



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 16 MAY, 2011
COMMENCING AT 3.00pm
IN THE TALBOT HALL, TALBOT**

SHIRE OF YORK

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RAY HOOPER
CHIEF EXECUTIVE OFFICER

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SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL
HELD ON MONDAY, 16 MAY, 2011, COMMENCING AT
3.00PM IN THE TALBOT HALL, TALBOT

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

1. OPENING

- 1.1 Declaration of Opening
Cr Pat Hooper, Shire President, declared the meeting open at 3.00pm
- 1.2 Chief Executive Officer to read the disclaimer
Ray Hooper, Chief Executive Officer, read the disclaimer
- 1.3 Announcement of Visitors
Nil
- 1.4 Announcement of any Declared Financial Interests
Nil

2. ATTENDANCE

- 2.1 Members
Cr Pat Hooper, Shire President; Cr Brian Lawrance, Deputy Shire President; Cr Roy Scott; Cr Tony Boyle; Cr Trevor Randell; Cr Tricia Walters
- 2.2 Staff
Ray Hooper, Chief Executive Officer; Tyhscha Cochrane, Deputy Chief Executive Officer; Gordon Tester; Manager of Health and Building Services; Jacky Jurmann, Manager Planning Services; 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 8 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

Mr S Saint
87 Avon Terrace
York WA 6302

PUBLIC QUESTION TIME - 27TH APRIL 2011

Further to your questions submitted to the Ordinary Council Meeting on the 27th April, 2011 which were taken on notice please find set out below the relevant responses.

Question 1(e):

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

Response:

Yes

Question 4(b):

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

Response:

No, as no prior notice of questions to be asked was provided.

Question 4(c):

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

Response:

Yes, when part of the letter to the editor was not correct and it could have been checked with staff at any time.

Question 5:

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

Response:

In determining permissibility of a proposal under the York Town Planning Scheme No. 2, additional information is sometimes requested from the applicant and can include business plans where the assessing officer has determined there is insufficient information submitted with the planning application. Council does not have any specific authority to demand the submission of a business plan or other information pertaining to a business under the provisions of the Planning and Development Act 2005 and Regulations. However, Clauses 7.1(c) and (d) of the York Town Planning Scheme No. 2 enables Council to request any specialist studies, other plans or information to be submitted to enable the application to be determined. If there is insufficient information to determine an application, then a planning application may be unable to be determined and may be refused.

4. PUBLIC QUESTION TIME

Ms Tanya Richardson
113 Newcastle Street
York WA 6302

Question 1:

Town Hall Celebrations – I asked at the February, March and April council meeting who was on the Town Hall Centenary working group and for minutes of those meetings. Both CEO and President assured me I would receive them but I still have not. Why?

Response:

Working notes only not for distribution unless there are recommendations which require the approval of Council e.g. expenditure.

Question 2:

Review of Tourism 1990 Policy – How is the York Shire Councillors supposed to set a budget for Tourism when there is no strategic plan, objectives or the like? Do you feel it is responsible spending of ratepayer's money to set a Tourism Budget without planning? Is this not exactly what the Shire criticised YTB for?

Response:

The same process is used as for past years.

Question 3:

Not published.

Question 4 (a):

By what authority has the CEO to cancel my booking at Peace Park for the 25th & 26th June and refund my deposit?

Response:

No booking for Peace Park by Avon Events & Marketing has been cancelled. A booking for Avon Park was cancelled.

Question 4 (b):

Where and when did Councillors vote on this matter and what was the result?

Response:

Council resolution of the 27th April, 2011 approved the use of Avon Park for the Handcrafts & Gift Bazaar.

Question 4 (c):

Do you believe we had a legally binding agreement? Do you believe that National Competition policies are within your jurisdiction?

Response:

No – No hire fee had been levied.

Question 4 (d):

The CEO has noted there has been no demise in York Events? Do you not consider the loss of the Flying 50's, Spring Garden Festival, Jazz Festival, Olive Festival to name a few?

Response:

Only event lost in the past five years is the Jazz Festival as it went to private enterprise.

Question 4 (e):

Why has the CEO condensed all the letters sent in regarding the draft events policy when I was promised that the SOY never condenses any correspondence from me? Why are the letters of objective not available for the public to see?

Response:

It is standard procedure that responses are condensed. Councillors were provided with full copies of the submissions.

Question 1 (a): (Asked On Behalf of the York Chamber of Commerce)

Shire of York V Rosmill Pty Ltd Supreme Court Appeal – What is the actual cost to date of the appeal including all Appellant and Respondents legal costs.

Response:

Taken on Notice.

Question 1 (b):

If final settlement has been agreed/awarded the amount of that settlement.

Response:

Taken on Notice.

5. APPLICATIONS FOR LEAVE OF ABSENCE

Cr Pat Hooper

RESOLUTION

010511

Moved: Cr Randell

Seconded: Cr Lawrance

“That Council grant a leave of absence to Cr Pat Hooper for the Council Meeting scheduled for 20th June, 2011.”

CARRIED: 6/0

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Minutes of the Ordinary Council Meeting held April 27, 2011

Corrections

Confirmation

**RESOLUTION
020511**

Moved: Cr Scott

Seconded: Cr Lawrance

“That the minutes of the Ordinary Council Meeting held April 27, 2011 be confirmed as a correct record of proceedings”

CARRIED: 6/0

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Cr Hooper thanked the people of Talbot for their hospitality.

9. OFFICER'S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Installation Of An External Disabled Lift To The State Heritage Listed York Town Hall

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

FILE NO:	P634, CPP.1
COUNCIL DATE:	16 May 2011
REPORT DATE:	3 May 2011
LOCATION/ADDRESS:	York Town Hall, Lot 400 (81) Avon Terrace, York
APPLICANT:	Shire Of York
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Locality Map & Plans
DOCUMENTS TABLED:	Nil

Summary:

The application proposes to install an external lift to provide disabled access to the second storey of the York Town Hall and to replace the existing stairs and associated landscaping works.

The Heritage Council have given their concurrence to the proposal and no submissions were received in response to exhibition of the proposal.

The application is being recommended for approval, subject to conditions of consent.

Background:

On 24 May 2004, Mrs Leonora Gregory lodged an impairment discrimination complaint with the Equal Opportunity Commissioner against the Shire of York in relation to a lack of disabled access to the upper floor of the York Town Hall. The Equal Opportunity Commissioner declined to make a finding.

On 10 January 2006 the Equal Opportunity Commissioner referred Mrs Gregory's complaint to the State Administrative Tribunal to hear and determine the matter.

The matter was the subject of a number of directions hearings from the State Administrative Tribunal.

A compromise outcome to the action for disability access to the upper floor of the York Town Hall was agreed upon at the State Administration Tribunal Compulsory Conference held on 20 September 2006.

The State Administrative Tribunal Granted an Exemption to the York Shire Council for a two year period from the second of May 2008 under sections 66J and 66k of the Equal Opportunities Act 1984 subject to:

1. Council taking all reasonable steps to secure, or make available , funding for the installation of a lift and,
2. Modify the conditions of Hire form to formally advise of the lack of disabled access to the upper floor of the York Town Hall.

Consultation:

The proposal has been advertised in accordance with clause 7.3.3 of the Scheme, i.e. advertised in the local newspaper and on Council's website, and letters to the adjoining landowners. Detailed plans of the proposed development and relevant documentation have been on display at the Council offices during the advertising period.

The application was also referred to the Heritage Council in accordance with the requirements of the *Heritage of Western Australia Act 1990*.

No submissions were received in response to the exhibition.

The Heritage Council support the installation of the lift due to it being located in an area of low to some significance and is required for the place.

Statutory Environment:

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

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

York Town Planning Scheme No. 2

The property is zoned Special Use – Public Purposes under the provisions of the TPS and the proposed works are considered consistent with the use of the building for public purposes.

Clause 5.1 sets out the controls for Heritage Precincts and Places of Cultural Significance. The site is located in the York Central Heritage Precinct and therefore the provisions of this Clause have been assessed as follows:

5.1.4 – Applications for Development Control

- Assessment to have regard to any heritage policy – Refer to section (f) of this report.
 - Consultation with Heritage Council – The Heritage Council have been consulted throughout the assessment of the proposal and have provided their support. Refer to 'Consultation' Section of this report.

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

Nil.

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

Nil.

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

Nil.

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

Nil.

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

Shire of York Local Planning Policy – Heritage Precincts and Places

York Town Hall is located in the York Central Heritage Precinct and is a building of significance in the Precinct.

The proposal is consistent with the principles of development outlined in Clause 2.4.1 of the Policy, particularly in that the proposal will not adversely impact on the heritage significance of the building and will enable better use and public access to the second storey. It is proposed to design the lift and stairs to complement the façade of the building.

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

Not applicable.

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

The York Town Hall is state heritage listed and accordingly, the Heritage Council have been consulted during this process. Refer to the 'Consultation' section of this report.

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

The proposed development and uses are considered to be compatible with the public use of the building and setting.

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

The installation of a lift to enable access to the second storey of the Town Hall for disabled or physically impaired persons is considered to be positive for the community.

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

The proposal can meet the requirements of Shire's Heritage Precinct and Places Policy and therefore is unlikely to affect the cultural significance of the area.

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

The proposal will not impact on the natural environment.

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

The site is not affected by any natural constraints.

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

The amenity of the locality will not be adversely affected by the development.

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

The proposal is in context with the setting with regards to height, bulk, scale and siting of the building.

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

The proposal will significantly enhance access to the second storey of the Town Hall.

q) *The amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.*

Not applicable.

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

The site is accessible by existing public transport services.

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

Water, sewer, telecommunications and electrical services are available to the site.

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

Access to the site is available for pedestrians and cyclists, including toilet facilities.

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

The proposal will enable Council to meet the requirements of the BCA and Australian Standard for disabled access.

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

Affected landscaping will be made good following installation of the lift and stairs.

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

The proposal is unlikely to result in any erosion or sediment requiring prevention.

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

The development will result in a net gain for the community.

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

The application was public exhibited in accordance with the requirements of the TPS and no submissions were received regarding the proposal.

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

No impacts have been identified.

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

Heritage Council

The Heritage Council support the installation of the lift due to it being located in an area of low to some significance and is required for the place.

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

Nil

Policy Implications:

Shire of York Town Planning Scheme No 2

Local Planning Policy - Heritage Precincts and Places

Financial Implications:

The quote received from the company Octagon BKG Lifts for the supply of a CIBES A 5000 Disabled lifting platform is \$51,820.00.

Mr Sean Harvey, of the Registered Building Company – Design Struct (Reg. No 12476) has provided a quotation of \$54,812.00 for the installation of the lift and the shifting and modifications of the existing steel stairs, steel landing and upper landing entrance doors.

Strategic Implications:

The proposal meets the following KRA's:

Key Result Area 2: Economic Development & Tourism

To utilise the unique features of York's heritage and rural lifestyle, where appropriate, as the basis for economic development.

Key Result Area 5: History and Heritage

To safeguard York's history and heritage.

To promote an increased rate of preservation of heritage buildings, including Council's own heritage buildings.

Key Result Area 7: Community Services

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

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

As the supply of the lift and the installation of the lift are two separate items from two separate companies it is considered that it is not necessary to tender this project as each quote is less than \$ 100,000.00.

Social Implications:

The installation of a lift to enable access to the second storey of the Town Hall by disabled and physically impaired persons will benefit the community and enable better utilisation of a heritage place and community facility.

Environmental Implications:

Nil.

Comment:

The proposal has the approved of the Heritage Council and is being recommended for approval subject to the recommended conditions of approval.

**RESOLUTION
030511**

Moved: Cr Boyle

Seconded: Cr Lawrance

“That Council:

APPROVE the planning application for the installation of an external lift to provide disabled access to the second storey of the York Town Hall and to replace the existing stairs and associated landscaping works at Lot 400 (81) Avon Terrace, York, subject to the following conditions:

- 1. Development must take place in accordance with the approved plans, including any amended plans that are required as part of this consent.***
- 2. Development must substantially commence within two (2) years from the date of this determination.***
- 3. Disabled access shall be provided to the building in accordance with the requirements of the Building Code of Australia and Australian Standard AS 1428.***
- 4. The development hereby permitted being in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts and the requirements of the Heritage Council of Western Australia.***

Notes to the approval:

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

CARRIED: 4/2

Item 9.1.1 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.2 Application For Use Of 35 Leeming Road, Mount Hardey For Advanced Driver Tuition And Corporate Driver Training Days

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

FILE NO: LE2.2874, P.641
COUNCIL DATE: 16 May 2011
REPORT DATE: 5 May 2011
LOCATION/ADDRESS: Lot 37 (35) Leeming Road, Mount Hardey
APPLICANT: Extreme Driving (Mark Haybittle)
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES: Locality & Site Plan
DOCUMENTS TABLED: Nil

Summary:

Council is in receipt of a planning application to use Lot 37 (35) Leeming Road, Mount Hardey for advanced driver tuition and corporate driver training days.

