



SHIRE OF YORK

## NOTICE OF MEETING

Dear Councillors

I respectfully advise that the ORDINARY COUNCIL MEETING will be held in Council Chambers, York Town Hall, York on Monday, 23 April 2018, commencing at 5.00pm.

MEETING AGENDA ATTACHED

Paul Martin

PAUL MARTIN  
CHIEF EXECUTIVE OFFICER  
Date: 13 April 2018

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<p><b>MISSION STATEMENT</b> <i>"Building on our history to create our future"</i></p>
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## **Local Government Act 1995 (as amended)**

### **Part 1 Introductory Matters**

#### **1.3. Content and intent**

- (1) This Act provides for a system of local government by —
  - (a) providing for the constitution of elected local governments in the State;
  - (b) describing the functions of local governments;
  - (c) providing for the conduct of elections and other polls; and
  - (d) providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.
- (2) This Act is intended to result in —
  - (a) better decision-making by local governments;
  - (b) greater community participation in the decisions and affairs of local governments;
  - (c) greater accountability of local governments to their communities; and
  - (d) more efficient and effective local government.
- (3) In carrying out its functions a local government is to use its best endeavours to meet the needs of the current and future generations through an integration of environmental protection, social advancement and economic prosperity.

### **Part 2 Constitution of Local Government**

#### **Division 2 Local Governments and Councils of Local Governments**

##### **2.7 The Role of Council**

- (1) The Council —
  - (a) directs and controls the Local Government's affairs; and
  - (b) is responsible for the performance of the Local Government's functions.
- (2) Without limiting subsection (1), the Council is to —
  - (a) oversee the allocation of the Local Government's finances and resources; and
  - (b) determine the Local Government's policies.

#### **Meetings generally open to the public**

- 5.1. (1) Subject to subsection (2), the following are to be open to members of the public —
  - (a) all council meetings; and
  - (b) all meetings of any committee to which a local government power or duty has been delegated.
- (2) If a meeting is being held by a council or by a committee referred to in subsection (1) (b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —
  - (a) a matter affecting an employee or employees;
  - (b) the personal affairs of any person;
  - (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;
  - (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
  - (e) a matter that if disclosed, would reveal —
    - (i) a trade secret;
    - (ii) information that has a commercial value to a person; or
    - (iii) information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government;

- (f) a matter that if disclosed, could be reasonably expected to —
  - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
  - (ii) endanger the security of the local government's property; or
  - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety;
- (g) information which is the subject of a direction given under section 23 (1a) of the *Parliamentary Commissioner Act 1971*; and
- (h) such other matters as may be prescribed.

(3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.



## Shire of York

## **G 2.6 PUBLIC QUESTION TIME**

## Policy Statement

1.0 "Public Question Time" will be limited to 15 minutes\*. The Council may exercise a discretion to extend the time by resolution if required. If there are questions remaining unasked at the expiration of the time allotted members of the public will be asked to submit their questions in writing to the Chief Executive Officer who will provide a written reply with the response placed in the Agenda of the next Ordinary Meeting of the Council.

\* A minimum of 15 minutes is provided by Regulation 6(1) of the Local Government (Administration) Regulations 1996 (S.5.24 of the Local Government Act 1995)

2.0 Questions may be asked at the Ordinary Council Meeting and any Committee meeting on any matter affecting the Council and the Shire's operations. Questions submitted to Special Meetings of the Council will be restricted to the subject matter of the meeting.

3.0 Each questioner will be limited to two (2) questions. Statements or long preamble are not permitted.

4.0 People wishing to ask questions will be encouraged to put their questions in writing or in a prescribed form and submit them to the Chief Executive Officer prior to 10 am on the day of the meeting. This allows for an informed response to be given at the meeting. Oral questions are permitted.

5.0 Priority will be given to questions about matters on the agenda for the meeting and which are submitted in accordance with 4.0 above.

6.0 Every person who wishes to ask a question must identify themselves and register with a Council Officer immediately prior to the meeting. Subject to 5.0 above questions will be taken in the order in which people register.

7.0 Questions containing offensive remarks, reference to the personal affairs or actions of Elected Members or staff, or which relate to confidential matters or legal action will not be accepted. Questions that the Presiding Member considers have been answered by earlier questions at the meeting or earlier meetings may not be accepted.

8.0 On receipt of a question the Presiding Member may answer the question or direct it to the Chief Executive Officer to answer. If the question is of a technical nature the Chief Executive Officer may direct the question to a senior technical officer present. If the question requires research it will be taken on notice.

9.0 There will be no debate on the answers to questions.

- 10.0 A summary of the question and the answer will be recorded in the minutes of the Council meeting at which the question was asked.
- 11.0 Public Question Time guidelines incorporating this policy are being prepared and will include information on the other methods of enquiry that are available to members of the public to obtain information from the Shire.

Adopted 21 October 2013

Amended 17 September 2015

Amended 23 November 2015

# **PUBLIC QUESTION TIME PROFORMA**

## **CONTINUED**

## Question(s)

**Please ensure that your question complies with the Public Question Time Policy Statement as published in the Council Agenda and stated as per the attached**

**Name:** \_\_\_\_\_

**Residential Address:** \_\_\_\_\_  
(Required if written response requested)

**Organization Name:** \_\_\_\_\_  
(If presenting on behalf of)

**Council**  
**Meeting Date:** \_\_\_\_\_

**Item No. Referred To:**  
**(If Applicable) \_\_\_\_\_**

*Write your question(s) as clearly and concisely as possible – lengthy questions may be paraphrased.*

**Note:** *To provide equal opportunity for all in attendance to ask questions, a limit of two (2) questions at a time from any one person is imposed.*

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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**OFFICE USE ONLY**

Presented Meeting Date: \_\_\_\_\_ Item No: \_\_\_\_\_

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## SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL WILL BE  
HELD ON MONDAY, 23 APRIL 2018, COMMENCING AT  
5.00PM IN COUNCIL CHAMBERS, YORK TOWN HALL, YORK

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

### 1 OPENING

#### 1.1 Declaration of Opening

#### 1.2 Disclaimer

The Shire President advised the following:

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

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

#### 1.3 Standing Orders

#### 1.4 Announcement of Visitors

#### 1.5 Declarations of Interest that Might Cause a Conflict

*Councillors/Staff are reminded of the requirements of s5.65 of the Local Government Act 1995, to disclose any interest during the meeting when the matter is discussed and also of the requirement to disclose an interest affecting impartiality under the Shire of York's Code of Conduct.*

Name	Item No & title	Nature of Interest (and extent, where appropriate)

## 1.6 Declarations of Financial Interests

*A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration*

*Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.*

Name	Item No & title	Nature of Interest (and extent, where appropriate)

## 1.7 Disclosure of Interest that May Affect Impartiality

*Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member/employee is also encouraged to disclose the nature of the interest. The member/employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member/employee declares that their impartiality will not be affected then they may participate in the decision making process.*

Name	Item No & Title

## 2 ATTENDANCE

- 2.1 Members
- 2.2 Staff
- 2.3 Apologies
- 2.4 Leave of Absence Previously Approved
- 2.5 Number of People in the Gallery at Commencement of the Meeting

## 3 QUESTIONS FROM PREVIOUS MEETINGS

- 3.1 Response to previous public questions taken on notice

### Special Council Meeting held 14 March 2018

#### Mr Denis Hill

The community has two elected candidates representing them on the JDAP, making up 40% of the panel. The Shire of York has 100% oversight of this development should it succeed. In light of this, it is not unreasonable to expect that the Shire of York and community, as part of the JDAP, will be adequately represented at the SAT should this matter end up there.

#### Question 1:

Is there a mechanism or avenue available to the JDAP and Shire of York to engage more expert representation than that available from the SSO?

**Response provided by the Chief Executive Officer:**

- (a) The only way that the Shire of York could become a party in the forthcoming SAT proceedings would be if the Shire could be joined as an intervener. That was attempted on the SITA application, and was unsuccessful.
- (b) In the case of the SITA application, the SAT gave leave to the Shire to make a submission pursuant to s.242 of the *Planning and Development Act*, which gives power to the SAT to receive or hear submissions in respect of an application from a person who is not a party if the SAT is of the opinion that that person (the Shire of York) has a sufficient interest in the matter.
- (c) It is likely that the SAT will allow the Shire to make submissions, and we would use McLeods to assist as occurred in the SITA case. I have asked McLeods to make such an application at the next Directions Hearing on 4 May.
- (d) So far as the engaging of more expert evidence is concerned, the only way the Shire can do that is if the JDAP, represented by the SSO, agree to incorporate such evidence in the defence case they provide.
- (e) McLeods have advised that they are not sure that the case before the SAT will get into expert evidence, as the issue for the SAT to decide is whether there should be an extension of the period for commencement of development in the SAT's 8 March 2016 determination. What the Shire can do is present legal arguments as to why the time should not be extended, similar to the written and verbal presentation made by McLeods at the JDAP for its 10 April 2018 meeting.

**Ordinary Council Meeting held 26 March 2018**

**Mr Mike Gill**

In 2017 the York Shire reconstructed a section of the Talbot Road due east of Stockdale. The reconstruction works were terminated just short of a hill crest on a sweeping bend. This is in direct contravention of the Austroad Guideline and all common sense.

**Question 2:**

Who made the decision to terminate the roadworks at this location?

Page 30 of the Tallis Report states “continuation of the current road management practices is expected to have a significant negative impact on the expected life of the road assets”.

