* 'non-compliant' and further, that there is no legal obstacle to implementing it by paying me the sum of \$3014.44 still outstanding?

Response:

Minister Simpson commented:

... reasonable for the refund to be apportioned in proportion to the amount of interest and legal costs that you and the bank paid respectively ...

... final decision rests with the Shire of York ...

Short answer –

Ms Barratt paid no funds herself as the bank paid them and the Bank in question is making, and has made, no claim for the funds.

Shire of York has made the final decision. No further funds are to be paid to Ms Barratt as none were paid by her.

Question 4:

Will the Acting CEO give an assurance that the Shire's refusal to authorise such a payment is not motivated and driven by personal malice or antipathy towards me on the part of one or more of his subordinates in the Shire administration?

Response:

Yes – there is no personal malice towards Ms Barratt by the Commissioner, A/CEO or any member of the Shire of York Administration staff.

Question 5:

If he is willing to give that assurance, will he explain the following statement in his letter to me dated 14 May 2015:

'I regret to advise that I have not been able to find any suitable person who is willing to review your rates account record or liaise directly with you on your complaint against the Shire.'

Are we justified in assuming from his referent to 'willingness' that he has no authority over his subordinates in the Shire administration?

Response:

No – you are not justified in assuming that A/CEO Simpson has no authority over his administration staff. Over several years, Ms Barratt has met with now 3 CEO's/A/CEO's, Shire Presidents, D/CEO, 2 Rates Officers and the Commissioner and still after being provided the same answer is not satisfied that all possible efforts have been made to settle this issue.

The 'suitable person' referred to was someone from an outside agency.

Mrs Roma Paton

As Mrs Paton was not at the meeting her written questions were not presented and will be taken as correspondence and a response will be forwarded direct to Mrs Paton in accordance with paragraph (f) of the Rules for Public Question Time.

Ms Liz Christmas**Item 9.5.1 Allegations of Serious Misconduct****Question 1:**

Where are the reports of the investigations made by the various entities referred to under the heading 'Summary'— those said to have found no wrong doing by the Shire of York, current and former staff members and elected members? They are not included in Appendices.

Response:

The reports were presented as follows:

- 1.1 Department of Local Government and Communities Probity Audit response was presented to the 25 May Council meeting.
- 1.2 FRAC Sub-Committee/Acting CEO report on Credit Care Use was presented to the Shire President on Monday, 15th December, 2014 and the final report on Friday, 19th December, 2014

The Corporate Credit Care policy changes were presented to the 16 February, 2015 Council meeting
- 1.3 Macri & Partners reported to the Shire on 3rd September, 2014
- 1.4 The Corruption and Crime Commission report was received by the Commissioner on 26th May, 2015.

Question 2:

Why have they not been published openly for people to read for themselves?

Response:

The CCC letter has not been released for public information as it is marked Private & Confidential and their investigation report has not been released and it is acknowledged this will not address community perceptions about the allegations.

Question 3:

How may the public access them?

Response:

The Probity Audit is on the public record and the remaining reports are like 'exception reports' in that all things are being appropriately handled except as stated.

Question 4:

Given that there were people already concerned about a range of behaviours of certain Shire persons, why does the Commissioner want to think that the resignation of the former CEO, Mr Ray Hooper, was what *"triggered events that led to the conducting of investigations"* when, in fact:

First on 14 April 2014 Council passed resolutions 190414 (OM), 240414 (SM) and 250414 (SM), namely to *"Appoint Fitz Gerald Strategies and if necessary Jackson Macdonald as consultants to provide Council with relevant professional advice by way of reporting to Council on its legal position and any responsibilities or obligations it may have in relation to [a certain 4th April] letter of complaint and other relevant matters"* and to authorise *"the [Shire] President to represent the Council and to liaise with Fitz Gerald Strategies on behalf of the Council in the process necessary for Council to address and resolve its concerns about the conduct and performance of the Chief Executive Officer"* and *"That Council makes a budget provision of \$20,000 to engage Fitz Gerald Strategies and Jackson McDonald"*;

and consequently the then CEO Ray Hooper wrote his Resignation letter the following day, i.e. on 15th April, the same day on which it was receipted, there being records of these facts?

Response:

The motion to engage FitzGerald Strategies was in relation to the Letter of Complaint dated 4th April, 2014. The resignation was submitted on the 15 April, 2014 and somehow the scope of the investigation was broadened.

Question 5:

The FitzGerald report was indeed commissioned by the Shire and printed for distribution. Shouldn't the next wording under Background be: "but one (1) hard copy and one (1) electronic version of the document were [not were not] lodged in the Shire's records office"?

Response:

Twenty-Nine written copies of the report have been accounted for and quarantined. Two were never lodged.

Question 6:

Where is the evidence that the FitzGerald report and associated legal fees cost \$77,700.00?"

Response:

The costs directly related to the FitzGerald Report are:

FitzGerald Fees -	\$17,553
Printing	923
Legal Costs	60,700

	\$79,176

Question 7:

What does PPR stand for in the sentence "The Shire has commissioned PPR to assist with communicating the many good things...?". Googling indicates that there are numerous possible meanings of the acronym PPR. Are we to understand that this instance of the acronym PPR refers to some kind of publicity journalist?

Response:

PPR are the three letters of the Company name for Professional Public Relations Pty Ltd

Question 8:

Does the writer of the agenda item (under the name of G K Simpson, whoever he actually delegated it to if he did) not respect the citizens enough to follow the 'use of plain English' convention of spelling out the meaning of all acronyms the first time they are used in a document, item or article?

Response:

The Acting CEO understands that an acronym is a word formed from the initial letters of others words but PPR doesn't fit the definition, as it is a brand name.

Mr Julian Krieg

Question:

What was the \$70,000 in legal costs in the FitzGerald Report?

Response:

The Commissioner stated that the Shire of York engaged lawyers to look at the report for us and assist in communicating with individuals concerned about the contents of the FitzGerald Report

Mr Bill Cebula

Question:

When the Shire of York engage lawyers and use ratepayers money, do you need to ask the ratepayers to endorse or otherwise the expenditure?

Response:

The Commissioner stated the Chief Executive Officer is delegated to spend money in accordance with the budget and is also required to protect the Shire so expenditure on Legal advice was authorised.

The Commissioner also stated that the CEO does not need to go to Council once the money is provided for and within budget.

Ms Beverley Hill

Questions relate to the Allawuna Landfill application:

Question 1:

What is the progress of the compilation of the Responsibility Authority Report (RAR) and when might it be received by Council?

Response:

The Shire Planner stated that we are currently assessing the proposed amendments as well as compiling and assessing the submissions that were received for the Responsible Authority Report (RAR). This includes the submissions received from relevant government agencies and liaising with these agencies. Depending on when the meeting is set for the Joint Development Assessment Panel (JDAP) will largely determine when the report will be received by Council.

Question 2:

Will the previous due process be followed and the RAR be listed as an Agenda item to be received by Council at a General Meeting (or a Special Council Meeting if timing dictates)

Response:

The Town Planner responded - Yes. The RAR will be put forward to Council for adoption prior to forwarding it to the JDAP.

Question 3:

Has any deadline been set for the presentation of the RAR to the JAP and has the venue and date of the JDAP meeting been set as yet?

Response:

The Town Planner responded - No. We are still awaiting notice from the Development Assessment Panels Secretariat about a date for the JDAP meeting.

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 Elise Ferro

Question 1:

Are you still leaving Mr Best at the beginning of July as you have often stated? If yes, why did you close the most recent 'Voice of York' with 'Look forward to seeing you there' at the York 2031 Community Forum to be held at the end of July?

Response:

The Commissioner replied – because the Department has asked him if he would like to be part of an ongoing mentoring role for the Council.

Question 2:

Who will be sitting on the mentoring and monitoring panel for our already competent Councillors? Will you be on it?

Response:

The Commissioner stated he did not know who would be on the mentoring and monitoring panel. The Commissioner also stated that he has been asked to submit an expression of interest.

Question 3:

Who is paying the salary of the mentoring and monitoring panellists and how much are they being paid?

Response:

The Commissioner stated the Department is paying, however not sure of the figure.

Question 4:

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

Response:

Not sure of the total yet. Taken on Notice

Question 5:

In your 'Voice of York' article, you stated that the CCC had finished its investigation into allegations of misconduct at the Shire, with no adverse finding made against Shire officers or Councillors. Further, you were please that the CCC determined that all allegations have been dealt with appropriately. Exactly what allegations are you referring to?

Response:

The Commissioner stated that the questions are Private & Confidential and he is not at liberty to confirm or deny the allegations.

Question 6:

So we will never know what the allegations are?

Response:

Commissioner stated – No.

The Acting CEO stated that the question could be taken up with the CCC. The CCC is the author of the report and they owe it to the public to make a comment to explain what the allegations were.

The Commissioner stated that the CCC had completed its review and in the Commission's view and in light of the available evidence, the allegations have been dealt with appropriately. Accordingly the Commission has now closed its file.

The Commissioner also stated that the CCC wrote to the Shire in early January and asked the Shire to answer some specific questions. The Shire has answered these questions and the CCC have said that in light of the available evidence, the allegations have been dealt with appropriately.

Question 7:

You made reference to the work done during the past 6 months to improve the Shire's administrative practices. What exactly have you and A/CEO Simpson done to improve administrative practices?

Response:

The Commissioner stated that Policies and processes have been reviewed. Councillors have had training on with regards to Governance issues.

Question 8:

What administrative practices were not being managed effectively before your arrival?

Response:

The Commissioner stated that he and the A/CEO have been looking at all Policies and Procedures. Officer's have reviewed the Policies and these will be taken to Councillors for their input over four (4) meetings in the next four months.

Question 9:

You were reported to have said "There's a much greater level of understanding of the various roles, whether you're an elected member of the Council or staff in the administration". What exactly do you mean about the various roles for the staff?

Response:

The Commissioner stated that part of the training for elected members was to inform them what the separation of responsibilities were for elected members (the Board) and staff members (the administration)

Question 10:

The report closed with your saying, when York residents look back upon this time it has been a good opportunity to reset the relationship between the council and the community. Now that many of us have made you aware of how well supported our suspended Councillors were prior to your arrival, what contribution do you believe you made towards improving the relationship between the council and the community, especially considering the lack of response you've had from the community as compared to the response our suspended Councillors enjoyed?

Response:

The Commissioner stated that for the Shire to be effective there is a need for a good relations and trust to be had with the Community. You will not have a high performing Council without this. There is also always mentioned that there is a 'York Factor' when doing business with York as it is more difficult to accomplish. The community needs to 'step up' and work together to accomplish a positive outcome for the town. The community now needs to look towards the towns 200th in 2031 and work for the betterment of the District.

Mrs Heather Saint

Question 1:

The late report today titled Allegations of Misconduct refers to 'reports of the investigations' and it states 'The public needs to be informed that five (5) agencies have been involved in thorough investigations into the Shires activities over several years and have found there were no wrong doings and only minor changes to one policy were needed. '

In a report dated 3 August 2011, the WA State Ombudsman made findings that there was 'Defective Administration at the Shire of York and training measures needed to be taken to address the shortfalls and make sure that future planning processes were handled better.

- a) Could you please advise if the WA State Ombudsman is one of the 5 agencies you mention?
- b) Regardless and knowing that this report exists, would you still state that no agency has ever identified wrong doings at the Shire or that changes were needed?

Response:

Acting CEO stated he was not familiar with the Ombudsman report.

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:

Taken on Notice

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:

Taken on Notice

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:

Taken on Notice

Mr Julian Krieg

Question 1:

Does the Shire intend to pursue the CCC to release the allegations and report to the Community?

Response:

Commissioner stated that he has been trying to get the CCC to release the allegations.

Question 2:

Does the community have the authority to go to the CCC?

Response:

The Acting CEO stated that the community can go to either the Premier or the Attorney General.

Mr Bill Cebula

Question:

Could the Council ask the CCC what the allegations are?

Response:

The Commissioner stated that he can write to the CCC formally.

Ms Darlene Barratt

Question:

Why is the Notice of Motion in regards to Lot 4, Penny Street, Kauring on the Agenda as "nothing" in the report is correct?

Response:

The Notice of Motion is for discussion at a future meeting. There will be a report on the matter and you will be able to make a deputation at the time the item is included in the Agenda

Cr Matthew Reid

Question 1:

The Corruption and Crime Commission normal process for investigating a matter is to appoint an Investigating/Reporting Officer for each investigation. Were you the Investigating Officer for the CCC investigation into the Shire of York?

Response:

The Commissioner stated that he was.

Question 2:

I have requested a copy of the Local Government Probity Report from the Acting CEO by email. To date I have not received a copy. Will you provide me with a copy?

Response:

The report was tabled at the Ordinary Council meeting in May. A hard copy will be sent to Cr Reid.

Question 3 (a):

The Department of Local Government report to Minister Simpson that recommended the suspension of the York Shire Council referred to a Minority Report from Cr Pat Hooper for their recommendation. Do you have a copy of Cr Hooper's report?

Response:

The Commissioner stated that he had a copy of the report provided confidentially as background information on the FitzGerald report only.