The application has been advertised in accordance with the requirements of the York Town Planning Scheme No. 2 and six (6) submissions were received objecting to the proposal, which are the subject of this report.

The proposal has been assessed, together with the content of the objections, and is being recommended for time limited approval subject to the imposition of conditions.

Background:

Council received a planning application on 28 March 2011 to conduct advanced driver tuition and corporate training days at 35 Leeming Road, Mount Hardey.

The property is located on the corner of Leeming Road and York-Quairading Road and is approximately 61 hectares in area. It is proposed to use approximately 15 hectares of the property that has a gravel track established for the driving training.

It is proposed to conduct the days three to four times per year on a Saturday and/or Sunday from 8.00 am to 4.30 pm. Participants must use one of the two cars provided. The cars are road registered vehicles that are fitting with roll cages for safety.

In the application submitted to Council, the applicant states that the aim of the days are to provide participants with skills to drive on unsurfaced, gravel roads.

This property has previously been used by the applicant for this purpose without Council approval in 2009. Complaints were received by Council regarding the use, dust and noise issues. The applicant was requested to cease the use and to submit a planning application.

Consultation:

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

Six (6) submissions were received in response to the exhibition objecting to the proposal.

The following table provides a summary of the issues raised in the submissions and a planning assessment.

Issue	Planning Comment
Don't believe it will only be 3-4 times per year. Is it only 1 day 4 times or 1 week? Previously activities have continued day and night.	Conditions can be imposed restricting hours of operation.
Concerns fencing isn't sufficient to protect neighbouring properties and stock.	Rally area is located at the front of the property away from neighbouring properties. Conditions can be imposed restricting the area to be used.
Noise of vehicles will affect my family lifestyle. Who will be monitoring the noise?	Vehicles used are road registered. Applicant has offered to provide noise reports. Council can also monitor noise if required. Condition can be imposed requiring submission of noise reports.
Increased use of Leeming Road will result in degradation of the road.	It is considered that the increased use by road registered vehicles is unlikely to further degrade Leeming Road. Notwithstanding this, the applicant has offered to grade Leeming Road in conjunction with grading of the track.
Questioning genuineness of proposal for training general public.	Proposal is for driving training, which is similar to advanced driver training days held at race tracks.
Dust from vehicles will affect cattle and sheep grazing, particularly during calving and lambing season.	Conditions can be imposed to require dust suppression. Applicant has advised that a water cart will be on site.
Fire risk is extreme. Car caught fire in the past.	Conditions can be imposed requiring that fire fighting equipment is on site. Applicant has advised that extinguishers and a water cart will be on site.
Recent Scheme Amendment enables subdivision and zoning of some lots rural-residential. Proposal not in the best interest of Mount Hardey in the long-term. Venue unsuitable due to size and location near families.	Agree. Recommended a time limited consent be issued. Applicant agrees that the site is probably not suitable long-term but wishes to establish business in York, and then look for a long-term site.
Likely to be an imposition on ratepayers and voluntary emergency services.	Disagree. If all safety equipment and conditions are met, then the operation should not impose on local services.

The applicant has been provided the opportunity to respond to the concerns in the submissions, and have provided responses that have been considered in the above planning comments. A copy of the applicant's response is attached to this report.

Statutory Environment:

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

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

York Town Planning Scheme No. 2

The property is zoned General Agriculture and the proposed use for advanced driving tuition and corporate driving training days is not 'listed' (defined) in the Scheme. Clause 3.2.4 states that Council may:

- (a) *"determine that the use is consistent with the objectives and purposes of the particular zone and is therefore permitted; or*
- (b) *determined that the use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of clause 7.2 in considering an application for planning consent; or*
- (c) *determine that the use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted."*

In this case, it has been determined that the use may be consistent with the objectives of the zone (as assessed below) and have followed the advertising procedures of clause 7.2 in consideration of the application.

Clause 4.9 outlines the requirements for the 'General Agriculture Zone' and has been assessed as follows:

4.15.1 – Objectives

- (a) *"To ensure the continuation of broad-hectare agriculture as the principal land use in the district encouraging where appropriate the retention and expansion of agricultural activities.*
- (b) *To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.*
- (c) *To allow for facilities for tourists and travellers, and for recreation uses.*
- (d) *To have regard to residential use of adjoining land at the interface of the General Agriculture zone with other zones to avoid adverse effects on local amenities."*

The proposal is considered consistent with the objectives of the zone for the following reasons:

- (a) It will not impact on the continuation of broad-hectare agriculture;
- (b) Is considered a non-rural use that will be of benefit economically to the district;
- (c) Allows for the establishment of a recreation use for tourists, travellers and locals; and
- (d) There are no residential zones adjoining the property and through conditions of consent, any likely adverse impacts, such as noise and dust, can be managed satisfactorily.

4.15.2 Development

The property and area to be utilised for the driving cannot be seen from the York-Quairading Road and will not detrimentally impact on the rural character of the locality.

4.15.3 Site Requirements

No buildings are proposed in conjunction with the proposal.

4.15.4 Retention of Vegetation

It is not proposed to remove any vegetation in conjunction with the proposal. Some grading of existing tracks will be required to maintain the area to be used.

5.3 – Control of Advertisements

No advertising signage has been requested as part of this application.

5.5 – Development Limited by Liquid Waste Disposal

The site has existing toilet facilities. However, these may require upgrade. There is sufficient land available for the establishment and/or extension of disposal areas.

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

Nil.

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

Nil.

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

Nil.

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

State Planning Policy 2.5 Agricultural and Rural Land Use Planning

The proposed use is not inconsistent with the State Policy, in that the land use will not affect the potential or current use of agricultural land.

Draft State Planning Policy 2.5 – Land Use Planning in Rural Areas

The proposal is consistent with the policy measures in the draft document, particularly in that agricultural zones should be flexible and cater for a wide range of land uses that can support primary production, tourism and environmental and cultural pursuits.

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

There are no locally adopted policies that apply to this proposal.

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

Not applicable.

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

Not applicable.

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

The surrounding uses consist generally of agriculture, with associated residential. The proposal, if managed as indicated on the application, is considered compatible with the setting and is consistent with the zone objectives. Conditions of approval are recommended to ensure that any potential impacts are managed to ensure that neighbouring properties are not detrimentally affected.

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

No social issues have been identified during the assessment of this proposal. The proposal is considered to be in the interest of the greater community.

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

Not applicable.

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

Dust control and precautionary fire measures will be required during operation. Overall the development will not impact on the natural environment if these mitigation measures are employed.

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

The site is not affected by any natural constraints in regards to the proposed use.

n) The preservation of the amenity of the locality.

It is unlikely that the amenity of the locality will be adversely affected by the development if the use is conducted as outlined in the application and in accordance with the recommended conditions of consent.

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

The proposal is in context with the setting with regards to scale and location of the track.

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

The access to and egress from the site are considered satisfactory for the proposed use. It is recommended that a traffic management plan be submitted to ensure that participants enter and leave the site in a safe manner.

q) The amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.

All access roads have sufficient capacity to cater for the traffic generated from the development. Access to and egress from can be done safely in a forward manner.

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

Not applicable. The participants will access the site using private transport.

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

The proposed use does not require public utility services. Private water and sewer systems will be used.

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

Not applicable.

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

Not applicable. Proposal is for use only.

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

No vegetation will be affected by this proposal.

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

Dust may be an issue during use. Preventative controls, such as water tankers for suppression will be required.

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

The development will not result in the loss of any community service or benefit.

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

The application was publicly exhibited in accordance with the requirements of the TPS and six (6) submissions were received regarding the proposal.

The content of the submissions are discussed in the 'Consultation' section of this report.

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

The proposed use may result in noise and dust emissions. However, it is considered that these impacts can be managed and it is unlikely that there will be detrimental impacts on neighbouring properties. Conditions of consent have been recommended to manage the potential impacts.

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

Not applicable.

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

Nil.

Policy Implications:

The proposal is consistent with State and Council Policies. There are no policy implications.

Financial Implications:

The adopted application and advertising fees have been paid by the applicant.

Strategic Implications:

Key Result Area 2: Economic Development & Tourism

1. Will result in an increased in tourism.
2. May result in an increase of spending within the Shire.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple Bottom Line Assessment:

Economic Implications:

There are no economic implications for Council.

Social Implications:

Positive social implications identified through an increase in tourism and potentially spending in York.

Environmental Implications:

Environmental impacts identified can be managed appropriately.

Comment:

The issues raised in the submissions have been assessed and it is considered that the issues raised can be appropriately managed by conditions of consent.

Council recently granted approval for a time limited consent for twelve (12) months the use of Laurelville for functions and it is recommended that a similar approach be adopted.

Therefore, it is recommended that a time limited consent be issued to ensure that the applicant can conduct the use without impact on the locality.

RESOLUTION

040511

Moved: Cr Lawrance

Seconded: Cr Boyle

“That Council:

APPROVE the planning application to use Lot 37 (35) Leeming Road, Mount Hardey for advanced driver tuition and corporate driver training days for a period of twelve (12) months from the date of determination, subject to the following conditions:

- 1. Development must take place in accordance with the approved plans and supporting documentation.***
- 2. This consent will lapse twelve (12) months from the date of determination.***
- 3. An application for renewal after the initial 12 month period must be lodged in writing, a minimum of 3 months prior to the expiry date.***
- 4. This consent grants approval to use the property four (4) times, Saturday or Sunday, within the 12 months from the date of determination. The hours of operation are restricted to 8.00 am to 4.30 pm. No vehicles are permitted to operation outside the approved hours, with the exception of grading of the track and Leeming Road, which must be carried out during daylight hours.***
- 5. The applicant must notify Council and all adjoining landowners prior to conducting each event. The notification shall provide details of the on-site contact person.***
- 6. Toilet facilities shall be provided on site. Any required on-site sewage management systems shall be approved by Council prior to the installation and use.***
- 7. Noise levels emitted from the use shall not exceed the levels specified in the Environmental Protection (Noise) Regulations 1997 for ‘unreasonable noise’ for sensitive premises. If any complaints are received, noise monitoring shall be carried out under event conditions by a suitably qualified person at the residence of the complainant(s) and a report shall be submitted to Council within one month from the date of the complaint demonstrating compliance with this condition prior to conducting any further events.***

8. ***Dust suppression must be carried out when necessary to ensure that dust created from the activity does not detrimentally impact on neighbouring properties or the use of public roads.***
9. ***Fire fighting equipment must be available on site at all times during the event. Events shall not be held during periods when 'Harvest Movement Bans' are in force.***
10. ***Leeming Road shall be graded from York-Quairading Road to the entrance of the property to Council's satisfaction following each event.***
11. ***The applicant shall submit evidence of public liability insurance for each event prior to conducting the first event.***

Notes to the approval:

- 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: Under the provisions of the York Town Planning Scheme No. 2, Council can extend a consent following receipt of a written request. Any applications for renewal will be advertised in accordance with the provisions of the Scheme."
- Note 5: Any food preparation shall comply with the requirements of the Food Act 2008.
- Note 6: Potable water supplied on site shall meet the requirements of the Department of Health and the Australian Drinking Water Guidelines.
- Note 7: Council's records indicate that the shed on the property does not have Council approval. Council can issue a retrospective building approval upon application.

Amendment

Moved: Cr Scott

Seconded: Cr Boyle

"That condition 4 be amended to include the following 'No use of the property by Extreme Driving in the period 1st November to 30th April each year due to the potential fire danger'."

Amendment

Moved: Cr Hooper

Seconded: Cr Walters

"That Council:

Defer this matter until legal advice is received on the constraints able to be placed on the landowner and the proponent if there are activities outside of the approved conditions."

Amendment become the Motion and was put and CARRIED: 5/1

Item 9.1.2 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.3 Proposed Commercial Building (4 Retail Shops & Car Parking) At Lot 801 (70) Avon Terrace, York

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

FILE NO:	AV1.60565, P597
COUNCIL DATE:	16 May 2011
REPORT DATE:	6 May 2011
LOCATION/ADDRESS:	Lot 801 (70) Avon Terrace, York
APPLICANT:	R Bellot
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Locality & Architectural Plans
DOCUMENTS TABLED:	Nil

Summary:

Council is in receipt of a planning application to construct a commercial building consisting of four (4) retail shops and associated car parking on a vacant lot at Lot 801 (70) Avon Terrace, York.

The application has been advertised in accordance with the provisions of the York Town Planning Scheme No. 2. One submission was received from the York Society raising concerns regarding the design.

It is recommended that the application be approved subject to redesign of the façade and the recommended conditions of consent.

Background:

A planning application was received on 2 November 2010 proposed to construct a commercial building consisting of four (4) retail shops and associated car parking on the subject lot that is currently vacant.

The lot is located in the Central Heritage Precinct on Avon Terrace between Stephen Street and Balladong Road, York and is approximately 788m² in area.

