



SHIRE OF YORK

**MINUTES OF THE ORDINARY
MEETING OF THE COUNCIL
HELD ON 19 SEPTEMBER, 2011
COMMENCING AT 3.01pm
IN THE LESSER HALL, YORK**

SHIRE OF YORK

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RAY HOOPER
CHIEF EXECUTIVE OFFICER

Table of Contents

1. OPENING	7
1.1 Declaration of Opening	7
1.2 Chief Executive Officer to read the disclaimer.....	7
1.3 Announcement of Visitors	7
1.4 Announcement of any Declared Financial Interests	7
2. ATTENDANCE	7
2.1 Members.....	7
2.2 Staff	7
2.3 Apologies.....	7
2.4 Leave of Absence Previously Approved.....	7
2.5 Number of People in Gallery at Commencement of Meeting.....	7
3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	8
3.1 Previous Public Questions Taken on Notice.....	8
3.2 Written Questions	8
4. PUBLIC QUESTION TIME.....	8
5. APPLICATIONS FOR LEAVE OF ABSENCE	9
6. PETITIONS / PRESENTATIONS / DEPUTATIONS.....	9
7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING	10
7.1 Minutes of the Ordinary Council Meeting held August 15, 2011	10
7.2 Minutes of the Special Council Meeting held September 5, 2011.....	10
8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION.....	10
9. OFFICER'S REPORTS.....	11
9.1 Development Services.....	13
9.1.1 Scheme Amendment No. 37 – Rezoning Portion of Reserve 121	15
Item 9.1.1 - Appendices	19
9.1.2 Change of Use to Dental Surgery – 129 & 129A Avon Terrace, York	21
Item 9.1.2 - Appendices	31
9.1.3 Demolition of Cottage at Lot 12 (17) Redmile Road, York.....	33
Item 9.1.3 - Appendices	37
9.1.4 Proposed Scheme Amendment No. 43 – Omnibus Amendment.....	39
Item 9.1.4 - Appendices	45

9.2	Administration Reports	47
9.2.1	Balbally Pty Ltd – Lease – Reserve 34841	49
	Item 9.2.1 - Appendices	61
9.2.2	Delegations.....	63
	Item 9.2.2 - Appendices	67
9.2.3	Gazettal Notices - Various	69
	Item 9.2.3 - Appendices	73
9.2.4	Rate Debt Recovery – Supreme Court Appeal Rosmill Pty Ltd	75
	Item 9.2.4 - Appendices	79
9.2.5	Youth Report for September, 2011	81
9.2.6	Contract of Sale – Lots 2, 3, 4, 5 6 Avon Terrace & Lot 13 Redmile Road, York..	85
	Item 9.2.6 – Appendices	89
9.2.7	Avon Tourism	91
	Item 9.2.7 - Appendices	93
9.3	Works Reports	95
9.4	Financial Reports	97
9.4.1	Monthly Financial Reports – August 2011.....	99
	Item 9.4.1 Appendices	101
9.5	Late Reports	103
9.5.1	State Administrative Tribunal Appeal – Laurelville, 18-20 Panmure Road, York	105
9.6	Confidential Reports	109
10.	NEXT MEETING	111
11.	CLOSURE	111



SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL
HELD ON MONDAY, 19 SEPTEMBER 2011, COMMENCING AT
3.01PM IN THE LESSER HALL, YORK.

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

1. OPENING

- 1.1 Declaration of Opening
Cr Pat Hooper, Shire President, declared the meeting open at 3.01pm
- 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
*Cr Tony Boyle – Item 9.2.6 – Financial
Item 9.5.1 – Proximity*

2. ATTENDANCE

- 2.1 Members
*Cr Pat Hooper, Shire President;
Cr Brian Lawrance; Cr Roy Scott; Cr Tony Boyle; Cr Trevor Randell*
- 2.2 Staff
Ray Hooper, Chief Executive Officer, Gordon Tester; Manager of Health and Building Services; Jacky Jurmann, Manager Planning Services; Glen Jones, Manager Works & Projects; Gail Maziuk, Finance Officer/Project Co-Ordinator; Helen D'Arcy-Walker, Executive Support Officer
- 2.3 Apologies
Nil
- 2.4 Leave of Absence Previously Approved
Cr Tricia Walters
- 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
Nil

3.2 Written Questions
Nil

4. PUBLIC QUESTION TIME

Mr Robert Chester
PO Box 137
York WA 6302

Question 1:

Why wasn't I notified regarding the rezoning of land adjacent to my property? Takes umbrage at not being notified.

Response:

Apologies if not notified. Will search records as to the reason.

Ms Darlene Barratt
Lot 4 Penny Street
Kauring WA 6302

Question 1:

Questions asked at last meeting not answered. My last question was not recorded in the Minutes as it related to an individual.

Response:

Questions Noted.

Ms Coral Middleton
c/- York Caravan Park
York WA 6302

Question 1:

Could you please tell me why I was not informed when my house was to be demolished. Did you grant a licence to the builder to demolish the house as I would like to see the licence. The septic tanks were taken out but not emptied out.

Response:

Gordon Tester, Manager Environmental Health & Building Services stated that a demolition license was issued to the builder.

Question 2:

Why didn't I receive any paperwork.

Response:

Ms Middleton to make an appointment with Gordon Tester.

Mrs Kaye Scott
45 Eleventh Road
York WA 6302

Cr Scott left the room at 3.10pm

Questions are being asked on behalf of Craig Scott who is unable to attend the meeting.

Question 1:

- (a) Who gave the instruction to illegally remove the trees from our property?
- (b) The name of the person/s who removed the trees, including the back hoe operator engaged to remove the stumps
- (c) Copies of the Work Orders issued for the removal of the trees

Response:

Taken on Notice.

Cr Scott returned to the room at 3.12pm

Mrs Anne Chester
PO Box 137
York WA 6302

Question 1:

When was the Town Hall handed over and to who?

Response:

The York Shire Council owns the Town Hall. The article in the local paper is not true.

Question 2:

The Shire lost the case three times and he was owed some money. Why was it not in the budget.

Response:

In the court case he was found guilty. \$120,000 appeal was reduced to \$60,000 and the Shire is currently going through the collection process.

Question 3:

Why is the Shire spending \$12,000 on Heritage Rail when the west ward roads are a disgrace?

Response:

\$3.3 million is being spent on roads.

Ms Darlene Barratt
Lot 4 Penny Street
Kauring WA 6302

Question 1:

When are my questions going to be answered?

Response:

They will not be answered.

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Minutes of the Ordinary Council Meeting held August 15, 2011

Confirmation

**RESOLUTION
030911**

Moved: Cr Scott

Seconded: Cr Boyle

“That the Minutes of the Ordinary Council Meeting held August 15, 2011 be confirmed as a correct record of proceedings.

CARRIED: 5/0

7.2 Minutes of the Special Council Meeting held September 5, 2011

Confirmation

**RESOLUTION
040911**

Moved: Cr Boyle

Seconded: Cr Lawrance

“That the Minutes of the Special Council Meeting held September 5, 2011 be confirmed as a correct record of proceedings.

CARRIED: 5/0

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Cr Hooper read the following statement:

Initially can I offer my congratulations to Damian Dillion from the York Football Club on winning the Atkinhead Medal at the recently held AFA Awards night? Although the Club did not enjoy finals success this year their performances were commendable.

I would also like it recorded the Council’s congratulations to the York Agricultural Society for the success of the 165th Annual York Show. The courage the President and Committee have shown and their community leadership is recognised by holding the Show under the adverse conditions. They didn’t throw in the towel and are again congratulated upon the great Show we all enjoyed.

As we are in the last Council Meeting of this current Council can I offer on behalf of fellow Councillors, Council staff and the community our sincere thanks to Councillor Randell for his services over the past six years? Trevor’s lasting legacy will be his dedication to the cause of ‘youth’ in our town. Trevor, thank you for your efforts and commitment to the role.

May I also thank fellow Councillors past and present, Council staff and the community of York for their support in my role as President? While I am standing for election as a Councillor, I will not be seeking the role of President if re-elected, therefore I wish to have my thanks to the community, recorded.

It has been a privilege to have had the opportunity for six years to lead such a community as ours. It is a community of choice and to have been your Shire leader and to have represented you in a wide variety of forums has been great experience.

Thank you!

9. OFFICER'S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Scheme Amendment No. 37 – Rezoning Portion of Reserve 121

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-32
COUNCIL DATE:	19 September 2011
REPORT DATE:	16 August 2011
LOCATION/ADDRESS:	Reserve 121 (Lot 606) Spencer's Brook Rd
APPLICANT:	Mr and Mrs Saunders
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	1 – Locality Plan 2 – Draft Scheme Amendment Report 3 – Council report 19 May 2008
DOCUMENTS TABLED:	Nil

Summary

The applicant has been requesting to purchase a portion of Reserve 121 – 1¼ acres in area, which is vested in Council. The whole reserve is approximately 57 hectares in area. To allow this to occur, Council is required to complete a Scheme Amendment to change the zoning of the land to incorporate all infrastructures relating to the land leased by Mr and Mrs Saunders from Public Purposes to Rural Residential.

A Scheme Amendment was initiated on 19 May 2008 by Council for the same rezoning purpose. However, the amendment stalled due to insufficient information and due to the time period lapsed, it was necessary to re-initiate the scheme amendment.

It is recommended that Scheme Amendment No. 37 be re-initiated to enable the purchase of the subject land by Mr and Mrs Saunders.

Background

The amendment was originally initiated as a result of discussions with various government departments and Mrs and Mrs Saunders regarding the sale of the land.

On 19 May 2008 Council resolve to initiate the Scheme Amendment to rezone the subject portion of land as follows:

“That Council:

- 1. Initiate a Scheme Amendment for the purpose of rezoning a portion of Reserve 121 from Recreation and Open Space to Rural Residential.*

CARRIED (5/1)

Advice Note:

All costs relating to the Scheme Amendment will be recovered from the applicants.

This action is being taken in accordance with correspondence received on the 19th March 2008 from the Department for Planning and Infrastructure – State Land Services.

All appropriate mapping will be inserted prior to the Amendment being advertised and once a sketch is provided by the applicants.

Advertising to be for the statutory period of 42 days.”

Refer to the Council report of 19 May 2008 for further background on the rezoning proposal.

Following Council's resolution to initiate Scheme Amendment No. 37, Council requested permission to advertise in accordance with the Regulations. The Environmental Protection Authority wrote to Council on 8 April 2009 to advise that insufficient information had been received to make a decision on whether or not to assess the scheme amendment.

A survey plan has been prepared on behalf of Mr and Mrs Saunders, and was received by Council on 16 July 2009, proposing an area of 5947m² be excised from the reserve for purchase. This area contains the dwelling and associated structures belonging to the applicants.

On 13 January 2011 State Lands wrote to Council as follows:

"Mr George Saunders occupies a house on a portion of the above reserve.

In 2005, Mr Saunders asked the Shire if it would consider selling to him that portion of the Reserve. The Shire asked RDL for comment.

Generally RDL is agreeable to the alienation of a portion of the reserve, but the Planning Department did not support conversion to freehold due to local planning and zoning concerns.

There appears to have been no change in the town planning and zoning situation. Accordingly, freeholding of the land occupied by Mr Saunders will not be further considered at this time.

If there is a significant change in planning/zoning of the land, and the Shire wishes to renew the matter, please re-submit the request and it will be considered anew."

Although a considerable amount of time has passed since the initiation of the original scheme amendment, the applicants continue to pursue the sale of the land and it is therefore considered appropriate to re-initiate the scheme amendment.

Consultation

Applicants
Department for Planning and Infrastructure
State Land Services

Statutory Environment

Planning and Development Act 2005
Town Planning Regulations 1967

Policy Implications

There are no Policy implications associated with this proposal.