Question 3 (b):

Will you provide Councillors with a copy of Cr Hooper's minority report?

Response:

The Commissioner stated that he could not provide a copy of the report, as it was confidential and only the Minister for Local Government could release it.

Question 4:

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

Response:

Taken on Notice

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.

Question has been Taken on Notice

Question 2:

At the May Ordinary Council Meeting, I asked the following question – “On 17 September, 2012 the Shire of York banned me from asking questions at public question time for a period of one year. What legislation enable the Shire of York to do this?”

Councils response was - “The Local Government Act 1995 is written as a ‘General Competence Power’ which means that the local government can determine what is good governance providing it doesn’t clash with Federal and State laws.”

Clearly on this occasion, what Council considers to be ‘good governance’ ‘clashed with State law’ in this case, Regulation 7 (3) Local Government (Administration) Regulation 1996 – Question time for public states – (3) Each member of the public who wishes to ask a question at a meeting referred to in is to be given an equal and fair opportunity to ask the question and receive a response.

According to Reg 7(3) Local Government (Administration) Regulations 1996, I have a right under State law to ask questions at public question time. Can Council please explain to me without any ambiguity, what legislation it used to disqualify me from asking questions?

Response:

The Commissioner stated that he would respond to Mr Saint in the next few days.

Ms Rebecca Hameister**Question:**

I would like to ask about Avon Waste’s intention for use of the property located at 3933 Great Southern Highway, corner of Ashworth Road, also known as ‘Fairways’. I am asking due to concerns regarding surrounding and adjacent residential properties, recreational areas and tourism businesses.

Response:

The Town Planner replied we have not received a Development Application. The Commissioner stated that it would be best to ask Avon Waste direct.

Ms Hameister replied that she had already done this and Avon Waste would not give an answer.

The Commissioner stated he would get Ashley Fisher of Avon Waste to give her a call.

Ms Tricia Walters**Question 1:**

At the Agenda Settlement Briefing I submitted questions which I thought would have been put into this Agenda.

Response:

This was an Administration oversight and the submitted questions will be placed in the Minutes.

Question 2:

I also asked that the Item on Global Care Group (Inc) – Rating of Land be deferred.

Response:

The Acting CEO stated that this item needs to be reviewed and requires an absolute majority vote of Council. It is also noted that Shires do not win over the provider if taken to Court.

Question 3:

In due respect what is proposed will have a big affected if we have anymore Over 55's villages in York.

Response:

The Commissioner stated that there are many reasons why this item needs to be reviewed this meeting. If the item is deferred this could hold up the \$10 million extension proposed for the site.

Public Question Time concluded at 6.03pm

QUESTIONS SUBMITTED AT THE AGENDA SETTLEMENT BRIEFING HELD ON MONDAY, 15TH JUNE, 2015

Ms Tricia Walters

Item 4.2.1 – 2015 October Biennial Election

1. Who will be manning the Polling Stations?
2. Who will be the Returning Officer
3. What guarantee can be given that the Election will be fair and transparent?

ASB Comment - It was stated that it would cost less for the Shire to conduct an in-house election. However due to the political climate of York it is recommended that the WA Electoral Commission conduct the 'in-person' election. The WA Electoral Commissioner will be manning the three polling booths – York, Greenhills and Talbot. The only Shire employee involved with the election would be the officer required to be on site to open the office and access electoral records if needed.

Item 4.2.2 – Disbandment of Committees

1. Why disband only two of the previous Committees – Heritage & Works and not the Finance, Risk & Audit Committee?
2. Why has the FRAC been excluded?

ASB Comment - For clarity the Heritage Committee has been incorporate into the Sense of Place Advisory Group and the Works Committee has been incorporated into the Infrastructure Options Advisory Group. Working groups have more flexibility than Committees as any community member can join in the discussion with Advisory Groups and they do not have the restrictions of the Local Government Act.

Foot Note: The Finance, Risk & Audit Committee (FRAC) was disbanded at the Ordinary Council Meeting held on 23rd March, 2015.

Item 4.2.5 – Application to Keep Three (3) Dogs

1. The Dog Act allows the keeping of four dogs.
2. The Shire of York has compromised its policy on numerous occasions thereby creating a precedent
3. The Policy needs to be reviewed in line with the Dog Act.

ASB Comment - Commissioner stated that the Dog Act allows for Shire Local Laws to prescribe the number of dogs to be kept on a property. The Acting CEO stated that the Shire of York Local Law stated that up to four dogs can be kept outside the town boundary and up to two dogs can be kept within the town boundary. To keep more than two dogs in the town boundary a request for an exemption is required to be made to Council.

Item 4.4.3 – Global Care Group (Inc) – Rating of Land

1. The Global Care site has over 55's housing on the site which are purchased by the owner/occupier.
2. Why should the Over 55's housing which provides an income for Global Care be exempt from paying rates.

ASB Comment - A deputation to this report was made at the commencement to the meeting. The Commissioner stated that the rating of the property has been an ongoing issue and has taken a fair while to reach a resolution. It is also a controversial issue across WA. The Acting CEO stated that it was necessary for the item to be presented at the June Council meeting as it requires an absolute majority and in July there may not be the opportunity for an absolute majority which could mean the item may then need to be held over until after the October elections

Item 4.5.3 – Lot 257 (151) Avon Terrace, York

1. Is there any requirements for the site to be connected to the Town Sewerage system?
2. I believe the building comes within the Flood Fringe has this been checked?

ASB Comment - A deputation was received at the commencement of this meeting. The Planner stated that there is a change of use for this building and a number of internal changes are required to keep in line with the building code. Consultation is also to be made with the State Heritage Office. The Town Planning Scheme requires a shop to provide eight parking bays, however based on the age of the existing building and property having limited space, discretion has been used to reduce the requirement to four car parking bays including a disability car parking space. The Commissioner asked if the Standard 2010 and AS1428-2009 provided discretion for the onsite disability car parking space. The Planner stated that her understanding of the building code was that it did not provide discretion for a disabled car parking space however she noted that this was a question for a building surveyor. From a planning point of view, the Scheme requires one disabled bay in this case. The Commissioner stated he would take the disabled car parking issue on notice and he would need to exercise discretion for the next council meeting.

Foot Note:

1. The Water Corporation website indicates that the property is already connected to the reticulated sewer system.
2. Department of Water mapping indicates that the property is not within the Avon River floodway or flood fringe.

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 May 25, 2015

Corrections

Confirmation

**RESOLUTION
010615**

“The Commissioner Confirmed:

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

The Commissioner Declared the Motion Carried

7.2 Notes of the Agenda Settlement Briefing – June 15, 2015

Officers of the Shire of York presented background information on reports to be considered at the June Ordinary Council Meeting at the Agenda Settlement Briefing held on June 15, 2015.

Recommendation:

**RESOLUTION
020615**

“The Commissioner Confirmed:

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

The Commissioner Declared the Motion Carried

8. **ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

8.1 NOTICE OF MOTION

8.1.1 Shire President Application for Legal Cost/ Reimbursement

FILE NO:
COUNCIL DATE: 22 June 2015
REPORT DATE: 22 June 2015
LOCATION/ADDRESS: N/A
APPLICANT: Shire President
SENIOR OFFICER: N/A
REPORTING OFFICER: N/A
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Application Request From Shire President,
Dated 18 June 2015.
MOTION TABLED BY: Commissioner James Best

Summary:

On 18 June 2015, Council received an application for the reimbursement of legal expenses incurred by the Shire President in his role as Councillor and Shire President between 16 November, 2014 and 19 February, 2015.

Background:

The Shire President has made the request “for financial support on this action I confirm my advice that my actions were taken to provide benefit for the community as a whole and all actions taken and advice sought in complete good faith.”

The legal counsel was sought in relation to:

- Advice regarding a report to the Corruption and Crime Commission.
- Advice and Assistance regarding the Minister for Local Government’s “Show Cause Notice”.
- Advice of the use of surveillance devices.

Consultation:

N/A

Statutory Environment:

N/A

Policy Implications:

Tabling of “Notice of Motions”
Councillors Financial Interests

Financial Implications:

Cost of legal advice provided to the Shire President at a cost of to the value of approximately \$52,580.50.

Strategic Implications:

Nil

Voting Requirements:

Commissioner’s Voting Support

Site Inspection:

Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Officers Comment:

N/A

Agenda Settlement Briefing Comment:

N/A

NOTICE OF MOTION

“That Council:

- 1. Request the A/Chief Executive Officer investigate the merits of the application from the Shire President seeking legal Cost/ Reimbursement,***
- 2. The Report to consider matters consistent with the Local Government Act 1995, Council Policy and any other relevant regulations.***
- 3. Request a report on the matter to Council at the first available opportunity.”***

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

8.1 NOTICE OF MOTION

8.1.2 Development of Policy for Rates Remission for Non-Contiguous Agricultural Land.

FILE NO:	#
COUNCIL DATE:	22 June 2015
REPORT DATE:	22 June 2015
LOCATION/ADDRESS:	N/A
APPLICANT:	Commissioner
SENIOR OFFICER:	N/A
REPORTING OFFICER:	N/A
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil
MOTION TABLED BY:	Commissioner James Best

Summary:

An Agricultural property on separate titles are penalised under Councils current rating system. It is proposed to investigate the merits of developing a Policy for Rates Remission for Non-contiguous Agricultural Land.

Background:

This idea for an Agricultural Rates Policy is based on the need for equity and for the remission of rates where two or more uniform annual general charges and two or more sets of targeted uniform annual charges are set on rating units that are:

1. Non-contiguous
2. Owned by the same person or corporate body
3. Used jointly as an economic unit for an agricultural practice

All properties must be used for the purpose of agriculture and be located outside the urban area as defined in the Hurunui district plan

The policy applies to ratepayers who are recorded as ratepayers of two or more separate rating units

Each separately used or inhabited rating unit will attract an annual general charge and the targeted rates that are set on a uniform basis

Not carry sufficient improvements to allow it to be operated as a separate agricultural unit

Not be occupied by a habitable dwelling

Consultation:

N/A

Statutory Environment:

N/A

Policy Implications:

N/A

Financial Implications:

N/A

Strategic Implications:

Nil

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Officers Comment:

N/A

Agenda Settlement Briefing Comment:

N/A

NOTICE OF MOTION

"That Council:

- 1. Request the A/Chief Executive Officer investigate the merits of rates remission for non-contiguous agricultural land -- consistent with the Local Government Act 1995, Council Policy and any other relevant regulations.***
- 2. That consultation be conducted with stakeholders through the Business Development Working Group.***
- 3. Request a report on the matter to Council at the first available opportunity."***

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

8.1 NOTICE OF MOTION

8.1.3 No Same Or Similar Questions In Connection With Lot 4, Penny Street, Kauring To Be Responded To At Public Question Time

FILE NO:	FI.RTS.PPO.2490
COUNCIL DATE:	22 June 2015
REPORT DATE:	22 June 2015
LOCATION/ADDRESS:	N/A
APPLICANT:	N/A
SENIOR OFFICER:	N/A
REPORTING OFFICER:	N/A
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil
MOTION TABLED BY:	Commissioner James Best

Summary:

Since 2008, the former owner of Lot 4, Penny Street, Kauring has asked numerous questions about the property in relation to the rates notice, legal action and the payment of legal fees.

Given the frequency of similar questions in connection with Lot 4, Penny Street, Kauring it is foreshadowed that Council consider making a determination that the file be closed.

Further questions shall not be responded to where the same or similar question was/were asked at a previous meeting and a response was provided; and the member of the public is directed to the minutes of the meeting at which the response was provided.

The proposed wording to be

“The Presiding Officer advises that these questions (or similar) in connection with Lot 4, Penny Street, Kauring have been responded to in the past, therefore no further response is being provided, as resolved by Council at Item __ of the __ 2015 Ordinary Council Meeting.”

Commissioner Comment

There have been hundreds of questions asked over the last 7 years relating to the with the first being asked in April 2008.

At the 28th April, 2015 meeting, a motion was tabled to revoke Council Resolution 111014. This motion was deferred and is to be tabled again.

The matter has been determined by various courts on a number of occasions, and the Shire considers the matter closed following the last Magistrates Court hearing on 19th September, 2012.

The questions are repetitive. Previous responses have been given and no useful purpose is served by responding to further questions on the subject.

Consultation:

Valenti Lawyers

Statutory Environment:

N/A

Policy Implications:

Nil

Financial Implications:

Xxx

Strategic Implications:

Xxx

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Officers Comment:

Legal advice is that the Applicant is unlikely to find comfort in further Court action.

There is nothing further that can be done to seek resolution with the Applicant.

Agenda Settlement Briefing Comment:

N/A

NOTICE OF MOTION

"That Council:

Determines, in accordance with Local Government Operational Guidelines No. 3 – Managing Public Question Time, that any questions in connection with Lot 4, Penny Street, Kauring shall not be responded to where the same or similar question were asked at a previous meeting, a response was provided and the member of the public is directed to the Minutes of the meeting at which the response was provided."

9. OFFICER'S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Wheatbelt Joint Development Assessment Panel Nominations

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 and orderly planning considerations.