The proposal involves the construction of three shops with a floor area of 67.33m² and one shop with a floor area of 58.50m². The shops will be located on either side of the lot with a driveway through the centre to 10 car parking spaces at the rear. A verandah is proposed on the front elevation.

It is proposed to construct the building of masonry with external rendering painted in heritage colours of yellow and maroon in accordance with Council's Heritage Policy.

Consultation:

The application was advertised in the newspaper and on Council's website, and letters were sent to adjoining land owners regarding the proposed development. Additionally, the Heritage Council and York Society were notified.

One submission from the York Society was received regarding the development raising the following issues:

- *“The development is very close to the iconic Town Hall and its façade is implicitly part of the Avon Terrace streetscape. It should therefore reflect the Shire’s Heritage and Development Guidelines. TYS advised that the façade should be sympathetic to the Avon streetscape shops (verandahs, posts) and the Town Hall.”*

The York Society’s submission has been taken into consideration in the assessment of this application. Refer to the discussion later in this report assessing compliance with Council’s Heritage Policy.

Statutory Environment:

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

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

York Town Planning Scheme No. 2

The property is zoned Town Centre. The construction of shops is permissible under the provisions of the scheme.

Clause 4.9 outlines the requirements for the ‘Town Centre Zone’ and has been assessed as follows:

4.9.1 – Objectives

The proposal is consistent with the objectives of the zone, particularly as it will provide additional retail/commercial space of a high standard that will contribute to the amenity of the town centre.

4.9.2 – Site requirements

Building setbacks – Site located in York Central Heritage Precinct. Refer to section (f) of this report.

4.9.3 – Development requirements

- Single storey development proposed – complies.
- Design guidelines – Refer to section (f) of this report.
 - Colour and texture of external building materials – Refer to section (f) of this report.
 - Bulk and scale – the proposed size of the building and scale with reference to the lot size and locality is considered appropriate.
 - Architectural style – Refer to section (f) of this report.
 - Function of the building – the proposed use is considered appropriate for the Town Centre.
 - Relationship to surrounding development and impact on any item of heritage significance – Refer to section (f) of this report.
 - Other characteristics – the proposed is consistent with the Scheme Amendment to enable additional uses on site.
- Landscaping – A detailed landscaping plan will be required prior to the issue of a Building Licence.
- Layout of carparking – the layout of the carparking will enable traffic circulation, manoeuvring and unloading and loading of vehicles.

Car parking requirements are outlined in Section 4.5 and Schedule 4 of the TPS, which require 6 spaces per 100m² of net lettable floor area. The net lettable floor area has been calculated at 220.45m² and therefore, 14 spaces are required. The plan indicates that 10 spaces are proposed on site, with one car parking space will be required to be disabled accessible. There is a shortfall of four spaces and it is recommended that the applicant redesigns the car parking area or pays a cash-in-lieu payment for the shortfall as per Council's adopted Fees and Charges, which is currently \$4,915.00 per space.

Clause 5.1 sets out the controls for Heritage Precincts and Places of Cultural Significance. The site is located in the York Central Heritage Precinct and therefore the provisions of this Clause have been assessed as follows:

5.1.4 – Applications for Development Control

- Assessment to have regard to any heritage policy – Refer to section (f) of this report.
- Consultation with Heritage Council – The Heritage Council were notified of the application and declined to provide comment as the development did not relate to a State listed building.

5.3 – Control of Advertisements

No signage has been indicated on the submitted plans. It is recommended that the applicant amend the plans to indicate the footprint of any proposed signage on both buildings prior to issue of the Building Licence. Alternatively, a separate planning application will be required for any signage that is not exempt under Schedule 8 of the TPS.

5.4 – Avon River Flood Fringe

The site is not located within the Avon River flood fringe.

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

Nil.

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

Nil.

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

Nil.

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

Nil.

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

Shire of York Local Planning Policy – Heritage Precincts and Places

The site is located in the York Central Heritage Precinct and therefore Section 4 of the Policy relating to Commercial Development has been considered during assessment of the proposal as follows:

- *Scale and size* – the single storey development is considered in context with the surrounding buildings.

- *Form* – the simple design of the building is considered sympathetic to the surrounding development and the town centre. A parapet has been incorporated into the design in accordance with the Policy. However, it is recommended that the front façade be reviewed to reduce the visual impact of the glass. It is considered that Council can approved the concept and amended plans can be submitted and approved prior to issue of the Building Licence.
- *Siting* – it is proposed to locate the front of the building on a nil setback with an awning overhanging the footpath in accordance with the Policy. The premises will be directly accessible from the footpath. Car parking is proposed at the rear of the buildings.
- *Materials and colours* – the walls are proposed to be rendered and painted in a yellow hue with maroon used for guttering selected from the heritage range. The design the colours indicated by the applicant are consistent with the Policy and final colours will be required prior to the issue of the Building Licence.
- *Detailing* – as indicated previously, it is proposed to require that the applicant amend the façade of the building so that the façade of the building reflects the architecture to complement the York Central Precinct.
- *Setting* – access to the proposed buildings is available directly from the public footpath (and will also be required to meet the requirements for disabled access).

Section 5 relates to signage within the heritage precincts. No signage has been indicated on the submitted plans. It is recommended that the applicant amend the plans to indicate the footprint of any proposed signage on both buildings prior to issue of the Building Licence. Alternatively, a separate planning application will be required for any signage that is not exempt under Schedule 8 of the TPS.

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

Not applicable.

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

It is considered that the proposed building can complement the York Heritage Precinct and is unlikely to be detrimental to existing buildings, particularly the Town Hall situated on the opposite side of Avon Terrace.

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

The proposed development and uses are considered to be compatible with the surrounding development and greater town centre area.

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

It is unlikely that the proposal will result in any adverse social issues for the locality, and is more likely to have a positive impact through the creation of employment during construction and occupation phases of the development.

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

The proposal can meet the requirements of Shire's Heritage Precinct and Places Policy and therefore is unlikely to affect the cultural significance of the area.

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

Sediment, erosion and dust controls will be required during construction. The existing tree will require removal as part of the development. Overall the development will not impact on the natural environment if these mitigation measures are employed.

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

The site does not have any natural constraints that would affect this development.

n) The preservation of the amenity of the locality.

The amenity of the locality will not be adversely affected by the development.

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

The proposal is in context with the setting with regards to height, bulk, scale and siting of the building. Amended plans will be required to ensure that the appearance meets the provisions of the Shire's Heritage Policy.

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

The location and layout of the car parking will provide adequate provision for access to and egress from the site, manoeuvring, loading and unloading.

q) The amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.

Avon Terrace has sufficient capacity to cater for the traffic generated from the development. Access to and egress from can be done safely in a forward manner.

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

The site is accessible by existing public transport services.

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

Water, sewer, telecommunications and electrical services are available to the site.

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

Access to the site is available for pedestrians and cyclists, including toilet facilities.

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

The proposal can meet the requirements of the BCA and Australian Standard for disabled access. A condition of consent will be required to ensure access is proposed prior to issue of the Building Licence.

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

A detailed landscaping plan will be required prior to issue of the Building Licence.

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

Soil erosion may be an issue during construction. Preventative controls will be required.

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

The development will not result in the loss of any community service or benefit.

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

The application was public exhibited in accordance with the requirements of the TPS and one submission from the York Society was received regarding the proposal. Refer to the comments made earlier in this report.

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

The occupation of the development is unlikely to result in adverse impacts on neighbouring properties.

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

No comments were received from other authorities.

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

Nil.

Policy Implications:

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

Financial Implications:

Planning fees have been paid and building licence fees will be required.

Strategic Implications:

Key Result Area 1 – Objective 1:

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

The proposal is consistent with the objectives of the Town Centre Zone.

Key Result Area 2 - Objective 1:

“To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.”

The proposed development will result in increased employment and new business opportunities in York.

Key Result Area 2 - Objective 2:

“To increase tourism to achieve business viability and growth.”

New retail premises will provide tourists with additional destinations within York that will complement existing businesses. The proposal may also assist with the activation of the southern end of the town centre.

Key Result Area 2 - Objective 3:

“To increase the net disposable income of the York community and investigate ways of increasing spending within the Shire.”

New shops will result in an increase in spending within the Shire by visitors and locals.

Key Result Area 2 - Objective 4:

“To utilise the unique features of York’s heritage and rural lifestyle, where appropriate, as the basis for economic development.”

Encouraging infill commercial development within the town centre precinct in accordance with the Heritage Policy is a strong basis for future economic development.

Key Result Area 2 - Objective 5:

“To ensure economic development does not conflict with York’s heritage, lifestyle and environment.”

The proposal can comply with the Heritage Policy and will complement the existing development within the town centre.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

Increased commercial premises in York will stimulate the economy of the Shire of York by providing an alternative shopping experience for the local community and possibly, for the communities of surrounding towns.

Social Implications:

The creation of additional commercial premises will provide employment during the construction and occupation phases of the development. No adverse social implications have been identified in this assessment.

Environmental Implications:

It is unlikely that any adverse environmental impacts will result from the construction and occupation of the proposed development. It is recommended that sediment and erosion controls and stormwater management are required as part of any approval.

Comment:

The proposal meets the objectives of the York Town Planning Scheme No. 2 and will be positive socially and economically for the Shire, which is shown in this assessment. It is therefore recommended that Council approve the application.

**RESOLUTION
050511**

Moved: Cr Boyle

Seconded: Cr Randell

“That Council:

APPROVE the application to construct a commercial building consisting of four (4) retail shops and associated car parking at Lot 801 (70) Avon Terrace, York, subject to the following conditions:

- 1. Development must take place in accordance with the approved plans, including any amended plans that are required as part of this consent.***
- 2. Development must substantially commence within two (2) years from the date of this determination.***
- 3. Prior to the issue of a building licence, amended plans shall be submitted to Council for approval depicting a redesign of the façade demonstrating compliance with the provisions of the Shire of York’s Planning Policy – Heritage Precincts and Places. The plans shall include a schedule of the proposed colours and materials.***

- 4. Prior to the issue of a building licence, detailed landscaping plans shall be submitted to Council for approval.**
- 5. Prior to the issue of a building licence, details of any proposed advertising signage shall be submitted to Council for approval. It should be noted that any advertising signage not approved under this application will be subject to a separate planning application unless the signage is considered 'exempt development' under the York Town Planning Scheme No. 2.**
- 6. Prior to the issue of a building license, detailed drainage plans shall be submitted to the satisfaction of the local government.**
- 7. Disabled access shall be provided to the building in accordance with the requirements of the Building Code of Australia and Australian Standard AS 1428.**
- 8. A concrete or brick paved footpath and crossover shall be constructed for the full width of the subject lot at the applicant's expense to the specifications of Council.**
- 9. The design of off-street car parking areas being in accordance with Australian Standard 2890.1 and A2890.2. Car parking areas shall be constructed and maintained to the satisfaction of Council and shall include adequate provision for customers, staff parking, and for manoeuvring, loading and unloading of vehicles. The car parking shall be constructed prior to occupation.**
- 10. Prior to the issue of a building licence, the applicant shall pay a cash-in-lieu contribution for the shortfall of four (4) car parking spaces in accordance with Council's adopted Fees and Charges. Alternatively, the applicant may submit amended plans for redesign of the car parking area to incorporate a minimum of 14 car parking spaces on-site.**
- 11. The fitout of any food premises must comply with the Shire's Food Construction Standards.**
- 12. The premises shall be connected to the town sewerage and water scheme.**
- 13. A Drainage Management Plan shall be submitted to Council for approval prior to the issue of the Building Licence.**
- 14. A waste storage area shall be constructed at the rear of the property. The area shall be roofed, bunded and drained to the sewerage system. Details of the waste storage area shall be shown on the plans submitted with the Building Licence.**

Notes to the consent:

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development is to be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant is aggrieved by this determination there is a right of appeal under the Planning & Development Act 2005. An appeal must be lodged within 28 days of the determination.

Note 4: This approval is not a building licence. In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1960, an application for a building licence must be submitted to, and approval granted by the local government prior to any change of classification or prior to the commencement of any structural works within the development hereby permitted.

Note 5: All roots shall also be removed in conjunction with the tree removal as part of the site works. All surrounding land, including neighbouring properties must be made good."

Amendment

Moved: Cr Lawrance

Seconded: Cr Boyle

“That condition No 10 be deleted.”

LOST: 1/5

The original Motion was put and CARRIED: 6/0

Item 9.1.3 – Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.4 Scheme Amendment No. 36 – Proposed Conservation Zone, Lot 7082 Great Southern Highway, St Ronans

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

FILE NO:	PS-TPS-31, GR2.1121
COUNCIL DATE:	16 May 2011
REPORT DATE:	9 May 2011
LOCATION/ADDRESS:	Lot 7082 Great Southern Highway, St Ronans
APPLICANT:	Mr A Johnson/Greg Rowe & Associates
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	1 – Locality 2 – Proposed Subdivision Plan 3 – Schedule Of Submissions
DOCUMENTS TABLED:	Nil

Summary:

Council is asked to approve final endorsement proposed Scheme Amendment No. 36 to the Shire of York Town Planning Scheme No. 2 (the 'Scheme') which seeks to rezone Lot 7082 Helena Road, St Ronans, from 'General Agriculture' to 'Conservation'.