Financial Implications

No costs are anticipated for the excision of part of the reserve. The applicants will meet all costs and there will be no financial implications to Council.

Strategic Implications

York Local Planning Strategy

The proposed lot size is consistent with the Living Density identified in Figure 4 of the Strategy. The site is adjacent to the Bakewell/Equine Precinct that is zoned Rural-Residential. It is there considered that the proposed lot area and zoning is consistent with the objectives of the Strategy.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications

There are no financial implications for Council.

The applicants have put a considerable amount of infrastructure on this Reserve at their own costs and are responsible for the costs associated with the scheme amendment.

Social Implications

The excision of land out of Reserve 121 is unlikely to impact on future developments within this area and will not impact on the future use of the reserve.

Environmental Implications

There are no environmental implications associated with this proposal.

Comment

There is no lease agreement in place at the moment and it is a good opportunity to make a decision on this issue.

Council previously looked at using a portion of the Reserve to increase waste disposal options however at this time it is highly unlikely that there will be any expansion of this facility. The entrance of the Transfer Station to the area that the applicant wishes to purchase is approximately 370 metres. If for some reason Council wishes to pursue activities in relation to waste disposal in this area it would be fair to say that it would most likely be developed around the car disposal site and the Drum Muster compound and that an adequate buffer will be possible.

**RESOLUTION
050911**

Moved: Cr Lawrance

Seconded: Cr Boyle

“That Council:

- 1. Re-Initiate Scheme Amendment No. 37 for the purpose of rezoning a portion of Reserve 121 from Recreation and Open Space to Rural Residential.***
- 2. Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation.***
- 3. Forward the Scheme Amendment to the Environmental Protection Authority and request permission to advertise.***
- 4. Upon receipt of consent to advertise from the Environmental Protection Authority, advertise the Scheme amendment for public comment for a period of 42 days in accordance with the Town Planning Regulations 1967.***
- 5. Staff to investigate rezoning of the balance of land and enter into discussions with Landcorp.***

Advice Note:

All costs relating to the Scheme Amendment will be recovered from the applicants.”

CARRIED: 5/0

Item 9.1.1 - Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.2 Change of Use to Dental Surgery – 129 & 129A 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: AV1.6663, AV1.6667, P692
COUNCIL DATE: 19 September 2011
REPORT DATE: 9 September 2011
LOCATION/ADDRESS: Lot 889 (129 & 129A) Avon Terrace, York
APPLICANT: B Elsegood on behalf of Lifetime Dental P/L
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES: 1 – Locality Plan
2 – Architectural Plans
3 – Assessment Report
DOCUMENTS TABLED: Nil

Summary:

Council is in receipt of a planning application to change the use of Lot 889 (129 & 129A) Avon Terrace, York to a dental surgery.

The establishment of a dental surgery in the town centre of York is a positive planning and community outcome.

The application being recommended for approval subject to the conditions of consent listed at the end of this report.

Background:

An application to change the use of two existing shops at 129 and 129A Avon Terrace to a dental surgery was submitted to Council on 12 August 2011. The shops were previously used as a book shop and gallery.

An initial assessment of the application showed that the application was deficient in information with regards to employee numbers, hours of operation, impact on heritage and details of advertising signage. Additional information was requested from the applicant in writing on 16 August 2011.

The additional information was received from the applicant on 31 August 2011 and the application was considered adequate to enable advertising to the public and adjoining landowners.

The adjoining landowners were advised of the application on 1 September 2011 and an advertisement was placed in the Avon Valley Gazette on 3 September 2011. The consultation period closes on 17 September 2011.

Although the advertising period had not closed at the time of writing this report, due to the community significance of the proposal, it is considered appropriate to present the report to the September meeting and not delay the determination until the October meeting.

Consultation:

The application has been advertised in the local newspaper and letters have been sent to adjoining landowners in accordance with the requirements of Clause 7.3 of the York Town Planning Scheme No. 2.

No submissions were received concerning the proposal at the time of writing this report. Any submissions received after the time of writing this report will be distributed to the Councillors for consideration.

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

Statutory Environment:York Town Planning Scheme No. 2

Clause 7.5 of the Scheme sets out the matters for consideration that have been assessed as follows:

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

York Town Planning Scheme No. 2

The site is zoned Town Centre and the shops were previously used as a book shop and gallery. The proposed change of use to a dental surgery, defined as 'consulting rooms' under the scheme, is a permitted use.

Clause 4.2 of the Scheme requires planning consent for any works where a building is included on the Heritage List under clause 5.1.2 of the Scheme. The site is listed in the Municipal Inventory and therefore in the Heritage List under the Scheme and therefore, planning consent is required for the works involved in conjunction with the change of use.

The Town Centre Zone objectives are:

- (a) *To retain the town centre of York as the principal place for retail, commercial, civic, and tourist-oriented uses in the District.*
- (b) *To preserve the unique qualities of the town centre as a heritage place, including the conservation of existing heritage buildings, and to avoid development which will detract from those qualities.*
- (c) *To ensure development complies with Design Guidelines adopted by the local government for the town centre.*
- (d) *To encourage a high standard of development of commercial facilities to service the residents, the farming sector, tourists, and travellers.*
- (e) *To encourage a high standard of landscaping in and around the town centre; the local government will undertake planting of shade trees in road reserves and public carparks where appropriate.*
- (f) *To encourage a high standard of residential and residential mixed use development in appropriate locations that contribute to the amenity, security and economic sustainability of the town centre.*

The proposal is consistent with the objectives of the town centre zone, particularly in that the dental surgery will provide a much needed health service to the community of York and will use a heritage building without the need for substantial changes to the external fabric of the building.

Clause 4.5 of the Scheme requires that on-site car parking spaces must be provided in accordance with Schedule 4. Schedule 4 requires that for consulting rooms, four (4) spaces per every consulting room up to two (2) such rooms and two (2) for every additional consulting room. Three (3) consulting rooms are proposed to be established and therefore, the Scheme requires 10 off-street car parking spaces are provided for the development.

The Settler's strata plan provides only one off-street car parking space to cater for the needs of the workers of all four shops. In the calculation of off-street car parking space requirements it is appropriate to take into consideration the previous uses of both shops, a book shop and a gallery. These uses would have been classified as shops under the Schedule and six (6) spaces for every 100m² of Nett Lettable Area (NLA) would have been required. The overall floor space is approximately 100m². It is considered appropriate that the shops be credited with six (6) off-street car parking spaces and therefore, the applicant is required to provide two (2) additional off-street car parking spaces.

The applicant is unable to provide an additional two (2) car parking spaces as the site is established. In this circumstance, Council may accept cash payment in lieu of the provision of car parking spaces. A payment of \$5,165 per space would be charged in accordance with the adopted Fees and Charges for 2011/12. This payment must be accepted into a parking fund to be used for the provision of public car parking facilities anywhere within reasonable proximity to the subject land. Alternatively, Council may choose to modify the development standard relating to car parking if Council considers that there is sufficient public car parking available in Howick Street and Lowe Street and waive the payment.

Clause 5.1 of the Scheme relates to heritage. The subject site is listed on the Heritage List (Municipal Inventory) Category 1B in the Central York Heritage Precinct. In assessment of applications for development approval, Council must take into consideration the provisions of the Local Planning Policy – Heritage Precincts and Places. Refer to section (f) of this report for assessment.

It is proposed to display advertisements in conjunction with the dental surgery – one window advertisement and one under awning advertisement. These types of advertisements are consistent with the Scheme and will be required to comply with the requirements of the Heritage Policy with regards to design. The proposed advertisements are also consistent with Council's draft Local Planning Policy for Advertisements.

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

There is no new town planning scheme or amendments applicable to the site.

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

There are no statements applicable to this proposal.

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

There are no policies applicable to this proposal.

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

There are no policies or strategies applicable to this proposal.

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

Local Planning Policy – Heritage Precincts and Places

The subject site is listed on the Municipal Inventory in Category 1B of the Central York Heritage Precinct.

The change of use does not propose any significant or structural changes to the external fabric of the building. Minor changes may be required to comply with the requirements for disabled access. Additionally it is proposed to display advertising on the window fronting Avon Terrace and hang an under awning sign. Materials, lettering and colours will need to comply with the provisions of the Policy.

The proposed change of use will not detrimentally impact on the character or appearance of the site or precinct.

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

The land is not reserved under the Scheme.

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

The site is included on the Heritage List under clause 5.1.2 of the Scheme. Refer to section (f) of this report for assessment.

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

The proposed use of the site for a dental surgery is consistent with the zone objectives and compatible with the other uses in the town centre, such as shops, cafes, post office, banks and the like.

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

There are no social issues that will impact the amenity of the locality associated with this proposed.

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

The Central York Heritage Precinct is a place of high cultural significance to York and the state of Western Australia, particularly from a heritage point of view. The change of use will not impact of this cultural significance.

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

No environmental impacts associated with this proposal.

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

There are no natural constraints associated with this proposal.

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

The proposal will not impact on the amenity of the locality.

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

The proposal, including the advertising, will not impact on adjoining land.

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

Access and egress from the site exist from Avon Terrace and through the Settler's complex. Minor changes may be required to meet disabled access requirements. Refer to section (a) of this report for assessment of car parking requirements.

- 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 and connecting roads are considered to have sufficient capacity to cater for the additional traffic generated as a result of this proposal, which may be minimal when compared to the previous uses.

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

Public transport services are not specifically required for this proposal. However, existing public bus services provide access to the town centre.

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

Existing utility services are available and adequate for the proposal. Minor changes may be required to cater for the needs of the dental surgery.

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

Not applicable. Toilet facilities are available as part of the Settler's complex.

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

Access will be required in accordance with the Building Code of Australia and relevant Australian Standards. Recommend condition to be imposed and plans submitted with the Building Licence application to show compliance with the relevant standards.

- 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.*

Not applicable.

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

Not applicable.

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

The proposal will result in the establishment of a needed community service.

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

No submissions were received regarding the proposal at the time of writing this report.

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

There are no potential impacts identified with this proposal.

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

Consultation with other government authorities were not required as part of the assessment of this proposal.

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

The premises will need to comply with the Building Code of Australia, particularly with regards to fire safety and disabled access. Council's Senior Building Surveyor has assessed the proposal and has recommended, in consultation with the applicant, that disabled access be provided through the rear of the shop, that the complex toilets be utilised for staff and patients, and that a fire safety services plan be submitted with the Building Licence application.

The assessment shows that the proposal is consistent with the aims, objectives and provisions of the Scheme.

Policy Implications:

The proposal is consistent with the aims and objectives of the York Local Planning Strategy and Town Planning Scheme No. 2.

As indicated in the assessment of the report, Council may choose to vary the development standard in accordance with Clause 4.6 of the Scheme with regards to the off-street car parking requirements and the payment of a cash-in-lieu contribution for the two required car parking spaces.

Financial Implications:

The proposal will result in positive financial implications for economy of York.

Strategic Implications:

If Council decides to vary the development standard with regards to car parking, it should consider the implications if the decision is a precedent with regards to car parking numbers and cash-in-lieu contributions. It may be appropriate for a policy to be formulated to address this issue.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

Triple bottom Line Assessment:

Economic Implications:

If Council chooses to vary the car parking requirements, the funds received from the cash-in-lieu payment will not be available to contribute to additional and/or maintenance of car parking facilities in the town centre.

Social Implications:

The establishment of a dental surgery in the town centre to provide a need health service to the community of York will have positive impacts in the locality and surrounding districts.

Environmental Implications:

There are no environmental implications associated with this proposal.

Comment:

There are two main issues for consideration associated with this proposal, heritage and car parking.

The first issue is heritage and as assessed in this report, the proposal will not detrimentally impact on the site or town centre from a heritage point of view. The reuse of a heritage building is a positive planning and heritage outcome, particularly as the proposal does not require any substantial changes to the external facades of the building maintaining the appearance of the building and consistency of the shops.