**Response provided by the Chief Executive Officer:**

Two staff members who no longer work at the Shire made the decision to terminate the roadworks at this location.

**Question 3:**

My question is to Council. Do you think it appropriate that the Chief Executive Officer of the York Shire have a fundamental grasp of road construction and maintenance in light of the findings of the Tallis Report?

**Response provided by the Shire President:**

It is important that the CEO employees staff with expertise to construct and maintain Shire roads.

3.2 Response to unasked questions from the previous meeting  
*Nil*

#### 4 PUBLIC QUESTION TIME

Public Question Time is conducted in accordance with the Act and Regulations. In addition to this the Shire's Council Meetings Local Law 2016 states –

##### **6.7 Other procedures for question time for the public**

- (1) *A member of the public who wishes to ask a question during question time must identify themselves and register with a Council Officer immediately prior to the meeting.*
- (2) *A question may be taken on notice by the Council for later response.*
- (3) *When a question is taken on notice the CEO is to ensure that—*
  - (a) *a response is given to the member of the public in writing; and*
  - (b) *a summary of the response is included in the agenda of the next meeting of the Council.*
- (4) *Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—*
  - (a) *declare that he or she has an interest in the matter; and*
  - (b) *allow another person to respond to the question.*
- (5) *Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.*
- (6) *Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.*
- (7) *The Presiding Member may decide that a public question shall not be responded to where—*
  - (a) *the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;*
  - (b) *the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or*
  - (c) *the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.*
- (8) *A member of the public shall have 2 minutes to submit a question.*
- (9) *The Council, by resolution, may agree to extend public question time.*
- (10) *Where any questions remain unasked at the end of public question time they may be submitted to the CEO who will reply in writing and include the questions and answers in the agenda for the next ordinary Council meeting.*
- (11) *Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.*

4.1 Written Questions – Current Agenda

4.2 Public Question Time

## **5 APPLICATIONS FOR LEAVE OF ABSENCE**

## **6 PRESENTATIONS**

6.1 Petitions

6.2 Presentations

6.3 Deputations

6.4 Delegates reports

## **7 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

7.1 Minutes of the Ordinary Council Meeting held 26 March 2018

Confirmation

“That the minutes of the Ordinary Council Meeting held 26 March 2018 be confirmed as a correct record of proceedings.”

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

## **9 OFFICER’S REPORTS**



**SY037-04/18 – Application to Amend Condition 7 of Planning Consent:  
Restaurant/Exhibition Centre, Guest House and Residential Use: Lots 1 & 2  
(18 & 20) Panmure Road, York (Laurelville)**

**FILE REFERENCE:** PA1.9910  
**APPLICANT OR PROPONENT(S):** Wealth Balance Pty Ltd Atf The Cowin Paskett Family Trust  
**AUTHORS NAME & POSITION:** Carly Rundle, Senior Planner  
**RESPONSIBLE OFFICER:** Paul Martin, Chief Executive Officer  
**PREVIOUSLY BEFORE COUNCIL:** 9.1.2 Ordinary Council Meeting 27 July 2015  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A – Applicant's Submission

**Nature of Council's Role in the Matter:**

- Quasi-judicial

**Purpose of the Report:**

An application has been received to amend condition 7 of planning approval issued 13 August 2015 for a Reception/Exhibition Centre, Guest House and Residential Use at Lots 1 & 2 (18 & 20) Panmure Road, York (Laurelville).

Condition 7 required removal of the temporary ablutions block by no later than 31 December 2016. The applicant has applied to amend condition 7 to permit the temporary ablutions block being permitted for an additional 24 months from 21 February 2018.

Council is requested to make a determination on the application.

**Background:**

Planning Approval was issued 13 August 2015 for a Reception/Exhibition Centre, Guest House and Residential Use at Lots 1 & 2 (18 & 20) Panmure Road, York (Laurelville).

Condition 6 and 7 of the approval are as follows:

6. *The temporary ablutions block is to be screened to the satisfaction of the Shire of York.*
7. *The temporary ablutions block is to be removed from the property no later than 31 December 2016.*

The approved plans identified the temporary ablutions block at the front of the property, setback approximately 11m from Panmure Road, and 2.2m from the adjoining property.

The temporary ablutions block is placed on the site intermittently during months when weddings are booked (generally in Autumn and Spring) and removed in months when no functions are being held onsite.

It has been brought to the Shire's attention that the temporary ablutions block has continued to be placed on the property after 31 December 2016, which is not in compliance with condition 7 of the approval. An application to amend condition 7 has subsequently been submitted to permit the temporary ablutions block to remain on the property for a further 24 months from the 21 February 2018 (21 February 2020), which is the subject of this application.

### **Comments and details:**

The officers report presented to Council at the Ordinary Council Meeting 27 July 2015 to consider when making a determination on the application for the Reception/Exhibition Centre, Guest House and Residential Use noted that in regards to the temporary ablutions block, the site management plan identified this would be retained for use, and screening had been erected around the building to soften the appearance. Long term it was proposed to construct a permanent amenity building set back further on the property that will be designed sympathetically to the main dwelling. It was noted that:

- despite the screening the facility is still visually obvious from the street and has a presentation inconsistent with the visual quality of the locality;
- the use of the facility could not be avoided in the short-term, and it was required for upcoming events booked by the applicant; and
- it would be unreasonable to require the immediate construction of a permanent ablutions facility keeping with the visual quality of the property.
- That additional screening can remediate the visual impact of the facility in the short term, and a condition on any approval given can confirm the temporary nature of the facility and require their removal in an appropriate timeframe, following the 2015 spring and summer season.

On this basis, condition 6 and 7 formed part of the planning consent issued.

6. *The temporary ablutions block is to be screened to the satisfaction of the Shire of York.*
7. *The temporary ablutions block is to be removed from the property no later than 31 December 2016.*

It is noted that the temporary ablutions block has been placed on the property intermittently since that time. The applicant has now submitted an application to amend condition 7 to permit the temporary ablutions block on the property for a further 24 months from 21 February 2018 for the following reasons:

- It is the owner's intention to undertake a significant upgrade of Laurelville, to further tourist uses on the property;
- This development will require significant capital investment and consideration of the concept, which is anticipated to take at least two years from planning to execution;
- The landowner's investment for the above development, and to ensure this was financially viable was dependent on being able to construct an onsite restaurant. The ability to apply for development approval for a restaurant on the property has only recently been granted as part of Scheme Amendment No. 54, which was gazetted 23 January 2018;
- As such, further planning will commence towards development of the site with an overall development plan being prepared (Local Development Plan) which will provide for integrated toilets with restaurant facilities rather than a separate 'toilet block'.
- Screening which has been removed from around the toilet blocks when placed onsite will be reinstated, further plant screening has been undertaken on the western side, and further landscaping is planned on the southern side.

Whilst the overall time the temporary ablutions has been intermittently placed on the property has exceeded the time permitted by condition 7 (1 year and 4 months), and in total the temporary ablutions block is likely to have been used for over 2.5 years, it is considered that the applicant's justification regarding delays in construction of a permanent ablutions block is reasonable. Scheme Amendment No. 54 was submitted 2 November 2016, and was gazetted to have effect as part of 23 January 2018. The Scheme Amendment proposed modifications to

Special Use Zone No. 7 (SU7) to extend the special uses that are able to occur on the property, which included inserting the land use of Holiday Accommodation and Restaurant as discretionary land uses. Condition 3 of the SU7 zone applicable to the site, requires a Local Development Plan to be approved, setting out how the overall site is to be developed prior to further development on the property.

Visual impacts of the ablutions block referred in the officer's report are still relevant, although the temporary ablutions block is placed on the property intermittently and removed in months where its use is not required. Screening will be erected in accordance with condition 6 of the existing approval, and no complaints have been received regarding the ablutions from the date of approval.

Clause 77(1)(b) of Schedule 2 Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides the ability to amend or delete any condition to which an approval is subject.

As such, it is considered reasonable to support the applicant's request to amend condition 7 to extend the period of time the temporary ablutions block is permitted to remain on the property. However, a period of two years is considered excessive, given that landowners and attitudes of the community may change. A one-year timeframe from the end of the Autumn wedding season is considered reasonable to allow for approval of a Local Development Plan and a development application to be submitted and approved to plan for permanent ablutions facilities. Condition 7 would then read:

*"7. The temporary ablutions block is to be removed from the property no later than 1 June 2019"*

The applicant would be able to apply for a further extension following expiry of this period if required, and consideration to progress made with regards to the provision of alternate ablutions facilities will be given.

Given the request for extension was substantial (considering the time already elapsed since the temporary ablutions was intended to be removed), the application was referred to landowners adjoining and immediately adjacent to the property. One submission was received in support of the application. At the time of application, the applicant confirmed the ablutions block had been removed from the property. As such the application is not considered 'retrospective'.

#### **Options:**

Should Council disagree with the officer's recommendation, the following options are available:

1. Refuse the application to modify condition 7 of planning approval and list reasons;
2. Approve the application to modify condition 7, with modification to the approved condition including the period requested by the applicant.

#### **Implications to consider:**

- **Consultative**

The application was referred to adjoining and immediately adjacent properties, allowing 14 days to provide a submission on the proposal. One submission was received in support of the application from a landowner of 15 Mount Street, York. Council should note that the submission received was not from a property which was referred the application for comment.