FILE NO: PS.GEN.PPO.3.1
COUNCIL DATE: 22 June 2015
REPORT DATE: 3 June 2015
LOCATION/ADDRESS: N/A
APPLICANT: N/A
SENIOR OFFICER: G. Simpson, ACEO
REPORTING OFFICER: K. Strange, TP
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

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

Summary:

The purpose of this report is to inform the community and the Commissioner of the current progress of nominations for the Wheatbelt Joint Development Assessment Panel.

Background:

The Wheatbelt Joint Development Assessment Panel (JDAP) voted to refuse the planning application to use Allawuna Farm for the purposes of a landfill on 17 March 2014.

SITA Australia Pty Ltd lodged an appeal against the decision with the State Administrative Tribunal on 24 April 2014.

Following a number of SAT Mediation and Directions Hearings, the State Administrative Tribunal (SAT) invited the Wheatbelt JDAP to reconsider their decision to refuse prior to 15 July 2015.

Currently, the local representatives for the JDAP are Cr Matthew Reid and Cr Denese Smythe however with the Council's current suspension, their position and role on the JDAP is also suspended. Additionally, these positions were due to expire in mid-April and therefore renomination was required.

Due to their suspension, the renomination of Councillors in this role was not permitted at the present time.

At the Ordinary Meeting held 21 April 2015, the Commissioner resolved to

1. *Call for nominations, to be due 9am Friday 24 April 2015, for suitably qualified and/or experienced community members to represent the Shire of York on the Wheatbelt Joint Development Assessment Panel.*

2. *Authorise the Acting Chief Executive Officer, along with any relevant staff, to assess the nominations provided and submit an amended nomination form to the Development Assessment Panels Secretariat, to include the Commissioner, along with at least two, but no more than six, candidates to represent the Shire of York on the Wheatbelt Joint Development Assessment Panel.*
3. *Request the Minister for Planning to appoint the Commissioner and a suitably qualified and experienced community person to represent the Shire of York on the Wheatbelt Joint Development Assessment Panel.*

A total of four nominations were received plus one from the Commissioner. As only four nominees were required and given we only received five, we requested that the Development Assessment Panels Secretariat consider a fifth community nominee.

Upon review of the nominations, it was decided that the order of candidates would be as follows;

1. Commissioner James Best – DAP Member 1
2. Hon. Christopher Pullin – DAP Member 2
3. Dr Duncan Steed – Alternate DAP Member 1
4. Ms Bairbre Lewis – Alternate DAP Member 2
5. Mr Ross Ainsworth – Alternate DAP Member 3

Consultation:

Department of Planning – Development Assessment Panels (DAPs) Secretariat

Statutory Environment:

Planning and Development (Development Assessment Panel) Regulations 2011

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Nil

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: N/A

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

Nil

Environmental Implications:

Nil

Officer Comment:

Mr John Day, Minister for Planning; Culture and the Arts, has confirmed that the following four nominations are being considered for appointment;

1. Commissioner James Best – DAP Member 1
2. Hon. Christopher Pullin – DAP Member 2
3. Dr Duncan Steed – Alternate DAP Member 1
4. Ms Bairbre Lewis – Alternate DAP Member 2

Further to this, the details of a fifth nominee, Mr Ross Ainsworth, will be kept on record should a replacement for any of the above members be required.

The Minister did not specify when a final decision would be made however the Development Assessment Panels (DAPs) officer confirmed that the existing member's term was extended to 26 July 2015.

Therefore, the Shire of York will be suitably represented on the Wheatbelt JDAP, specifically in its role in reconsidering the refusal of the SITA landfill proposal.

ASB Comment:

The JDAP nominations have been sent to Minister Day who has yet to answer. It is the Planners understanding that the current JDAP member's term has been extended to the 26th July, 2015.

RESOLUTION

030615

“That the Commissioner:

- 1. Receive the advice that the nominations for the Wheatbelt Joint Development Assessment Panel are currently being considered by the Minister for Planning; Culture and the Arts; and***
- 2. Request that the Chief Executive Officer provide a subsequent report once a decision is made regarding their formal appointment.”***

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.2 11 Broome Street, York – The Mill

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 and orderly planning considerations.

FILE NO: BR2.10462
COUNCIL DATE: 22 June 2015
REPORT DATE: 4 June 2015
LOCATION/ADDRESS: 11 Broome Street, York
APPLICANT: Gregory Browne
SENIOR OFFICER: G. Simpson, ACEO
REPORTING OFFICER: K. Strange, TP
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix 1 – Location Plan
Appendix 2 – Site Plan
Appendix 3 – Signage
Appendix 4 – Schedule of Submissions
Appendix 5 – Assessment
DOCUMENTS TABLED: Nil

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

Summary:

A planning application has been received for a change of use and associated signage for the Saw Tooth Shed located on the site of the old York Flour Mill at Lots 24-27, 38, 58 and 26807 (11) Broome Street, York.

For the purposes of this report, the property will be hereby referred to as 'the Mill'.

The proposal has been assessed taking into consideration the Local Planning Strategy, Scheme and Policy requirements as well as the submissions received.

It is recommended that the Commissioner approve the application subject to the conditions listed in the recommendation of this report.

Background:

The Mill is located on the eastern boundary of the railway line between Henrietta Street and Broome Street. Being situated adjacent to Henrietta Street (Great Southern Highway), the Mill is on the main road entering the town site of York.

The property is listed as a category 1A on the local municipal inventory which means that the place is of exceptional cultural significance for the Shire of York and the State of Western Australia and is therefore also a State listed heritage place. The Mill is also located within the Central York Heritage Precinct.

The application proposes an "old style general store" providing a wide variety of goods to local and surrounding townspeople. Specifically, the proposed use will involve wholesale, retail and hire of unique mining, agricultural and domestic equipment, vehicles and goods, including:

- Machinery
- Vehicles and equipment
- Furniture
- Clothing
- Saddlery
- Camping gear

- Guns and ammunition
- Horse and other stock feed
- Hardware and supplies
- Minor repairs to equipment and machinery, including horse floats.

As the proposal represents a range of retail and servicing use classes, it did not fall comfortably within any use class defined by TPS2, and would be described by a number of both listed and unlisted uses. Such a use definition does not enable the coordinated assessment and determination of the proposal – which would have resulted in some elements of the proposal being more or less consistent with the zoning of the land than other elements.

To provide a single, cohesive consideration of the proposal, it was reasonable to consider the proposed use as a single, unlisted and undefined use of “bulky goods general store” and progress the application in accordance with clause 3.2.4 of the scheme.

At the Ordinary Meeting held 28 April 2015, the Commissioner resolved to;

“Determine that the proposed bulky good general store at Lots 24-27, 38, 58 and 26807 (11) Broome Street, York, may be consistent with the objectives of the Town Centre zone in accordance with 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 accordingly with six submissions being received. An assessment has been completed, taking into consideration these submissions as well as the relevant provisions of the Strategy, Scheme and local policies.

Consultation:

The proposal was advertised in accordance with clause 8.3.3 (a), (b) and clause 8.4 of the Shire of York Town Planning Scheme No. 2.

A total of six submissions were received with one being a public submission and the remaining five being from agencies. A summary of their submissions can be found in Appendix 4.

Statutory Environment:

- Shire of York Town Planning Scheme No. 2
- Heritage Precincts and Places

The proposal is consistent with the Scheme and Policy requirements. A copy of the full assessment can be found in Appendix 5.

Policy Implications:

Nil.

Financial Implications:

Nil.

Strategic Implications:

Shire of York Local Planning Strategy (LPS)

The property is identified in the LPS as being within the York Town Centre Precinct.

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 Strategy and Community Strategic Plan, particularly as it has the potential to grow the economic base whilst protecting the heritage value of the place.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

Nil.

Social Implications:

Nil.

Environmental Implications:

Nil.

Officer Comment:

The proposed change of use has been assessed against the requirements of the scheme. The proposed use is considered to reflect an appropriate, diverse retail and agricultural service that reflects the local economy and farming lifestyle of York.

Potential impacts, in relation to car parking and dust, can be adequately managed through conditions of approval. The application is considered to be capable of approval against the requirements of the scheme.

ASB Comment:

Commissioner stated he did not have any questions regarding this item.

**RESOLUTION
040615**

“That the Commissioner:

Approve the development application for a General Store – Bulky Goods at 11 Broome Street, York, subject to the following conditions;

- 1. The change of use must substantially commence within two (2) years from the date of this decision.***
- 2. Prior to the commencement of the use, a revised car parking and pedestrian access plan is to be submitted to and approved by the local government (see note 5).***
- 3. Car parking areas are to be constructed prior to commencement of use to the satisfaction of the local government.***
- 4. A schedule of colours and materials for signage is to be submitted to and approved by, the local government prior to the commencement of the use (see note 2).***
- 5. Development must take place in accordance with the stamped approved plans.***
- 6. Prior to the commencement of the use, a dust and pest management plan is to be submitted to and approved by the local government. The plan is to be thereafter implemented to the satisfaction of the local government.***

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 car parking and pedestrian access plan is to detail the general parking spaces, disabled parking space and subsequent compliant access ways to the building. The vehicle accessway is to comply with the Schedule 4 requirements as well as the relevant access standards.***
- Note 6: All signs and supports shall be maintained in good condition to prevent deterioration, oxidation, rust, and any other unsightly conditions.***
- Note 7: The approval is for the two signs only. All other signage is subject a separate application.***
- Note 8: The storing of firearms and ammunition is subject to regulation by the Western Australian Police and the Firearms Regulations 1974.”***

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.1 DEVELOPMENT REPORTS
9.1.3 Lot 4 (6) South Street - Showroom

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 and orderly planning considerations.

FILE NO: SO1.11610
COUNCIL DATE: 22 June 2015
REPORT DATE: 29 April 2015
LOCATION/ADDRESS: Lot 4 (6) South Street, York
APPLICANT: M. Higson
SENIOR OFFICER: G. Simpson, ACEO
REPORTING OFFICER: K. Strange, TP
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix 1 – Location Plan
Appendix 2 – Site Plan
Appendix 3 – Elevations
Appendix 4 – Schedule of Submissions
Appendix 5 – Assessment
DOCUMENTS TABLED: Nil

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

Summary:

A planning application has been received for the development of a showroom at Lot 4 (6) South Street, York.

A showroom is a use not listed in the Shire of York Town Planning Scheme and was therefore processed accordingly.

A full assessment has been conducted and it is recommended that Council approve the application subject to the conditions listed in the recommendation of this report.

Background:

The application was originally submitted as a shop and the development was assessed accordingly. However the applicant has decided to develop the building as a showroom to complement his existing business, rather than as a shop. Therefore a different process is required.

Showroom is a use defined in the Scheme as *a building or part of a building used or intended for use for the purpose of displaying or offering for sale by wholesale or retail, automotive spare parts, carpets, large electrical appliances, furniture, hardware or goods of a bulky nature*. It is considered that the application suitably falls within this definition.

However, this use is not specifically listed in the Zoning Table and therefore has no defined use permissibility and must be assessed as a 'use not listed' in accordance with 3.2.4 of the Shire of York Town Planning Scheme No. 2.

At the Ordinary Meeting held 28 April 2015, the Commissioner resolved to;

"Determine that the proposed showroom at Lot 4(6) South Street, York, may be consistent with the objectives of the Town Centre 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."

Following this resolution, the application was appropriately advertised and a full assessment of the use and development was completed taking into consideration the comments received.

Consultation:

Numerous discussions have been held with the applicant regarding this use and the compatibility within the Town Centre zone.

The application was advertised in accordance with clause 8.3.3 (a) and clause 8.5 of the Shire of York Town Planning Scheme No 2.

Neighbour notification has already occurred as well as referral to a number of relevant agencies and other external groups including; Department of Water, the York Society, Western Power, Telstra, Water Corporation, and our local heritage advisor Laura Gray.

Statutory Environment:

Shire of York Town Planning Scheme No. 2

The proposal is consistent with the objectives of the Town Centre zone. A full assessment against the provisions of the Scheme can be found in Appendix 5.

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 York Town Centre Precinct.

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 Shire of York Local Planning Strategy and Community Strategic Plan.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

There are no economic implications associated with this proposal.

Social Implications:

There are no social implications associated with this proposal.

Environmental Implications:

The property is located within a flood affected area.

Department of Water have provided comment in relation to minimum floor level requirements.

There are no environmental implications associated with this proposal.

Officer Comment:

The application for a showroom has been appropriately assessed and is considered consistent with the relevant requirements.

There are a number matters that require confirmation by the applicant subject to additional information. It is considered appropriate to condition this information as part of the approval.

ASB Comment:

The Planner stated that the item had been re-advertised and assessed. From feedback received there has been concerns with regards to access to properties, generation of extra traffic and materials to be used in a heritage area. Conditional approval has been given to cover all issues.