It is recommended that Council resolve to approve the Scheme Amendment and advise the Minister of its resolution to enable gazettal of the amendment.

Background:

Council at its Ordinary Meeting of 12 May 2008 initiated Scheme Amendment No. 36 to rezone Lot 7082 Helena Road, St Ronans, from 'General Agriculture' to 'Conservation'.

Following negotiations with the Environmental Protection Authority (EPA) and modifications to the draft provisions of the Scheme Amendment, Council at its Ordinary Meeting of 16 August 2010 resolved to endorse final modifications to enable the proposed scheme amendment to be advertised following receipt of consent from the Environmental Protection Authority (EPA).

Consent to advertise was received from the EPA on 2 December 2010.

The proposed amendment was advertised for 42 days in accordance from 6 January 2011 to 25 February 2011 in the Avon Valley Gazette, on Council's website and in writing to adjoining landowners.

A total of 13 submissions were received from various government agencies and landowners. The content of the submissions have been assessed in the 'Consultation' section of this report.

The next step in the process is for Council to consider the application and advise the Western Australian Planning Commission (WAPC) of the resolution. If approved by WAPC and signed by the Minister, the amendment can be gazetted.

Consultation:

The proposed Scheme Amendment was advertised for 42 days in accordance with the Town Planning Regulations 1967. An advertisement was placed in the Avon Valley Gazette and on Council's website. All appropriate government agencies and landowners were notified of the proposed amendment in writing.

In response to the advertising, 13 submissions were received regarding the proposal. A Schedule of Submissions has been prepared in accordance with the WAPC's Planning Bulletin No. 24 and is attached to this report.

The issues received from landowners have generally raised concerns regarding loss of agricultural land, fire risk, water supply and loss of flora and fauna. The planning report submitted with the request for amendment has assessed these issues in detail and it is considered that these issues have been addressed by the applicant in supporting documentation, particularly in the flora and fauna report and the bushfire management plan.

The submissions received from government agencies have been supportive or raised no objections to the proposed scheme amendment, with the exception of the submission received from the Department of Mines and Petroleum (DMP) who raised concerns that a conservation covenant restricting exploration will be imposed. It is not recommended by Council that such a covenant be imposed. However, the WAPC will need to consider the submissions from both the EPA and DMP in their determination.

Statutory Environment:Planning and Development Act 2005

The Act provides the authority to the WAPC to approve and amend local planning schemes. The proposed amendment has been initiated and assessed in accordance with the requirements of the Act and WAPC.

Town Planning Regulations 1967

The application has been advertised for 42 days in accordance with the Regulations.

York Town Planning Scheme No. 2

Lot 7082 Helena Road is currently zoned 'General Agriculture' under the provisions of TPS2. It is proposed to zone the subject site to 'Conservation' under TPS2. It should be noted that this zone does not exist in TPS2 at present and will be introduced as a result of this proposal.

No minimum lot size is specified within the TPS2 for subdivision within the 'General Agriculture' zone. However, the Local Planning Strategy (LPS) provides guidance in relation to subdivision. The LPS has identified the property within the Western Slopes Precinct (Conservation) (2b) and identifies the area suitable for subdivision for conservation purposes.

Consequently in order to facilitate subdivision as proposed on the subject lot, it is necessary to amend the TPS by rezoning the lot to 'conservation'.

Policy Implications:

The approval of the amendment will result in amendment of the York Town Planning Scheme No. 2 to enable subdivision of the subject lot. The incorporation of a conservation zone may enable rezoning and subdivision of other agricultural lots which cannot be used for rural production due to clearing and other environmental restrictions or prohibitions.

Financial Implications:

The applicant will be required to pay processing fees in accordance with Council's adopted Fees and Charges.

Strategic Implications:

Key Result Area 1: Strategic Planning

The proposal meets the objectives of KRA 1 as it will result in a framework to facilitate future decision making for subdivision and occupation of the land.

Key Result Area 5: History and Heritage

The proposal will result in sustainable development of the lot whilst conserving important local flora and fauna.

Key Result Area 6: The Environment

The proposal is considered to result in a framework to enable ecologically sustainable development to support environmental protection of the property.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

The proposed subdivision of a conservation zone is expected to be a sustainable solution offering viability for the landowner and enabling the protection of the Wandoo forest.

Social Implications:

The proposed conservation lots are proposed to provide a unique rural living option with a strong focus on protecting the native Wandoo bushland.

Environmental Implications:

The conservation zone is expected to offer a long term conservation approach to protecting the Wandoo forest of the subject lot. Conditions and conservation covenants will assist to achieve the environmental outcomes.

Comment:

The proposed rezoning of the lot to a conservation zone will enable a sustainable outcome and meet the housing needs of future residents in a unique bushland setting.

The recommendations contained in the bushfire management plan must be fully implemented to ensure that the fire risk is acceptable for future residents and adjoining land owners.

It is important that the provisions of the conservation zone are met to achieve the objectives outlined in the draft provisions of the amendment.

**RESOLUTION
060511**

Moved: Cr Walters

Seconded: Cr Boyle

“That Council resolves to:

1. *Amend in accordance with Section 75 of the Planning and Development Act 2005 the Shire of York Town Planning Scheme No. 2, in respect of Amendment No. 36 by:*

- i. Rezoning Lot 7082 Helena Road, St Ronans, from ‘General Agriculture’ to ‘Conservation and modifying the Scheme maps accordingly;***
- ii. Inserting into the list of zones in Part 3.1 of the Scheme the new zone – ‘Conservation’;***
- iii. Inserting to the Scheme text the following clause 4.16 ‘Conservation Zone’:***

‘4.16 Conservation Zone

4.16.1 Objective

The objective of this zone is to conserve areas of natural vegetation, whilst permitting limited development for human occupancy with strict conditions on land uses.

4.16.2 Requirements

The following provisions shall apply generally to all land included in the ‘Conservation Zone’ in addition to any provisions which are more specifically applicable to individual ‘Conservation Areas’.

Prior to providing for a Conservation Zone over a particular property, Council shall require the landowner or agent to prepare a submission supporting the creation of the Zone and such submission shall include:

- 1) A plan showing the location of the lot/s proposed to be included in the zone together with the area surrounding and its uses, which are likely to be affected by the proposed zone having regard to the nature and purpose of the proposed lots and the intended uses.***
- 2) The reasons for the selection of the particular area with reference to the location, land characteristics and land capability which are to support the intended uses.***
- 3) A visual analysis of the land as viewed from the surrounding vantage points.***
- 4) Description the flora and fauna present on the land, its condition and threats from exotic plants, weeds and animals and the measures required to prevent degradation for such introduced species.***
- 5) A Subdivision Guide Plan which shows:***
 - a) the proposed lots including lot sizes and dimensions;***
 - b) existing and proposed roads;***
 - c) building envelopes – 5,000m² not to be split for minimal destruction to vegetation;***
 - d) any improvements or impairments to the land including buildings, fencing, bores, dams, wells, or other impediments;***

- e) *extent of natural vegetation on the land and a broad description of the species;*
 - f) *areas to be revegetated (if applicable);*
 - g) *areas of exclusion to occupation such as watercourses, wetlands, severe slopes and other natural features;*
 - h) *Fire Management Plan showing strategic fire breaks and fire fighting facilities;*
 - i) *relevant information on water supplies for domestic and fire fighting purposes; and*
 - j) *effluent disposal systems as appropriate in the land capability assessment.*
- 6) *Planning approval is required for all development including a single house and any outbuildings.*
- 7) *Any clearing of indigenous vegetation shall comply with the clearing of Native Vegetation Regulations as administered by the Department of Environment and Conservation and shall be limited to the making of roads, creation of fire breaks and in the cleared building envelope.*
- 8) *No clearing of native vegetation will be supported outside the Building Envelope except that required to:*
- i. *Maintain an approved Strategic Fire Break;*
 - ii. *Comply with Council's requirements for low fuel areas;*
 - iii. *Construct an approved access way or driveway; or*
 - iv. *To remove diseased or dangerous trees or species exotic to the area.*
- 9) *The keeping of stock is prohibited.*
- 10) *Intensive agricultural pursuit shall be prohibited.*
- 11) *Domestic pets that do not pose a threat to native flora and/or fauna and are to be confined to the approved development area may be kept within the zone.*
- 12) *Strategic Fire Breaks shall be provided and maintained in accordance with the approved Fire Management Plan and in compliance with the Bush Fires Act and the Shire of York Firebreak Legal Notices.*
- 13) *The planting of exotic or introduced species outside of the building envelopes is not permitted.*
- 14) *The vendor of any lot shall make arrangements to the satisfaction of the Council to ensure prospective purchasers are aware of the conditions of occupancy and of the requirements of FESA for the fire risks pertaining to the property.'*
- iv) *Amending the Zoning Table by adding the new zone – Conservation Zone with the following use classes:*

USES		CONSERVATION
1	aged or dependent persons' dwelling	X
2	ancillary accommodation	IP
3	caretakers dwelling	X
4	civic building	X
5	club premises	X
6	consulting rooms	X
7	dog kennels	X
8	education establishment	X
9	fast food outlet	X
10	fuel depot	X
11	grouped dwelling	X
12	home business	AA
13	home occupation	AA
14	hotel	X
15	industry – cottage	SA
16	industry – extractive	X
17	industry – general	X
18	industry – light	X
19	industry – noxious	X
20	industry – rural	X
21	industry – service	X
22	intensive agriculture	X
23	motel	X
24	motor vehicle repair	X
25	office	X
26	piggery	X
27	plant nursery	AA
28	poultry farm	X
29	public recreation	X
30	public utility	AA
31	residential building	X
32	restaurant	X
33	rural pursuit	X
34	service station	X
35	shop	X
36	single house	P
37	tavern	X
38	transport depot	X
39	veterinary centre	X

v) **Inserting the following ‘Schedule 15’ into the Scheme text:**

SCHEDULE 15 – CONSERVATION ZONE

Site	Description of Land	Conditions
1	Lot 7082 Deposited Plan 225081 Helena Road, York	<p>In addition to the general provisions in Clause 4.16, the following provisions shall apply:</p> <p>1. Subdivision Guide Plan</p> <p>1.1 Subdivision shall be generally in accordance with the Subdivision Guide Plan endorsed by the Chief Executive Officer.</p> <p>1.2 The minimum Lot size shall be 50 hectares.</p> <p>1.3 Areas indicated on the Subdivision Guide Plan for revegetation shall be re-vegetated prior to subdivision.</p> <p>2. Building Envelopes</p> <p>2.2 Building Envelopes shall be defined on the subdivision guide plan.</p> <p>2.3 The maximum area for a Building Envelope shall be 5,000m².</p> <p>2.4 Buildings, structures and domestic gardens shall only be located within the Building Envelopes as shown on the Subdivision Guide Plan.</p> <p>2.5 Building Envelopes may be amended subject to the approval of Council.</p> <p>3 Keeping of Stock and Pets</p> <p>3.1 The keep of stock is prohibited.</p> <p>3.2 Domestic pets which do not pose a threat to native flora and and/or fauna, may be kept within residential dwellings and surrounding Building Envelopes. For the purposes of this Clause cats and rabbits are considered to pose a threat to native flora and/fauna and shall not be kept within the area affected by the Subdivision Guide Plan.</p> <p>3.3 Domestic pets must be confined within the Building Envelope. Fencing shall be erected to Council’s satisfaction to prevent domestic pet access to areas outside the Building Envelope.</p> <p>4 Clearing</p> <p>4.1 Clearing shall be permitted within a Building Envelope.</p> <p>4.2 Should a tree within a building envelope be identified by Council as significant in respect to providing habitat for native fauna or being an outstanding specimen Council may require the tree to be retained notwithstanding Clause 4.1 above.</p> <p>4.3 Clearing for the following purposes may be permitted subject to Council’s approval:</p> <p>I. Clearing for the construction of a driveway for vehicular access to a Building Envelope. Only one driveway shall be permitted per Lot and clearing shall minimise impacts on native flora and fauna.</p> <p>II. Revegetation of areas damaged during the construction of</p>