- **Strategic**

The proposal and officer's recommendation is considered consistent with the Shire of York's 2018-2028 Strategic Community Plan, which supports visitor based economic activity.

- **Policy related**

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

- **Financial**

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

- **Legal and Statutory**

The proposal has been assessed in accordance with the statutory framework set by the Scheme and Regulations.

- **Risk related**

A risk assessment of the proposal has been undertaken, and there were no medium to high risks identified with the proposal that warrant further discussion.

- **Workforce Implications**

There are no known workforce implications for the Shire as a result of the officer's recommendation.

**Voting Requirements:**

**Absolute Majority Required:**      **No**

**OFFICER RECOMMENDATION:**

***“That Council:***

1. ***Pursuant to the Shire of York Town Planning Scheme No. 2 and Schedule 2 clause 77 of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the application to modify condition 7 of the planning approval dated 13 August 2017 for a Reception/Exhibition Centre, Guest house and Residential use at Lots 1 & 2 (18 & 20) Panmure Road, York. Condition 7 shall now read as follows:***

***“7. The temporary ablutions block is to be removed from the property no later than 1 June 2019.”***

2. ***Notes that all other conditions, requirements and approved plans of planning approval dated 13 August 2015 remain unchanged and are not affected by this approval.”***

## **SY038-04/18 – Development Application P1138 – Oversized and Overheight Outbuilding at Lot 481 (18) Georgiana Street, York**

**FILE REFERENCE:** GE2.8050  
**APPLICANT OR PROPONENT(S):** Tim Burns  
**AUTHORS NAME & POSITION:** Carly Rundle, Senior Planner  
**RESPONSIBLE OFFICER:** Bret Howson, Acting Executive Manager  
Infrastructure & Development Services  
**PREVIOUSLY BEFORE COUNCIL:** Nil  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A – Site Plan  
B – Amended Development Plans

### **Nature of Council's Role in the Matter:**

- Quasi-judicial

### **Purpose of the Report:**

The purpose of this report is to request Council to make a determination on a development application for an oversized and overheight outbuilding at Lot 481 (Hse 18) Georgiana Street, York.

### **Background:**

Lot 481 (Hse 18) Georgiana Street, York is zoned 'Residential' with a density code of R10/40. The property is 2,023m<sup>2</sup> in area, contains a single dwelling, is surrounded by land similarly zoned to the north and west, abuts a railway reserve to the east, and crown land to the south identified in the zoning maps as a Reserve for Recreation and Open Space which has a depression that functions as a drainage channel.

A Site Plan is provided in **Appendix A**.

A development application has been received to construct an outbuilding with dimensions of 13m by 12m (156m<sup>2</sup>), wall height of 3.6m and 2.925m and a ridge height of 5.5m. 0.72m to 0.84m of fill was proposed underneath the outbuilding, representing a maximum height from natural ground level of 4.35m and 3.425m wall height and 6.35 ridge height. 1.2m wide square towers made of columns are also proposed to be erected at a height of approximately 6.5m, and 7.22m to 7.34m from natural ground level. The proposed outbuilding proposes variations to the height and size of outbuilding permitted on the property by Local Planning Policy No. 5 Outbuildings in Residential Zones and requires development approval.

The application was referred to adjoining landowners in proximity to the property. One submission was received objecting to the proposed outbuilding. One reason listed for the objection was based on the overall height of the outbuilding and towers which is further discussed below. The applicant subsequently submitted amended plans, which reduced the ridge height to 4.2m and towers to a height of 5.5m from finished floor level and a reduction of fill to no more than 300mm. The overall height from natural ground level will be 3.9m wall height, 4.5m ridge height and 5.8m high towers.

A copy of the amended development plans is provided in **Appendix B**.

In accordance with the Shire of York Register of Delegated Authority, an objection was received during the referral period and as such, the application is presented to Council to determine.

**Comments and details:**

The application is required to be assessed in accordance with the Shire of York's Local Planning Scheme and *Planning and Development (Local Planning Schemes) Regulations 2015* – Deemed Provisions.

The property is zoned 'Residential' with a density code of R10/40 by the Scheme. In accordance with clause 4.4 of the Scheme, the lower coding of R10 applies unless the provisions of clause 4.4 are met, which involves application of discretion by the local government. A coding of R10 applies to this development application.

An outbuilding is ancillary development to a single house and is permitted development which is exempt from planning consent, except where the development requires variation under the Scheme or Local Planning Policy. Local Planning Policy No. 5 – Outbuildings in Residential zones applies to the construction of outbuildings in the Rural Residential zone.

The outbuilding has been assessed against the policy as outlined in the table below. The policy permits a 5% variation of provisions listed below in the instance that neighbours have consented to the proposal. One objection was received from a landowner to the west of the property via Georgiana Street, on the basis that the height of the towers would be visible from this property over the dwelling. This is discussed further below, however as no objections were received from immediately adjoining landowners, the 5% variation permitted is included in the assessment below.

Provision	Requirement	Proposed	Comment
<b>7.1.1 General</b>			
a)	Are not attached to a dwelling	Outbuilding is not attached to dwelling.	Complies.
b)	Are non-habitable or used for commercial and industrial purposes	The applicant has applied for an outbuilding/studio.	Complies. The applicant has been notified that any use of the outbuilding for access to the public or use of the outbuilding for business purposes may require further prior approval.
c)	Are not within the primary setback area	Outbuilding is setback 56m from Georgiana Street, and located behind the dwelling.	Complies. The R-Codes specify that the primary street setback is 7.5m.
d)	Do not reduce the amount of open space required in the R-codes.	The lot is 2,020m <sup>2</sup> in area. The outbuilding (156m <sup>2</sup> ) and dwelling (~180m <sup>2</sup> ) has a cumulative area of 336m <sup>2</sup> representing 16.6% of the site for building area. Over 83% of the site is being retained as open space.	The R-codes deemed to comply provisions require a minimum of 60% open spaces is required on the property.  Following construction of the property approximately 83% of the property will be open space which complies.
e)	Comply with the siting and design requirements of the R-Codes for the dwelling, with the exception of the rear setback requirements.	The outbuilding is proposed to be setback 2m from the southern lot boundary, 5m from the northern lot boundary and over 20m to the rear lot boundary.	A minimum side and rear setback of 1.5m is required by the R-Codes.  The proposed outbuilding complies with setbacks.
<b>7.1.2 Floor Area</b>			
b) & (c)	Outbuildings on a	The proposed outbuilding	The outbuilding requests

	<p>Residential lot coded R10 and below that have a combined area not exceeding 100m<sup>2</sup> or 10% in aggregate of the site area, whichever is the lesser shall be deemed as meeting the performance criteria of clause 6.10.1 of the R-Codes.</p> <p>The 5% variation allows 105m<sup>2</sup>.</p>	<p>will have a combined area of 156m<sup>2</sup>.</p> <p>10% of the site area is 2,038m<sup>2</sup>. The policy permits a maximum area of 200m<sup>2</sup></p>	<p>a variation of 51m<sup>2</sup>.</p>
<b>7.1.3 Height</b>			
(b) & (c)	<p>Outbuildings on a residential lot coded R10 and below that has a maximum wall height of 3.5m, a ridge height of 4.2m; or..</p> <p>The 5% variation permits a wall height of 3.675m, and a ridge height of 4.41m.</p>	<p>The proposed outbuilding has a wall height of 2.9m, 3.6m, a ridge height of 4.2m, and towers of 5.5m. The finished floor level will be no more than 300mm from natural ground level.</p> <p>The height from natural ground level is walls of 3.2m, 3.9m, ridge of 4.5m and tower of 5.8m.</p>	<p>A variation of 0.225m for the wall height, 0.06m for the ridge height is proposed. The installation of towers is not specifically addressed within the outbuilding policy, although exceeds both the wall height and ridge height permitted.</p>
<b>7.1.4 Materials</b>			
b) & (c)	<p>(b) second-hand materials may only be used where the materials are in good condition and are sufficient to provide a consistent appearance to the building. Council's Building Surveyor may request a report from a structural engineer for use of second-hand building materials.</p> <p>(c) Materials of low reflectivity should be used to ensure that the structure does not adversely affect neighbours</p>	<p>Materials to be used are listed on the plans as:</p> <ul style="list-style-type: none"> <li>• Solar Panels on roof</li> <li>• Custom orb wall cladding</li> <li>• Corrugated suntuff wall cladding</li> <li>• Sliding steel framed door with clear glazed panels to top of door.</li> </ul> <p>The applicant has not specified colours or whether any second-hand materials will form part of the construction.</p>	<p>A condition of approval will be included requiring use of materials with low reflectivity, and prior approval to be issued by the Shire for use of any second-hand materials.</p>

The outbuilding requires a variation to the size of outbuilding permitted by the policy.

The purpose of the policy is to guide the development of outbuildings and provide a standard which is deemed acceptable as meeting the requirements of maintaining amenity of the Scheme and can proceed to building permit without planning consent. Outbuildings which do not comply with these standards can still be approved provided that they are consistent with the objectives of the policy, scheme and design principles of the R-Codes.