**RESOLUTION
050615**

“That the Commissioner approve the development application for a showroom at Lot 4 (6) South Street, York, subject to the following conditions;

- 1. Development must substantially commence within two (2) years from the date of this decision.***
- 2. All stormwater is to be managed on site to the satisfaction of the local government.***
- 3. Prior to the commencement of works, a revised car parking and access site plan is to be submitted to and approved by the local government (see note 5).***
- 4. A schedule of colours and materials is to be submitted to and approved by, the local government prior to the commencement of work (see note 6).***
- 5. Development must take place in accordance with the stamped approved plans.***
- 6. Prior to the commencement of works, a Notification, pursuant to Section 70A of the Transfer of Land Act 1893 is to be placed on the certificate of title of the lot. The notification is to state as follows:***
“This lot is partially located within the Avon River floodway and flood fringe and may be subject to flooding and inundation from time to time.”
- 7. Prior to the commencement of works, a Notification, pursuant to Section 70A of the Transfer of Land Act 1893 is to be placed on the certificate of title of the lot. The notification is to state as follows:***
“The Development Application, number P940, approved by the Commissioner at the Ordinary meeting held on Monday, 22nd June, 2015, has a finished floor level of 174.34m AHD. This is considered acceptable for commercial use in relation to flood protection however is not consistent with the required finished floor level for habitable development”
- 8. Electrical installations are to be located above 174.69m AHD and be suitably insulated.***

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 car parking and access site plan is to detail the general parking spaces, disabled parking space and subsequent compliant access ways to the building. The vehicle accessway is to comply with the Schedule 4 requirements as well as the relevant access standards.*
- Note 6:** *The schedule of colours and materials is to address the requirements of the Local Planning Policy, Heritage Precincts and Places, specifically clauses 4.4.4, 4.4.5, and 4.4.6.*
- Note 7:** *All other development, including fencing, advertising signage, etc, is not subject to this application and will require separate approval.*
- Note 8:** *It is recommended that the landowner consult with the adjoining property owners with regard to making arrangements for reciprocal rights of access.*
- Note 9:** *All work must comply with Worksafe Regulation 3.64 – Guidelines for Work in the Vicinity of Overhead Power Lines.”*

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.1 DEVELOPEMNTREPORTS
9.1.4 Lot 257 (151) Avon Terrace, York

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

FILE NO: AV1.14300
COUNCIL DATE: 22 June 2015
REPORT DATE: 2 June 2015
LOCATION/ADDRESS: Lot 257 (151) Avon Terrace, York
APPLICANT: Cygnus (WA) Pty Ltd.
SENIOR OFFICER: G. Simpson, ACEO
REPORTING OFFICER: K. Strange, TP
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix 1 – Location Plan
Appendix 2 – Site Plans
Appendix 3 – Schedule of Submissions
Appendix 4 – Assessment
DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: Graeme Simpson

Summary:

A planning application has been received for a change of use to a retail book store at the Old York Fire Station at Lot 247 (151) Avon Terrace, York.

A retail book store is considered as a 'shop' in accordance with the Shire of York Town Planning Scheme which is a permitted use in the Zoning Table.

A full assessment has been conducted and it is recommended that Council approve the application subject to the conditions listed in the recommendation of this report.

Background:

The Old York Fire Station is located on the northern end of the main street of York. The property is listed as a category 1A on the local municipal inventory which means that the place is of exceptional cultural significance for the Shire of York and the State of Western Australia and is therefore also a State listed heritage place. The property is also located within the Central York Heritage Precinct.

Originally constructed in 1897, the Old Fire Station was built for the purposes of a Council Chambers for the York Municipal Council and represents the beginning of accelerated growth of York. Later, in 1914, the building was used as the headquarters for the York Volunteer Fire Brigade. Most recently, the building has been used as a community centre.

The applicant has proposed a change of use to this building to a retail book store which is consistent with the definition of a 'shop' in the Shire of York Town Planning Scheme No. 2; *"any building wherein goods are kept, exposed or offered for sale by retail, or within which services of a personal nature are provided (including a hairdresser, beauty therapist or manicurist) but does not include a showroom, fast food outlet or any other premises specifically defined elsewhere in the Scheme"*.

Further to this, the applicant has also proposed a wall mounted sign for the front of the building. Final drawings of the sign are yet to be provided.

Consultation:

Numerous discussions have been held with the applicant regarding this use and the compatibility within the Town Centre zone.

The application was advertised in accordance with clause 8.3.3 (a) and clause 8.5 of the Shire of York Town Planning Scheme No 2.

Statutory Environment:Shire of York Town Planning Scheme No. 2

The proposal is consistent with the objectives of the Town Centre zone. A full assessment against the provisions of the Scheme can be found in Appendix 4.

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 York Town Centre Precinct.

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 Shire of York Local Planning Strategy and Community Strategic Plan.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Yes

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

There are no economic implications associated with this proposal.

Social Implications:

There are no social implications associated with this proposal.

Environmental I

mplications:

There are no environmental implications associated with this proposal.

Officer Comment:

The proposal for a change of land use to the Old York Fire Station will complement the heritage of the building and objectives of the Town Centre by introducing a retail book store.

A planning approval is required for a change in land use and any associated development which includes an assessment against the relevant Strategy, Scheme and Policy requirements.

Further to this, the proposed use will result in the need to change the building classification through an application for an occupancy permit. This will involve structural upgrades to the building in order to comply with the Building Code and disabled access requirements.

The applicant is in the process of engaging a Building Surveyor to assist them with their application for a change of building classification. It is expected that there will be structural changes to the internal layout which will require further assessment by the local government and the State Heritage Office. It is considered appropriate to condition this as part of their approval as there are no other associated issues.

ASB Comment:

A deputation was received at the commencement of the ASB meeting. The Planner stated that there is a change of use for this building and a number of internal changes are required to keep in line with the building code. Consultation is also to be made with the State Heritage Office. The Town Planning Scheme requires a shop to provide eight parking bays, however based on the age of the existing building and property having limited space, discretion has been used to reduce the requirement to four car parking bays including a disability car parking space. The Commissioner asked if the Standard 2010 and AS1428-2009 provided discretion for the onsite disability car parking space. The Planner stated that her understanding of the building code was that it did not provide discretion for a disabled car parking space however she noted that this was a question for a building surveyor. From a planning point of view, the Scheme requires one disabled bay in this case. The Commissioner stated he would take the disabled car parking issue on notice and he would need to consider the exercising of discretion at the next council meeting.

RESOLUTION

060615

“That the Commissioner approve the development application for a change of use to a retail book store (shop) at Lot 257 (151) Avon Terrace, York, subject to the following conditions;

- 1. The change of use must substantially commence within two (2) years from the date of this decision.***
- 2. Prior to the commencement of the use, an amended site plan is to be submitted to and approved by the local government in consultation with the State Heritage Office. The site plan is to illustrate;***
 - a. the necessary upgrades required in accordance with the Building Code of Australia and Disability (Access to Premises-Buildings) Standard 2010 and AS1428-2009; and***
 - b. a revised car parking plan showing a minimum of four (4) staff car parking spaces in accordance with Schedule 4 of the Shire of York Town Planning Scheme No. 2 (see note 5).***
- 3. Development must take place in accordance with the stamped approved plans.***
- 4. Prior to the erection of the sign, the applicant is to provide a copy of the final design for the sign to the local government for their approval.***
- 5. The sign is to be appropriately and adequately secured.***
- 6. The sign is to be maintained in good condition to prevent deterioration, oxidation, rust, and any other unsightly conditions.***

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 four (4) staff parking bays are to be provided and suitably constructed to the satisfaction of the local government, meeting the minimum manoeuvring requirements of Schedule 4 of the scheme for two way access. At least one (1) of the spaces is to comply with Disabled Access provisions of AS/NZS2890.6-2009.”

The Commissioner Declared the Motion Carried

9.2 Administration Reports

- 9. OFFICER'S REPORTS
- 9.2 ADMINISTRATION REPORTS
- 9.2.1 2015 October Biennial Election

FILE NO: OR.ELN.3.4
COUNCIL DATE: 22nd June, 2015
REPORT DATE: 2nd June, 2015
LOCATION/ADDRESS: Nil
APPLICANT: N/A
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: G K Simpson, A/CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Letter from WA Electoral Commission
DOCUMENTS TABLED: Nil

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

Summary:

The proposal is to have the 2015 October biennial election conducted by the WA Electoral Commission.

Background:

The Shire has traditionally held 'in person' elections conducted by the local staff but the perceptions held by some members of the community suggest that it would be best to use the independent service.

Consultation:

Department of Local Government
Commissioner
Senior Staff
WA Electoral Commission

Statutory Environment:

Local Government Act 1995 electoral provisions apply

Policy Implications:

Nil

Financial Implications:

The quoted estimate for conducting a postal ballot is \$18,182 and the estimate of an 'in person' election is \$19,000.

Strategic Implications:

In view of the perception of some members of the community it has been strongly suggested by the administration that the election be conducted by the WA Electoral Commission.

Honest and open elections are the foundation of the democratic process and must be seen to be done.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not Applicable

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

The quoted costs are higher than the budgeted figure for an 'in person' election conducted by the administration and the majority of the money would have stayed in the community, however, the local political climate suggests it is better to have the election conducted at 'arms length'.

Social Implications:

The usual electoral process for York is to have 'in person' elections with polling booths at York, Talbot and Greenhills. This social practice is important for the York community to be involved in the process and be part of the witnessing of the communities will.

Environmental Implications:

Nil

Officer Comment:

The history of recent 'in person' elections for York have produced a response rate of 44.85%. The Electoral Commission proposal is as follows:

The estimated cost for the 2015 election if conducted as a postal ballot is \$18,000 inc GST, which has been based on the following assumptions:

- 2,600 electors
- Response rate of approximately 50%
- 5 vacancies
- Count to be conducted at the offices of the Shire of York
- Appointment of a local Returning Officer
- Standard Australia Post delivery service to apply

An additional amount of \$182 will be incurred if your Council decides to opt for the Australia Post Priority Service for the lodgement of election packages.

Costs not incorporated in this estimate include:

- Non-statutory advertising (ie any additional advertisements in community newspapers and promotional advertising)
- Any legal expenses other than those that are determined to be borne by the Western Australian Electoral Commission in a Court of Disputed Returns
- One local government staff member to work in the polling place on election day
- Any additional postage rate increases by Australia Post

The estimated cost for a 2015 voting 'in person' election is \$19,000 inc GST. This is based on a response rate of approximately 45% the appointment of a local Returning Officer and three polling places open on polling day. It is proposed that an 'in-person' election be conducted by the Electoral Commission in October 2015.

The Commission is required by the Local Government Act 1995 to conduct local government elections on a full cost recovery basis and you should note that this is an estimate only and may vary depending on a range of factors including the cost of materials or number of replies received. The basis for charges is all materials at cost and a margin on staff time only. Should a significant change in this figure become evident prior to or during the election you will be advised as early as possible.

ASB Comment

It was stated that it would cost less for the Shire to conduct an in-house election. However due to the political climate of York it is recommended that the WA Electoral Commission conduct the 'in-person' election. The WA Electoral Commissioner will be manning the three polling booths – York, Greenhills and Talbot. The only Shire employee involved with the election would be the officer required to be on site to open the office and access electoral records if needed.

RESOLUTION**070615**

“That the Commissioner:

Declare, in accordance with section 4.20(4) of the Local Government Act 1995, the Electoral Commissioner to be responsible for the conduct of the York 2015 Ordinary Council election together with any other elections or polls which may also be required.”

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.2 Disbandment of Committees

FILE NO:
COUNCIL DATE: 22nd June, 2015
REPORT DATE: 2nd June, 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: Nil
DOCUMENTS TABLED: Nil

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

Summary:

The changes to the meeting systems that were introduced in February 2015 have been successful and it is time to disband the Works Committee and the Heritage Committee.

Background:

At the February Council Meeting the Acting Chief Executive Officer reported on the introduction of formal Agenda Settlement Briefing sessions and the formation of Visioning Working Groups, being:

1. Sense of Place,
2. Environment,
3. Strength of Community,
4. Infrastructure Options,
5. Town Life and
6. Economic Development.

Consultation:

Commissioner

Statutory Environment:

Local Government Act Section 5.11 (1) (c)
Local Government (Administration) Regulations
Local Laws – Standing Orders

Policy Implications:

The changes introduced in February have been modestly supported by the community and favourable comments indicate there is support for the Visioning Working Groups to continue, with support/leadership of the Elected Members.

Financial Implications:

Nil

Strategic Implications:

There are currently six Visioning Working Groups and it is hoped that the Elected Members will maintain these community groups.

It is suggested that one Visioning Working Group is held on the same night every week, rotated through six (6) weeks, with the opportunity for Council to convene a 'combined groups meeting' in week 7 to co-ordinate activities and avoiding duplication and gaps.

The Visioning Working Groups concept has been endorsed by those who have chosen to participate, they see the opportunity to look ahead and contribute to the future of York.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

There is a real need for the York economy to be boosted and any action to return to past conflicts will be detrimental. Change is needed to create the opportunity for improvement.

Social Implications:

In respect to the changes made in the method of how things are done it is necessary to avoid the axiomatic tendency to revert to past behaviours if we return to past practices. This needs to be avoided.

Environmental Implications:

Nil

Officer Comment:

Heritage matters have been discussed at the 'Sense of Place' meetings and Works issues at the 'Infrastructure Options' meetings.

Community Working Groups are more inclusive, open to any community member to join-in and informal.