Car parking is always an issue when retrofitting uses with higher car parking requirements into existing premises, and particularly heritage listed premises. Schedule 4 of the Scheme provides numerical requirements for car parking based on best practice when the Scheme was adopted in 1996. These figures have not been recently reviewed, however are generally consistent with other car parking requirements. It is generally accepted that car parking requirements increase not decrease. It is a Council decision to vary development standards stipulated in the Scheme, but careful consideration needs to be given to any potential precedent established as a result of the variation.

OFFICER RECOMMENDATION

“That Council:

APPROVE the planning application to change the use of Lot 889 (129 and 129A) Avon Terrace, York to consulting rooms (dental surgery), subject to the following conditions of approval:

- 1. The development must take place in accordance with the stamped approved plans.***
- 2. The development must be substantially commenced within two (2) years from the date of determination.***
- 3. The development, including associated signage, shall be carried out in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts.***
- 4. Disabled access shall be provided to the building in accordance with the requirements of the Building Code of Australia and Australian Standard AS 1428.***
- 5. The signage must be maintained in accordance with the provisions of Clause 5.3.6 of the York Town Planning Scheme No. 2.***
- 6. Any additional advertising signage not approved under this application is subject to a separate planning application and approval by Council.***
- 7. Prior to the issue of the Building Licence, a cash-in-lieu contribution for two (2) car parking spaces shall be paid to the Shire of York in accordance with the adopted Fees and Charges.***
- 8. Clinical and related wastes shall be effectively segregated from general and recyclable waste at the time and source of generation, bagged, packaged or containerised as appropriate. An approved waste removal contractor shall be employed for regular removal of contaminated waste.***

Advice Notes:

- Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period specified in the approval, after the date of 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 and Development Act 2005. An appeal must be lodged within 28 days of the date of 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.”***

**RESOLUTION
060911**

Moved: Cr Scott

Seconded: Cr Randell

“That Council:

APPROVE the planning application to change the use of Lot 889 (129 and 129A) Avon Terrace, York to consulting rooms (dental surgery) excluding the provision of any toilet facilities, subject to the following conditions of approval:

- 1. The development must take place in accordance with the stamped approved plans.***
- 2. The development must be substantially commenced within two (2) years from the date of determination.***
- 3. The development, including associated signage, shall be carried out in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts.***
- 4. Disabled access shall be provided to the building in accordance with the requirements of the Building Code of Australia.***
- 5. The signage must be maintained in accordance with the provisions of Clause 5.3.6 of the York Town Planning Scheme No. 2.***
- 6. Any additional advertising signage not approved under this application is subject to a separate planning application and approval by Council.***
- 7. Prior to the issue of the Building Licence, a cash-in-lieu contribution for two (2) car parking spaces shall be paid to the Shire of York in accordance with the adopted Fees and Charges.***
- 8. Clinical and related wastes shall be effectively segregated from general and recyclable waste at the time and source of generation, bagged, packaged or containerised as appropriate. An approved waste removal contractor shall be employed for regular removal of contaminated waste.***

Advice Notes:

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period specified in the approval, after the date of 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 and Development Act 2005. An appeal must be lodged within 28 days of the date of determination.

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

CARRIED: 5/0

The Officer Recommendation was varied to remove the toilet requirements as the plans provided were not compliant with disabled access requirements.

Item 9.1.2 - Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.3 Demolition of Cottage at Lot 12 (17) Redmile Road, York

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

FILE NO: RE1.60385, P686
COUNCIL DATE: 19 September 2011
REPORT DATE: 9 September 2011
LOCATION/ADDRESS: Lot 12 (17) Redmile Road, York
APPLICANT: M Rust
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Nil
APPENDICES:
1 – Locality Map
2 – Photographs
3 – Structural Engineer's Report
4 – Schedule of Submissions
DOCUMENTS TABLED: Nil

Summary:

Council has received a planning application requesting permission to demolish the dwelling, known as 'Rosemary Cottage' at Lot 12 (17) Redmile Road, York.

The property is situated in the Blandstown Heritage Precinct and is subject to the provisions of the Local Planning Policy – Heritage Precincts and Places. It is this Policy that requires the submission of a planning application for development, including demolition on properties that are heritage listed or situated in a heritage precinct.

The application was advertised in accordance with the provisions of the York Town Planning Scheme No. 2 and four (4) submissions were received either objecting to or raising concerns regarding the proposal.

It is recommended that the application be APPROVED/REFUSED, subject to the conditions of approval recommended at the end of this report.

Background:

Council at its Ordinary Meeting held on 18 October 2010 resolved to:

1. *Serve the following notices requiring improvements to the house and land situated on Lot 12 (17) Redmile Road owned By Mr Michael Rust.*
2. *Section 403, Local Government (Miscellaneous Provisions) Act 1960 declaring the building dangerous and requiring the building to be forthwith secured and repaired.*
3. *Health Act 1911, Shire of York Health Local Laws, Part 2 Sanitation & Part 3 Housing and General requiring maintenance of the dwelling house.*
4. *Local Government Act 1995 Schedule 3.1 ensuring that unsightly land is enclosed adequately by a fence and that overgrown vegetation, rubbish or disused material is removed from Lot 12 (17) Redmile Road that the Shire of York considers to be untidy."*

The Notices were served in the owner in accordance with the resolution of Council.

The owner appealed the time frame stipulated on the Notices to the State Administrative Tribunal and was successful in having the time frame varied in accordance with an approved schedule of works.

The property condition has been monitored by Council's Manager of Health and Building and Environmental Health Officers, and to date inspections have revealed that the works have not been completed in accordance with the approved Schedule of Works.

Unfortunately, the condition of the dwelling and the property has continued to deteriorate, which has resulted in the owner submitting a planning application to demolish the dwelling.

Consultation:

The application was advertised in accordance with Clause 7.3 of the York Town Planning Scheme No. 2, including adjoining landowner notification, a Notice on site, advertising in the Avon Valley Gazette and on Council's website.

Four (4) submissions were received either objecting to or raising concerns regarding the proposal. The content of the submissions have been considered during the assessment of this proposal. Refer to the Schedule of Submissions at Appendix 4.

Statutory Environment:

York Town Planning Scheme No. 2

The property is zoned Residential R40 under the provisions of the Scheme.

Clause 4.2 of the Scheme requires a planning application for properties located in a heritage precinct designated under the Scheme.

Council has adopted a Local Planning Policy – Heritage Precincts and Places under the provisions of Clauses 5.1 and 8.8 of the Scheme. The Policy has designated two heritage precincts with the Shire – Central York and Blandstown. The subject site is located within the Blandstown precinct and although an example of architecture and construction in the 1850s, the dwelling is not listed on the Municipal Heritage Inventory.

The Blandstown precinct comprises approximately 37 buildings constructed from local materials, two bridges, Bland's Brook, a section of Avon River and a street layout that dates from the end of the nineteenth century that has cultural significance to York.

Clause 2.4.3 of the Policy relates to demolition of heritage places or places in a heritage precinct. Demolition of heritage places is not likely to be supported, especially if the reasons are solely based on the economic viability or if the building has been neglected. However, if the main reason is structural failure, then evidence must be provided. Council commissioned Avon Civil Engineering to assess the structural stability of the building. The report dated 23 June 2010 stated "the building is in an extremely poor condition that renders it unfit for habitation". Therefore, the demolition of the building can be supported under the provisions of the Policy.

Policy Implications:

The proposed demolition is consistent with the provisions of the York Town Planning Scheme No. 2 and the Local Planning Policy – Heritage Precincts and Places.

Financial Implications:

There are no financial implications associated with the proposal for the Shire.

Strategic Implications:

The objective of the York Local Planning Strategy with regards to heritage is to “recognise the opportunity to protect and preserve the significant heritage values of York and promote new development that integrates and enhances these values”.

It is considered, that unfortunately, the opportunity to protect and preserve the heritage value of Rosemary Cottage has passed and that the state of the cottage has become beyond economic repair. It is therefore considered that the demolition of the cottage is not inconsistent with the objectives of the Strategy.

Voting Requirements:

Absolute Majority Required: **No**

Site Inspection:

Site Inspection Undertaken: **Yes**

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

The demolition of the cottage is a decision for the landowner and is possibly the best decision economically.

Social Implications:

The preservation of items of cultural significance is an important social objective. The demolition of this cottage is not expected to have wider social implications.

Environmental Implications:

There are no environmental implications associated with this proposal.

Comment:

The issues raised in the submissions have been considered in the assessment of this proposal, particularly in determining the best planning outcome for the site and for Blandstown. Unfortunately, as stated in the engineer’s report, the dwelling has become structural unstable and unfit for human habitation.

It must be acknowledged that with significant financial outlay, Rosemary Cottage could be saved. However, this is a decision for the landowner and not for Council, especially noting that the property is not heritage listed and was not recommended for listing when the heritage list was compiled by the Shire and heritage experts.

**RESOLUTION
070911**

Moved: Cr Lawrance

Seconded: Cr Randell

“That Council:

APPROVE the planning application for the demolition of Rosemary Cottage located at Lot 12 (17) Redmile Road, York, subject to the following conditions of consent:

- 1. The development must be substantially commenced within three (3) months from the date of determination.***
- 2. The development shall be carried out in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts. Photographs of the building are to be submitted to the Shire for records.***
- 3. All works must be carried out wholly within the property and must not obstruct or impact on pedestrian or vehicular safety.***
- 4. All demolition wastes must be disposed of at an approved waste management facility.***
- 5. Any asbestos must be removed, handled and disposed of in accordance with the requirements of Worksafe.***

Advice notes:

Note 1: If the development the subject of this approval is not substantially commenced within a period of 3 months, or such other period specified in the approval, after the date of 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 and Development Act 2005. An appeal must be lodged within 28 days of the date of determination.

Note 4: This approval is not a demolition licence. In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1960, an application for a demolition licence must be submitted to, and approval granted by the local government prior to the commencement of works.”

CARRIED: 5/0

Item 9.1.3 - Appendices

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.4 Proposed Scheme Amendment No. 43 – Omnibus Amendment

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.38
COUNCIL DATE:	19 September 2011
REPORT DATE:	8 September 2011
LOCATION/ADDRESS:	Various
APPLICANT:	Various & Shire of York
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	1 – Scheme Amendment Documentation 2 – Schedule of Submissions
DOCUMENTS TABLED:	Nil

Summary:

On 17 August 2009 Council at its Ordinary Meeting resolved to initiate Scheme Amendment No. 43, known as the 'Omnibus Amendment' to rezone a number of properties to more appropriate zonings.

The Scheme Amendment was advertising in accordance with the Town Planning Regulations and the submissions have been considered.

Council is now asked to resolve to amend the scheme and to request approval from the Western Australian Planning Commission and the Minister of Planning.

Background:

Council at its Ordinary Meeting held on 17 August 2009 to:

"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. 43 by:*

Rezoning Lots 1 to 5 Macartney Street and Lot 342 Grey Street from 'Residential R10/30' to 'Residential R10/40';

Rezoning Lot 50 Avon Terrace from 'Residential R10' to 'Residential R40';

Rezoning Lots 57 and 143 Osborne Road and Lot 54 Springs Road from 'Recreation and Open Space' to 'Rural Residential';

Rezoning Portion of Lot 2 Redmile Road from 'Recreation and Open Space' to 'Residential R5/40';

Rezoning Lot 551 Avon Terrace and Lot 552 Lowe Street from 'Public Purposes' to 'Town Centre';

Zoning Lots 500 and 501 Bayly Road 'Rural Residential' (closed road reserve);

Rezoning Lot 615 Brook Street from 'Public Purposes' to 'Special Use Zone'; and amending the Scheme Maps accordingly; and

Inserting the following 'Special Use Zone 6' into Schedule 3:

	No	Particulars of Land	Special Use	Conditions
SU6	6	Lot 615 Brook Street (Old York Hospital)	Function Centre, Exhibition Centre, Restaurant, Art Gallery, Residential, Short Term Accommodation	<ol style="list-style-type: none"> 1. All development (including change of use) shall be subject to application for approval by the Heritage Council of Western Australia and in accordance with an approved conservation plan. 2. All development (including change of use) shall be subject to application for the local government's planning consent and in accordance with the Shire of York Local Planning Policy Heritage Places and Precincts (as amended).

2. Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation;
3. Forward the Town Planning Scheme Amendment to the Environmental Protection Authority requesting consent to advertise; and
4. Upon receipt of consent to advertise from the Environmental Protection Authority, advertise the amendment for a period of 42 days in accordance with the Town Planning Regulations 1967."

The Environmental Protection Authority granted permission to advertise on 29 December 2010. However, advertising was not carried out as there was an amendment to the proposal requested for 68 Avon Terrace.

Following the request for inclusion of 68 Avon Terrace into the 'Omnibus' Scheme Amendment No. 43, Council considered a further report at its Ordinary Meeting held on 21 February 2011 and resolved as follows:

"That Council resolve to modify Amendment No 43 (Omnibus Amendment) by:

- 1 *inserting a new No 9 after No 8 on Page 2 which states the following:*
"9. Rezone Lot 9 (68) Avon Terrace, York from "Residential R40" to "Town Centre"."
- 2 *inserting appropriate background and overview information into the Report section of Amendment 43; and*
- 3 *inserting a new No 9 after No 8 on Page 35 which states the following:*
"9. Rezone Lot 9 (68) Avon Terrace, York from "Residential R40" to "Town Centre"."
- 4 *Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation;*
- 5 *Forward the Town Planning Scheme Amendment to the Environmental Protection Authority requesting consent to advertise; and*
- 6 *Upon receipt of consent to advertise from the Environmental Protection Authority, advertise the amendment for a period of 42 days in accordance with the Town Planning Regulations 1967."*

The Environmental Protection Authority granted advertising for the amended proposal on 7 July 2011.

Consultation:

Advertising commenced on 13 July 2011 and concluded on 30 August 2011. Affected landowners were notified by letter and advertisements were placed in the Avon Valley Gazette and on Council's website. The scheme documents were available for viewing at Council's Office.

Eight (8) submissions were received from government departments during the exhibition period. No submissions from the public were received.

The content of the submissions have been considered and where appropriate amendments have been made to the scheme documentation. Refer to the Schedule of Submissions in Appendix 2 of this report.

It should be noted that the scheme amendment documentation has been amended in light of the submission received from the Department of Regional Development and Lands to delete the proposed rezoning of Lots 500 and 501 Bayly Road. Since the initiation of the scheme amendment, these lots have been cancelled and the lands comprising these lots have been partly sold by amalgamation into adjoining lots and partly reserve as Lot 504 for an 'Emergency Access Lane', as Reserve 50319 under management of the Shire of York.

Statutory Environment:

Planning and Development Act 2005

Town Planning Regulations 1967

York Local Planning Strategy

York Town Planning Scheme No. 2

Policy Implications:

The proposed rezoning of the lots is consistent with the provisions of the York Local Planning Strategy.

Financial Implications:

The rezoning will enable better use and development of the properties.

Strategic Implications:

As indicated above, the proposed rezoning is consistent with the objectives and actions of the Planning Strategy.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Yes

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

The provision of certainty and equal opportunities for landowner in the sewered areas will stimulate additional commercial and residential development and contribute to the local economy.

Social Implications:

Additional commercial and residential development will bring more residents to the town centre and will also add to the vibrancy of the town.

Environmental Implications:

The provision of reticulated sewer service will significantly reduce the health risks associated with septic systems.

Some properties are affected by flood issues due to their proximity to the Avon River. This has been addressed in the scheme amendment documentation.

Comment:

This Scheme Amendment will give the properties in question the same development options that other properties that are either connected to reticulated sewer or are zoned appropriately.

The proposed zoning and coding of the properties are in accordance with the York Local Planning Strategy for the expansion of the town centre, residential areas and Mt Hardey rural-residential area and the property owners will benefit from certainty and development opportunities afforded from the new zoning and coding.

The issues raised in the submissions received from government agencies have been considered, and where appropriate, the scheme amendment documentation has been amended. For example, the proposed rezoning of the lots in Bayly Road has been removed from the scheme amendment proposal as a direct result of the submission received from the Department of Regional Development and Lands.

It is therefore recommended to resolve to amend the York Town Planning Scheme No. 2 by approving Scheme Amendment No. 43.

**RESOLUTION
080911**

Moved: Cr Boyle

Seconded: Cr Lawrance

“That Council, pursuant to Part 5 of the Planning and Development Act 2005, in respect to Amendment No. 43 to the York Town Planning Scheme No. 2, resolves to –

1. *Adopt, in accordance with Part 5 of the Planning and Development Act 2005, for final approval the proposed amendment with modification by:*

- *Rezoning Lots 1 to 5 Macartney Street and Lot 342 Grey Street from ‘Residential R10/30’ to ‘Residential R10/40’;***
- *Rezoning Lot 50 Avon Terrace from ‘Residential R10’ to ‘Residential R40’;***
- *Rezoning Lots 57 and 143 Osborne Road and Lot 54 Springs Road from ‘Recreation and Open Space’ to ‘Rural Residential’;***
- *Rezoning Portion of Lot 2 Redmile Road from ‘Recreation and Open Space’ to ‘Residential R5/40’;***
- *Rezoning Lot 551 Avon Terrace and Lot 552 Lowe Street from ‘Public Purposes’ to ‘Town Centre’;***
- *Rezoning Lot 615 Brook Street from ‘Public Purposes’ to ‘Special Use Zone’; and amending the Scheme Maps accordingly;***
- *Inserting the following ‘Special Use Zone 6’ into Schedule 3:***

	No	Particulars of Land	Special Use	Conditions
SU6	6	Lot 615 Brook Street (Old York Hospital)	Function Centre, Exhibition Centre, Restaurant, Art Gallery, Residential, Short Term Accommodation	1. All development (including change of use) shall be subject to application for approval by the Heritage Council of Western Australia and in accordance with an approved conservation plan. 2. All development (including change of use) shall be subject to application for the local government's planning consent and in accordance with the Shire of York Local Planning Policy Heritage Places and Precincts (as amended).

- *Rezone Lot 9 (68) Avon Terrace, York from ‘Residential R40’ to ‘Town centre’.***
- 2. *Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation; and***
- 3. *Forward Scheme Amendment No. 43 to the Western Australian Planning Commission and the Minister for Planning requesting final approval.”***

CARRIED: 5/0

Item 9.1.4 - Appendices

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 Balbally Pty Ltd – Lease – Reserve 34841

FILE NO: CCP.19
COUNCIL DATE: 19 September 2011
REPORT DATE: 22 August 2011
LOCATION/ADDRESS: Lot 588 South Street, York
APPLICANT: Balbally Pty Ltd (M York)
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: T Cochrane, DCEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Appendix A –Example Lease
DOCUMENTS TABLED: Reserve Detail and Government Gazettes
Draft Lease

Summary:

That Council supports the proposed new lease and alteration to the lease area and submits the proposed lease to the Department of Regional Development and Lands for final approval.

Background:

Council at its Ordinary Council meeting held on the 15th February 2010 resolved as follows:

“That Council:

- 1. Advise Mr M York of Balbally Pty Ltd that the renewal is granted in accordance with the existing lease arrangements – Schedule 1 commencing 1 July 2010 – 30th June 2015; and*
- 2. Advertise the proposed extension of the existing lease with Balbally Pty Ltd for Reserve 34841 (part lot 588, York) for a period of five years with the option of a further five years, effective from the 1 July 2015 and 1 July 2020, for the purposes of operating a kiosk, in accordance with the terms and conditions of the existing lease.*

Advice Note:

The Local Government Act stipulates that a minimum of 2 weeks is required to allow for submissions, however a 28 day submission period will be advertised for public comments to be received.”

The above was advertised in the Community Matters in the April 2010 edition.

Council wrote to the Department of Regional Development and Lands seeking advice on the 14th June 2010:

“... The area in question is not covered by the lease in place with Balbally Pty Ltd, please refer to attached maps.

In regards to the lease could you please provide comment on extending the lease to Balbally Pty Ltd with an additional two five year terms until 30th June 2025? An advert has been placed in the local paper and no comments were received.”

Council at its Ordinary Council meeting held on the 21st June 2010 resolved as follows:

“That Council advise Balbally Pty Ltd that it supports the lease extension for the land at Reserve 34841 (Part Lot 588) South Street subject to the following:

- 1. A new Deed being signed by both parties, stipulating that the extension is granted for two additional five year periods from the 1st July 2015 and the 1st July 2020, at the cost of the applicant;*
- 2. A review of the lease being undertaken July each calendar year;*
- 3. That the lease is not transferrable without the written approval of Council; and*
- 4. Any conditions put in place by the Department of Regional Development and Lands to be adhered to.”*

Council wrote to the Department of Regional Development and Lands on the 1st July 2010:

“The original intent of leasing the whole Reserve was to operate an archery park. Council’s records show that the Lessee has not been operating as an archery park for some time and a change to the area and the use changed with the new Deed Lease dated 26 March 2001, document attached for your information.

Council advertised the proposed extensions to the lease and no submissions were received.

Tourism is a significant part of the local economy and Yorky’s Coffee Carriage (Balbally Pty Ltd) provides a popular tourist facility that compliments the infrastructure developed at Avon Park by the Council. Council requests your reconsideration of an extension to the lease.

Could you please provide details on the current registration requirements and what constraints these pose for Council and other Lessees.”

On the 1 July 2010 Council wrote to Mr M York, as follows:

“Please be advised that Council considered the extension to the lease for Yorky’s Coffee Carriage at its Ordinary Council meeting on the 21st June 2010 where it was resolved as follows:

“That Council advise Balbally Pty Ltd that it supports the lease extension for the land at Reserve 34841 (Part Lot 588) South Street subject to the following:

- 1. A new Deed being signed by both parties, stipulating that the extension is granted for two additional five year periods from the 1st July 2015 and the 1st July 2020, at the cost of the applicant;*
- 2. A review of the lease being undertaken July each calendar year;*
- 3. That the lease is not transferrable without the written approval of Council; and*
- 4. Any conditions put in place by the Department of Regional Development and Lands to be adhered to.”*

In relation to Point 4 of the Resolution, Council is in receipt of advice from the Department of Regional Development and Lands regarding the area of land and that the Department does not favour extension of lease, given current registration requirements.

Please be advised that Council has requested further details regarding the registration requirements and will touch base further when information is at hand.”

The Department of Regional Development and Lands responded on the 19th July 2010 as follows:

“It would appear that the 2001 ‘Kiosk’ lease to Balbally Pty Ltd over portion of “Recreation” Reserve 34841 was not submitted for prior approval of the Minister for Lands as required under the Management Order (transitioned Vesting Order) condition. Ministerial approval under s18 of the Land Administration Act 1997 (LAA) can not be granted retrospectively. Accordingly, for this reason alone, the proposed ‘further term’ extension of this lease is not supported.

Indeed, it may be opportune to use the lease term expiry to address some oversights / weaknesses / deficiencies via the drafting of a fresh lease. It is worthwhile to consider that while s46 of the LAA allows usages ancillary or beneficial to the reservation purpose, commercial leases such the proposed ‘Kiosk’ lease can fall within this restriction when considering ‘Recreation’ reserves with careful consideration of definition, trading hours, area descriptions etc.