The relevant objectives of the Local Planning Policy No. 5 Outbuildings in Residential zones is as follows:

- a) *To provide flexibility for outbuilding size, construction and materials to meet the needs of local residents.*
- b) *To ensure that outbuildings are constructed and located in such a way as to minimise their impact on the amenity of the locality.*

Clause 9.8.6 of the Scheme also provides how local planning policies apply in decision making and provides that local government shall give due regard to the

*“A Policy shall not bind the local government in respect of any application for planning consent but the local government shall have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its decision.”*

A variation to the deemed to comply provisions of the R-Codes also requires an assessment against design principles (5.4.3 Outbuildings P3) which are listed as:

*“Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties”.*

Clause 67 of the Regulations also contains general matters for consideration, or which those relevant are mainly covered by the Scheme provisions above. Specifically provision m) and n) requires consideration of:

- “m) *the compatibility of the development 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 development”;* and
- “n) *the amenity of the locality including the following –*
  - (i) *Environmental impacts of the development;*
  - (ii) *The character of the locality;*
  - (iii) *Social impacts on the development.”*

The provisions of the Scheme, Regulations, R-Codes and Policy essentially require the variations to be assessed in terms of whether the outbuilding (and variation) would have a detrimental impact on visual amenity or character of locality from the streetscape or adjoining properties or detrimental impact on character of the area.

The proposed outbuilding (minus 300mm fill proposed) has a wall height of 3.6m and a ridge height of 4.2m complies with the height permitted by the policy (4.41m to the ridge and 3.675m to the walls). With the pad of 100mm and 200mm fill, the outbuilding from natural ground level slightly requires a variation to policy.

The amenity of the area consists of single dwellings and associated outbuildings. In assessment of the impact on amenity it is considered:

- Lot 481 slopes gradually downwards from Georgiana Street to the railway. The proposed outbuilding will be setback 56m from Georgiana Street, and is located in an a low area on the property. A total of 300mm fill/pad is likely to bring the finished floor of the outbuilding to match the outbuilding constructed on Lot 480 to the north. The outbuilding when viewed from adjoining properties to the north will have a finished appearance consistent with that permitted by the policy, and is not anticipated to have a detrimental impact on amenity;
- The Outbuilding consists of an enclosed area of 10m by 12m (120m<sup>2</sup>), and open lean-to of 36m<sup>2</sup>. The lean-to has a reduced wall height of 2.925 from finished floor level sloping

up to 3.6m. The increase in area is not anticipated to substantially increase the appearance of the bulk of the outbuilding from that permitted by the policy.

- Land immediately to the south of the property is crown land used for drainage purposes. The closest dwelling to the south is 40m from the proposed outbuilding location and has a ground level raised substantially higher than the proposed outbuilding. The outbuilding is substantially setback from Georgiana Street, and to the rear of the dwelling. The variation is not anticipated to have an adverse impact on amenity, and will have an appearance consistent with that permitted by the policy;
- The outbuilding abuts a railway reserve to the east, which is raised approximately 3m higher than the proposed outbuilding location. The outbuilding will be mostly screened from view by the railway to properties to the east.
- The square towers of 1.2m in width, and 5.5m from finished floor level will be located on each corner of the outbuilding. These will exceed the ridge height of the outbuilding at 4.2m and wall height of 3.6m. The applicant has provided that the towers are for aesthetic purposes and indicated that these may have structural function. Any structural reliance on the towers could be resolved at building permit stage and is not a consideration as part of the development application. The towers will increase the scale and perceived bulk of the outbuilding at the height proposed and have potential to impact amenity of adjoining landowners. A reduction in their height to align with the scale and appearance anticipated by the policy will be required, and it is considered that the towers should be reduced in height that the top point of the towers do not exceed the ridge height of 4.2m, and square 1.2m wide towers do not extend higher than 3.7m from finished floor level.

The application was referred to landowners in proximity to the property. One objection was received from Lot 290 Georgiana Street, located to the west of the property. The objection was on the following basis:

- Visual appearance from the street and my premise will be of four towers above the existing house, and towers appear to have no purpose.
- Query as to the standard of the existing house and whether this is habitable, and if this is to be demolished, it is my understanding that they should not be able to build a shed without a habitable residence on the property;
- Concerns that the studio could generate additional traffic and noise impact on adjoining properties.

A condition of approval will be required so that the towers will be reduced in height, so no point shall exceed 4.2m in line with the ridge height. This will be below the height of the dwelling on the property which is approximately 5m.

There are no records indicating that the dwelling has been assessed as not meeting a habitable standard or any work orders issued on the property. The outbuildings policy does require an outbuilding to be ancillary to a dwelling, and at the current time the proposed development complies. There is no application submitted, or orders/condemnation on the property to indicate that the landowner intends to demolish the dwelling.

The approval is for an outbuilding, which the applicant has provided will be used for storage/studio. The applicant has been advised that use of the outbuilding for commercial purposes, such as home business, art gallery etc which could generate traffic, noise or the public visiting the premises would require further planning approval.

It is recommended to Council that the revised proposal is consistent with Town Planning Scheme No. 2 and the *Planning and Development (Local Planning Schemes) Regulations 2015*, and that pursuant to Clause 68 of the Regulations that planning consent be approved, subject to conditions.

**Implications to Consider:**

- **Consultative:**  
The outbuilding was referred to adjoining landowners for comment. A submission was received and discussed above.
- **Strategic Implications:**  
The proposal is considered consistent with the amenity of the area and is therefore consistent with the Shire of York's 2018-2028 Strategic Community Plan Theme 1: The Place to Live.
- **Policy Implication:**  
The recommendation does not result in any policy implications for the Shire.
- **Financial Implications:**  
There are no financial implications associated with this proposal for the Shire.
- **Legal and Statutory**  
The proposal has been assessed in accordance with the statutory framework set by the Scheme and Regulations.
- **Risk related**  
A risk assessment of the proposal has been undertaken, and there were no medium to high risks identified with the proposal that warrant further discussion.

**Voting Requirements:**

Absolute Majority Required:      No

**OFFICER RECOMMENDATION*****"That Council:***

***Approves the planning application for an overheight and oversized outbuilding at Lot 481 (Hse 18) Georgiana Street, York, subject to the following conditions:***

- 1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.***
- 2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the Shire and except as may be modified by the following conditions.***
- 3. The shed is not to be used for habitable purposes (Advice Note 4).***
- 4. The shed is not to be used for commercial and/or industrial purposes.***
- 5. Materials and colours used for external walls and roof of the outbuilding, shall be of low reflectivity.***
- 6. The use of any second-hand materials in the construction/external appearance of the outbuilding shall be in a good condition to ensure a consistent finish and requires prior approval of the Shire.***

- 7. The finished floor level of the outbuilding shall not be more than 300mm from natural ground level.**
- 8. The towers shown on the development plans shall not exceed a height of 4.2m from finished floor level of the outbuilding and the section of square tower where the width is 1.2m by 1.2m shall not exceed a height of 3.775m from finished floor level of the outbuilding.**
- 9. All stormwater is to be managed on site by the landowner to the satisfaction of the local government.**
- 10. The works undertaken to satisfy Condition(s) 2, 5, 6, 8 and 9 shall be subsequently maintained for the life of the development.”**

**ADVICE NOTES:**

- Note 1:** If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval will lapse and be of no further effect.
- Note 2:** Where an approval has so lapsed, no development is to be carried out without the further approval of the local government having first been sought and obtained.
- Note 3:** If an applicant is aggrieved by this determination there is a right of appeal under the Planning & Development Act 2005. An appeal must be lodged within 28 days of the determination.
- Note 4:** Note: Non-compliance against CONDITION 3 is an offence against the Public Health Act 1911.
- Note 5:** This approval is not a building permit. In accordance with the provisions of the Building Act 2011, an application for a building permit must be submitted to, and approval granted by the local government prior to any change of classification or prior to the commencement of any structural works within the development hereby permitted.
- Note 6:** The use of the building for a ‘home business’, ‘art gallery’, or commercial use may require further development approval from the Shire.



**SY039-04/18 – Development Application P1132 – Intensive Agriculture (Aqua-culture, Olives and Sweet Potatoes) and Associated Structures at Lot 102 (3152) Spencers Brook Road, Burges**

**FILE REFERENCE:** SP1.60618  
**APPLICANT OR PROPONENT(S):** Tanks Real Estate Pty Ltd  
**AUTHORS NAME & POSITION:** Carly Rundle, Senior Planner  
**RESPONSIBLE OFFICER:** Bret Howson, Acting Executive Manager Infrastructure & Development Services  
**PREVIOUSLY BEFORE COUNCIL:** Nil  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:**  
A – Site Plan  
B – Development Plans  
C – Schedule of Submissions  
D – Copy of Submissions

**Nature of Council's Role in the Matter:**

- Quasi-judicial

**Purpose of the Report:**

The purpose of this report is to request Council to make a determination on a development application received for Intensive Agriculture (aqua-culture, olives and sweet potatoes) and associated structures at Lot 102 (Hse 3152) Spencers Brook Road, Burges.

**Background:**

Lot 102 (Hse 3152) Spencers Brook Road, Burges is zoned 'General Agriculture', and is 164.62ha in area. The property is currently used for cropping and grazing, contains a number of outbuildings and is surrounded by land similarly zoned General Agriculture used for broadacre agriculture purposes. Access to the property is via Spencers Brook Road. A ridge is located in the centre of the property, which has a reasonable flat area at the top. A Site Plan which shows contours is provided in **Appendix A**.