Committees of Council are subject to the rules and regulations of the Local Government Act that requires formal membership, statutory declarations of interests and formal meeting procedures.

ASB Comment

For clarity the Heritage Committee has been incorporate into the Sense of Place Advisory Group and the Works Committee has been incorporated into the Infrastructure Options Advisory Group. Working groups have more flexibility than Committees as any community member can join in the discussion with Advisory Groups and they do not have the restrictions of the Local Government Act.

RESOLUTION

080615

"That the Commissioner:

Disband the existing Heritage and Works Committees in accordance with Section 5.11 (1) ©."

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.3 York Cemetery Interment Niche Wall

FILE NO: CCP.3
COUNCIL DATE: 22 June 2015
REPORT DATE: 4 June 2015
LOCATION/ADDRESS: Herbert Road, York
APPLICANT: N/A
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: Paul West, Purchasing/Special Projects
DISCLOSURE OF INTEREST: Nil
APPENDICES:

- Design by Stock Bros Monumental Works & HR Stonecraft (China)
- Design by Oxter Services Northam
- Design by Techstone, York

DOCUMENTS TABLED: Nil
REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

Summary:

Council to consider options for a new niche wall for 90 interments to be constructed at the York cemetery.

These options include erecting a new gazebo incorporating bricked niche walls similar to the existing structure or building a smaller monument or headstone styled stand-alone niche wall.

In addition to the new gazebo option, this report will present to council several options regarding the smaller monument styled niche walls and seeks council's recommendation.

Background:

\$30 000 was budgeted for 2014-2015 for materials for a patio for a new niche wall. When taking into consideration interment niches already reserved the existing niche wall is almost at capacity. Building estimations to replicate the existing gazebo and niche wall structure are in excess of \$60 000.

It is important to note that although such a solution is not achievable within the 2014-2015 budget allocation, it would provide room for 260 interments, deriving a projected total income of \$117 500.

The concept of building another gazebo to house new niche walls raises questions regarding the long-term planning for the cemetery - whether building multiple gazebos to house replacement niche walls are a desirable outcome and whether the cemetery will reach its capacity for new burials before 260 niches are utilised.

Erecting a 'monument' style stand-alone niche wall that would enable 90 interments could be achieved well within the \$30 000 allocated budget and derive a projected total income of \$40 600. Such a wall could be constructed in a style sympathetic to the existing monuments and headstones of the York cemetery and placed adjacent to the existing path at the entry to the existing gazebo.

The cemetery conservation plan suggests that such a gazebo should not be built at the location previously proposed. The project coordinator has met with representatives from the York Society who believe a 'monument' style stand-alone niche wall is a more sympathetic option than replicating the Gazebo and niche walls. The project coordinator also spoke to builders and monumental masons in Perth, Sydney and China as well as in Northam and York. The two main metropolitan crematoriums and the local funeral directors were consulted to confirm the required niche size. New techniques retain a larger volume of remains resulting in a changed size and shape of the container to be interred. These designs take this into account. The Shire's interment records and niche reservation requests give confidence that a mix of equal double and single niches enabling 30 single interments and 60 interments in the 30 double niches is the right combination. This is also the combination used in the new niche walls in Northam. The Building and Project Supervisor at the Shire of Northam was consulted extensively regarding replicating the technical aspects of their new niche wall.

Stock Bros Monumental Works (Karrakatta Monumental Centre and Fremantle Monumental Centre) can supply a granite stand-alone monument with 50 niches or 100 niches back to back. This monument allows for single interments only.

HR Stonecraft in China can supply a granite monument style stand-alone niche wall with 30 single and 30 double niches enabling 90 interments. From discussions with their representatives, it is likely that the colour choice of the granite used would not complement the existing monuments at the York cemetery. Dealing directly with a manufacturer in China is something that the Shire hasn't had experience and seems fraught with issues should anything go wrong. Importing monument blanks from China is standard practice amongst Australian monumental works. The Shire could utilise a Western Australian based monumental works to purchase and import the wall but this would invariably bring the cost up to being in line with other local options.

York based 'Techstone' can produce a monument style niche wall in cast polished concrete in a design that references York's iconic Town Hall. The designed colour can be achieved in consultation with the manufacturer who is keen to deliver a product that complements the York cemetery. This wall would also be a design incorporating 30 single and 30 double niches enabling 90 interments.

Northam based Oxter Services can deliver a monument style stand-alone niche wall with 30 single and 30 double niches enabling 90 interments. Their design however sources a precast concrete component (manufactured by Techstone in York) that is clad with polished granite, sits on a polished granite plinth, has a polished granite cap and uses the design and methodology of the recently completed niche walls at the Northam Cemetery.

Representatives from the York Society when consulted liked both the 'Techstone' and the Oxter Services design, though favouring the potential aging properties of the polished granite of the Oxter Services solution over the polished concrete of the 'Techstone' solution.

All of the above options require a level concrete base to be provided by the Shire.

Consultation:

The York Society
Shire of Northam – Building and Project Supervisor
Stock Bros Monumental Works
HR Stonecraft
Techstone
Oxter Services

Statutory Environment:

York Cemetery Local Laws

Policy Implications:

Nil

Financial Implications:

Replicating the existing niche walls under a gazebo would provide 260 interments and cost in excess of \$60 000. This equates to a cost of more than \$230 per interment.

The Stock Bros Monumental Works (Karrakatta Monumental Centre and Fremantle Monumental Centre) granite stand-alone monument with 50 niches for \$15 000 or 100 niches back to back for \$30 000-. This equates to a cost of \$300 per interment.

The HR Stonecraft granite monument style stand-alone niche wall from China can supply a with 30 single and 30 double niches enabling 90 interments, landed in Fremantle for approximately \$17 400- (depending on value of Australian Dollar at time of purchase). This equates to a cost of \$193.33 per interment.

York based 'Techstone' can produce a monument style niche wall in cast polished concrete incorporating 30 single and 30 double niches enabling 90 interments for \$28 000 or \$311.11 per interment. Taking into account Councils Buy-Local Policy, ten-percent is deducted from the 'price/fee'. This equates to \$25,455 or \$285.83 per interment.

Northam based Oxter Services can deliver a monument style stand-alone niche wall with 30 single and 30 double niches enabling 90 interments for a total cost of \$19 800 which is \$220- per interment.

The Shire of York derives an income of approximately \$450 per interment.

Strategic Implications:

Extension to the number of interment niches at the York Cemetery.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Yes

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

\$28 000

Social Implications:

Providing the opportunity for deceased loved ones to be remembered in their community.

Environmental Implications:

The installation of a monument style stand-alone niche wall has taken into account the cemetery conservation plan and will not impact on existing unmarked grave sites.

Officer Comment:

The granite clad monument style stand-alone niche wall from Northam based Oxter Services provides an economic solution in keeping with the environs of the existing cemetery. It also utilises a key component manufactured by 'Techstone' in York and as such is the officer's recommendation.

This option was also identified by the representatives from the York Society as their preferred design.

ASB Comment

The Commissioner stated that the Cemetery is an important issue for the community. The work involved with the new monument style interment niche wall will also provide local work for its construction. It is also important that the Cemetery has a life beyond the current scope.

RESOLUTION

090615

“That the Commissioner:

Approve the commissioning of a new monument style interment niche-wall sourced from Oxter Services at the expense of \$19 800.”

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.4 Policy Manual Review

FILE NO:
COUNCIL DATE: 22nd June 2015
REPORT DATE: 5th June 2015
LOCATION/ADDRESS: N/A
APPLICANT: Shire of York
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: P R Bradbrook, Relief A/CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: Graeme Simpson

Summary:

The Shire of York's policies need to be reviewed as some amendments are necessary and some new policies need to be considered before their final adoption.

Background:

The Probity Report undertaken by the Department of Local Government and Communities in September 2014 stated that *"The Shire's current policies are not fully supporting an effective council decision making process. It is considered that the approach in developing and reviewing policies is in need of clear direction and co-ordination. This process should be expedited in order to provide an efficient and effective policy structure for the Shire"*.

The Department's recommendation was *"That council gives priority to reviewing its policy manual and policies to support a high standard of direction and guidance in its decision making processes"*.

Consequently, senior staff have initiated a review of the policies and copies of amended and new policies will gradually be distributed to Councillors for their perusal and comment over the next four months.

It is also planned to hold Workshops for the Councillors to discuss the policies and have input, with the purpose of obtaining majority endorsement of their final content. The completed draft Policy Manual will then be submitted to Council for endorsement after the local government elections in October.

It is mentioned that the Delegations Register and the Shire's Local Laws are also important instruments that assist with the good governance of local government and it intended that these also be updated and distributed in due course.

Consultation:

Commissioner and A/CEO

Statutory Environment:

Local Government Act 1995 Section 2.7(2)(b)

Policy Implications:

When the Policy Manual is complete and endorsed by Council it will provide an essential document for the good governance of the Shire of York.

Financial Implications:

Printing, stationery and postage costs will be minimal. No significant financial implications.

Strategic Implications:

It is essential that all of the Shire's regulatory documentation is applicable and provides adequate guidance to enable the Shire to function efficiently. Working towards the adoption of the revised Policy Manual is a strategic step towards this outcome.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not applicable

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

Not Applicable

Social Implications:

Not Applicable

Environmental Implications:

Not Applicable

Officer Comment:

Relevant policies are important to provide direction to Shire staff and Elected Members. The Shire has also been directed to update its Policy Manual and to do so the Shire will be distributing policies to Councillors over the next four months, for consideration and amendment, where necessary, with Workshops for the Councillors to be held on each of the following Mondays at 5.00pm in the Council Conference Room:

13th July, 3rd August, 7th September and 5th October.

ASB Comment

Commissioner stated that this report is straight forward and correspondence has been sent to elected members so dates can be placed in their diaries.

RESOLUTION**100615**

"That the Commissioner:

- 1. Approve the distribution of existing and new policies to Councillors for their consideration at the Workshops to be held on 13th July, 3rd August, 7th September and 5th October, 2015 for them to discuss and amend, where necessary, and*
- 2. Request the A/CEO table the completed draft Policy Manual for consideration at/or after the November 2015 meeting of Council."*

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.5 Application To Keep Three (3) Dogs

FILE NO: RS.ANC.1
COUNCIL DATE: 22 June 2015
REPORT DATE: 5 June 2015
LOCATION/ADDRESS: 142 Newcastle Street, York 6302
APPLICANT: Brenda Van Brakel
SENIOR OFFICER: Mr Graeme Simpson, A/CEO
REPORTING OFFICER: John Goward, Community Ranger
DISCLOSURE OF INTEREST: Nil
APPENDICES: Photographs
DOCUMENTS TABLED: Permission Notes

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

Summary:

An application has been received from Mrs. Brenda Van Brakel requesting permission to keep three dogs at her property at 142 Newcastle Street, York.

Background:

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

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

Consultation:

The Shire Ranger has liaised with Mrs. Brenda Van Brakel, who lives on the property at 142 Newcastle Street, York. The Shire of York has received a letter of support from Ms. Patricia Hendy of 133 Newcastle Street, York which is located immediately across the road from the applicant's property. Ms. Hendy is also the only immediate neighbour.

Statutory Environment:

Dog Act 1976 (As Amended)
York Shire Council Dogs Local Law (2000)

Policy Implications:

Not Applicable

Financial Implications:

Not Applicable

Strategic Implications:

Not Applicable

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

On Wednesday 6 May 2015 at approximately 11.00am the Shire Ranger attended at 142 Newcastle Street, York and spoke to Mark and Brenda Van Brakel. They showed the Ranger a large enclosure that had been constructed on the property to ensure that the three dogs would be adequately confined. During his attendance the Shire Ranger photographed the dogs and the enclosure in question. (See attached)

In the Shire Rangers opinion the three dogs will be adequately confined by this enclosure.

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

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

Environmental Implications:

Nil

Officers Comment:

Brenda Van Brakel states in her letter of application:

Tonka is a pup from the dog Cleo's last litter and due to labour issues he was the only surviving pup out of 6. The whole family have an extremely close bond with him as he was bottle fed from 2 days old because of the medication mum was on dried her milk supply. It would devastate our family if we were unable to keep him at home.

The two dogs that are legally allowed to be kept on the property presently are as follows:

Cleo, female Staffordshire bull terrier, York Rego R150255

Angel, female Pomeranian, York rego R150256

A third unregistered dog (The dog the subject of this application): an unsterilized male Staffordshire bull terrier dog, tan in colour, named Tonka and is 17 months old has been kept on the property without permission from the Shire of York fourteen months.

There has been a recently alleged incident involving the dog Tonka and the dog Cleo.

It was alleged that on Tuesday 17 March 2015 at approximately 6.00pm the above mentioned dogs Cleo and Tonka entered the property at 133 Newcastle Street, York. The dog Cleo attacked a Pug dog at this location which was being looked after by the owners of this property. The dog Tonka was in close proximity to the attack but was not seen to take part in it.

The Pug dog was taken to the Heartlands Veterinary Hospital for treatment the next day where this dog was found to have loose teeth and other injuries.