		<p>a building or driveway may be required at Council's discretion.</p> <p>III. Fallen timber shall not be removed or cleared from areas outside the Building Envelope.</p> <p>5 Fencing</p> <p>5.1 No boundary fencing shall be permitted other than as shown on the Subdivision Guide Plan and around each Building Envelope.</p> <p>5.2 Fencing shall be designed and constructed so as to minimise site disturbance. Where fencing is to be provided it is required to be primarily open in nature. Solid fencing shall not be permitted.</p> <p>6 Water Supply</p> <p>6.1 Each dwelling is required to be provided with a rain water tank with a minimum catchment capacity of 92,000 litres.</p> <p>7 Servicing</p> <p>7.1 All services from the road reserve to the Building Envelope shall be below ground level and shall follow the alignment of the driveway to minimise clearing.</p> <p>8 Effluent Disposal</p> <p>8.1 All dwellings shall be connected to an Aerobic Treatment Unit.</p> <p>8.2 Effluent disposal systems shall not be located within 30 metres of a watercourse.</p> <p>9 Fire Protection</p> <p>9.1 The subdivider shall prepare a Fire Management Plan that identifies the need for and the construction requirements relative to strategic firebreaks, water supplies and equipment and any other fire management requirements that may be deemed necessary, to the specifications and satisfaction of the Local Government and the Fire and Emergency Services Authority of Western Australia. The approved Fire Management Plan shall be implemented prior to subdivision of the land.</p> <p>10 Road and Access</p> <p>10.1 Subdivisional roads shall be designed in such a manner to minimise impacts on bushland and areas of significant vegetation.</p> <p>11 Applications for Planning Approval</p> <p>11.1 Notwithstanding Clause 4.2 (b) all development within the Subdivision Guide Plan area requires the Planning Approval of Council.</p> <p>12 Environmental Management Plan</p> <p>12.1 An Environmental Management Plan shall be prepared prior to subdivision and endorsed by Council. The Environmental Management Plan shall address control of feral pests, weed management, dieback management and clearing.</p> <p>12.2 All landowners shall comply with the requirements of the Environmental Management Plan.</p> <p>12.3 The Environmental Management Plan may be amended</p>
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		<p>by Council at its discretion from time to time.</p> <p>13 Notification to Prospective Purchasers</p> <p>13.1 Provision shall be made to the satisfaction of Council to ensure that prospective purchasers of land within the Subdivision Guide Plan are given a copy of these provisions prior to entering into an agreement to purchase the land.</p> <p>14 Conservation Covenant</p> <p>14.1 A conservation covenant in perpetuity shall be registered on the Certificate of Title of the conservation lot as a condition of subdivision approval.</p> <p>15 Independent Fauna Report</p> <p>15.1 Qualified fauna consultant to assess whether all reasonable steps have been taken in design to minimise disturbance to fallen or standing trees used for breeding by the following conservation significant species:</p> <ul style="list-style-type: none"> I. Carnaby's Black Cockatoo (<i>Calyptorhynchus latirostris</i>) II. Baudin's Black-Cockatoo (<i>Calyptorhynchus baudinii</i>) III. Forest Red-tailed Black-Cockatoo (<i>Calyptorhynchus banksii</i>) IV. Chuditch (<i>Dasyurus geoffroii</i>) V. Brush-tailed Phascogale (<i>Phascogale taopatafa</i>) VI. Barking owl (<i>Ninox connivens</i>) VII. White-browed Babbler (<i>Pomatostomus superciliosus</i>) <p>15.2 Qualified fauna consultant to prepare a report that verifies all reasonable steps have been taken to ensure that all clearing (i.e. building envelopes, fire management zones, fire breaks) are based on findings of the survey to minimise disturbance to fallen or standing trees, and impacts to conservation of significant species.</p>
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2. **Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation; and**
3. **Forward the Scheme Amendment No. 36 to the Western Australian Planning Commission and the Minister for Planning requesting final approval."**

CARRIED: 6/0

Item 9.1.4 – Appendices

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 Proposal to Make Dogs Amendment Local Law 2011

FILE NO:	LE.LLW
COUNCIL DATE:	May 2011
REPORT DATE:	8 May 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Dogs Amendment Local Law 2011
DOCUMENTS TABLED:	Public Submission received – Ms A Marshall

Summary:

One submission relating to the consideration of the Dogs Amendment Local Law 2011 was inadvertently omitted.

Section 3.12 of the Act requires Council to consider all submissions received prior to the adoption of the local law.

The purpose of this report is to:

- (1) consider the omitted submission received on the proposed Shire of York Dogs Amendment Local Law 2010 and determine if any drafting amendment(s) are required to the Amendment local law as a result of the submissions received;
- (2) give notice of the purpose and effect of the Shire of York Dogs Amendment Local Law 2011;
- (3) make the Shire of York Dogs Amendment Local Law 2011, incorporating all amendments;
- (4) authorise the local law's gazettal in the *Government Gazette*;
- (5) give local public notice, (after gazettal), of the date the Shire of York Dogs Local Law 2011 will come into effect; and
- (6) authorise the affixing of the Common Seal to the local law.

Background:

The submission period for public comment on the Dogs Amendment local law closed Wednesday 19 January 2011.

A series of submissions were received by the closing date and unfortunately one submission was inadvertently omitted from the review report presented to the 27th April 2011 Council meeting.

Section 3.12 of the Local Government Act requires Council to consider all submissions prior to considering adoption of the local law.

Consultation:

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

Statutory Environment:

Local Government Act 1995.
Dog Act 1976 and associated regulations.
Dogs (Restricted Breeds) Regulations 2002.

Policy Implications:

There are no policy implications for this item.

Financial Implications:

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

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: YES

Site Inspection:

Site Inspection Undertaken: Not Applicable.

Triple bottom Line Assessment:

Economic Implications:

Not applicable.

Social Implications:

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

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the Dogs Amendment Local Law 2010. The previous report to Council on the 27th April 2011 advised that at the close of the submission period, one petition with 14 signatures, and two public submissions relating to proposed changes to the Dogs Local Law had been received.

This was incorrect on two counts. Firstly the petition actually contained 16 signatures including that of Ms A J Marshall who signed the covering letter to the petition; the number 14 was a typographical error. Secondly three public submissions were received by the closure date, which include Mr Paton, Ms Marshall and the Petition submitted by Ms Marshall on behalf of 15 signatories. A submission from Ms A Marshall was inadvertently omitted from the Council agenda report considering the submissions received.

This report is submitted to address the omission of Ms Marshall's submission on the Dogs Amendment Local Law 2010.

The issues raised by Ms Marshall in her submission are common in theme to the other submissions received and are detailed in the following table.

Submission/Applicant Name	Comment	Officer/Consultant Comment	Action to be Taken
Ms A Marshall	<p>Section 3.2 – Limitation on the number of dogs. I strongly object to the changes to Rural Residential; this regulation in the Dog Act of 1976 and the local laws in place now, is that you can keep four dogs, not 2 dogs as the Shire of York amendments want to change. Families moving to rural towns for the prime reason to be able to keep animals and considering there is acreage this law should not be altered. Councillors please reconsider not making this change we want people to com and live in York, not depart it.</p>	<p>The proposed amendments to the local law will automatically permit land owners within the rural residential area to keep two dogs. However this will not remove the right of the land owner to apply, under section 26(3) of the Dog Act, to Council to keep up to 6 dogs. Rural residential properties are closer in proximity than rural properties, and generally are more representative of residential form than rural. It is considered appropriate that rural residential areas have a as of right limit of 2 dogs, with more than 2 requiring approval by Council in accordance with section 26(3) of the Dog Act.</p> <p>The proposed amendments to the Dogs Local Law do not prevent dog owners from walking their dogs in Avon Park. The owners can walk their dog in Avon Park, but the dog must remain on a leash or lead whilst there – as is the case with other public places with the exception of dog exercise areas. It would seem that there is some misunderstanding as to what constitutes a dog exercise area. Dog Exercise areas are where dog owners can release their dog from being on a leash or lead, whilst still maintaining control of the dog.</p>	<p>Reject submission and no change be made to the Dogs Amendment Local Law.</p> <p>It is suggested that Council consider the preparation of some information brochures to assist dog owners interpret and understand the terminology within the local law so there is no confusion.</p>
	Section 5.1 (c), (e) & (f) – Places where dogs are	The comments relating to tethering are associated	Comments will be considered in the

	<p>prohibited absolutely. I absolutely object to dogs not being permitted to be tethered to the CBD whilst owners are shopping or enjoying Alfresco coffee. This will see even more tourists give York a miss. These proposed changes contradict the attitude of both Perth and Fremantle tourist precincts.</p> <p>It will also discriminate against blind people bringing their dogs into York at any time.</p>	<p>with proposed amendments to the Shire of York Local Government Property Local Law and do not relate to the provisions in the Dogs Local Law.</p> <p>The provisions are not discriminatory as they are subject to Section 8 of the Dog Act and Section 66J of the Equal Opportunity Act 1984, which entitle a person who is blind to be accompanied by a bona-fide guide dog in all of those places listed in Section 5.1(1).</p>	<p>report dealing with the proposed amendments for the Local Government Property Local Law.</p> <p>Reject submission and no change be made to the Dogs Amendment Local Law.</p>
	<p>Section 5.2 Places which are dog exercise areas Proposed changes to "Dogs Laws" discriminate against dog owners who walk/exercise and socialise their dogs in Avon Park & around Forrest Oval early in the morning without any harm to the community. The area set aside within the proposed local laws (Cr. Barker & Ulster Roads & Henrietta Sts) is barren with no shade or seats for residents to rest. This is a disgusting and disrespectful way to treat dogs and their owners. As the Shire of York is forcing this change of venue on dogs, then it is their responsibility alone to provide clean water for the dogs to drink. I would think that this is the humane way of action?</p> <p>For many years dog lovers and owners have been using Avon Park to exercise their dogs. This has evolved into a social occasion for the owners to meet together and enjoy each others company.</p>	<p>Dog exercise areas are where dog owners can release their dog from being on a leash or lead, whilst still maintaining control of the dog. This allows owners to throw balls, etc for their dog(s) to fetch whilst off the lead.</p> <p>The area proposed is considered suitable for this type of activity as the land is not used for any other purpose.</p> <p>The proposed amendments to the Dogs Local Law do not prevent dog owners from walking their dogs in Avon Park. The owners can walk their dog in Avon Park or Forrest Oval, but the dog</p>	<p>Reject submission and no change be made to the Dogs Amendment Local Law.</p> <p>Council may wish to consider the installation of seating and a shade structure to accommodate users at the proposed dog exercise area.</p>

	<p>For very hot days there is shade for both animals and people to use and public toilets for the humans. All of the dog owners are responsible and take away any waste from their animals.</p>	<p>must remain on a leash or lead whilst there – as is the case with other public places with the exception of dog exercise areas.</p>	
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The attached local law incorporating all identified amendments is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

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

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

**RESOLUTION
070511**

Moved: Cr Boyle

Seconded: Cr Lawrance

“That Council:

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

Advice Note:

- a. This formulises the adoption of Resolution 080411 of the Ordinary Council meeting held on the 27th April 2011 to ensure that due processes are followed.**
- b. It should be noted that previous submissions including the petition and submission from the Department of Local Government in relation to the proposed Shire of York Dogs Amendment Local Law 2010 was considered in report 9.2.1 of the Ordinary Council meeting held on the 27th April 2011 (Resolution 080411).**

CARRIED: 6/0

Note:

- 1. Change description of Dog Exercise area from Henrietta/Barker/Ulster to Henrietta/Barker/Forrest Streets.**
- 2. Advice to be provided to food premises on Health & Food Act requirements for dogs on alfresco eating areas.**

Item 9.2.1 – Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.2 Shire of York Events Policy

FILE NO:	OR.CMA.4
COUNCIL DATE:	16 May 2011
REPORT DATE:	10 May 2011
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Not Applicable
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Gordon Tester, Manager Health/Building
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Proposed Events Policy
DOCUMENTS TABLED:	Nil

Summary:

A revised Shire of York Events Policy is attached for Councils consideration for approval having advertised the proposed policy amendment for public consultation during the month of April 2011.

Background:

Councils current Event Policy was most recently reviewed in August 2009 and is indicated below.

Events for York – Origin/Authority – Council Meeting – 21 October 1996

1. Facility Provision:
(A) Funding Support
(B) Promotion
2. Assist with liaison subject to staff availability.
3. Resources:
Rubbish Bins
Cleaning Of Amenities Buildings
Signage
Road Closures
Access to Council Owned/ Controlled Land
Road Grading at the (Discretion of the Chief Executive Officer)

It is considered that this policy requires amendment to adequately reflect current legislative requirements and risk management issues associated with events held in York as Indicated in the appendices attached to this report.

Consultation:

The proposed policy was advertised during April 2011 with the advertising period closing on April 29 2011.

No Submissions were received during the advertising period however, a number of late submissions were received as summarised in the below table of submissions. All Councillors have received copies of the complete submissions.