Other areas of review when drafting a new lease: -

- Could contain a suitable clause to remove uncertainty regarding the status of any earlier leases issued to Balbally Pty Ltd.*
- Should incorporate a sketch of the lease area with dimensions and tie in with reserve land boundary shown.*
- Should be in registrable form, that is, it should be in Transfer of Land Act 1893 approved format. Enclosed is an example of a lease cover sheet that may be used.*
- The lease should have a purpose reflective of the permitted activities. If the kiosk has an associated seating or open area, then this should be recognised in the lease purpose.*

The draft lease when prepared should be forwarded to this Office for endorsement of Ministerial consent (under delegated powers) prior to execution by parties in line with the Management Order condition.

Other matters on Reserve 34841

This Office is not supportive of adjoining land owners taking on responsibility for fire hazard abatement etc without formulation of a management plan for the reserve, and/or creation of a management committee under the auspices of the Shire. Such a committee may be formed under section 5.17(1) (c) of the Local Government Act 1995.

Council may consider isolating revenue collected from Management Order leasing arrangements, with this monies being applied on maintenance and management issues. There appears to be encroachment of buildings onto the reserve in this area, this should in the first instance be managed through Council’s regulations.”

The Council wrote to Mr York on the 23rd September 2010:

“Council has tried every avenue available to them regarding the lease, however when the 2001 Lease was completed it was not submitted to the Minister for final approval, which is a requirement of the Lands Administration Act 1997.

The following advice was received from the Department of Regional Development and Lands (the Department):

“It would appear that the 2001 ‘Kiosk’ lease to Balbally Pty Ltd over portion of “Recreation” Reserve 34841 was not submitted for prior approval of the Minister for Lands as required under the Management Order (transitioned Vesting Order) condition. Ministerial approval under s18 of the Land Administration Act 1997 (LAA) can not be granted retrospectively. Accordingly, for this reason alone, the proposed ‘further term’ extension of this lease is not supported.

Indeed, it may be opportune to use the lease term expiry to address some oversights/weaknesses /deficiencies via the drafting of a fresh lease. It is worthwhile to consider that while s46 of the LAA allows usages ancillary or beneficial to the reservation purpose, commercial leases such the proposed 'Kiosk' lease can fall within this restriction when considering 'Recreation' reserves with careful consideration of definition, trading hours, area descriptions etc.

Other areas of review when drafting a new lease: -

- Could contain a suitable clause to remove uncertainty regarding the status of any earlier leases issued to Balbally Pty Ltd.
- Should incorporate a sketch of the lease area with dimensions and tie in with reserve land boundary shown.
- Should be in registrable form, that is, it should be in Transfer of Land Act 1893 approved format. Enclosed is an example of a lease cover sheet that may be used.
- The lease should have a purpose reflective of the permitted activities. If the kiosk has an associated seating or open area, then this should be recognised in the lease purpose.

The draft lease when prepared should be forwarded to this Office for endorsement of Ministerial consent (under delegated powers) prior to execution by parties in line with the Management Order condition.

Other matters on Reserve 34841

This Office is not supportive of adjoining land owners taking on responsibility for fire hazard abatement etc without formulation of a management plan for the reserve, and/or creation of a management committee under the auspices of the Shire. Such a committee may be formed under section 5.17(1) (c) of the Local Government Act 1995.

Council may consider isolating revenue collected from Management Order leasing arrangements, with this monies being applied on maintenance and management issues. There appears to be encroachment of buildings onto the reserve in this area, this should in the first instance be managed through Council's regulations."

With the above in mind it is recommended that Council reconsider the lease keeping in mind the recommendations from the Department.

In relation to the comment under 'Other matters on Reserve 34841' there was a request from a couple of neighbouring properties to maintain part of the lease. The advice from the Department will be provided to those involved.

You mentioned that you wished to pursue this matter with the Minister for Lands and the details are as follows:

Hon Brendon Grylls MLA
Minister for Regional Development; Lands
9th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
Phone: 9213 7000"

The Council wrote to the Department of Regional Development and Lands on the 23rd September 2010:

"Thank you for your correspondence of the 19th July 2010 regarding the above, apologies for the delay in responding.

Council has advised the Lessee that all avenues to get the lease through were investigated, however when the 2001 Lease was completed it was not submitted to the Minister for final approval, which is a requirement of the Lands Administration Act 1997.

With the above in mind Council's advised the Lessee that it is recommended to reconsider the lease keeping in mind the areas to review that you proposed.

In relation to the comment under 'Other matters on Reserve 34841' this advice will be provided to the neighbouring properties.

Please note that Mr York requested the Minister for Lands details, which has been provided to him."

Council spoke with Mr York on the 26 October 2010 and Mr York advised that his solicitors were looking at the example lease document and would be in contact again at a later date to progress the lease.

McDonald Pynt Lawyers provided details regarding the lease on the 24th November 2010:

"We act for Balbally Pty Ltd.

We have been provided with correspondence between the Shire of York to our client together with copies of correspondence with the Department of Regional Development and Lands.

With regard to the correspondence with the Shire of York concerning our client's lease of the above property and its right to extend the term, I believe which is supported by the Shire our client would prefer to enter into a new lease agreement commencing on 1 January 2011 for a term of five (5) years together with two five year options on the same terms and conditions as is in the existing lease except that. Amendments are made to overcome the issues raised in the letter of 23 September. A new lease would

- (a) remove the uncertainty regarding earlier leases;*
- (b) we agree to the request for a sketch of the area;*
- (c) we agree that the new lease should be in registrable form and this is relatively simple to achieve; and*
- (d) in our opinion the use of the kiosk is a use allowed in numerous reserves of a similar nature as where our clients permitted use is used such as the following examples:
 - (i) the café at the Esplanade Park in Fremantle;*
 - (ii) Zephyr café in East Fremantle;*
 - (iii) Point Walter café, Point Walter Bicton;*
 - (iv) A café at Bibra Lake.**

and there a numerous other examples of where a kiosk is approved within a public reserve.

The above is without prejudice to our client's rights under its existing lease."

The Council wrote to the Department of Regional Development and Lands on the 9th December 2010:

"Further to Council's correspondence of the 23rd September 2010 please be advised that a response has been received, which is attached for your information, from MPL – Lawyers on behalf of Balbally Pty Ltd (dated 24 November 2010).

I have advised that it is unlikely that the matter will be resolved by the 1st January 2011.

Could you please provide a general overview of the time taken to deal with these matters and if the proposal submitted in the correspondence is appropriate to the Department?

Your advice is much appreciated.”

The above information was relayed to Mcdonald Pynt Lawyers on the 9th December 2010:

“Thank you for your correspondence of the 24th November 2010 regarding the lease of the above property.

Please note that while Council is supportive of an extended lease it is unlikely that this matter will be finalised by the 1st January 2011.

Contact will be made with the Department of Regional Development and Lands as a matter of priority to try and resolve the issues associated with the Lease.”

The Council received the following advice from the Department of Regional Development and Lands on the 4th January 2011:

“I refer to your letter of 09 December, 2010.

Please forward the lease document when ready for our perusal.

If the Council wishes a document to be dealt with expeditiously, please make that clear in the letter that accompanies the document, and this office will make every effort to oblige.”

Advice from RDL on the 17 February 2011:

“If the Shire wants to cancel the existing lease and create a new one, I don’t see why that can’t be done. The responsible Shire officers can decide on that without asking RDL. You need to instruct your legal advisers in terms of the Shire’s decision.”

Council received a draft lease from the Lawyers acting on behalf of Mr York on the 18th February 2011 and this document was forwarded on the same day to the Department of Regional Development and Lands for perusal to see if it was to their satisfaction. A further request to check document was sent on the 4th March 2011.

The following correspondence was received on the 10th March 2011 from the Department of Regional Development and Lands and was forwarded to the Lawyers acting on behalf of Mr M York on the 10th March 2011:

“I refer to previous correspondence regarding the proposed lease to Balbally Pty Ltd over portion of the above-mentioned reserve.

The draft lease document has been examined by this office and the consent of the Minister, under delegated authority cannot be endorsed on the lease until the following corrections have been made:

In clause 8.1, in the first paragraph, the words “and the Minister for Lands” should be added following the words “Lessor”.

In Clause 10.1, the words “and the Minister for Lands” should be added following the word “Lessor” in the fourth line.

In Clause 10.2, the words “and the Minister for Lands” should be added following the word “Lessor” in last line.

In schedule 1, Item 7 should read “1 July 2010. If the lease commenced on the date of the Minister’s consent (which has not occurred yet) the lease would expire on a date well beyond the termination date in Item 10 of the schedule.

Further Comment on the Draft

As it is anticipated to evidence Ministerial consent (under s18 of LAA) on the lease document via usage of a stamp the Minister's Consent Statement appearing on page 20 of the draft maybe deleted in its entirety.

"Permitted Use" – the widely accepted definition of a 'Kiosk' is a small structure with one or more open sides, even with allowance for a small alfresco sitting area it is difficult to reconcile this 'permitted use' with the proposed Management Order lease area of 0.4512 hectares. To be meaningful (hence enforceable) consideration of the expansion of the 'permitted use' to include all activities permitted under the lease, reference to the valuation report could provide useful guidance in this regard.

It is usual to state how the Lessor comes to be in a position to enter into a lease of Crown land, in this case via the issue of a Management Order in Council's favour, see attached material. (tabled).

On the 5th May 2011 Council received correspondence from the Lawyers acting on behalf of Mr M York:

"... We are currently reviewing and updating the proposed lease for the Premises and in the course of advising our client, our client has expressed concern with regards to the size of the proposed leased premises.

Our client advises us that the proposed land to be leased is significantly larger than the area of the leased premises under the previous lease. Our client previously leased only a portion of Lot 588 (as described on the map attached to the lease, a copy of which is attached). However under the proposed lease our client is required to lease the entire Lot 588.

Under the provisions of the previous Lease (which the parties have agreed will substantially form the basis of the proposed Lease), our client is obliged to maintain the premises, including mowing and keeping the premises free of pests. As the proposed area of land to be lease by our client is much greater under the proposed lease, the obligation on him with regards to abiding by the maintenance provisions will be much higher.

As an example, our client advised us that as a result of a storm that passed through York in January there is a significant amount of clearing work that needs to be done to the premises and our client is unable to personally undertaken this work, nor does he have the means to pay others to do so.

Our client advises us that, in any event, the area proposed in the Lease is far greater than is necessary to run the coffee carriage.

Our client has also advised us that the Shire of York had previously discussed with him the possibility of the Shire constructing a carpark in the land immediately adjacent to the Coffee Carriage. Is this the Shire's intention?

If the shire does not intend to build a carpark our client seeks only to lease that area that he leased under the previous lease.

If the Shire does intend to construct a car park then our client then seeks to lease an area slightly larger than the previous lease in that our client intends to lease land adjacent to the coffee carriage to include the area where patrons of the coffee carriage park their vehicles.

Our client is willing to arrange for a surveyor to prepare a new detailed plan of the proposed lease area for inclusion in the lease."

On the 11th May 2011 Council emailed the Department of Regional Development and Lands regarding the proposed area:

“Could you please advise if Council is in a position to limit the area of the land for leasing purposes? If you are happy with this to occur – I will request the proponent to prepare a new detailed plan of the proposed lease area.”

A response was provided immediately advising that there is no problem in limiting the lease area if the parties agree.

Consultation:

RDA;
Lawyers;
Current Lessee;
Property Owners;
Staff; and
Councillors.

In accordance with the Local Government Act 1995 section 3.58 the proposal was advertised in the Community Matters in the April 2010 edition.

Statutory Environment:

3.58. Disposing of property

- (1) In this section —
dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;
property includes the whole or any part of the interest of a local government in property, but does not include money.
- (2) Except as stated in this section, a local government can only dispose of property to —
 - (a) the highest bidder at public auction; or
 - (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.
- (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —
 - (a) it gives local public notice of the proposed disposition —
 - (i) describing the property concerned; and
 - (ii) giving details of the proposed disposition; and
 - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;and
 - (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —
 - (a) the names of all other parties concerned; and
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition —
 - (i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or

- (ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.
- (5) This section does not apply to —
- (a) a disposition of an interest in land under the *Land Administration Act 1997* section 189 or 190; or
 - (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or
 - (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
 - (d) any other disposition that is excluded by regulations from the application of this section.