As a result of the above-mentioned attack the following infringement notices were issued to Mrs Brenda Van Brakel by the Shire Ranger:

2383 for the dog Cleo attacking another dog causing actual injury, \$400

2384 for the dog Cleo being on private property without consent, \$200

2385 for the dog Tonka attacking another dog causing actual injury, \$400

2387 for the dog Tonka being on private property without consent, \$400

Infringement notice 2385 has been withdrawn by the Shire on application from Mrs Brenda Van Brakel as the dog Tonka was not seen to cause the actual injuries to the victim dog.

As a result of investigating the abovementioned incident, the Shire Ranger became aware that the dog Tonka was unregistered and illegally kept on the property. Mrs Brenda Van Brakel was warned regarding these issues.

It became apparent at the time of the alleged attack that the dogs escaped from the property as it was not adequately enclosed to contain them.

Mr Van Brakel has subsequently constructed a large enclosed area on the property to confine the dogs (See attached photos)

Mrs Patricia Hendy is the only immediate neighbour of the Van Brakels and one of the people liable for control of the dog which was allegedly attacked by Brenda Van Brakels dogs. The Shire has received correspondence stating that she has no objections to Brenda Van Brakel owning three dogs.

The Shire Ranger has conducted a review of the Shires records and advises that no other contraventions of the Dog Act 1976 are recorded as being received by the Shire of York.

The Shire Ranger believes that Brenda Van Brakel has taken adequate steps to ensure that the dogs are confined to the property in future, however he recommends as the dogs Tonka and Cleo were involved in a recent incident that a stricter condition that has been applied in the past for such applications be put into place that being:

That Council reserve the right to withdraw the exemption if prior to the review period Brenda Van Brakel is found to be in any contravention of the Dog Act 1976 in relation to the three dogs permitted to reside at the premises.

It is recommended that Council agree to the granting of an exemption for the keeping of three dogs at 142 Newcastle Street, York subject to the following conditions:

- That the exemption be reviewed in 12 months' time to ensure that no adverse problems have been experienced as a result of the exemption.
- That Council reserve the right to withdraw the exemption if prior to the review period Brenda Van Brakel is found to be in any contravention of the Dog Act 1976 in relation to the three dogs permitted to reside at the premises.
- That the exemption applies only to the dogs nominated by the applicant.
- Each dog on the property must be registered with the Shire of York.
- Upon the death or permanent removal of any of the nominated dogs a maximum of two dogs only will be permitted to be kept on this property.

ASB Comment

Commissioner stated that the Dog Act allows for Shire Local Laws to prescribe the number of dogs to be kept on a property. The Acting CEO stated that the Shire of York Local Law stated that up to four dogs can be kept outside the town boundary and up to two dogs can be kept within the town boundary. To keep more than two dogs in the town boundary a request for an exemption is required to be made to Council.

**RESOLUTION
110615**

“That the Commissioner:

Approve an exemption for the keeping of three dogs at 142 Newcastle Street, York subject to the following conditions:

- 1. That the exemption be reviewed in twelve months time to ensure that no adverse problems have been experienced as a result of the exemption; and***
- 2. That Council reserve the right to withdraw the exemption if prior to the review period Brenda Van Brakel is found to be in any contravention of the Dog Act 1976 in relation to the three dogs permitted to reside at the premises; and***
- 3. The exemption applies only to the dogs nominated by the applicant; and***
- 4. Each dog must be registered with the Shire of York; and***
- 5. Upon the death or permanent removal of any of the nominated dogs a maximum of two dogs only will be permitted to be kept on this property”.***

The Commissioner Declared the Motion Carried

9.3 Works Reports

Nil

9.4 Financial Reports

9. OFFICER'S REPORTS

9.4 FINANCE REPORTS

9.4.1 York Men's Shed – Request for Sponsorship

FILE NO:	FI.DON
COUNCIL DATE:	22 June 2015
REPORT DATE:	26 May 2015
LOCATION/ADDRESS:	N/A
APPLICANT:	York Men's Shed
SENIOR OFFICER:	Graeme Simpson – A/CEO
REPORTING OFFICER:	Tabitha Bateman – Finance Controller
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil

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

Summary:

The York Men's Shed has requested the Shire consider making a contribution towards the cost of the electrical fit out at its Shed. The Men's Shed is a community based, non-commercial organisation open to all men in the community with the primary objective to promote men's health and wellbeing.

Background:

The situation of the shed is that power was connected to the site late September 2014. However, at present they are operating on extension cables from the one power source, whilst they gather funds to complete the electrical fit out. Until the fit out is complete they cannot finish the workshop organisation and realise the full potential of the building and the new equipment and tools purchased with a previous Department of Veteran Affairs grant.

Consultation:

York Men's Shed

Statutory Environment:

Local Government Act 1995

Policy Implications:

Not Applicable

Financial Implications:

If Council accepts the recommendation as it stands the total expenditure for this venture shall be \$4,077 being one third of the full project cost. Council previously provided \$4,750 in the 2013/14 financial year towards the construction of a new ablution building.

Strategic Implications:

Council's support of local community organisations is of strategic importance to the District, as without this support these groups, who in many respects are the backbone of the community, would become unviable from a financial perspective.

Voting Requirements:
Commissioner's Voting Support

Site Inspection:
Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:
Economic Implications:

Local community organisations are a vital component of the local economy, as in many cases they provide the lifestyle type activities that attract individuals, families and businesses to a community, improving the overall diversification and market size of the local economy.

Social Implications:

Local community organisations provide the social framework of any community and without this type of financial support from the Council, many are not able to function effectively.

Environmental Implications:
Not applicable

Officers Comment:

It is recommended that the Commissioner approves the funding to the York Men's Shed Inc. to enable full potential use of the site.

ASB Comment

Commissioner stated he did not have any questions regarding this item.

**RESOLUTION
120615**

"That the Commissioner:

Approves funding of \$4,077 to the York Men's Shed Inc. towards the cost of electrical upgrades to the shed situated on Reserve 9203."

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.4 FINANCE REPORTS
9.4.2 York Racecourse

FILE NO: CCP.10
COUNCIL DATE: 22 June 2015
REPORT DATE: 4 June 2015
LOCATION/ADDRESS: N/A
APPLICANT: York Racing Inc
SENIOR OFFICER: Graeme Simpson, A/CEO
REPORTING OFFICER: Pam Law
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

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

Summary:

Finalisation of the shared title for the York Racecourse land and improvements is necessary to meet the requirements of the Wheatbelt Development Commission funding agreement for track upgrading and to allow the Shire of York to write-off existing rate arrears and to deal with future rates.

Background:

The Wheatbelt Development Commission through York Racing Inc and in liaison with Racing & Wagering WA provided grant funds to upgrade the racecourse on condition that the York Racecourse land be transferred into joint ownership between York Racing Inc and the Shire of York.

The acquittal for this funding to York Racing Inc is due to be submitted by 30 June 2015. Should the title transfer not proceed the funding that has been provided is at risk of being withdrawn and payment of all funds will be required to be returned by York Racing Inc.

At the Special Council Meeting held 29 November 2010, the below 3 part resolution was passed, which approved the transfer of the land title to joint ownership; the write off of rates and interest; and the Shire of York to meet the cost of future rates as ongoing contribution to the operations of the racecourse.

Minutes – Special Council Meeting 29 November, 2010

**RESOLUTION
011110**

Moved: Cr Randell

Seconded: Cr Lawrance

“That Council:

1. Rescind Resolution 220309

OFFICER RECOMMENDATION

RESOLUTION
220309

Moved: Cr Hooper

Seconded: Cr Boyle

“That Council:

Agree to the write-off of rates, service charges and interest fees for the land and buildings owned by the York Beverley Turf Club (currently \$53,731.10) when a grant to restore the racetrack to an approved race surface, as defined by Racing & Wagering WA, is received subject to the following matters being agreed and entered into:

- a. The land titles being transferred to the Shire of York with the current land conditions remaining in place; and
- b. The York Turf Club and the Shire of York entering into an agreement for the management and operations of all activities and facilities used for racing.”

CARRIED (5/1)

Cr Walters was recorded as voting against the motion.

2. Approve the transfer of the title for the land and buildings registered in the names of the York Beverley Turf Club Inc (now York Racing Inc) and the Shire of York as tenancy in common in equal shares of the land and improvements with the current Crown Grant in Trust conditions remaining in place.

3. Following the issue of a new title:

- (a) **authorise the write-off of the existing debt relating to rates and interest**
- (b) **authorise the Shire of York to meet the cost of future rates as an ongoing contribution to the operations of the racecourse land and facilities.**

Advice Note:

- **York Racing Inc will manage and operate the racecourse and facilities in the interests of thorough bred racing for as long as the racecourse is accredited by Racing & Wagering WA as an official race track.**
- **Land and improvements cannot be sold or leased without the approval of both parties and the consent of the Minister for Lands and all proceeds must be used for racecourse facilities.”**

CARRIED: 5/1

Consultation:

York Racing Inc
Wheatbelt Development Commission
Department of Lands

Statutory Environment:

Local Government Act 1995 (As Amended)

Subdivision 6 — Actions against land where rates or service charges unpaid

6.63. Term used in this Subdivision

In this Subdivision —

service charge does not include a service charge imposed under section 6.38(1)(b) on the occupier of land who is not the owner of that land.

6.64. Actions to be taken

(1) If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —

- (a) from time to time lease the land;
- (b) sell the land;
- (c) cause the land to be transferred to the Crown; or
- (d) cause the land to be transferred to itself.

(2) On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.

(3) Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.

6.65. Power to lease — procedure

Schedule 6.2 has effect in relation to the exercise of a power under section 6.64(1)(a) (in this Subdivision and that Schedule referred to as the **power to lease**).

6.66. Effect of lease

(1) Where a local government exercises the power to lease in relation to any land that land does not cease to be rateable land because of the exercise of that power.

(2) A lessee from a local government is entitled, during the term of the lease, to possession of the land as against persons who have an estate or interest in the land, but this subsection does not affect —

- (a) the rights of the local government under the lease;
- (b) easements in favour of the public which affect the land; or
- (c) the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth.

(3) The exercise by a local government of a power to lease any land does not prejudice or affect the recovery of rates or taxes if any, due to the Crown in right of the State or Commonwealth, or a department or agency of the Crown in right of the State or Commonwealth.

6.67. Release of property after payment of arrears

(1) Where, within 12 years of the taking of possession of any land by a local government under section 6.64, an entitled person pays to the local government all rates and service charges due and payable in respect of the land, the local government is required to give up possession of that land to the person unless it has exercised a power under section 6.64(1)(b), (c) or (d) in relation to the land.

(2) If the local government has granted a lease of the land referred to in subsection (1) and the term of the lease has not expired, the lease subsists for the balance of the term as if it had been made between the lessee and the entitled person.

(3) In this section —

entitled person means the person who, if the local government had not taken possession of the land under section 6.64, would be entitled to possession of that land.

6.68. Exercise of power to sell land

(1) Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b) (in this Subdivision and Schedule 6.3 referred to as the **power of sale**) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due to it.

(2) A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land.

(3) Schedule 6.3 has effect in relation to the exercise of the power of sale.

6.69. Right to pay rates, service charges and costs, and stay proceedings

(1) Up to 7 days prior to the time of the actual sale of any land for non-payment of rates or service charges a person having an estate or interest in the land may pay the rates or service charges and the costs and expenses incurred to that time in proceedings relating to the proposed sale.

(2) At any time after the 7 days referred to in subsection (1) but prior to the time of the actual sale of any land the local government may, upon such terms and conditions as are agreed between the parties, accept payment of the outstanding rates or service charges.

(3) On payment being made under subsection (1) or (2) the proceedings relating to the proposed sale are stayed and the local government is required to make such notifications and take such measures as are prescribed in relation to the payment and the cancellation of the proposed sale.

6.70. Effect of changes in boundaries of local government area

An alteration in —

(a) the boundaries of a district of a local government;

(b) the constitution of the local government or its council; or

(c) its name or status, does not preclude the local government from exercising in respect of any land on which rates or service charges were lawfully imposed by it under this Division, the powers conferred by this Subdivision.

6.71. Power to transfer land to Crown or to local government

(1) If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the *Transfer of Land Act 1893*, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —

(a) the Crown in right of the State; or

(b) the local government.

(2) When a local government exercises the power referred to in subsection (1)(a) in relation to any land all encumbrances affecting the land are, by virtue of this section of no further force or effect against that land and the Registrar of Titles or the Registrar of Deeds, as the case requires, is to give effect to this section.

(3) When exercising the power referred to in subsection (1)(b) the local government is required to pay the sum secured by, or payable under, a mortgage, lease, tenancy, encumbrance or charge in favour of the Crown in right of the State or a department, agency, or instrumentality of the Crown in right of the State.

(4) Schedule 6.3 has effect in relation to the exercise of the power referred to in subsection (1).

6.72. Title to land sold or transferred

Where a transfer or conveyance of an estate in fee simple in land is made in purported exercise of a power under section 6.64(1)(b), (c) or (d) the title transferred or conveyed is not impeachable on the ground that —

- (a) no case had arisen to authorise the sale;
- (b) the proper procedures were not followed; or
- (c) the power was otherwise improperly or irregularly exercised, and a person who claims there has been an unauthorised or improper or irregular exercise of the power has a remedy in damages against the relevant local government but not against the Crown or the State with the Registrar as the nominal defendant under the *Transfer of Land Act 1893*.