No	Submission	Response
1.	<p>Objection to fees being introduced for assessment of event applications and hire of parks for events as this is a disincentive for potential event promoters resulting in events not being held and potential negative impact on local businesses.</p>	<p>A commercial events promoter who stands to profit from the work of Council Employees and the use of Council facilities will factor in such charges to their business plan and proceed accordingly.</p> <p>Council reserves the right to waive fees for Community Groups holding events should it desire to do so.</p>
2.	<p>Complaint that policy was not sent to individuals who may be affected by policy. Policy is to all encompassing and nothing offered from Shire such as application turnaround times. Objection to terminology that the "CEO may require". Community groups not capable of complying with policy. Perception that the policy will result in unauthorised events.</p>	<p>The policy was advertised twice in a 28 day period in a paper circulating in the local district. The policy was discussed at a Public Council meeting in March.</p> <p>It is considered fair and reasonable to allow the CEO discretion within the policy to prevent unnecessary delays in referring every matter to Council for a ruling.</p> <p>Community groups are capable of complying with the policy as is demonstrated in other Local Authorities.</p> <p>Unauthorised events are not permitted.</p>
3.	<p>Objects to policy as it is perceived that safety and regulatory requirements of the policy are complicating matters for community groups wishing to hold events. No assistance offered to community groups by policy.</p> <p>Policy will lead to the demise of events in York.</p> <p>No mention of what Council will do For event promoters.</p> <p>Supports a three tier fee structure.</p> <p>Any one event in York which is taking the proceeds away from York pay full fees.</p> <p>A commercial annual event such as the York Antique and Collectors Fair and York Gourmet Food and Wine Festival, which have substantial economic impact to York, pays no more than 10%</p>	<p>There are very few if any community groups that do not possess public liability insurance.</p> <p>The policy clearly outlines in easy to understand terms what is required. This will assist community groups consider whether they are capable of fulfilling their statutory obligations prior to undertaking an event.</p> <p>Events policies such as this exist elsewhere and have not resulted in the demise of events .It will however result in safe and professionally run events.</p> <p>The three tier fee structure appears to suggest that any commercial event that is run by a company not based in York should pay full fees and any Events company based in York should have concessions.</p> <p>This is anti competitive and not something any Local Authority should contemplate.</p> <p>Council currently offers concessions to organisations it recognises as community</p>

	<p>of associated fees.</p> <p>A community event is exempt from fees.</p>	<p>groups.</p>
4.	<p>Same issues as item 3</p>	<p>Same comment as item 3</p>
5.	<p>Concerns as to definitions of public gatherings i.e. private birthday party in park.</p> <p>Suggest hire an events coordinator to assist community groups and commercial event promoters meet their statutory obligations.</p> <p>Fee structure should be based on size of event.</p> <p>Proposed fee structure will make commercial events run at a loss.</p> <p>Local businesses will be impacted by demise of events due to fees being introduced.</p>	<p>This policy applies to public events not small private gatherings.</p> <p>This suggestion has some merit and it is something the Shire of York has been considering.</p> <p>A single fee for events in parks and public halls are considered to be appropriate.</p> <p>The fees for commercial events operators for the hall have been in place prior to the policy. No demise noted so far.</p> <p>As above.</p>
6.	<p>Perception that policy is in direct conflict with objective to promote and encourage small business into York and that businesses will be adversely affected by policy resulting in demise of events</p> <p>Shire of York to hire a full time Events Coordinator</p> <p>Remove the requirement for comprehensive vehicle insurance for vehicles used in events.</p>	<p>As stated above Council is not in a position to promote anti competitive practices.</p> <p>The fees for the hall have been in place for commercial use of the hall and no demise of events has so far been noted.</p> <p>As stated in item 5</p> <p>Should damage occur to Council infrastructure by a vehicle used during an event Council would have to claim on its own insurance possibly affecting future premiums and negatively impacting on required rating levels.</p>
5.	<p>State the requirement to cater for the disabled during events i.e. (Toilets and access) and to delete references to the Food Hygiene Regulations 1993 and substitute Food Act 2008</p>	<p>Noted</p>

Statutory Environment:

Health Act 1911, Health (Public Building Regulations) 1992, Local Government Act 1995

Policy Implications:

The proposed amendments as indicated in the attached appendices will provide a framework that will streamline the events application process and clearly indicate to both commercial and community event promoters what is required by Council to hold safe and enjoyable events in the Shire of York.

Financial Implications:

At present there is no application fee for events applications apart from stall holder licences, however it is standard practice by the majority of Local Authorities to charge a fee for the event application assessment.

As a considerable amount of work is involved by staff in assessing events applications it is suggested that a fee of \$120.00 be adopted in Councils fees and charges.

There is currently no set hire fee for Councils Parks or Reserves.

It is suggested that a fee of \$500.00 per day be imposed on Commercial Events Operators wishing to use these Parks or Reserves.

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Not Applicable

Social Implications:

The policy if managed correctly will enhance and encourage events and at the same time guide community groups through the process.

Environmental Implications:

Nil

Comment:

While this policy may appear to be new and somewhat overwhelming to persons encountering it for the first time, the legislation that the policy is based on has been in place since the early to mid nineties.

Council in the past has been supportive both financially and materially with the conducting of events within York and there is nothing in this policy that prevents Council from continuing with these practices in the future after examining each application on its merit.

The Policy encourages event promoters to discuss their requirements with Council staff prior to making their application.

The fees for commercial events operators to use the hall have been in place for some time.

The application fee for the assessment of an events application is a fair and reasonable fee considering the time and work involved in assessing such applications which are at times far from complete.

The fee for hire of Council facilities and parks is also considered reasonable considering the expense of maintenance and upkeep Council is continually burdened with.

Council has a long standing practice of community not for profit organisations registering as community groups with view to having fees waived.

As stated in one of the submissions, there are very few commercial events held in York hence the fear that the “commercial spin off” from the demise of community events due to this policy is unfounded.

**RESOLUTION
080511**

Moved: Cr Boyle

Seconded: Cr Scott

“That Council:

- 1. Rescind the existing events policy and adopt the Shire of York Events Policy No 13.1 with the following amendments;***

Insert under Appendix 6 – Disabled Toilets to be provided in accordance with Council requirements.

Delete in Item 8 of the Policy Statement (Food Hygiene) Regulations 1993 and substitute the words Food Act 2008

- 2. Adopt the following fees and charges in the 2011/2012 budget:***

\$120.00 – Events Application Fee

\$500.00 – Hire Fee for Council Parks Ovals and facilities for event purposes.”

CARRIED: 5/1

Tyhscha Cochrane, Deputy CEO left the room at 4.03pm.

Item 9.2.2 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.3 Proposal to Make Local Government Property Amendment Local Law 2011

FILE NO:	LE.LLW
COUNCIL DATE:	16 May 2011
REPORT DATE:	8 May 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Local Government Property Amendment Local Law 2011
DOCUMENTS TABLED:	Public Submission received – Ms A Marshall

Summary:

One submission relating to the consideration of the Local Government Property Amendment Local Law 2011 was inadvertently omitted.

Section 3.12 of the Act requires Council to consider all submissions received prior to the adoption of the local law.

The purpose of this report is to:

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

Background:

The submission period for public comment on the Local Government Property Amendment local law closed Wednesday 19 January 2011.

A series of submissions were received by the closing date and unfortunately one submission was inadvertently omitted from the review report presented to the 27th April 2011 Council meeting.

Section 3.12 of the Local Government Act requires Council to consider all submissions prior to considering adoption of the local law.

Consultation:

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

Statutory Environment:

Local Government Act 1995

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

Policy Implications:

There are no policy implications for this item.

Financial Implications:

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

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: YES

Site Inspection:

Site Inspection Undertaken: Not Applicable.

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

Not applicable.

Social Implications:

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

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the proposed Local Government Property Amendment Local Law 2011. The previous report to Council on the 27th April 2011 advised that at the close of the submission period, one petition with 14 signatures, and two public submissions relating to proposed changes to the Local Government Property Local Law had been received.

This was incorrect on two accounts. Firstly the petition included a covering letter by Ms A J Marshall resulting in 15 signatures. Secondly four public submissions were received by the closure date, which included Mr Paton, Mrs Paton, Ms Marshall and the petition submitted by Ms Marshall on behalf of 14 signatories. A submission from Ms A Marshall was inadvertently omitted from the Council agenda report considering the submissions received.

This report is submitted to address the omission of Ms Marshall's submission on the Local Government Property Amendment Local Law 2011.

The issues raised by Ms Marshall in her submission are common in theme to the other submissions received and are detailed in the following table.

Submission/Applicant Name	Comment	Officer/Consultant Comment	Recommended Action
Submission 4 – Ms A Marshall Item (1)	<p>Clause 4.6 – Refusal of entry to local government property.</p> <p>Introduction of clause 4.6 is in breach of the Universal Declaration of Human Rights articles as listed below:</p> <p>(1) Article 9 – No-one shall be subject to arbitrary arrest, detention or exile.</p> <p>(2) Article 10 – Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p> <p>(3) Article 13 – Everyone has the right to freedom of movement and residence within the borders of each state.</p> <p>(4) On 14th January 2011 the Commissioner of WA Police announced new laws provided to WA Police, eliminating the need for the Shire of York to implement clause 4.6 as it is a duplication of Police Laws.</p> <p>(5) Existing local law clearly details reasons and behaviour by which a person may be refused entry to Loc Gov. Property. The proposed new law is open to interpretation by individual 'Shire</p>	<p>The following comments are made in relation to the points raised-</p> <p>(1) The introduction of clause 4.6 is not in breach of the Universal Declaration of Human Rights Articles. The Commonwealth of Australia is one of the founding partners of the Universal Declaration of Human Rights and all law must comply with the tenets down in the Declaration. The Joint Standing Committee on Delegated legislation has the role of oversight of all subsidiary legislation made in Western Australia. It has assessed the use of Clause 4.6 by other local governments and has approved its inclusion in other local laws, with some modifications. These modifications have been made to the clause in the current amendment.</p> <p>(2) See (1) above.</p> <p>(3) See (1) above.</p> <p>(4) Local laws are subsidiary legislation and are an extension of state legislation, so that local governments can regulate 'local issues'. Where local governments have the head of power to make local laws, the content of the local law often mirrors state legislation. Examples include Parking local laws (which mirror the Traffic</p>	<p>It is recommended that Council note points (1), (3) and (4) of the submission and delete the words "or is likely to behave" from clause 4.6.</p>

	<p>appointed person' and definitely open to abuse.</p> <p>(6) The wording 'believes has or is likely' in clause 4.6 is subjective. This could allow personal vendettas against residents and ratepayers to be carried out from within the Administration.</p> <p>(7) It is unclear within this proposed change exactly who the authorised person/s will be as the proposed wording is "the/those" persons are yet to be determined by Council through Gazettal process.</p>	<p>Code) and Dog local laws. However, where the head of power exists, the local laws often go further than what is in state legislation, so that local governments can tailor their local laws to what they see as the needs of their district. Clause 4.6 provides the Shire with the ability to impose a suspension if a person contravenes the provisions of Part 4 of the local law. Part 4 of the local law is very clear in which circumstances a suspension may be imposed-</p> <ul style="list-style-type: none"> (a) Behaviour that interferes with others; (b) Behaviour that is detrimental to property (c) A person under the influence of alcohol or a prohibited drug; or (d) A person taking or consuming a prohibited drug on local government property. <p>(5) The existing local law has deemed to be deficient in a number of matters, particularly in respect to the ability to remove a person who consistently behaves in a manner that is contrary to Part 4 of the local law. Whilst some aspects are open to interpretation, an officer of the Council must have good grounds to impose a suspension, as subclause (3) provides that any</p>	
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		<p>decision made under this clause is subject to objection and review pursuant to clause 7.1 of the local law.</p> <p>(6) The words “or is likely to behave” have been removed from clause 4.6 of the amendment local law.</p> <p>(7) The method of appointing of authorised persons by a local government requires a Council resolution making the appointment and then the gazettal of the names of those appointed before the authorised person can act.</p>	
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The attached local law incorporating all identified amendments is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

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

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

**RESOLUTION
090511**

Moved: Cr Scott

Seconded: Cr Lawrance

“That Council:

- 1. notes the additional public submission received from the submission writer in relation to the proposed Shire of York Local Government Property Amendment Local Law 2010 and rejects the submission on the basis of the reasons as outlined in the table contained in report 9.2.3.**
- 2. resolves to make the Shire of York Local Government Property Amendment Local Law 2011, as per Attachment 1, incorporating all amendments, in accordance with section 3.12 of the Local Government Act 1995:**
 - (a) the purpose of which is to restrict and prohibit certain activities on local government property and review the modified penalties; and**
 - (b) the effect is to control the use of local government property and create offences for inappropriate behaviour in or on local government property.**
- 3. publish the Shire of York Local Government Property Amendment Local Law 2011, as per (2) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government.**
- 4. forward a copy of the gazetted Local Government Property Amendment Local Law 2011, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review.**
- 5. after gazettal of the Local Government Property amendment local law, provide local public notice of the date the local law takes effect.**
- 6. authorise the affixing of the Common Seal of the Shire of York to the Shire of York Local Government Property Amendment Local Law 2011.**

Advice Note:

- a. This formulises the adoption of Resolution 120411 of the Ordinary Council meeting held on the 27th April 2011 to ensure that due processes are followed.**
- b. It should be noted that previous submissions including the petition and submission from the Department of Local Government in relation to the proposed Shire of York Dogs Amendment Local Law 2010 was considered in report 9.2.5 of the Ordinary Council meeting held on the 27th April 2011 (Resolution 120411).”**

CARRIED: 5/1

Item 9.2.3 – Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.4 Contract of Employment – Manager - Works and Projects

FILE NO:	P171
COUNCIL DATE:	21 st January 2010
REPORT DATE:	19 th January 2010
LOCATION/ADDRESS:	N/A
APPLICANT:	N/A
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	T Cochrane, DCEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil

Summary:

Following the advertising and selection process for the position of Manager - Works and Projects it is proposed that Mr Glen I Jones be appointed to the position for a five (5) year term.