[Section 3.58 amended by No. 49 of 2004 s. 27; No. 17 of 2009 s. 10.]

Schedule 4 of the York TPS No. 2 requires that restaurants provide one space for every 4 seats that an eating area is designed to provide, or 25 spaces for every 100m² or eating area or part thereof.

Policy Implications:

Not applicable.

Financial Implications:

The lease currently returns Council an annual lease rental in accordance with the Fees and Charges, per annum and indexed to the Consumer Price Index. The original market appraisal for the property estimated the value to be between \$1,350.00 and \$1,650.00 per annum.

Balbally Pty Ltd is responsible for all outgoings associated with their occupation of Reserve 34841, including municipal rates and other government charges.

Strategic Implications:

Not applicable.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Tourism is a significant component of the local economy, with Yorky's Coffee Carriage providing a popular tourist facility that compliments the infrastructure developed at Avon Park by the Council.

Social Implications:

York's Coffee Carriage has proven to be a popular eating establishment, for both residents and visitors to York alike, and contributes to the social diversity of the town.

Environmental Implications:

Although located in close proximity to the Avon River, there would appear to be no environmental implications arising from Balbally Pty Ltd's use of this land parcel.

Comment:

The Officer's recommendation is to support the proposed lease subject to comments being incorporated into the lease document subject to correspondence by the Department for Regional Development and Lands.

Whilst Council's long term goal is to provide a carpark in this vicinity it is dependant on availability of funds and the proposed Lessor should arrange for a survey of the land and this should include a parking area for patrons of Yorkies Coffee Carriage.

The applicant should provide sufficient parking for their customers within the lease area, or alternatively they could pay the cash-in-lieu contribution per space in accordance with the adopted Fees and Charges that they want Council to provide outside their lease area.

It is considered appropriate to provide carparking in accordance with Schedule 4 of the Shire of York Town Planning Scheme No. 2, which ever is the greater that being area or number of seats.

OFFICER RECOMMENDATION

“That Council:

- 1. supports the creation of a new lease agreement subject to the recommendations from the Department for Regional Development and Lands being adhered to;***
- 2. supports a revised lease area subject to carparking being included in accordance with the Shire of York Town Planning Scheme No. 2 – Schedule 4 or alternatively a cash in lieu payment being made and surveying costs being at the expense of the applicant;***
- 3. consider the construction of a carpark outside the lease area and prepare costings for consideration during the mid year review.***

Advice Note:

- a. Recommendations from the Department for Regional Development and Lands:***

In clause 8.1, in the first paragraph, the words “and the Minister for Lands” should be added following the words “Lessor”.

In Clause 10.1, the words “and the Minister for Lands” should be added following the word “Lessor” in the fourth line.

In Clause 10.2, the words “and the Minister for Lands” should be added following the word “Lessor” in last line.

In schedule 1, Item 7 should read “1 July 2010. If the lease commenced on the date of the Minister’s consent (which has not occurred yet) the lease would expire on a date well beyond the termination date in Item 10 of the schedule.

- b. Further Comment on the Draft provided from the Department for Regional Development and Lands:***

“As it is anticipated to evidence Ministerial consent (under s18 of LAA) on the lease document via usage of a stamp the Minister’s Consent Statement appearing on page 20 of the draft maybe deleted in its entirety.

“Permitted Use” – the widely accepted definition of a ‘Kiosk’ is a small structure with one or more open sides, even with allowance for a small alfresco sitting area it is difficult to reconcile this ‘permitted use’ with the proposed Management Order lease area of 0.4512 hectares. To be meaningful (hence enforceable) consideration of the expansion of the ‘permitted use’ to include all activities permitted under the lease, reference to the valuation report could provide useful guidance in this regard.

It is usual to state how the Lessor comes to be in a position to enter into a lease of Crown land, in this case via the issue of a Management Order in Council’s favour, see attached material.” (tabled)

**RESOLUTION
090911**

Moved: Cr Scott

Seconded: Cr Boyle

“That Council:

- 1. *supports the creation of a new lease agreement subject to the recommendations from the Department for Regional Development and Lands being adhered to. The Applicant to arrange for a surveyor to prepare a new detailed plan of the proposed lease area for inclusion in the lease and meet the associated costs.***

Advice Note:

- a. *Recommendations from the Department for Regional Development and Lands:***

In clause 8.1, in the first paragraph, the words “and the Minister for Lands” should be added following the words “Lessor”.

In Clause 10.1, the words “and the Minister for Lands” should be added following the word “Lessor” in the fourth line.

In Clause 10.2, the words “and the Minister for Lands” should be added following the word “Lessor” in last line.

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- b. *Further Comment on the Draft provided from the Department for Regional Development and Lands:***

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It is usual to state how the Lessor comes to be in a position to enter into a lease of Crown land, in this case via the issue of a Management Order in Council’s favour, see attached material.” (tabled)

CARRIED: 5/0

The Officer Recommendation for Condition 1 was varied to ensure the lease area was properly identified and Conditions 2 and 3 were deleted as not being required for the land use.

Item 9.2.1 - Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.2 Delegations

FILE NO:	OR.CMA.1
COUNCIL DATE:	19 September 2011
REPORT DATE:	5 September 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	T Cochrane, CEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Delegations – September 2011
DOCUMENTS TABLED:	Nil

Summary:

Following a review of Council's existing Delegation Manual it is proposed that the current Manual be updated and additional delegations be included, as per Appendix A.

Background:

The existing delegation manual was reviewed in accordance with the Local Government Act.

Consultation:

Staff.

Statutory Environment:

Clause 5.42 & 5.43 of the Local Government Act 1995:

"5.42. Delegation of Some Powers and Duties to CEO

- (1) *A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*

** Absolute majority required.*

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

5.43. Limits on Delegations to CEO's

A local government cannot delegate to a CEO any of the following powers or duties —

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) appointing an auditor;*
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;*
- (e) any of the local government's powers under section 5.98, 5.99 or 5.100;*
- (f) borrowing money on behalf of the local government;*
- (g) hearing or determining an objection of a kind referred to in section 9.5;*
- (h) any power or duty that requires the approval of the Minister or the Governor; or*
- (i) such other powers or duties as may be prescribed."*

The Delegation Manual also refers to the following clauses:

“5.41. Functions of CEO

The CEO's functions are to —

- (a) advise the Council in relation to the functions of a local government under this Act and other written laws;*
- (b) ensure that advice and information is available to the Council so that informed decisions can be made;*
- (c) cause Council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the Mayor or President on the local government's affairs and the performance of the local government's functions;*
- (f) speak on behalf of the local government if the Mayor or President agrees;*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

5.46. Register of, and records relevant to, delegations to CEO's and employees

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.*
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.*
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.*

9.5. Objection may be lodged

- (1) An affected person may object to a decision if the person has not lodged an appeal against the decision.*
- (2) The objection is made by preparing it in the prescribed form and lodging it with the local government in the prescribed manner within 28 days after the right of objection arose [i.e. within 28 days after the decision], or within such further time as the local government may allow.”*

The Shire of York Town Planning Scheme Clause 8.2 states as follows:

“8.2 Delegation of Functions

- 8.2.1** *The local government may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the CEO, within the meaning of those expressions under the Local Government Act 1995, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.*
- 8.2.2** *The CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 8.2.1.*
- 8.2.3** *The exercise of the power of delegation under clause 8.2.1 requires a decision of an absolute majority as if the power had been exercised under the Local Government Act 1995.*

8.2.4. Sections 5.45 and 5.46 of the Local Government Act 1995 and the regulations referred to in section 5.46 apply to a delegation made under this clause as if the delegation were a delegation under Division 4 of Part 5 of that Act.”

Policy Implications:

No policy implications arise from this report.

Financial Implications:

No financial implications arise from this report.

Strategic Implications:

No strategic implications arise from this report.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Delegation of components of planning process to the Chief Executive Officer can assist in streamlining the assessment of development applications and results in a speedier approval processes.

Social Implications:

These types of delegations will expedite the planning and other administrative processes, as there will be no need to refer operational decisions to Council. Delegations provide a higher level of customer service.

Environmental Implications:

Nil.

Comment:

The annual review of delegations is a requirement under Part 5 Division 4 of the Local Government Act. After consultation with staff some minor alterations were made to the existing Delegations Manual and new Delegations proposed.

OFFICER RECOMMENDATION

“That Council pursuant to Section 5.4 of the Local Government Act 1995 approve the updated Delegation Manual, as attached and labelled Appendix A.

Advice Note:

An Absolute Majority is required.”

**RESOLUTION
100911**

Moved: Cr Boyle

Seconded: Cr Randell

“That Council:

- 1. Pursuant to Section 5.4 of the Local Government Act 1995 approve the updated Delegation Manual, as attached and labelled Appendix A.***
- 2. Formal review of delegates to be conducted within three (3) months of the new Council being appointed.***

***Advice Note:
An Absolute Majority is required.”***

CARRIED: 5/0

Officer Recommendation was varied to include Condition 2 to provide the new Council an opportunity to review the delegations.

Item 9.2.2 - Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.3 Gazettal Notices - Various

FILE NO:	LE.ACT
COUNCIL DATE:	19 September 2011
REPORT DATE:	5 September 23011
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Shire of York
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	R Hooper, CEO
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Gazettal Notices (existing) Appendix A
DOCUMENTS TABLED:	Nil

Summary:

Shire staff have reviewed the gazettal and authorisations for staff to operate effectively under the listed legislation.

Gazettals under the following Acts require updating to allow the authorised persons to carry out the procedures delegated under each Act:

Caravan Parks & Camping Grounds Act 1995
Control of Vehicles (Off-Road Areas) Act 1978
Litter Act 1979
Local Government (Miscellaneous Provisions) Act 1960
Dog Act 1976
Bush Fires Act 1954

Background:

A review was carried out on the appointment of authorised persons to carry out the administration duties of the various Government Acts at Council meetings held in August 2009, a correction made in November 2009, amendments made December 2009.

Consultation:

Not Applicable

Statutory Environment:

Nil

Policy Implications:

Nil

Financial Implications:

There will be a cost associated with advertising the gazettal notices in the Government Gazette.

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:

Potential improved customer service through the extended delegations of Authorised Officers.

Environmental Implications:

Not Applicable

Comment:

It is recommended that the Officers recommendation be accepted.

RESOLUTION

110911

Moved: Cr Lawrance

Seconded: Cr Randell

“That Council:

- (1) *Delete the current names from the Appointment of Authorised Persons (as referred to in Attachment A:***

Caravan Parks & Camping Grounds Act 1995

- ***Patrick Ruettjes***
- ***Geoff Crossing***
- ***Simon Patterson***
- ***Brooke Newman***
- ***Leslie Oakley***

Control of Vehicles (Off-Road Areas) Act 1978

- ***Simon Patterson***
- ***Brooke Newman***
- ***Geoff Crossing***

Litter Act 1979

- ***Patrick Ruettjes***
- ***Geoff Crossing***
- ***Simon Patterson***
- ***Brooke Newman***
- ***Leslie Oakley***

Local Government (Miscellaneous Provisions) Act 1960

- ***Simon Patterson***
- ***Brooke Newman***
- ***Leslie Oakley***
- ***Geoff Crossing***

Dog Act 1976

- **Geoff Crossing**

Bush Fires Act 1954

- **John Dawson**
- **Robert Chester**
- **Denis Luelf**
- **Vin Green**

Food Act 2008

- **Nil**

(2) **Add the following names to the list of Authorised Persons under the following Acts:**

Caravan Parks & Camping Grounds Act 1995

- **Glen Jones**
- **Jodie Taylor**
- **Gordon Tester**
- **Tim Jurmann**
- **Jacky Jurmann**

Control of Vehicles (Off-Road Areas) Act 1978

- **Jacky Jurmann**
- **Glen Jones**
- **Jodie Taylor**

Litter Act 1979

- **Glen Jones**
- **Jacky Jurmann**
- **Jodie Taylor**
- **Gordon Tester**
- **Tim Jurmann**

Local Government (Miscellaneous Provisions) Act 1960

- **Jacky Jurmann**
- **Tim Jurmann**
- **Glen Jones**
- **Jodie Taylor**

Dog Act 1976

- **Jodie Taylor**
- **Glen Jones**

Bush Fires Act 1954

- ***Peter Keeble***
- ***Gary Sargeant***
- ***Peter Boyle***
- ***Colin Luef***
- ***Steve McDowell***
- ***Troy Granville***
- ***Alan Milson***
- ***Dave Wallace***

(3) Undertake all statutory procedures for the amendment of the Authorised Persons.”