A development application has been received to:

- Place six transportable units on the property. The applicant has provided these will be used for overnight stays as required to attend to crops or emergency situations (although will not be used as permanent dwellings) and will be used as staff amenities/office areas as required for the intensive agriculture uses to occur onsite.
- Place sixteen 40ft sea containers on the property, which will be arranged in a rectangular shape to be used for marron breeding;
- Grow and harvest sweet potatoes. These will be grown in 'POD's which the applicant has advised consists of 3m high structures of approximately 1m by 1m in width, which will occupy an area of approximately 5ha;
- Planting of Olive Trees. Planting will occur in 1000L containers, which have dimensions of 1.5m by 1.5m, and are approximately 1m in height. The application indicates that in 2018 approximately 6ha will be planted and will be expanded over the property in the future.

Planning approval for an Organic Olive Orchard and Marron Breeding was issued on this property 11 March 2015 under delegated authority, which was subject to conditions including:

- Development being substantially commenced within two (2) years from the date of approval;
- submission of copies of approval from the Department of Fisheries and any other relevant authority;
- development being setback a minimum of 15m from the lot boundary;
- a landscape plan being implemented which was intended to provide a vegetative buffer between the approved activities and adjoining properties; and
- stormwater and polluted drainage being managed on site to the satisfaction of the local government and Department of Water.

The approved development plans included marron breeding in 1000L tanks, of 1.2m by 1.2m width, and a volume of 3,456L. Twenty breeding tanks were outlined for the first stage of development and were to be located on the northern lot boundary. Olive trees were to be planted in food grade 220 litre drums, and proposed to use grey water from marron breeding, with excess water then returned to the marron breeding area in an area on the northern lot boundary.

This development approval was not implemented and has lapsed. The current development application proposes intensive agriculture at a larger scale, use of sea containers, placement of transportable units on the property, and 3m high poles for sweet potatoes which are amendments requiring a new development application to be submitted.

A copy of the development plans is provided in **Appendix B**. The application was referred to adjoining landowners for comment, and a submission was received which raised objections to aspects of the proposal. In accordance with the Shire of York Register of Delegated Authority, an objection was received during the referral period and as such the application is presented to Council to determine.

#### **Comments and details:**

The application is required to be assessed in accordance with the Shire of York's Local Planning Scheme and *Planning and Development (Local Planning Schemes) Regulations 2015 – Deemed Provisions*.

#### York Town Planning Scheme No. 2

The property is zoned 'General Agriculture' by the Shire of York Town Planning Schemes (Scheme). Marron breeding, olive trees and growing of sweet potatoes is consistent with the land use of 'agriculture – intensive', which is defined as:

*"means premises used for commercial production purposes, including outbuildings and earthworks, associated with any of the following:*

- (a) production of grapes, vegetables, flowers, exotic or native plants, or fruit and nuts;*
- (b) the establishment and operation of plant or fruit nurseries;*
- (c) the development of land for irrigated fodder production or irrigated pasture (including turf farms);*
- (d) aquaculture."*

'Agriculture-Intensive' is listed as a permitted use in the General Agriculture zone by the zoning table of the Scheme.

The transportable units are for the purposes of temporary overnight accommodation as required, and office/staff amenities buildings. It is considered that this use encompassing both accommodation, and amenities/office uses does not fall within an existing land use of the Scheme and is considered a 'Use Not Listed'. In accordance with Clause 3.2.4 of the Scheme, if a land use is not specifically mentioned in the zoning table, and cannot reasonably be determined as falling within the type or class of activity of any other use, the local government may:

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

The objectives of the General Agriculture zone are:

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

The transportable units are for the purposes of staff accommodation, amenities and offices use to facilitate and support use of the property for intensive agriculture land uses which is a permitted land use in the General Agriculture. The units are consistent with the objectives of the zone, provided they are utilised for this purpose. It is therefore considered reasonable that a condition of approval outline that the units are only to be used as incidental to intensive agriculture uses occurring on the property.

Clause 61 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (referred herein as the Regulations), exempts permitted land uses from requiring development approval if there is no works component, or development approval is not required for the works component. In this regard, the erection of the sea containers is development which requires approval in accordance with Local Planning Policy No. 2, the structures associated with the intensive agriculture (3m high poles) are not considered exempt and the transported units (use not listed) requires development approval. In this regard the development approval is for the works component, and the planting of olive trees is considered exempt from approval.

Other relevant provisions of the Scheme include clause 4.15.3 Site Requirements, which requires a minimum building setback of 15m from front, rear and side lot boundaries and clause 4.15.2 Development, which requires that any development shall have regard to the scenic values of the district and views from roads, and provides that the local government may refuse an application that if approved, would have a detrimental impact on the rural character and amenities.

The sea containers and transportable units, and sweet potato pods are set back well over 15m from the lot boundary. The olive tree pots may be within the 15m setback although it is considered that these would not fall within the definition of a 'building' and regardless are considered exempt from requiring development approval.

In terms of impact on scenic values, the development plans indicate that olive trees may be planted expansively over the property. Intensive Agriculture (inclusive of olive trees) is a permitted land use where their development could reasonably be anticipated to occur in a rural area and is compatible with amenity. Furthermore, their planting and pots is exempt from requiring development approval.

The location of transportable units, sea containers and sweet potato pods (3m high poles) are set back over 1km from Spencers Brook – York road. The sea containers are proposed to be located on the top of the ridge in a large flat area. The size of this flat area is substantial and provides area for the sea containers to be located so that they will have limited visibility to Spencers Brook–York Road, and whilst they may be visible to adjoining properties particularly to the south and west, this is not anticipated to have an unacceptable impact on amenity. The specific location of the sea containers has not been provided, and to ensure these are appropriately located to reduce impacts on amenity, further details to confirm the location of sea containers will be a condition of approval.

Sweet potato pods, consisting of structures of no more than 3m high and 1m by 1m in width are located on sloping areas of the ridge. The poles will be located on land visible to adjoining properties and Spencers Brook-York Road, although given the structures are for agricultural purposes, it is considered that visual appearance will not be inconsistent with the rural character and is over 1km to the nearest dwelling and road. A condition of approval will be included to require that the structures associated with the intensive agriculture uses be removed should the intensive agriculture use on the property cease.

The transportable units are proposed to be set back approximately 80m from the northern lot boundary and located on the side of the ridge in an elevated position from adjoining landowners. The transportable units are 12m by 3m, and approximately 2.8m in overall height. The units contain one bedroom, one bathroom and a kitchen/dining area. The external appearance is typical of a donga, with little articulation on the outside. It is considered that the position of six units on an elevated position which will have visibility to adjoining properties, has potential to detrimentally impact amenity. The location of the transportable units should be relocated to a location which is less visible to adjoining properties and reduces impacts on amenity, which could be achieved by locating the units on a flatter part of the property. A condition of approval will be included to this effect.

#### Clause 67 – Matters for Consideration (Regulations)

Local government is to give due regard to Clause 67 in the consideration of any development application. The following are those relevant to the application and require consideration:

g) any local planning policy for the Scheme area

Local Planning Policy No.2 – Sea Containers (LPP2) applies to the proposal. The objective of the policy is to regulate the use of sea containers to ensure that they do not detract from the amenity of the area. The policy exempts the use of up to two (2) 40ft sea containers on a property zoned 'General Agriculture' provided they are located to the rear of buildings and not prominently visible from the street, comply with setbacks of the scheme, are not stacked vertically and are not located over septic tanks, leach drains or utilities.

This application proposes to locate sixteen 40ft sea containers on the property which is a variation to the policy. Clause 9.8.6 of the Scheme provides that:

*"A Policy shall not bind the local government in respect of any application for planning consent but the local government shall have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its decision."*

As discussed above the sea containers are to be placed on the property in a location which will have minimal visibility from roads and adjoining dwellings. The applicant has provided that they will be placed together in a rectangular shape. Given the variation to the policy, it is considered reasonable that a condition of approval requires that the containers be in a good condition, and are to have uniform external colours so as to reduce any impact where they will be visible.

*m) the compatibility of the development with its setting including the relationship of the development 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 development.*

Refer discussion above regarding impacts on rural character and scenic values.

The land use of 'Agriculture-Intensive' is a permitted use in the General Agriculture zone which could occur without development approval (except for the works component) and is a compatible land use in this zone. The transportable units for staff accommodation/amenities and office is incidental to the agricultural uses proposed to occur on the property and is considered compatible with surrounding properties which are zoned 'General Agriculture' and used for broadacre agriculture consisting of cropping and grazing.

*n) the amenity of the locality including the following –*

- (i) environmental impacts of the development;*
- (ii) the character of the locality;*
- (iii) social impacts of the development*

There are no adverse environmental or social impacts on detrimental impacts on amenity anticipated as a result of the development.

*q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk;*

Habitable development on the property is located outside any area designated as 'bushfire prone'. The planting of olive trees is exempt from requiring development approval, and other structures are non-habitable and not located in a bushfire prone area requiring consideration of bushfire mitigation in accordance with State Planning Policy 3.7 Planning in Bushfire Prone Areas.

There are no other known risks associated with aspects of this proposal which require development approval.

*s) the adequacy of –*

- (i) the proposed means of access to and egress from the site; and*
- (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles*

Access to the site is via an existing crossover from Spencers Brook-York Road.

*t) the amount of traffic likely to be generated by the development particularly in relation to the capacity of the road system in the locality and the probably effect on traffic flow and safety.*

Agriculture - Intensive is a permitted land use which is exempt from approval, except the structures and works have required development approval. The amount of traffic generated by the proposal requiring development approval will be minimal, and Spencers Brook is of a sufficient standard to accommodate.

u) the availability and adequacy for the development of the following –

- (i) public transport services;
- (ii) public utility services;
- (iii) storage, management and collection of waste;
- (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
- (v) access by older people and people with disability.