Background:

Effectively this position is replacing Simon Patterson. Mr Geoff Crossing and Mr Mike Gill have been providing their services to date.

Consultation:

Staff and Councillors.

Statutory Environment:

Local Government Act 1995 – Section 5.37

Senior employees

- (1) *A local government may designate employees or persons belonging to a class of employee to be senior employees.*
- (2) *The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in Section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.*

Policy Implications:

Not applicable.

Financial Implications:

The contract conditions for the position are covered in the budget.

Strategic Implications:

Shire of York Strategic Plan KRA8:

1. *To provide services in the most cost effective way*
2. *To ensure the financial viability of council.*
3. *To develop one team of Councillors and Staff.*
4. *To develop an innovative workplace with devolved responsibility.*

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Not applicable.

Social Implications:

Employment contracts give the community a degree of continuity and security in who they deal with at the local government level.

Environmental Implications:

Not applicable.

Comment:

Mr Jones brings local government experience to the position through his previous employment in the Northern Territory. In his current position, he is the Manager – Road Projects for the Tennant Creek region of the Northern Territory.

It is proposed that Mr Jones commences on the 4th July 2011.

RESOLUTION

100511

Moved: Cr Scott

Seconded: Cr Boyle

“That Council:

Authorise the Chief Executive Officer to negotiate, sign and affix the seal to a fixed term contract with Mr Glen I Jones for the position of Manager – Works and Projects in accordance with Section 5.39 of the Local Government Act 1995, using the terms and conditions as provided by Workplace Solutions as the basis.”

CARRIED: 5/1

Tyhscha Cochrane, Deputy CEO returned to the room at 4.05pm.

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.5 Avon Tourism

FILE NO: CS.CEV.6
COUNCIL DATE: 16 May 2011
REPORT DATE: 6 May 2011
LOCATION/ADDRESS: Avon Valley
APPLICANT: Avon Tourism
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Minutes – Avon Tourism 29th March, 2011
DOCUMENTS TABLED: Nil

Summary:

The minutes of the Avon Tourism Committee meeting are provided for Council and Community information.

Background:

The Shire of York has previously been a financial member of Avon Tourism up to 2009/10 and in 2010/11 contributed \$10,000 to the Guest Town promotion at the Perth Royal Show.

Consultation:

Not Applicable

Statutory Environment:

Not Applicable

Policy Implications:

Policy No. 13.1 - Events For York

Objective: To ensure that York retains its status as an events centre in the Avon Valley

Financial Implications:

If Council takes action to renew membership of Avon Tourism an annual fee of approximately \$10,000 per year will be applicable.

Note: Council was a member of Avon Tourism for three years prior to 2010/11 when the equivalent contribution to membership was used as a contribution to the Guest Town project at the 2010 Perth Royal Show.

Strategic Implications:

Key Result Area 2: Economic Development & Tourism

Objectives:

- 1. To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.*
- 2. To increase tourism to achieve business viability and growth.*
- 3. To increase the net disposable income of the York community and investigate ways of increasing spending within the Shire.*
- 4. To utilise the unique features of York's heritage and rural lifestyle, where appropriate, as the basis for economic development.*

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

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Tourism is a high value industry in the Avon Valley with economic benefit to local and regional businesses.

Social Implications:

Regional and local tourism events, activities and businesses can benefit residents.

Environmental Implications:

Nil

Comment:

Avon Tourism is a peak regional tourism organisation endeavouring to co-ordinate regional events and area promotion to benefit businesses and communities.

RESOLUTION

110511

Moved: Cr Randell

Seconded: Cr Scott

"That Council:

- 1. *Receive the Minutes of the March 2011 Avon Tourism meeting.***
- 2. *Consider renewing corporate membership of Avon Tourism in the 2010/11 budget and forward financial plans."***

CARRIED: 6/0

Item 9.2.5 – Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.6 Visitor Information Centre –
Ticket Sales for Commercial or Community Events

FILE NO: CS.LCS.8
COUNCIL DATE: 16 May 2011
REPORT DATE: 11 May 2011
LOCATION/ADDRESS: Shire Town Hall
APPLICANT: N/A
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Box Office Ticket Agent Agreement
Cummins Theatre – Conditions of Hire and Booking
Information
DOCUMENTS TABLED: Nil

Summary:

With the Shire of York taking over the York Visitor Centre from 1st July, 2010 there is a need to define any arrangements for the York Information Centre to be involved in ticket sales for commercial or community events.

Background:

The York Visitor Centre has in the past acted as a box office/ticket agent for events and some promoters expect/wish this to continue.

Consultation:

Information Centre Staff
Commercial Promoter

Statutory Environment:

Any fee or charge will come under the Financial Management Regulations and be part of the Fees and Charges adopted in the 2011/12 and future budgets.

Policy Implications:

Policy No. 13.1 - Events For York

Objective: - To ensure that York retains its status as an events centre in the Avon Valley

Financial Implications:

Any arrangement to act as a ticket agent should be cost neutral at least or generate income for the community.

Cash sales will only be accepted no eftpos sales.

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Events can have economic benefit however there should be no expectation that the community will underwrite or subsidise the event for the commercial benefit of the promoter.

Social Implications:

The community will generally support events through ticket purchases and do not expect to provide further support through administration or operating costs for ticket sales and/or promotion/advertising.

Environmental Implications:

Not Applicable.

Comment:

If the Shire of York is to be involved in ticket sales for events there needs to be a clearly defined process in place to protect all parties.

A document similar to the Cummins Theatre one may be of benefit in the operations and management of Forrest Oval Recreation and Convention Centre.

RESOLUTION

120511

Moved: Cr Lawrance

Seconded: Cr Randell

“That Council:

- 1. Adopt the York Information Centre Box Office/Ticket Agent Agreement to operate from the 1st July, 2011 and include the relevant changes in the 2011/12 and future budgets.***
- 2. Develop and adopt a Conditions of Hire and Booking Information document similar to the Cummins Theatre one by the 31st December, 2011.”***

CARRIED: 5/1

Item 9.2.6 – Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.7 Roadside Memorial Policy

FILE NO: TR.RDT.3
COUNCIL DATE: 16 May 2011
REPORT DATE: 11 May 2011
LOCATION/ADDRESS: Shire of York
APPLICANT: Not Applicable
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: WALGA Infopage
MRWA – Roadside Memorials Policy & Guidelines
DOCUMENTS TABLED: Nil

Summary:

The WA Local Government Association has received local government industry feedback on the MRWA policy and recommends that local governments adopt the policy.

Background:

The proliferation of roadside memorials has been an emotional and contentious issue over a number of years and Main Roads WA undertook a consultation process to determine a management methodology.

Consultation:

State wide through Main Roads WA

Statutory Environment:

Main Roads Act
Road Traffic Act

Policy Implications:

Not Applicable

Financial Implications:

Nil to the Shire at this stage

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Nil from this proposal.

Social Implications:

Memorials for loved ones deceased in traffic crashes on roads is an emotional issue which needs to be addressed in a sensitive manner.

Environmental Implications:

No measurable impacts on the natural environment other than for aesthetic values.

Comment:

The Main Roads WA model Roadside Memorial Policy is considered to be realistic and practical and which also addresses family memorial issues.

RESOLUTION

130511

Moved: Cr Randell

Seconded: Cr Scott

“That Council:

Adopt the Main Roads WA Roadside Policy & Guidelines for the purposes of advertising.

Advise Note:

The advertising period for the model policy shall be 21 days.”

CARRIED: 6/0

Item 9.2.7 – Appendices

9.3 Works Reports

9.4 Financial Reports

9. OFFICER'S REPORTS

9.4 FINANCE REPORTS

9.4.1 Monthly Financial Reports – April 2011

FILE NO:	FI.FRP
COUNCIL DATE:	16 May 2011
REPORT DATE:	4 May 2011
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Not Applicable
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Tabitha Bateman, Administration Officer
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Yes – Appendix A as detailed in Summary
DOCUMENTS TABLED:	No

Summary:

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

Appendix A includes the following:

- Monthly Statements for the period ended 30 April 2011
- Bank Account Reconciliations
- Cheque drawings on the Municipal Account
- EFT drawings on the Municipal Account
- Cheque drawings on the Trust Account
- Payroll Direct Debits Summary
- Corporate Credit Card Summary
- Fuel Card Summary

Consultation:

Dominic Carbone

Statutory Environment:

Local Government Act 1995 (As Amended).

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

Policy Implications:

Nil.

Financial Implications:

The following information provides balances for key financial areas for the Shire of York's financial position as at 30 April 2011;

Sundry Creditors as per General Ledger	\$ 2,500.76
Sundry Debtors as per General Ledger	\$ 460,242.66
Unpaid rates and services current year (paid in advance inc. ESL)	\$ 364,053.46
Unpaid rates and services previous years (inc. ESL)	\$ 257,737.09

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

A zero balance or surplus end of year financial position will increase community confidence and cohesion and provide an opportunity for improved community benefits in future years.

Social Implications:

Not applicable.

Environmental Implications:

Not applicable.

Comment:

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

**RESOLUTION
140511**

Moved: Cr Scott

Seconded: Cr Boyle

“That Council:

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

	<u>VOUCHER</u>	<u>AMOUNT</u>
MUNICIPAL FUND		
<i>Cheque Payments</i>	<i>29393-29451</i>	<i>\$ 95,717.40</i>
<i>Electronic Funds Payments</i>	<i>7879-8026</i>	<i>\$ 1,550,669.30</i>
<i>Direct Debits Payroll</i>		<i>\$ 149,385.94</i>
<i>Bank Fees</i>		<i>\$ 776.13</i>
<i>Corporate Cards</i>		<i>\$ 1,672.99</i>
<i>Shell Cards</i>		<i>\$ 194.17</i>
<i>TOTAL</i>		<i>\$ 1,798,415.93</i>
<u>TRUST FUND</u>		
<i>Cheque Payments</i>	<i>3807-3817</i>	<i>\$ 9,274.35</i>
<i>Direct Debits Licensing</i>		<i>\$ 96,307.15</i>
<i>TOTAL</i>		<i>\$ 105,581.50</i>
<i>TOTAL DISBURSEMENTS</i>		<i>\$ 1,903,997.43</i>

CARRIED: 6/0

Note to this item

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

Item 9.4.1 – Appendices

9. OFFICER'S REPORTS
9.4 FINANCE REPORTS
9.4.2 Transfer from Reserve – Centennial Unit

FILE NO: CCP.16.4
COUNCIL DATE: 16 May 2011
REPORT DATE: 10 May 2011
LOCATION/ADDRESS: Unit 4, 40 Macartney Street, York
APPLICANT: Shire of York
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: T Cochrane, DCEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

Summary:

That Council endorse the actions of the Shire President for the additional expenditure at Unit 4 – Centennial Gardens to replace the hot water unit.

Background:

The Manager of Environmental Health and Building Services has assessed that the hot water unit is a result of fair wear and tear (approximately 6 years old). The Council is responsible through the tenancy lease to repair as this is not through any fault of the tenant.

Consultation:

Tenant and Central Districts Air-Conditioning.

Statutory Environment:

Section 6.8 of the Local Government Act 1995 states that *“A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure-
...is authorised in advance by the mayor or president in an emergency...”*

The expenditure is then to be reported to the next ordinary council meeting of the council.

Policy Implications:

Not applicable.

Financial Implications:

A quote was received to replace the unit, as this was considered the best option due to the age of the unit.

Funds of \$111,127.64 are held in Reserves for use on the Centennial Units. Amounts relating to deep sewer connection and air-conditioning units are payable from this account. This still leaves sufficient funds to replace the hot water unit. The nature of the works deemed it an emergency and works were required as soon as possible.

Strategic Implications:

Not applicable.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

No economic implications arise from this report for the tenant.

Social Implications:

This has resulted in a better outcome for the tenant.

Environmental Implications:

Not applicable.

Comment:

This report gives a correct record and is in accordance with the Local Government Act.