CARRIED: 5/0

Item 9.2.3 - Appendices

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.4 Rate Debt Recovery – Supreme Court Appeal Rosmill Pty Ltd

FILE NO: FI.DRS; HE2; RA4; GR2
COUNCIL DATE: 19 September 2011
REPORT DATE: 5 September 2011
LOCATION/ADDRESS: Not Applicable
APPLICANT: Shire of York
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Notice of Appeal
DOCUMENTS TABLED: Nil

Summary:

CS Legal advise of an appeal to the Supreme Court of WA against the ruling by the Magistrate's Court that Western Australian Local Governments can legally impose and recover rates.

Background:

Rosmill Pty Ltd has raised objections about the power to impose rates under the Australian Constitution and now challenges the right of the Magistrate's Court to rule on rate recovery actions.

Similar challenges have been referred to the High Court and it has been determined that Local Governments formed under State legislation can impose and recover rates.

Consultation:

CS Legal
Council

Statutory Environment:

Local Government Act 1995 – Section:

6.43. Rates and service charges are a charge on land

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, rates and service charges imposed under this Act, together with the costs of proceedings, if any, for the recovery of the rates or service charges, are a charge on the land rated or in relation to which the service charge is imposed.

6.44. Liability for rates or service charges

- (1) The owner for the time being of land on which a rate or service charge has been imposed is liable to pay the rate or service charge to the local government.
- (2) If there are 2 or more owners of the land they are jointly and severally liable to pay the rate or service charge, as the case requires.

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.]

6.64. 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.

Policy Implications:

Not Applicable

Financial Implications:

The defence of this appeal may cost up to \$13,500 with some cost recovery if successful. If unsuccessful costs against the Shire could be in the order of \$15,000 - \$50,000.

It is unlikely that the appeal will be upheld due to existing legal precedence and the findings of the Magistrate's Court.

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required:

Yes

No provision for legal fees for rate debt recovery in the 2011/12 budget

Site Inspection:

Site Inspection Undertaken:

Not Applicable

Triple bottom Line Assessment:

Economic Implications:

If the appeal were to be upheld the operations of all Local Governments would be at risk placing a high impost on local and regional economics.

Social Implications:

If the appeal was successful communities would be severely affected as the financial base for service delivery to residents (rates) would no longer exist.

Environmental Implications:

Nil

Comment:

As the appeal had to be responded to on or before the 12th September, 2011 a cost agreement with CS Legal was entered into to provide for legal representation.

The appeal repeats the challenges to the ability of Local Government to function despite the position/contention being ruled on by various Courts as not having substance and rulings being made in favour of Local Governments.

RESOLUTION

120911

Moved: Cr Scott

Seconded: Cr Boyle

“That Council:

Endorse the action of entering into a cost agreement with and engaging CS Legal to defend the Supreme Court appeal by Rosmill Pty Ltd and to recover all legal costs incurred to date by caveats or other legal action.”

CARRIED: 5/0

Item 9.2.4 - Appendices

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.5 Youth Report for September, 2011

FILE NO: CS.LCS.6
COUNCIL DATE: 16th September, 2011
REPORT DATE: 9th September, 2011
LOCATION/ADDRESS: N/A
APPLICANT: Shire of York
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: Lyn Kay, YDO
DISCLOSURE OF INTEREST: Nil
APPENDICES: Nil
DOCUMENTS TABLED: Nil

Summary:

The following is a summary of the activities undertaken by the Youth Development Officer since the last report submitted in June 2011.

• **Active After School Programme:**

Lots of healthy fruit, celery, carrots consumed this Term as the Years 4, 5, 6 & 7 work on their Basketball skills and the Youth Development Officer would like to thank Judy Davies and Brodie Reid for their assistance.

• **Term 3 Karaoke/Disco:**

Youth Development Officer is organising a Disco on Friday 30th September at the Town Hall for:-

Kindy – Years 2	3.00pm - 4.30pm
Years 3, 4 & 5	4.30pm – 6.00pm
Years 6, 7 – Youth	6.00pm – 10.00pm

Entrance fee is \$2.50 and we have a sausage sizzle, lollies and drinks for sale.

All money raised is for the York Youth Centre.

• **School Holiday Programme:**

Youth Development Officer is obtaining prices for Lasercorps in the Swan Valley for a day excursion as well as having the Hang Out Centre open. This will be advertised in the Shire of York web page as well as the School Newsletter.

• **Youth Centre:**

The Youth Centre is nearly at lock up stage and with the colours of the Shire of York is looking fantastic.

Youth Development Officer is still waiting for a quote from Tiger Turf for the Basketball Court/volleyball/netball and other games to be situated in front of the Centre so we can follow up with obtaining financial assistant to build.

Youth Development Officer would appreciate any donations of Xbox, Wii, computers, table tennis tables, pool tables, air hockey etc.

• **Hang Out Centre:**

This is held every Thursday from 3pm-6pm and we average 15 Youth each week and also the local Police call in and are in contact with Youth Development Officer on developments around the Town with regards to Youth.

- **Banners in the Terrace:**

The Youth Development Officer has organised for the Shire to hang the Banner in Avon Terrace as of Monday 12th September and then will be on display for the School Assembly.

- **Salvation Army Breakfast Club:**

Youth Development Officer is working along side the Salvation Army on Friday mornings at the Pavilion from 7.30am-8.30am for children and parents to come and have a healthy **free** breakfast.

We are averaging 6 children a week and will be advertising it more to encourage more children to attend.

- **Youth Biz Summit:**

Youth Development Officer will be taking 2 Youth from York District High School and 5 from Beverley District High School, along with volunteer Tammy Sing, to Cunderdin Agricultural College for a Youth Summit with over 400 youth from the Wheatbelt attending.

There will be several speakers, Mentors, workshops with the Youth discussing different issues and opportunities and the Minister for Youth Robyn McSweeney will be opening the Summit.

- **Indigenous Scholarships:**

The Youth Development Officer is in the process of obtaining Scholarships for 2013 for 2 youth from York. The applications are available in January 2012 and the families have forms to fill out for Guildford Grammar School to Board in 2013.

- **IGA Newsletter:**

Youth Development Officer supplied photos and information for an article in the latest Newsletter with regards to the donation from IGA for the supply of printed T Shirts for the Youth Forum on the 7th April, 2011.

Background:

Youth Development Officer is building strong relationships with the appropriate partners in all fields of youth development, including education, police and health partnerships. Trust and integrity is being developed with York youth and their parents/guardians as quality programs are being introduced and activated.

Consultation:

Youth
School
Police
Health
Councillors
Council Staff
Community Members

Statutory Environment:

Nil

Policy Implications:

Not Applicable

Financial Implications:

Activities and initiatives are funded in SOY budget and through grants, fundraising activities and 'user pays' arrangements.

Strategic Implications:

Key Result Area 4 - Youth - Objectives:

1. *To facilitate an increase in the employment and education opportunities for the young people of the Shire.*
2. *To enhance recreational and cultural opportunities for young people.*
3. *To involve young people in decision-making and in taking a responsible role in our community.*
4. *To develop strategic alliances with other organisations working with young people.*

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Nil

Social Implications:

A strong focus on Youth activities will support community cohesion and interaction through the recognition and valuing of this section of the community.

Environmental Implications:

Not applicable

Comment:

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

RESOLUTION

130911

Moved: Cr Randell

Seconded: Cr Scott

“That Council:

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

CARRIED: 5/0

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.6 Contract of Sale –
Lots 2, 3, 4, 5 6 Avon Terrace & Lot 13 Redmile Road, York

FILE NO: AV1.60050
COUNCIL DATE: 19 September, 2011
REPORT DATE: 12 September, 2011
LOCATION/ADDRESS: Avon Terrace & Redmile Road
APPLICANT: Avon Community Development Foundation Inc
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Cr Boyle
APPENDICES: Control of Sale
DOCUMENTS TABLED: Nil

Summary:

The Avon Community Development Foundation submits an offer to purchase the above land parcel for \$500,000 plus GST subject to a range of conditions relating to development approvals and time frames and registration as a contaminated site.

The site is proposed to be developed for a range of workers residential units and meet regional demand.

Background:

The land generally comprises the previous York Power Station site in the Blandstown Precinct. The land, except for Lot 6, is zoned for development at R40 density.

Consultation:

Avon Community Development Foundation
Department of Regional Development Lands
Wheatbelt Development Commission

Statutory Environment:

Local Government Act 1995 – Section 3.58

3.58. Disposing of property

- (1) In this section —
dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;
property includes the whole or any part of the interest of a local government in property, but does not include money.
- (2) Except as stated in this section, a local government can only dispose of property to —
 - (a) the highest bidder at public auction; or
 - (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.
- (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —
 - (a) it gives local public notice of the proposed disposition —
 - (i) describing the property concerned;
 - (ii) giving details of the proposed disposition; and

- (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;
- and
- (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —
- (a) the names of all other parties concerned;
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.
- (5) This section does not apply to —
- (a) a disposition of land under section 29 or 29B of the *Public Works Act 1902*;
 - (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59;
 - (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
 - (d) any other disposition that is excluded by regulations from the application of this section.

[Section 3.58 amended by No. 49 of 2004 s. 27.]

Policy Implications:

Not Applicable

Financial Implications:

Funding from the proposed sale is included in the 2011/12 budget with part of the funds allocated to the Forrest Oval redevelopment and the balance to be placed in a cash backed Infrastructure Reserve Fund.

Strategic Implications:

Not Applicable

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Ongoing over the past four (4) years

Triple bottom Line Assessment:

Economic Implications:

Workers housing is a much needed service locally and regionally and in particular for developments at Avon Industrial Park and the Northam Detention Centre.

Social Implications:

Development of this land will enhance the amenity of Blandstown and it will compliment the Balladong Estate development.

Environmental Implications:

Proximity to Bland Brook and the surrounding built heritage will be considered in the development application process.

Comment:

A local government is required to comply with the provisions of Section 3.58 (3) & (4) of the Local Government Act if it intends to dispose of property other than by public auction or tender.

Development of this land for residential development is considered to be beneficial to the community as it provides accommodation in close proximity to the business centre and it develops a large scale area of vacant land zoned for high density development.

The proposed purchase conditions would result in a \$5,000 deposit being paid on acceptance of the offer with the balance being payable when planning, building and funding conditions are met which will result in the final payment potentially being deferred to 2012/13 impacting on the 2011/12 budget. The purchase offer is also contingent on a stipulated 18 residential units however no structure plan has been provided as to the site layout and this number may not be achievable.

The offer is also contingent on planning and building approvals being issued by the Shire of York by the 30th June, 2012 and the acceptance of any conditions imposed without any commitment by the purchaser on the level of detail to be provided with any application.

Dates on the Schedule do not coincide as planning and building approvals are required three (3) months after tenders are called and accepted.