[Section 6.72 amended by No. 81 of 1996 s. 153(1).]

6.73. Discharge of liability on sale of land

A sale of land by a local government or a transfer or conveyance of land to the Crown or a local government under this Subdivision discharges —

- (a) the land; and
- (b) the owners (present and past) of the land, from any liability to the local government for rates, service charges or other money due to the local government which were, at the time of the sale, transfer or conveyance —
- (c) secured by a charge over the land; or
- (d) otherwise recoverable, whether under this Act or another written law, by the local government in respect of the land.

6.74. Power to have land revested in the Crown if rates in arrears 3 years

(1) If land is —

- (a) rateable land;
- (b) vacant land; and
- (c) land in respect of which any rates or service charges have been unpaid for a period of at least 3 years, the local government in whose district the land is situated may apply in the form and manner prescribed to the Minister to have the land revested in the Crown in right of the State.

(2) The Minister is to consider the application and the circumstances surrounding the application and may grant or refuse the application.

(3) If the application is granted the Minister is to execute a transfer or conveyance of the land to the Crown and is to deliver the transfer or conveyance to the Registrar of Titles or the Registrar of Deeds, as the case requires, for registration.

(4) Upon the delivery of the transfer or conveyance Schedule 6.3 clause 8 has effect in relation to the exercise of the power referred to in subsection (1).

[Section 6.74 amended by No. 49 of 2004 s. 64(1).]

6.75. Land to be vested in the local government

(1) Where, at the expiration of 12 years from the taking of possession of any rateable land by a local government under section 6.64 —

- (a) all rates and service charges due and payable in respect of the land have not been paid; and
- (b) the land has not, under the provisions of this Subdivision, been —

- (i) sold by the local government;

- (ii) transferred to the local government; or

- (iii) transferred to the Crown, by operation of this section the fee simple in the land is to be transferred to the local government subject to —

- (c) easements in favour of the public which affect the land;

- (d) the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth; and

- (e) rates and taxes (other than local government rates and service charges) due on the land, but free from other encumbrances.

(2) Schedule 6.3 has effect in relation to a transfer under this section.

LAND ADMINISTRATION ACT 1997 - SECT 75

75 . Minister may transfer Crown land in fee simple subject to conditions

(1) The Minister may transfer Crown land in fee simple subject to such conditions concerning the use of the land (*the specified use*) as the Minister determines.

(2) For the purposes of this section and of section 76, the unimproved value of conditional tenure land must be calculated as if the use of the land were not subject to any conditions.

(3) The fee simple of conditional tenure land may be transferred under subsection (1) for a nominal price or a discounted price because of the community benefit to be provided by the proposed development of the conditional tenure land for the specified use.

(4) When conditional tenure land is used in breach of any condition concerning the specified use —

(a) the conditional tenure land is liable to be forfeited under section 35; and

(b) the Minister may recover from the holder of the freehold in the conditional tenure land —

(i) if the fee simple in the conditional tenure land was transferred under subsection (1) for a nominal price, an amount equal to the unimproved value of the conditional tenure land at the time of that recovery; or

(ii) if the fee simple in the conditional tenure land was transferred under subsection (1) for a discounted price, an amount calculated using the following formula —

where —

$$A = ((P-DP) / P) \times R$$

A is the amount the Minister may recover from the holder of the freehold in the conditional tenure land;

P is the unimproved value of the conditional tenure land at the time the discounted price was paid;

DP is the discounted price;

R is the unimproved value of the conditional tenure land at the time of the recovery, by action in a court of competent jurisdiction as a debt due to the Crown.

(5) Neither the fee simple, nor any other estate or interest, in conditional tenure land can be transferred without the written permission of the Minister, which may be given subject to conditions.

(6) Conditional tenure land cannot become the subject of any licence, mortgage, charge, security or other encumbrance without the written permission of the Minister, which may be given subject to conditions.

(7) The Minister may by order, on the application of the holder of the freehold in conditional tenure land accompanied, subject to subsection (7a), by payment to the Minister of the relevant amount referred to in subsection (4)(b)(i) or (ii), cancel the conditions to which the use of the conditional tenure land is subject.

(7a) The Minister may in prescribed circumstances, with the prior approval of the Treasurer, waive in whole or part the payment of the relevant amount referred to in subsection (4)(b)(i) or (ii), subject to such conditions as the Minister determines.

(8) The rule against perpetuities does not apply to conditions referred to in subsection (1).

[Section 75 amended by No. 59 of 2000 s. 19.]

LAND ADMINISTRATION ACT 1997 - SECT 76

76 . Obligations of mortgagees of land transferred in fee simple subject to conditions concerning its use

(1) If the holder of the freehold in conditional tenure land subject to a mortgage defaults under the mortgage, the mortgagee must give the Minister notice in writing not less than 28 days before the mortgagee exercises any power under the mortgage in respect of that default.

(2) Subject to subsection (3), the mortgagee must not exercise his or her power of sale under the mortgage until the Minister has been paid the relevant amount referred to in section 75(4)(b)(i) or (ii) in respect of the conditional tenure land.

(3) The Minister may allow the mortgagee to exercise the power of sale referred to in subsection (2) before payment of the relevant amount referred to in that subsection if the mortgagee gives the Minister security to the satisfaction of the Minister for the payment of that amount on completion of that exercise.

(4) When the fee simple of the conditional tenure land is sold by the mortgagee in accordance with this section, the land ceases to be subject to the conditions referred to in section 75(1).

LAND ADMINISTRATION ACT 1997 - SECT 77

77 . Application of purchase moneys arising from mortgagee sales

The proceeds of a sale by a mortgagee in accordance with section 76 are to be applied —

- (a) first, in payment of the amount referred to in section 75(4)(b)(i) or (ii) if payment of that amount has not already been made under section 76;
- (b) second, in payment of any amount owed by the mortgagor under the mortgage;
- (c) third, in payment of the expenses of and incidental to that sale;
- (d) fourth, in payment of amounts outstanding in respect of all subsequent encumbrances in respect of the land concerned; and
- (e) fifth, in payment of any remaining surplus to the beneficial holder of the freehold.

Policy Implications:

Not applicable

Financial Implications:

The rates outstanding at the York Racecourse as at the 3rd June 2015 are \$154,428.52.

Strategic Implications:

To safeguard York's heritage and history

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: N/A

Triple bottom Line Assessment:

Economic Implications:

Having a viable race club in York has flow on economic benefits for local employment and businesses and tourism and there is potential future income for racecourse development from land leases of racecourse property.

Social Implications:

The York Racecourse has significant heritage values from a community perspective and it provides a social hub for races and other possible events.

Environmental Implications:

N/A

Officers Comment:

The purpose of having the Shire of York as a tenant in common is for the protection of the community in the event that racing is withdrawn from York for any reason. The Minister for Lands would be able to provide a management order to allow various activities other than racing to be conducted at the site rather than have it revert to Crown Land for sale or disposal.

The cost for the Shire to obtain a half share land title right to the land is the value of rates outstanding at this time. As per resolution 011110, an agreement was made for the Shire of York to pay future rates as an ongoing financial contribution on behalf of the York community. York Racing Inc will remain financially responsible for all annual Emergency Service Levy (ESL) charges and other service charges, such as rubbish bin and (WARR) Act 2007 Transfer Station Fee.

It must be noted that the addition of the Shire name to the title does not change the control conditions / restrictions in place and neither party can sell or dispose of land / buildings without the other party's consent, in which case, all proceeds must be for racecourse / racing purposes.

In the event of the demise of York Racing Inc for whatever reason the constitution of this organisation should include a clause transferring its equal share of the tenancy in common to the Shire of York for community use and benefit. In line with current conditions, e.g. recreation, equine facility.

This report is a further endorsement of the support to transfer the title in to joint ownership between York Racing Inc and the Shire of York as tenants in common, with the conditions as agreed to in Council Resolution 011110, 29 November 2010.

ASB Comment:

A deputation was made to this report at the commencement to the meeting. The Commissioner stated that this has been a special council matter since 2010 and has taken some time to reach this point.

**RESOLUTION
130615**

“That the Commissioner as per Resolution 011110

Approve the transfer of the title for the land and buildings registered in the names of York Beverley Turf Club Inc (now York Racing Inc) and the Shire of York as tenancy in common in equal shares of the land and improvements with the current Crown Grant in Trust conditions remaining in place.

Following the issue of a new title:

- (a) Approve the write-off of the existing debt to rates and interest*
- (b) Approve the Shire of York meet the cost of future rates as an ongoing contribution to the operations of the racecourse land and facilities.*

Advice Note:

- York Racing Inc will manage and operate the racecourse and facilities in the interests of horse racing for as long as the racecourse is accredited by Racing Wagering WA as an official race track.*
- Land and improvements cannot be sold or leased without the approval of both parties and the consent of the Minister for Lands and all proceeds must be used for racecourse facilities.*
- York Racing Inc remain financially responsible for the payment of annual Emergency Service Charges (ESL) including all other services charges; and where the Shire of York will only contribute the Rates portion as shown on the annual Rate Notice.”*

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.4 FINANCE REPORTS
9.4.3 Global Care Group (Inc) – Rating of Land

FILE NO: RI.RTS.PPO.60661
COUNCIL DATE: 22 June 2015
REPORT DATE: 4 June 2015
LOCATION/ADDRESS: 20 Redmile Rd, York
APPLICANT: Global Care Group (Inc)
SENIOR OFFICER: Graeme Simpson, A/CEO
REPORTING OFFICER: Pam Law
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

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

Summary:

Swan Trust, now known as Global Care Group (Inc), has applied for rating exemption for the property at 20 Redmile Road, York. Global Care Group (Inc) is operating a dementia care facility and approximately 45 leased, residential units on this land.

Background:

Swan Trust, now known as Global Care Group (Inc) applied for rating exemption with the Shire of York on 2 September 2009, stating that it "is a not-for-profit organisation" and are endorsed by the ATO as a public benevolent institution.

On 14 September 2009, the Shire of York responded stating that –
"Rate exemption on the above land cannot be considered until the units are built.
Once the units are built, to consider rate exemption, Council would require a copy of the "Ingoing Terms and Conditions and total cost applied to each unit for ingoing tenants".

On 30 April 2012 the Shire of York advised Global Care Group Inc that the matter was being investigated but indicated that the Shire could find no evidence that Global Care's sale of residential units to individual owners was a charitable purpose.

On 15 August 2012, Jackson McDonald lawyers made a formal objection on behalf of Global Care to the Shire of York for the land in question for the 2011/12 and 2012/13 rate years. The objection was made on the ground that the land in question is used exclusively for charitable purposes.

In September 2012, advice was sought by the Shire of York from McLeods Barristers & Solicitors on whether Global Care Group (Inc) as the owners of the Balladong Estate land is entitled to an exemption from rates, rubbish charges and the emergency services levy on the ground that the land is being used for a charitable purpose.

McLeods noted that –

"The law in this State, as it currently stands, is that the modern retirement village style of housing, when provided by a charitable body, is use of land for a charitable purpose".

In March 2015, further legal advice was requested from Price Sierakowski Corporate, as a determination regarding rating exemption had not yet been determined by Council.

As determined by their office, Global Care Group (Inc)'s endorsements, registrations and licenses as a charity have been maintained and consistent throughout the rates exemption appeal process.

Global Care Group (Inc) have been consistently endorsed by the Australian Tax Office and subsequently the ACNC for the relevant rates periods.

Price Sierakowski Corporate also noted that “it could be determined that GCG is using the land for exclusively “charitable purposes”.”

Consultation:

McLeods Barristers & Solicitors
Price Sierakowski Corporate

Statutory Environment:

6.26. Rateable land

- (1) Except as provided in this section all land within a district is rateable land.
- (2) The following land is not rateable land —
 - (a) land which is the property of the Crown and —
 - (i) is being used or held for a public purpose; or
 - (ii) is unoccupied, except —
 - (I) where any person is, under paragraph (e) of the definition of **owner** in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the *Mining Act 1978* in respect of land the area of which does not exceed 10 ha or a miscellaneous licence held under that Act; or
 - (II) where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of **owner** in section 1.4 occupies or makes use of the land;
 - and
 - (b) land in the district of a local government while it is owned by the local government and is used for the purposes of that local government other than for purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the local government; and
 - (c) land in a district while it is owned by a regional local government and is used for the purposes of that regional local government other than for the purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the regional local government; and
 - (d) land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood; and
 - (e) land used exclusively by a religious body as a school for the religious instruction of children; and
 - (f) land used exclusively as a non-government school within the meaning of the *School Education Act 1999*; and
 - (g) land used exclusively for charitable purposes; and
 - (h) land vested in trustees for agricultural or horticultural show purposes; and
 - (i) land owned by Co-operative Bulk Handling Limited or leased from the Crown or a statutory authority (within the meaning of that term in the *Financial*

Management Act 2006) by that co-operative and used solely for the storage of grain where that co-operative has agreed in writing to make a contribution to the local government; and

- (j) land which is exempt from rates under any other written law; and
 - (k) land which is declared by the Minister to be exempt from rates.
- (3) If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that co-operative or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.
- (4) The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.
- (5) Notice of any declaration made under subsection (4) is to be published in the *Gazette*.
- (6) Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.