Details of a potable water supply for the accommodation units will be conditioned on approval.

y) Any submissions received on the application;

The application was referred to adjoining landowners in vicinity of the application. Two submissions were received which objected to aspects of the proposal. Objections generally related to:

- Detrimental impact on visual amenity;
- Lack of detail and information to support application, detailed operation of the site and structures;
- Water availability, catchment, management, and location of intensive agriculture on sloping/rocky land and erosion;
- Use of easily degradable material for olive pots and sweet potato pods and potential for broken down material to pollute adjoining properties;
- Concern with lack of buffer between broadacre agriculture and intensive agriculture land uses and a list of chemicals used in broadacre operations which could impact intensive agriculture uses was provided;
- Bushfire Risk and concern regarding lack of fire prevention;
- No details of workers lodging building placement, roads, earthworks, waste or effluent management.
- Biosecurity concerns; and
- Whether the applicant has the correct licencing in place for aquaculture to occur.

Agriculture - Intensive is a permitted land use in the General Agriculture zone and is exempt from development approval, although associated structures and transportable units are not exempt as outlined above. In this regard, considerations of this application are limited to the aspects which require development approval which in this instance is the transportable units, sea containers and sweet potato pods for Intensive Agriculture.

As such, concerns which are not relevant to the structures, including compatibility of land uses from aspects such as spray drift, fire management, water supply for intensive agriculture or olive trees are not able to be addressed via this application. Although it is considered the erection of sweet potatoes pods of 3m in height, does increase the potential for sweet potatoes (intensive agriculture) to be affected by spray drift and in this instance the implementation of a vegetation buffer to reduce impacts between these structures and adjoining properties is appropriate.

Other concerns regarding run-off from structures subject of this approval are noted. The applicant has proposed that PODs will have gutters to collect rain water, which is directed into a system where it is collected and pumped back up the hill and sorted. A condition of approval will require the provision of a drainage plan to provide further information regarding run-off from the structures subject of this approval, and address maintenance of sweet potato pods to pollution. Visual amenity concerns are discussed above and sea containers will be located in a rectangular format on the property and will not be stacked. Additional information regarding site plans, details, and a copy of licences being provided will be conditioned on approval.

A detailed response to submissions is provided at **Appendix C** and a copy of submissions provided at **Appendix D**.

*(za) the comments or submissions received from any authority consulted under clause 66;*  
The application was referred to Department of Primary Industries and Regional Development (DPIRD) for comment. A submission was received (Appendix D) which provided no objections in principle although advised that the application lacked sufficient detail to make an informed and supportive response. The submission received outlined:

- That POD's/POTS will be located on the land surface and all water leaching from this system will be captured and recycled. It is understood rainfall from marron sheds will be captured and stored. If this is the case, then surface water runoff and soil erosion from the site is unlikely to be an issue;
- The operation being transient in nature, consists of mobile facilities/equipment. A cleaning and sterilising phase may occur between crops (for horticulture) or harvest (for marrons), which may require wash down facilities. DPIRD recommends that if onsite cleaning occurs, the proponent's plans should include information about the management of liquid waste.
- DPIRD requests that the proponent provides the Shire with details of the licence which authorises the aquaculture operation on the property and also more detail about the aquaculture operation, including a biosecurity plan, so it could be assessed by fisheries officers with DPIRD.
- DPIRD notes the proposed units include accommodation. Placement of accommodation in a rural landscape can be a point of conflict with surrounding cropping activities. Although the proponent's activities are expected to be organically certified, DPIRD recommends a vegetative buffer is included around the workers accommodation.
- In assessing the application, DPIRD suggests the Shire refer to:
  - State Planning Policy 2.5 Rural Planning (2016) which states that the introduction of sensitive or incompatible land uses such as accommodation in rural areas can compromise rural land uses. There is a need to ensure that existing rural land uses are protected and neighbouring landholders are able to exercise their operational needs effectively and appropriately; and
  - Department of Health's Guidelines for Separation of Agriculture and Residential land uses – Establishment of Buffer Areas which specify a minimum separation of 300m or an adequate vegetated buffer.

A drainage plan and requirement for provision of licence will be conditional on approval. Bio-security concerns are noted, although given that Agriculture-Intensive is a land use permitted, and this approval is limited to aspects such as the associated structures, a condition requiring a biosecurity plan would not reasonably relate to this approval.

The transportable units are for the purposes of temporary staff accommodation, amenities and office to assist in implementation of the Intensive Agriculture uses on the property. In this regard the units are not considered a 'sensitive land use' which requires a vegetative buffer or separation distance to be implemented.

#### **Options:**

Should Council disagree with the officer's recommendation, the following options are available:

1. Refuse the application and list reasons; or
2. Approve the application, with modified conditions.
3. Defer the application, and list reason for deferral.

**Implications to Consider:**

- **Consultative:**  
The application was referred to adjoining landowners for comment. One submission was received and is discussed above.
- **Strategic Implications:**  
The proposal is generally considered consistent with the Shire of York's 2018-2028 Strategic Community Plan.
- **Policy Implication:**  
There are no policy implications associated with the proposal for the Shire.
- **Financial Implications:**  
There are no financial implications associated with this proposal for the Shire.
- **Legal and Statutory**  
The proposal has been assessed in accordance with the statutory framework set by the Scheme and Regulations.
- **Risk related**  
A risk assessment of the proposal has been undertaken, and there were no medium to high risks identified with the proposal that warrant further discussion.
- **Workforce Implications**  
There are no known workforce implications for the Shire as a result of the officer's recommendation

**Voting Requirements:**

**Absolute Majority Required:** No

**OFFICER RECOMMENDATION**

**"That Council:**

**Approves the planning application for 'Intensive Agriculture and Associated Structures' at Lot 102 (Hse 3152) Spencers Brook-York Road, Burges, subject to the following conditions:**

1. **The development hereby approved shall be substantially commenced within two years of the date of this decision notice.**
2. **The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the Shire and except as may be modified by the following conditions.**
3. **The transportable units for staff accommodation, staff amenities and office use, shall at all times be operated as an incidental land use to the Intensive Agriculture uses onsite.**
4. **Should Intensive Agriculture uses on the property cease, the 'pods' associated with the sweet potatoes are to be uninstalled.**

5. *Sea containers to be placed on site shall be in a good condition and all containers placed onsite shall be of a uniform colour and type or be painted to provide a uniform appearance.*

6. *Materials/containers used for sweet potato pods shall be maintained so that pollution from deterioration of containers does not occur.*

7. *The sea containers shall not be stacked vertically.*

8. *The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the Shire's Planning department and have been approved in writing:*

8.1 *A scaled, detailed site plan showing:*

(i) *the siting and layout of the sea containers. Siting of the sea containers is to minimise visibility from Spencers Brook-York Road.*

(ii) *Siting of the transportable units to minimise visibility from Spencers Brook-York Road and adjoining properties.*

8.2 *A landscape buffer plan, which shall provide for a 20m wide vegetative strip between the sweet potato planting areas and broadacre cropping on adjoining properties.*

8.3 *Details of a potable water supply for transportable units;*

8.4 *A Drainage Management Plan. The plan shall detail how run-off from structures will be managed, and management of any liquid waste or polluted waste associated with wash-down facilities.*

9. *The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 2 and 5 have been implemented, and the following condition has been complied with:*

8.1 *The applicant/owner is to obtain and submit copies of approval(s) from the Department of Fisheries and any other relevant authority.*

10. *The works undertaken to satisfy Condition(s) 2, 5 and 6 shall be subsequently maintained for the life of the development.*

**ADVICE NOTES:**

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

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

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

Note 4: Note: Non-compliance against CONDITION 3 is an offence against the Public Health Act 1911.

Note 5: This approval is not a building permit. In accordance with the provisions of the Building

Act 2011, an application for a building permit must be submitted to, and approval granted by the local government prior to any change of classification or prior to the commencement of any structural works within the development hereby permitted.

**Note 6:** It is noted that farming activities occur on adjoining and nearby properties. All associated farming activities including practices such as controlled burning, crop spraying, seeding, harvesting etc will be carried out on these properties, which are in close proximity to your property. This may or may not impact the development hereby approved.

**Note 7:** The landscape plan is to include an adequate vegetated buffer between the approved sweet potato activities and broad acre agriculture on adjoining properties. It is to contain details of plantings of a variety of tree and shrub species with differing growth habitats to ensure no gaps in the lower canopy. The vegetation is not to cause any adverse impacts, rather, provide a buffer for any surrounding farming activities.

**Note 8:** An expansion of activities on the site may require prior planning approval.

## **SY040-04/18 – Consideration of Potential Disposal of Lot 13 Redmile Road and Lots 2,3,4,5 and 6 Avon Terrace**

<b>FILE REFERENCE:</b>	AVI 4420
<b>APPLICANT OR PROPONENT(S):</b>	Tracey Thornton, Heartlands Veterinary Hospital
<b>AUTHORS NAME &amp; POSITION:</b>	Paul Martin, Chief Executive Officer
<b>RESPONSIBLE OFFICER:</b>	Paul Martin, Chief Executive Officer
<b>PREVIOUSLY BEFORE COUNCIL:</b>	N/A
<b>DISCLOSURE OF INTEREST:</b>	Nil
<b>APPENDICES:</b>	A. Proposal from Heartlands Veterinary Hospital B. Site Map

### **Nature of Council's Role in the Matter:**

- Executive

### **Purpose of the Report:**

This report seeks Council direction in response to a proposal received from Heartlands Veterinary Hospital for a purpose built veterinary hospital on land which is currently owned by the Shire in York.