RESOLUTION

150511

Moved: Cr Lawrance

Seconded: Cr Boyle

“That Council in accordance with Section 6.8 of the Local Government Act 1995 endorse the transfer of funds to the amount of \$1131.35 from Reserve 22 – Centennial Garden Reserve for a hot water unit at Unit 4, Macartney Street, York.”

CARRIED: 6/0

9.5 Late Reports

9.5.1 Request for Planning Decision Review – Lot 140 & 141 No. 9 Scarpia Street, York

9.5.2 District Court Appeal Shire of York V's Rosmill Pty Ltd

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.1 Review Of Planning Decision – Lots 140 & 141 (9) Scarpia Street, York

FILE NO:	SC1.60550, P.605
COUNCIL DATE:	16 May 2011
REPORT DATE:	12 May 2011
LOCATION/ADDRESS:	Lots 140 & 141 (9) Scarpia Street, York
APPLICANT:	R Stout
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	1 – Approved Plans 2 – Locality Plan
DOCUMENTS TABLED:	Nil

Summary:

Council has received a request to review the conditions of planning approval in relation to the construction of an addition to the rear of the existing dwelling at Lots 140 and 141 (9) Scarpia Street, York granted by Council at its Ordinary Meeting held on 21 March 2011.

The review specifically relates to the condition 4 requiring amalgamation of the lots prior to the issue of a Building Licence. The owner has requested the deletion or amendment of the condition.

Section 9.5 of the Local Government Act 1995 enables an affected person to lodge an objection to a Council decision.

It is recommended that the application be approved and that the condition requiring amalgamation be deleted.

Background:

Council at its Ordinary meeting held on 21 March 2011 approved an application to vary the Shire's Restriction on Building Materials Policy to enable the construction of a rear addition to the existing dwelling at 9 Scarpia Street, York, subject to the recommended conditions of consent.

The planning approval was issued on 28 March 2011, subject to the approved conditions of consent. Conditions 3, 4 and 5 needed to be satisfied prior to the issue of the Building Licence. Conditions 3 and 5 have been satisfied, however condition 4 requires amalgamation of the lots prior to the issue of the building licence.

To amalgamate lots, the owner is required to submit and have approved a subdivision application by the Western Australian Planning Commission. This process involves the services of a surveyor and payment of the application and other associated fees.

The owner/applicant has requested the deletion of this condition to enable the building licence to be issued. A discussion with the applicant revealed that Ms Stout is not in a financial position to amalgamate the lots at this point in time and intends to amalgamate the lots in the future. The priority for the owner currently is to carry out the works to upgrade the dwelling for habitation.

It is considered that the amalgamation of the lots in this circumstance is unreasonable, particularly as it is not proposed to construct over the boundary. The applicant has agreed, and will be required, to construct a fire rated wall on the boundary of the lots in accordance with the requirements of the Building Code of Australia, which will be assessed as part of the Building Licence approval process

It is acknowledged that the septic system servicing the property is located on Lot 140 and that the house is located on Lot 141. However, should the owner wish to sell either lot, then works will be required to ensure both lots are adequately serviced by an approved on-site sewerage management system.

Consultation:

Not required for review.

Statutory Environment:

Local Government Act 2005
Planning and Development Act 2005
York Town Planning Scheme No. 2

Section 9.5 of the Local Government Act 2005 enables an affected person to object to a decision. The objection must be lodged within 28 days after the right of objection or within such further time as the local government may allow. It is considered that the time period the objection was lodged is appropriate.

Section 9.6 states that an objection is to be dealt with by the council by –

- (a) *dismissing the objection;*
- (b) *varying the decision objected to; or*
- (c) *revoking the decision objected to, with or without –*
 - (i) *substituting for it another decision; or*
 - (ii) *referring the matter, with or without directions, for another decision by a committee or person whose function it is to make such a decision.*

Policy Implications:

Council at present do not have a Policy or adopted procedure for dealing with dwellings traversing lots. Council may wish to recommend the development of such a Policy or procedure to ensure landowners are aware of Council requirements with regards to amalgamation.

Financial Implications:

The only financial implications are for the applicant. It is considered that requiring amalgamation at this point in time is imposing undue financial implications.

Strategic Implications:

Key Result Area 1: Strategic Planning

The proposal is consistent with the objectives of KRA 1 where strategic decision-making is made to meet the community needs.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

There are no economic implications for Council. All applicable fees have been paid by the applicant for planning and building approval.

Social Implications:

There are no social implications associated with this proposal.

Environmental Implications:

There are no environmental implications associated with this proposal.

Comment:

The requirement to amalgamate properties must be considered carefully by Council to ensure that it is appropriate and does not cause undue financial implications for the applicant.

It is recommended that amalgamation of lots be only required by Council when it is proposed to traverse lot boundaries by new construction and that an advisory note be placed on all other applications advising that amalgamation should be pursued.

In this particular case, the applicant has been advised that although the requirement for amalgamation could be removed, the construction of the wall on the boundary will be required to be fire rated in accordance with the requirements of the Building Code of Australia.

**RESOLUTION
160511**

Moved: Cr Lawrance

Seconded: Cr Walters

“That Council:

APPROVE the deletion of condition 4 on the planning approval granted on 21 March 2011 and for an amended planning approval be issued subject to the following conditions and advisory notes:

- 1. Development must substantially commence within two (2) years from the date of this decision;***
- 2. Development must take place in accordance with the approved plans;***
- 3. Prior to the issue of a building licence, amended plans be received and approved by the Shire which detail the building materials for the extension as being flat hardiflex (or similar) sheeting covered with cement render (or similar) including a colour scheme.***
- 4. DELETED. 16 MAY 2011***
- 5. Prior to the issue of a building licence, detailed drainage plans shall be submitted to the satisfaction of the local government;***
- 6. Prior to occupation of the development, stormwater drainage works must be completed in accordance with the approved plans to the satisfaction of the local government;***
- 7. The on-site drainage system shall be maintained on an ongoing basis to the satisfaction of the local government.***

ADVISORY 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 licence. In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1960, an application for a building licence must be submitted to, and approval granted by the local government prior to any change of classification or prior to the commencement of any structural works within the development hereby permitted.
- Note 6:** Amalgamation of the lots will be required for any works that result in the dwelling or other ancillary structures traversing the lots 140 and 140.
- Note 7:** Should either lot be sold individually, a new septic system will be required to service the existing dwelling on Lot 141.“

CARRIED: 6/0

Item 9.5.1 – Appendices

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.2 District Court Appeal – Shire of York V Rosmill Pty Ltd

FILE NO:	Gr2.A1056; Wh1.A60008; He2.A60013; Ra4.A60068
COUNCIL DATE:	16 May 2011
REPORT DATE:	11 May 2011
LOCATION/ADDRESS:	Shire of York
APPLICANT:	CS Legal
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	R Hooper, CEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appeal Advice Cost Agreement
DOCUMENTS TABLED:	Nil

Summary:

CS Legal advised that Rosmill Pty Ltd have appealed to the District Court against the Magistrate's Court ruling on the payment of rates for properties owned by Rosmill Pty Ltd in the Shire of York.

CS Legal have provided a cost agreement for Council to consider for the appointment of CS Legal as the Shire of York representatives in the appeal.

Background:

Recovery action was taken by the Shire of York debt recovery agents for the non-payment of rates on four properties owned by Rosmill Pty Ltd.

The matter was heard in the Magistrate's Court where the Court found for the Shire of York and directed payment of the outstanding rates plus costs.

Consultation:

CS Legal
Austral Mercantile Collections Pty Ltd

Statutory Environment:

Local Government Act 1995 - Sections

6.55. Recovery of rates and service charges

- (1) *Subject to subsection (2) and the Rates and Charges (Rebates and Deferments) Act 1992 rates and service charges on land are recoverable by a local government from —*
 - (i) *the owner at the time of the compilation of the rate record; or*
 - (ii) *a person who whilst the rates or service charges are unpaid becomes the owner of the land.*
- (2) *A person who, by virtue of an Act relating to bankruptcy or insolvency or to the winding up of companies, has become the owner of land in the capacity of a trustee or liquidator, is not on that account personally liable to pay, out of the person's own money, rates or service charges which are already due on, or become due on that land while that person is the owner in that capacity.*

6.56. Rates or service charges recoverable in court

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.*
- (2) *Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.*

[Section 6.56 amended by No. 84 of 2004 s. 80.]

6.57. Non-compliance with procedure in Act not to prevent recovery of rate or service charge

In proceedings by or on behalf of a local government for the recovery of an amount due in respect of a rate or service charge, failure by the local government to comply in respect of the rate or service charge with the provisions of this Act, is not a defence, if it appears that it had the power to impose, and did in fact assent to the imposition of, the rate or service charge.

6.62. Application of money paid for rates and service charges

Where money is paid to a local government in respect of rates or service charges imposed on land, the local government is to apply the money for or towards —

- (a) *the rates or services charges due on the land in the order in which they become due; and*
- (b) *any outstanding costs of proceedings for the recovery of any such rates or charges.*

[Section 6.62 amended by No. 49 of 2004 s. 63.]

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

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.*

Policy Implications:

Not Applicable

Financial Implications:

The cost estimates for representation in the appeal are \$11,000 - \$13,500 which may be recoverable in full or in part subject to the Court ruling in the cases.

The current rates outstanding on the Rosmill properties are \$23,501.90.

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

If the appeal, based on the constitutional powers of a local government to impose rates and service charges, is successful the rate base of all local governments will be removed.

Social Implications:

Property rating and service charges are intrinsic to community service delivery and any change to current processes and powers will have a dramatic impact on communities.

Environmental Implications:

Nil

Comment:

The defence grounds in the Magistrate's Court were based on the power or authority for local government to set, impose and recover rates, fees and charges.

A similar defence has been raised in other cases and has been dealt with by the WA Court of Appeal and the High Court of Australia and it was found to have no grounds (Refer to *Glew & Anon V Shire of Greenough* (2006) WASCA 260 – appeal dismissed and applicants to pay the rates and the respondents appeal costs). The legal representatives for the Shire of Greenough was CS Legal.

Local Government rating is specifically empowered under the Local Government and it is the base revenue stream for annual budgets and community service delivery.

Rates on the properties in question are accruing interest on the outstanding amounts at 11% per annum and these rates and service charges remain as a debt against the property until paid.

Regardless of this appeal process Council, like all local governments, has the power to sell properties to recover outstanding rates after following set procedures and time frames.

While it appears comparatively expensive to engage legal representation to defend the appeal the precedents set by the Courts indicate very little chance of the appeal being up held and that full costs will be ordered against the applicant.

If the appeal is up held there is very little future for local government as any property owner may choose not to pay rates and service charges.

It is unknown whether the applicant will proceed to the WA Court of Appeal or the High Court of Australia if the appeal is not up held. If this occurs there will be a significant cost on the community until the matter is resolved and then there will be the issue of receiving payment for the rates and legal fees.

If Council does not respond to the appeal it is unclear if the matter will proceed and a worst case result would be for a court to determine that the rates are not payable and the applicants legal costs to date are awarded against the Shire of York – on the case history this is extremely unlikely however it is still a potential result.

**RESOLUTION
170511**

Moved: Cr Lawrance

Seconded: Cr Scott

“That Council:

Enter into a Solicitor Client Standard Costs Agreement with CS Legal for them to represent the Shire of York in the appeals by Rosmill Pty Ltd.”

CARRIED: 6/0

Item 9.5.2 – Appendices

9.6 Confidential Reports

9.6.1 Legal Agreement – Parking – Settlers House

**RESOLUTION
180511**

Moved: Cr Boyle

Seconded: Cr Scott

“That Council:

Go ‘Into Committee’ to consider the Confidential Report at 4.25pm”.

CARRIED: 6/0

Cr Randell declared a Conflict of Interest Affecting Impartiality to this item and left the room at 4.27pm

**RESOLUTION
190511**

Moved: Cr Boyle

Seconded: Cr Scott

“That Council:

- 1. Request McLeods, Barristers & Solicitors, to initiate action to recover all outstanding and current car parking contributions associated with the Settlers House Pty Ltd development.***
- 2. Advise the proponent, Settlers House Pty Ltd, that no further Certificate of Classification or Occupancy will be issued by the Shire of York until and unless all car parking payments associated with the development are paid in full.”***

CARRIED: 5/0

**RESOLUTION
200511**

Moved: Cr Lawrance

Seconded: Cr Boyle

“That Council:

Come ‘Out of Committee’ at 4.28pm”.

CARRIED: 5/0

Cr Hooper read the resolutions to the Gallery.

Cr Randell returned to the room at 4.29pm

10. NEXT MEETING

RESOLUTION
210511

Moved: Cr Walters

Seconded: Cr Scott

“That Council:

hold the next Ordinary Meeting of the Council on June 20, 2011 at 3.00pm in the Lesser Hall, York”

CARRIED: 6/0

11. CLOSURE

Cr Hooper thanked everyone for their attendance and declared the meeting closed at 4.30pm.