[Section 6.26 amended by No. 36 of 1999 s. 247; No. 77 of 2006 Sch. 1 cl. 102; No. 24 of 2009 s. 506 (correction to reprint in Gazette 7 Sep 2012 p. 4329).]

Policy Implications:

Nil

Financial Implications:

Loss of \$188,008.57 to 31 May 2015.

Strategic Implications:

Nil

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Write off of rates, accrued interest and legal fees in 2014/15 budget to the value of approximately \$190,000.

Rating exemption decreasing expected revenue.

Social Implications:

Nil

Environmental Implications:

Nil

Officers Comment:

Based on legal advice received and the definition of charitable purpose, it can be concluded that ownership of land by a charitable.

It would therefore be recommended to grant rating exemption on to Global Care Group (Inc) for the property at Lot 45, 20 Redmile Road, York.

All emergency service levy charges and other service charges would still remain the sole responsibility of Global Care Group (Inc) to pay.

Following the Agenda Settlement briefing it was decided to recommend the write off of the rates and accrued interest in the 2014/15 financial year.

ASB Comment:

A deputation to this report was made at the commencement to the meeting. The Commissioner stated that the rating of the property has been an ongoing issue and has taken a fair while to reach a resolution. It is also a controversial issue across WA. The Acting CEO stated that it was necessary for the item to be presented at the June Council meeting as it requires an absolute majority and in July there may not be the opportunity for an absolute majority which could mean the item may then need to be held over until after the October elections

RESOLUTION

140615

“That the Commissioner:

- 1. Approve the property at Lot 45, 20 Redmile Road, York currently owned by Global Care Group (Inc) being granted non-rateable status from the beginning of the 2015/16 rating year.***
- 2. Approve write off the outstanding rates, accrued interest and legal fees only in the 2014/15 financial year.***

Advice Note:

Global Care Group (Inc) will remain financially responsible for the payment of the Fire and Emergency Services Levy and all other service charges, including, but not limited to the waste rubbish bin fees.”

The Commissioner the Motion Carried

9. OFFICER'S REPORTS
9.4 FINANCIAL REPORTS
9.4.4 Daliak Structure Plan - Invoice

FILE NO: PS.TPS.24.1
COUNCIL DATE: 25 May 2015
REPORT DATE: 5 May 2015
LOCATION/ADDRESS: Not applicable
APPLICANT: Not applicable
SENIOR OFFICER: G Simpson, ACEO
REPORTING OFFICER: G Simpson, ACEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix A – Itemised Invoice
DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: Graeme Simpson

Summary:

Approval is sought to cancel an invoice that was raised in error for the costs associated with the submission of the Daliak Structure Plan.

Background:

An itemised invoice totalling \$20,883.93 was raised and sent to the relevant applicant on 25 February 2015 for the costs associated with the submission of the Daliak Structure Plan.

The invoice included costs calculated from the date of original submission on 18 January 2013 through to the date the applicant submitted an appeal to the State Administrative Tribunal on 27 October 2014.

Costs were calculated in accordance with the *Planning and Development Regulations 2009* and therefore included items such as staff hours, special costs, advertising costs, etc., that are reasonably incurred by the local government during the processing of the Structure Plan application.

The process for recouping costs in accordance with the Regulations generally involves providing the applicant an estimation of costs for the assessment of certain applications, including a structure plan, at the time of submission. The local government has a right to refuse to deal with the request until this fee is paid.

In this case, upon submission the applicant paid a bond of \$2,000 as per the Shire of York fees and charges, with actual costs to be invoiced to the applicant upon completion of the Plan.

On behalf of the applicant, Altus Planning and Appeals have appealed the invoice, stating that they were not provided an estimation up front and are therefore not required to pay.

Consultation:

McLeods Barristers and Solicitors.

Statutory Environment:

Planning and Development Regulations 2009
Local Government Act 1995

Policy Implications:

N/A

Financial Implications:

Cancellation of the invoice will reduce the outstanding sundry debtors by \$20,883.93. The costs associated with advertising and specialist costs, being consultant's fees, specifically engineering, will be borne by the Shire.

Strategic Implications:

N/A

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not applicable

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

N/A

Social Implications:

N/A

Environmental Implications:

N/A

Officer Comment:

Further advice from McLeods Barristers and Solicitors, although not free from doubt, concludes that an applicant for an adoption of a structure plan is not obliged to pay fees, costs and expenses incurred by the Shire if an earlier estimate has not been provided. This advice and the reasons that followed were not free from doubt as arguably there is a case for both sides of the debate.

The advice also included a recommendation that the Shire could try and come to a commercial settlement with the applicant that they pay an agreed amount towards the cost incurred by the Shire.

Regrettably, it has been concluded that the costs expected to be incurred by seeking this money from the applicant, being predominantly legal costs, as well as staff hours, would exceed the current charges. Therefore, the invoice is to be cancelled and the costs should be written off.

In future, regardless of the Shire of York's fees and charges, estimations for the costs of submitting and processing Structure Plans are to be provided up front for the applicant in accordance with the *Planning and Development Regulations 2009*. Therefore, there will be no future uncertainty surrounding the financial responsibility of the applicant/developer.

ASB Comment:

Commissioner stated he did not have any questions regarding this item.

**RESOLUTION
150615**

“That the Commissioner:

Resolve to cancel invoice number 5879 and write off the amount from sundry debtors as follows:

***Debtor: 1325
Description: Daliak Structure Plan Fee
Value: \$20,883.93”***

The Commissioner Declared the Motion Carried

9. OFFICER'S REPORTS
9.4 FINANCE REPORTS
9.4.5 Monthly Financial Reports – May 2015

FILE NO: FI.FRP
COUNCIL DATE: 22 June 2015
REPORT DATE: 5 June 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 31 May 2015 is presented for consideration.

Appendix A includes the following:

- Monthly Statements for the period ended 31 May 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 31 May 2015;

Outstanding Rates and Services

Total outstanding rates as at 31 May 2015 are \$1,015,156 compared to \$1,059,740 as at 30 April 2015 which is an increase to cash at bank of \$44,584.

3 Years & over	\$ 276,012	27.19% of rates outstanding
2 Years & over	\$ 175,047	17.24% of rates outstanding
1 Years & over	\$ <u>208,006</u>	20.49% of rates outstanding
<i>Total Prior Years</i>	<i>\$ 659,065</i>	<i>64.92% of rates outstanding</i>

Current rates \$ 356,091 35.08% of rates outstanding

Outstanding Sundry Debtors

Total outstanding sundry debtors as at 31 May 2015 are \$591,728 compared to \$634,431 as at 30 April 2015.

90 days & over	\$378,593	63.98% of sundry debtors outstanding
60 days & over	\$ 2,096	0.35% of sundry debtors outstanding
30 days & over	\$ 54,156	9.15% of sundry debtors outstanding
Current	\$156,882	26.52% of sundry debtors outstanding

Strategic Implications:

Nil

Voting Requirements:
Commissioner's Voting Support

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.

Officer Comment:
Not applicable.

ASB Comment:
No comment required
Commissioner wishes to pass on to the Officers his thanks in the continued reduction of the outstanding rates.

**RESOLUTION
160615**

"That the Commissioner:

Receives the Monthly Financial Report for May and ratifies payments drawn from the Municipal and Trust accounts for the period ending 31 May 2015:

	<u>AMOUNT</u>
<u>MUNICIPAL FUND</u>	
<i>Cheque Payments</i>	\$ 31,590.35
<i>Electronic Funds Payments</i>	\$ 524,253.77
<i>Direct Debits Payroll</i>	\$ 168,906.22
<i>Bank Fees</i>	\$ 591.87
<i>Corporate Cards</i>	\$ 1,672.71
<i>Fire Messaging Service</i>	\$ 0.00
TOTAL	<u>\$ 727,014.92</u>
<u>TRUST FUND</u>	
<i>Cheque Payments</i>	\$ 330.00
<i>Electronic Funds Payments</i>	\$ 8,197.94
<i>Direct Debits Licensing</i>	\$ 116,315.75
TOTAL	<u>\$ 124,843.69</u>
TOTAL DISBURSEMENTS	<u>\$ 851,858.61"</u>

The Commissioner Declared the Motion Carried

9.5 Late Reports

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.1 Allegations of Serious Misconduct

FILE NO:
COUNCIL DATE: 22nd June, 2015
REPORT DATE: 18th June, 2015
LOCATION/ADDRESS: Shire of York
APPLICANT: G K Simpson, A/CEO
SENIOR OFFICER: G K Simpson, A/CEO
REPORTING OFFICER: G K Simpson, A/CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED:

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

Summary:

There has been an extraordinary number of allegations made against the Shire of York, current and former staff members and elected members.

Reports of the investigations by the Corruption and Crime Commission, the Department of Local Government and Communities, the Shires FRAC (Finance, Risk & Audit Committee) sub committee, current Acting Chief Executive Officer and the Shire's Auditors, Macri Partners, have found no wrong doing notwithstanding the Probity Audit recommending that more training was needed in some topics.

Background:

The resignation of former CEO, Mr Ray Hooper, appears to have triggered events that led to the conducting of investigations. The FitzGerald report was commissioned and printed for distribution but one (1) hard copy and one (1) electronic version of the document were not lodged in the Shires records office. The remaining copies of the document have been quarantined and will not be released.

Consultation:

In addition to the investigating bodies listed in the summary, the Shire has consulted with Insurers LGIS Liability, two legal firms, the Office of the Minister for Local Government and some of the people named in the FitzGerald Report.

Statutory Environment:

The allegations made claimed acts by nominated persons contravened the Criminal Code and Local Government Policies and Procedures.

Policy Implications:

To provide clarity a change was made to the Shire's Policy in respect to the use of the Corporate Credit Card and the use of the Corporate Fuel Card.

It is also proposed to make minor changes to the Attendance at Conferences Policy.

Financial Implications:

No records have been kept to calculate the amount of staff salary time that has been expended on researching these allegations nor has there been any costs made known by the external agencies.

The FitzGerald report and associated legal fees cost \$77,700.00 to investigate and produce.

Strategic Implications:

The previous negative publicity generated by the perceptions of misconduct have damaged the reputation of the York community and confidence needs to be restored and all citizens need to contribute to the cause.

The Shire has commissioned PPR to assist with communicating the many good things in the District with the aim of improving the reputation of York and generate economic activity.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not Applicable

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

The loss of community cohesion and the down turn in the business sector needs to be addressed but it cannot be undertaken by the Shire alone, it is a community responsibility to work together.

Local Governments can enable and resource community programmes (for example the Visioning) but it requires community participation to achieve widespread outcomes for the betterment of the District.

Social Implications:

The public needs to be informed that five (5) agencies have been involved in thorough investigations into the Shires activities over several years and have found there were no wrong doings and only minor changes to one policy were needed.

Now that the Corruption and Crime Commission has closed its file it is appropriate for the Shire to inform the community on its view of the issues.

Environmental Implications:

Nil

Officer Comment:

The FitzGerald report was described by a legal practitioner as being a poor document, was misconceived in its creation and there was no due process given and Mr FitzGerald did not have the judicial experience to conduct an inquiry. The Shire should in no way be associated with it.

**RESOLUTION
170615**

“That the Commissioner note the contents of the various reports and advise the York Community that:

1. *In respect to the FitzGerald Report:*

- (i) The views contained within the FitzGerald report reflect those of its author***
- (ii) The FitzGerald report is not a document which has been adopted by the Shire***
- (iii) The Shire does not endorse the FitzGerald Report and will not be acting in accordance with its recommendations***

2. *In respect to the local Blog:*

... “It has come to the Shire of York’s attention that there is a web-site operating under the title “Shire of York 6302 Voice of York blog”, styled as the official, unofficial site.

The Shire of York has no connection to this blog or its previous incarnation. It does not endorse its contents and it in no way represents the views or opinions of the Shire of York.”...

3. *The Shire is obliged to create and maintain a safe workplace for its employees (Local Government Act & Worksafe) and will take all steps necessary to protect staff and the reputation of the organisation and not allow that to be infringed.”*

The Commissioner Declared the Motion Carried

9.6 Confidential Reports

Nil

10. NEXT MEETING

**RESOLUTION
180615**

“That the Commissioner:

holds a Special Meeting of the Council on Thursday, 25th July, 2015 at 5.00pm at the York Recreation & Convention Centre.”

The Commissioner Declared the Motion Carried

**RESOLUTION
190615**

“That Council:

holds the Agenda Settlement Briefing on Monday, July 20, 2015 at 5.00pm at the York Recreation & Convention Centre and the next Ordinary Meeting of the Council on Monday, July 27, 2015 at 5.00pm at the York Recreation & Convention Centre.”

The Commissioner Declared the Motion Carried

11. CLOSURE

Commissioner James Best thanked everyone for their attendance and declared the meeting closed at 6.48pm.