### **Background:**

Officers met with representatives from Heartlands Veterinary Hospital some time ago as they were investigating locations for development of a purpose built veterinary hospital in York.

Representatives from Heartland Veterinary Hospital indicated a number of sites had been explored however their preference was for the Shire owned lots at 13 Redmile Road and Lots 2,3,4,5 and 6 Avon Terrace York.

Officers explained that:

- The site is potentially contaminated. The site was previously used as a power station and panel beaters. The Shire has undertaken some investigation in the past however more investigation is required.
- If the Council agreed, any disposal of the land would need to be done in accordance with Section 3.58 of the *Local Government Act 1995* which may include auction, public tender or private treaty.
- Any disposal of the Shire land cannot fetter Council's statutory obligations for development in accordance with planning, building and health matters. These would need to be assessed separately to any issues associated with land development.

It was agreed that Heartlands Veterinary Hospital would provide a proposal outlining their plans which would be presented to Council for consideration. This proposal has since been received a copy of which is attached at Appendix A.

### **Comments and details:**

The Shire had previously investigated the development of this site for medium density residential accommodation however this didn't progress.

Whilst Officers see merit in this proposal from the perspective of retaining this expanded business in York, there are a number of matters which would need to be investigated, funded and decided upon by Council given the request is for Shire land. Prior to commencing this process, Officers are seeking direction from Council about whether the potential disposal of this land is something Council is open to considering and willing to allocate organisational resources to at this time.

If Council wanted to investigate this further, Officers would recommend preparing a report to Council which would outline the following:

Issue	Status	Investigation Required/ Next Steps
Extent of contamination on site.	The extent of any known contamination on the site and associated costs of remediation. The Shire has, in the past, commissioned GHD to prepare a Preliminary Site Investigation (February 2012) and a detailed Site Investigation (November 2012). These reports outline the extent of the contamination on the site. In March 2013, the Shire engaged GHD to undertake Remedial Options Analysis.	Officers would need to provide the information available to a consulting company to review what has been undertaken to date and scope and price any further works required to be undertaken. The cost of the Remedial Options Analysis was approximately \$14,000 in 2013 so Officers would expect a scope of work similar in costing to this amount. This would then be presented to Council for consideration.
Valuation of the land	The Shire does not have a current market value for this land.	If a disposal process was undertaken, a valuation would need to be obtained. The valuation of the land is highly dependent upon the extent of contamination and the costs to undertake remediation strategies. Therefore, the above issue would need to be addressed first. Typically, Officers would expect a valuation to cost approximately \$2,500 however this might be higher as this valuation would be expected to be more complex in nature.
Potential Land Disposal Process	If Council determined to dispose of this land it would need to be undertaken in accordance with the <i>Local Government Act 1995</i> . Council would need to determine if it was going to dispose of the land by public tender, auction or private treaty (ie with Heartlands Vets directly). Regardless of the disposal option determined by Council, although potentially not legally required, Officers would be recommending that a Business Plan be prepared similar to other land transaction processes recently undertaken to provide the community with all the information about the matter and an opportunity to make a submission prior to Council making a decision.	Officers recommend a report be presented to Council outlining the disposal options available and providing a recommendation for Council's consideration. Some legal advice may need to be obtained regarding this matter.

<p>Statutory approvals required.</p>	<p>Zoning: The land is currently zoned R40.</p> <p>Area: The overall site is made up of six lots with a total area of 4,988sqm.</p> <p>Current Use: Vacant Land</p> <p>Adjoining Land Uses: Residential to north and west, General Agriculture containing single dwellings to the east, river and residential to south. A number of commercial properties, zoned mixed business exist 30 to 45m north of the property.</p> <p>Other Information:</p> <ul style="list-style-type: none"> <li>• Affected by the Avon River Flood Fringe and Plain (blue lines);</li> <li>• Serviced by reticulated sewer and water;</li> <li>• Located within the Blandstown Heritage Precinct;</li> <li>• Located in Bushfire Prone Area (BAL may be required to support development)</li> </ul> <p>If the Council determined, following a process in accordance with the <i>Local Government Act 1995</i>, to dispose of the land the applicant would need to seek all relevant approvals like any other developer. The fact that the Shire owns the land cannot fetter Councils statutory obligations in regard to any development on the site.</p>	<p>It is proposed this is not something the Shire investigates at this time. These approvals are the responsibility of the proponent to investigate.</p>
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As can be seen from the above there are a number of matters that would need to be investigated and actioned to consider and progress this proposal if Council wished. Some of these actions will have a direct cost to the Shire which are currently unbudgeted and will need to be funded.

Officers consider the proposal has merit and is worthy of further investigation. Therefore, it is recommended that a detailed report including a proposed timeline and costings (based upon actual quotes) is presented to Council to consider progressing this proposal. In doing so however, Council needs to be mindful that it is likely to incur some costs to progress this proposal.

**Options:**

Council could determine not to investigate this proposal due to limited resources and other organisational priorities.

Officers would not be recommending any other options at this stage until further investigation was undertaken.

**Implications to consider:**

- **Consultative**

Officers have only consulted with Heartlands Veterinary Hospital at this stage. However, if Council requires further investigation Officers expect to consult with the Department of Local Government, McLeods Barristers & Solicitors and other consultants as required.

As outlined above, regardless of the disposal process selected, Officers would be recommending Council require a Business Plan be prepared and public comment sought prior to a final decision being made.

- **Strategic**

Consideration will need to be given as to whether the Shire wishes to retain or dispose of this parcel of land in accordance with Council's overall property portfolio objectives.

- **Policy related**

Nil

- **Financial**

If Council determines to undertake some investigation into this proposal, Officers expect Council would need to expend approximately \$20,000. This is currently unbudgeted. If Council determined to proceed these funds would need to be allocated.

At this stage it is unclear what is the value of the land. This would need to be investigated as per the above.

- **Legal and Statutory**

As outlined above, any disposal process would need to be in accordance with Section 3.58 of the *Local Government Act 1995*. Officers are proposing that if Council wanted to progress this proposal, a detailed report on the options be prepared for consideration.

Furthermore, the fact that the Shire owns the land cannot fetter Councils statutory obligations in regard to any development on the site.

- **Risk related**

The risks associated with this proposal would be further explored if Council sought to undertake any further investigation into the matter.

- **Workforce Implications**

A decision to investigate this proposal further would create a significant amount of work which will impact upon current workloads and timelines. This is not currently included in Councils Corporate Business Plan. Officers request that Council be mindful of this when considering the request.

**Voting Requirements:**

**Absolute Majority Required:**      **No**

**OFFICER RECOMMENDATION:**

***“That Council:***

- 1. Notes the proposal for a Purpose Built Animal Hospital on Shire owned land received from Heartlands Veterinary Hospital.***
- 2. Requests the Chief Executive Officer to prepare a detailed report for Council’s consideration addressing issues including but not limited to:***
  - the extent of contamination on the site and the works (and costs) required to determine likely costs to remediate the site.***
  - the options and process for disposing of the land in accordance with the Local Government Act 1995.***
  - the steps and costs to determine a valuation of the site.”***



## ***SY041-04/18 - St John Ambulance Temporary Use of Peace Park Carpark During Construction***

**FILE REFERENCE:** JO1.A12190.A12191  
**APPLICANT OR PROPONENT(S):** St John Ambulance - York  
**AUTHORS NAME & POSITION:** Paul Martin, Chief Executive Officer  
**RESPONSIBLE OFFICER:** Paul Martin, Chief Executive Officer  
**PREVIOUSLY BEFORE COUNCIL:** Nil  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A. Correspondence from St John Ambulance  
B. Map of area of potential lease

### **Nature of Council's Role in the Matter:**

- Executive

### **Purpose of the Report:**

This report seeks Council consideration of the use of part of the Peace Park Carpark by St John Ambulance during their rebuilding and construction program.

### **Background:**

A fire at the St John Ambulance subcentre building has resulted in the St John Ambulance undertaking a process to rebuild on the site.

Officers understand that St John Ambulance is now close to calling tenders for the redevelopment of the site.

As part of the redevelopment St John Ambulance has written to the Shire seeking use of half of the Peace Park carpark as a construction site office and lay down area during the construction period. The land in question is 12 (Lot 24) Joaquina Street York which is owned in freehold title by the Shire of York.

This correspondence is attached at Appendix A to this report. St John Ambulance has also requested, as part of this correspondence, temporary fencing. However, the fencing the Shire owns is used to assist with events.

### **Comments and details:**

In considering this request, Officers contacted the regular hirers of Peace Park providing an opportunity to lodge any objections or concerns about this request. No responses were received.

Officers have discussed the requirements of this request with St John Ambulance representatives and prepared a map of the area attached at Appendix B. The proposal design allows continued access and use of the carpark by some users and hirers of Peace Park whilst providing the space required for St John Ambulance for a site office and lay down area.

Officers are recommending that a lease be provided to St John Ambulance to use the area identified as part of the Peace Park Carpark for a period of 9 months at no charge as a contribution towards the redevelopment of this essential service in the community. St John Ambulance has confirmed that a 9-month lease should be sufficient. The commencement date of the lease would be negotiated with St John Ambulance as the lease is drafted.