Cr Boyle declared a Financial Interest to this item and left the room at 3.50pm

OFFICER RECOMMENDATION***“That Council:***

1. *In accordance with the provisions of Sections 3.58 (3) & (4) of the Local Government Act 1995 advertise the intent to dispose of Lots 2, 3, 4, 5, 6 Avon Terrace, and Lot 13 Redmile Road to the Avon Community Development Foundation (Inc) for the sum of \$500,000 plus GST and invite submissions on the proposal for a minimum 14 day period.*

2. *Request the purchase agreement to be amended as follows:*

The Schedule

• *part (d) insert the words ‘up to’ before the word eighteen in line 2*

• *part (e) insert the words ‘up to’ before the word eighteen in line 2 and the date 30 June, 2012 be amended to 30 April, 2012 to match the tender date in item (d)*

• *part (f) insert the words ‘up to’ before the word eighteen in line 2 and the date 30 June, 2012 be amended to 30 April, 2012 to match the tender date in item (d).”*

RESOLUTION

140911

Moved: Cr Lawrance

Seconded: Cr Scott

“That Council:

1. *In accordance with the provisions of Sections 3.58 (3) & (4) of the Local Government Act 1995 advertise the intent to dispose of Lots 2, 3, 4, 5, 6 Avon Terrace, and Lot 13 Redmile Road to the Avon Community Development Foundation (Inc) for the sum of \$500,000 plus GST and invite submissions on the proposal for a minimum 14 day period.*

2. *Request the purchase agreement to be amended as follows:*

The Schedule

- *part (d) insert the words ‘up to’ before the word eighteen in line 2.***
- *part (e) insert the words ‘up to’ before the word eighteen in line 2.***
- *part (f) insert the words ‘up to’ before the word eighteen in line 2.”***

CARRIED: 4/0

The Officer Recommendation was varied with the deletion of the words ...”and the date 30 June, 2012 be amended to 30 April, 2012 to match the tender date in item (d)” on the advice of the applicant.

Cr Boyle returned to the room at 3.53pm.

Item 9.2.6 – Appendices

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

FILE NO: CS.CEV.6
COUNCIL DATE: 19 September, 2011
REPORT DATE: 13 September, 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 26 July, 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:

Nil at this stage.

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 regional tourism organisation endeavouring to co-ordinate regional events and area promotion to benefit businesses and communities.

RESOLUTION

150911

Moved: Cr Scott

Seconded: Cr Randell

“That Council:

Note the Minutes of the July 2011 Avon Tourism meeting.”

CARRIED: 5/0

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 – August 2011

FILE NO:	FI.FRP
COUNCIL DATE:	19 September 2011
REPORT DATE:	12 September 2011
LOCATION/ADDRESS:	Not Applicable
APPLICANT:	Not Applicable
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Tabitha Bateman, Administration Officer
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Yes – Appendix A as detailed in Summary
DOCUMENTS TABLED:	Nil

Summary:

The Financial Report for the period ending 31 August 2011 is hereby presented for the consideration of the Council.

Appendix A includes the following:

- Monthly Statements for the period ended 31 August 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
- Monthly Statements for the period ended 31 July 2011

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 31 August 2011;

Sundry Creditors as per General Ledger	\$15,620.60
Sundry Debtors as per General Ledger	\$447,075.44
Unpaid rates and services current year (paid in advance inc. ESL)	\$3,783,211.50
Unpaid rates and services previous years (inc. ESL)	\$510,123.14

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

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

Social Implications:

Not applicable.

Environmental Implications:

Not applicable.

Comment:

Not applicable

RESOLUTION

160911

Moved: Cr Scott

Carried: Cr Boyle

“That Council:

Receive the Monthly Financial Report for August and ratify payments drawn from the Municipal and Trust accounts for the period ending 31 August 2011:

	<u>VOUCHER</u>	<u>AMOUNT</u>
MUNICIPAL FUND		
<i>Cheque Payments</i>	29591-29652	\$ 108,702.64
<i>Electronic Funds Payments</i>	8322-8418	\$ 1,543,671.64
<i>Direct Debits Payroll</i>		\$ 159,645.30
<i>Bank Fees</i>		\$ 539.71
<i>Corporate Cards</i>		\$ 1,062.77
<i>Shell Cards</i>		\$ 207.36
<i>TOTAL</i>		<u>\$1,813,829.42</u>
TRUST FUND		
<i>Cheque Payments</i>	3853-3860	\$ 2,674.37
<i>Direct Debits Licensing</i>		\$ 125,580.05
<i>TOTAL</i>		<u>\$ 128,254.42</u>
<i>TOTAL DISBURSEMENTS</i>		<u>\$1,942,083.84</u>

CARRIED: 5/0

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

9.5 Late Reports

9.5.1 State Administrative Tribunal Appeal – Laurelville, 18-20 Panmure Road, York

9. OFFICER'S REPORTS

9.5 LATE REPORTS

9.5.1 State Administrative Tribunal Appeal – Laurelville, 18-20 Panmure Road, York

FILE NO:	PA.1 9910
COUNCIL DATE:	19 September 2011
REPORT DATE:	15 September 2011
LOCATION/ADDRESS:	Lots 1 and 2 (18-20) Panmure Road, York
APPLICANT:	Wealth Balance Pty Ltd – S Paskett & P Cowan
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	J Jurmann, MPS
DISCLOSURE OF INTEREST:	Cr Boyle
APPENDICES:	Nil
DOCUMENTS TABLED:	Nil

Summary:

The State Administrative Tribunal matter lodged on 17 May 2011 appealing the conditions of the planning consent as resolved by Council on 11 May 2011 has been withdrawn by the applicant as an outcome of mediation.

This report provides Council a précis of the proceedings and significant costs to Council and the community to resolve the matter.

It is recommended that upon receipt of written confirmation from the State Administrative Tribunal that the matter has been withdrawn that Council issue an amended planning approval and that Council's Compliance Officer monitors the use and compliance with the conditions of approval.

Background:

Council at its Special Meeting on 11 April 2011 resolved to approve the planning application to hold functions at Laurelville subject to a number of conditions of consent.

On 17 May 2011 Council received notice that the applicant had lodged an application for review of the conditions of approval with the State Administrative Tribunal (SAT). The review is requesting deletion of conditions 1, 2, 5, 6, 7, 8, 10, 11 and 12, and to vary the wording of condition 4.

The applicant was advised that Council would agree to mediate the matter and a mediation was held on SAT on 13 June 2011. The applicants appeared in person, together with their representative. Council's Planning Manager appeared on behalf of the Shire with representation from McLeods Barristers and Solicitors.

The first attempt at mediation failed to reach a resolution satisfactory to both parties, the Tribunal made the following orders at the conclusion of the mediation session:

1. *By 24 June 2011, the Respondent (Council) is to provide to the Applicant a schedule of conditions of approval as it proposes they be amended, as discussed between the parties at the mediation on 13 June 2011, for the purpose of consideration and comment by the Applicant as part of the mediation process; and*
2. *The matter is adjourned to a further mediation at 2.15pm on 11 July 2011.*

On 9 August 2011, the 2nd Mediation of the State Administrative Tribunal was held in the matter of Wealth Balance Pty Ltd and the Shire of York before Ms Moore. Ian McLeod of McLeods Solicitors and Council's Manager of Planning Services, Jacky Jurmann appeared on Council's behalf and Ian McKellar and Phil Cowan appeared on behalf of the applicant.

During the mediation, the parties were able to reach agreement on the conditions that were being attested. The applicant accepted the time limited approval and relinquished the approval to conduct functions on Sundays. The respondent agreed to make condition 8 an advice note and extend the time for amplified music to 11.30 pm.

The mediation concluded with the following orders:

1. *Pursuant to Section 31 of the State Administrative Tribunal Act 2004 the respondent is invited to reconsider its decision at its meeting on 15 August 2011.*
2. *The mediation is adjourned until 10.00 am on Thursday, 1 September 2011.*

Council resolved at its Ordinary Meeting held on 15 August 2011 to reconsider its decision in accordance with the State Administrative Tribunal's order. The applicant was advised, through the Shire's legal representation, of Council's resolution.

On 31 August 2011, Council's legal representation received notice that the applicant was requesting that the mediation scheduled for 1 September 2011 be vacated for 30 days and be re-scheduled to enable further discussion regarding condition 7. (Condition 7 relates to parking requirements.) The State Administrative Tribunal approved the request for the mediation to be vacated, but for a shorter period. The mediation was re-scheduled for 15 September 2011.

The applicant requested for the Shire to consider and approve a car parking plan prior to agreeing to the re-considered consent and withdrawing the matter. A car parking plan was received on 14 September 2011 and was assessed by Council's Planning Manager. The car parking plan, including numbers and design, is considered satisfactory and the applicant was advised that the Shire approves the plan.

Notice was received from Council's legal representation that the matter had been withdrawn from the State Administrative Tribunal.

Consultation:

McLeods Barrister and Solicitors
Applicants

Statutory Environment:

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

Policy Implications:

The outcome of this matter and mediation has resulted in a better planning outcome with regards to approval and regulation of this use, particularly with regards to upholding of the time-limited consent.

Financial Implications:

The cost of this matter has not been finalised to date, however is estimated to have cost the Shire and the community approximately \$5,000 in legal fees. These costs do not include the time spent by Council's Planning Manager and other staff in attending and preparing for the mediation and associated reports.

The current budget has an allocation for legal expenses for planning issues. However, it should be noted that this issue has used approximately one-third of the planning legal budget for 2011/2012.

Strategic Implications:

The approval of the use of Laurelville for functions is consistent with the strategic direction of the Shire. Unregulated activity would have resulted in adverse impacts on the community, which conflicts with the strategic direction of the Shire.

Voting Requirements:
Absolute Majority Required: No

Site Inspection:
Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

The resolution of this matter allows for business development on the site and associated economic benefits for local businesses.

Social Implications:

To allow a residential premises to be used as a function centre unregulated would result in adverse social implications for the community. As indicated earlier, in this report the appeal has resulted in a good planning and social outcome for the community.

Environmental Implications:

There are no environmental implications associated with this issue.

Comment:

The employment of legal representation in this matter to date has been highly valuable, particularly taking into consideration the strong tactics employed by the Applicant's representative.

The outcome of the State Administrative Tribunal proceedings has been positive for the Shire and the community, particularly with regards to maintaining the time-limited consent, the hours of operation, traffic management and relinquishing of the approval to operate Sundays.

Cr Boyle declared an Interest Affecting Impartiality to this item and left the room at 3.55pm.

**RESOLUTION
170911**

Moved: Cr Lawrance

Seconded: Cr Scott

"That Council:

- 1. Following written notice of the applicant's request to withdraw the matter from the State Administrative Tribunal, provide written consent to the State Administrative Tribunal that the Shire consents to withdrawal of the matter (SAT DR 159/2011: Wealth Balance Pty Ltd);***
- 2. Issue an amended Notice of Determination of Application on Planning Consent in accordance with Council's resolution on 15 August 2011; and***
- 3. Request the Chief Executive Officer to instruct Council's Compliance Officer to ensure that all conditions of approval are being complied with and to initiate action for any non-compliances."***

CARRIED: 4/0

Cr Boyle returned to the room at 3.57pm.

9.6 Confidential Reports

10. NEXT MEETING

**RESOLUTION
180911**

Moved: Cr Scott

Seconded: Cr Randell

“That Council:

- 1. *hold a Special Meeting of the Council on October 17, 2011 at 10.00am in the Lesser Hall, York for the purpose of Swearing In of newly elected Councillors, Election of President and Deputy President, appointment of Audit Committee and appointment of Representatives to Community and other Organisations.***
- 2. *hold the next Ordinary Meeting of the Council on October 17, 2011 at 3.00pm in the Greenhills Hall, Greenhills.”***

CARRIED: 5/0

11. CLOSURE

Cr Hooper thanked everyone for their attendance and declared the meeting closed at 3.59pm.