Council normally charges community groups the legal fees associated with the preparation of any lease. Officers are recommending that on this occasion, the Shire be responsible for these legal costs and this is recognised as a contribution to the redevelopment because:

- St John Ambulance provides an essential service to the community.
- the lease is only for a relatively short period of time.

Officers understand that St John Ambulance is proposing to continue operating from the site during the redevelopment period. Typically, developments are required to contain their site office and laydown areas on their land. Officers understand St John Ambulance has limited space on their site for this purpose and if the site office and laydown area were contained on site it may impact upon the access available to Ambulances.

If Council approves this request it will mean that St John Ambulance can continue to provide services as usual from this site. If this is not approved, St John Ambulance has advised that potentially, some services might need to be relocated to other locations in town to provide continued service or services might need to be reduced. This is not an ideal outcome for the community.

Therefore, Officers are recommending Council requests the Chief Executive Officer to negotiate a 9 month lease with St John Ambulance for the use of the car park area for a construction site office and lay down area during the redevelopment of the site and present the lease to Council for final approval.

**Options:**

Council has the following options in regards to this matter:

1. Decline the request to use the carpark area.
2. Approve a larger or smaller area than identified in Appendix B.
3. Approve the request and charge St John Ambulance for use of the land for the period of the lease.
4. Approve the request but require St John Ambulance to cover legal costs associated with the lease.
5. Approve the request as recommended by Officers.

**Implications to consider:**

- **Consultative**

Regular Peace Park users have been consulted on this matter however no feedback was received.

- **Strategic**

Nil

- **Policy related**

Nil

- **Financial**

Officers are proposing the Shire be responsible for legal fees and any other costs associated with the preparation of the lease. This typically costs between \$500-\$1,000.

It is not proposed to charge St John Ambulance for the land during the period of the lease.

- **Legal and Statutory**

Clause 61 of the Schedule 2 Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* exempts temporary works which are in existence for less than 48 hours, or a longer period agreed by the Local Government in any 12-month period. Officers consider that if Council grants St John Ambulance a licence for this area for a 9-month period, then it is exempt from Planning Approval.

When the building contract is awarded by St John Ambulance, the contractor will need to liaise with the Shire's Building Surveyor to determine if any building licences are required. The approval of the lease will not impact upon this statutory responsibility.

If Council wants to approve this request from St John Ambulance, Officers are recommending it be undertaken as a lease for a period of 9 months. This would be considered a disposal in accordance with the Section 3.58 of the *Local Government Act 1995*.

However, Regulation 30 of the *Functions and General Regulation 1996* identify which disposals of property are excluded from the requirements of Section 3.58 of the *Local Government Act 1995* outlined as follows:

**30. Dispositions of property excluded from Act s. 3.58**

- (1) *A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.*
- (2) *A disposition of land is an exempt disposition if—*
  - (a) *the land is disposed of to an owner of adjoining land (in this paragraph called the **transferee**) and—*
    - (i) *its market value is less than \$5 000; and*
    - (ii) *the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;*

*or*

  - (b) *the land is disposed of to a body, whether incorporated or not—*
    - (i) *the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*
    - (ii) *the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*

*or*
  - (c) *the land is disposed of to—*
    - (i) *the Crown in right of the State or the Commonwealth; or*
    - (ii) *a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth; or*
    - (iii) *another local government or a regional local government;*

*or*
  - (d) *it is the leasing of land to an employee of the local government for use as the employee's residence; or*
  - (e) *it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land; or*
  - (f) *it is the leasing of land to a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession to be used for carrying on his or her medical practice; or*
  - (g) *it is the leasing of residential property to a person.*
- (2a) *A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been—*

- (a) *put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government; or*
- (b) *the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or*
- (c) *the subject of Statewide public notice under section 3.59(4) of the Act, and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —*
  - (i) *the names of all other parties concerned; and*
  - (ii) *the consideration to be received by the local government for the disposition; and*
  - (iii) *the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.*

(2b) *Details (see section 3.58(4) of the Act) of a disposition of property under subregulation (2a) must be made available for public inspection for at least 12 months from the initial auction or tender, as the case requires.*

(3) *A disposition of property other than land is an exempt disposition if —*

- (a) *its market value is less than \$20 000; or*
- (b) *the entire consideration received by the local government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75 000.*

*[Regulation 30 amended in Gazette 25 Feb 2000 p. 974-5; 28 Apr 2000 p. 2041; 31 Mar 2005 p. 1055-6; 27 Sep 2011 p. 3846; 18 Sep 2015 p. 3812.]*

Officers consider that if Council wants to provide a 9-month lease to St John Ambulance for exclusive use of this area it will be an exempt disposition because St John Ambulance is a not-for-profit organisation in accordance with Section 2 (b) (i) above.

- **Risk related**

Delays in the construction program of St John Ambulance could impact upon the length of time the area of land is required. If this was to exceed 12 months, planning approval would be required. If any delays required the area to be used for more than 2 years, the Regulation 30 exemption could not be used and Council would need to undertake a disposal process in accordance with Section 3.58 of the *Local Government Act 1995*.

- **Workforce Implications**

This lease can be accommodated within the current workforce capacity.

**Voting Requirements:**

**Absolute Majority Required:**      **No**

**OFFICER RECOMMENDATION:**

***“That Council:***

- 1. Requests the Chief Executive Officer to negotiate a 9 month lease with St John Ambulance for part of the carpark at Peace Park (as per Appendix B to this report) to be used a site office and laydown area during the period of redevelopment and present the draft lease to Council for approval; and***
- 2. Agrees the Shire will fund the legal fees and any other costs associated with the preparation of the lease which are to be recognised as a Shire contribution towards the redevelopment.”***



## **SY042-04/18 – Draft Disability Access and Inclusion Plan 2018-2023**

**FILE REFERENCE:** OR.CMA.9.1  
**APPLICANT OR PROPONENT(S):** Shire of York  
**AUTHORS NAME & POSITION:** Suzie Haslehurst – Executive Manager, Corporate and Community Services  
**RESPONSIBLE OFFICER:** Suzie Haslehurst – Executive Manager, Corporate and Community Services  
**PREVIOUSLY BEFORE COUNCIL:** Nil  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A. Draft Shire of York DAIP 2018-23

### **Nature of Council's Role in the Matter:**

- Executive

### **Purpose of the Report:**

This report provides Council with a draft Shire of York Disability Access and Inclusion Plan 2018 – 2023 for consideration and endorsement for public advertising.

### **Background:**

In accordance with the *Disability Services Act 1993 (amended 2004)*, public authorities are required to develop and implement a Disability Access and Inclusion Plan (DAIP) at least every five years that identifies barriers to access and to propose solutions to ensure equitable access to services and facilities for people with disabilities. The Shire of York adopted its current DAIP 2013-18 on 18 February 2013.

Council established an Access and Inclusion Advisory Committee to oversee the development of the Shire's new DAIP and to provide input into matters relating to access and inclusion within the Shire.

A meeting of the AIAC was scheduled for 27 March 2018 to consider the draft DAIP. However, a quorum could not be achieved and after 30 minutes, the meeting was adjourned. A further unsuccessful attempt was made to hold a meeting of the AIAC on 9 April 2018 where a quorum was again unable to be achieved. Therefore, the draft DAIP is presented directly to Council for endorsement for public advertising.

### **Comments and details:**

In accordance with the approved project plan, two community consultation workshops were held on 28 February 2018 at Balladong Lodge. These workshops were promoted via;

- The Shire's Community Matters page
- Media Release, Posters, Website
- Email reminder to Shire's database
- Telephone follow-up
- Social Media
- Flyer distribution by hand
- AIAC members personal contact with networks

Below is an outline of the structure of the workshops:

- Background regarding people with disability in the community, statistics in WA and the types of disability recognised (ie psychological, intellectual, psychiatric etc)
- Definition of disability as prescribed by the *Disability Services Act (1993)*
- The rationale and purpose of a DAIP

- The desired outcomes as prescribed by the *Disability Services Regulations 2004* relating to:
  - Services and events
  - Building and facilities
  - Information
  - Level and quality of service
  - Complaints
  - Participation; and
  - Employment
- The role of Local Government
- The elements of a DAIP as required by legislation

Participants were then asked to think about and discuss barriers to each of the seven outcomes for people living in and visiting the Shire of York and any ideas that could reduce or remove those barriers.

Although attended by only 10 people, the workshops provided valuable insight and information which has informed the development of the draft DAIP 2018-2023 which is attached at Appendix A to this report.

Informal feedback regarding the draft DAIP has been received from members of the AIAC and incorporated into the attachment. It is now recommended that Council endorses the draft DAIP 2018-2023 for public advertising for a period of four weeks.

**Options:**

Council could choose to have the DAIP presented to the Committee prior to consideration by Council. However, two attempts have been made to convene a formal meeting of the Committee and if the DAIP is to be submitted to the Department of Communities (Disability Services) by the required date, it is proposed that Council considers the matter directly. Informal feedback received from members of the AIAC has been incorporated into the draft document.

Council could also recommend that a further period of consultation is undertaken. However, the consultation and proposed advertising are in accordance with the project plan endorsed by both the AIAC and Council. In addition, it is anticipated that the members of the Committee will use their networks, knowledge and experience to encourage public comment.

**Implications to consider:**

- **Consultative**

One of the integral requirements of the DAIP is community consultation. The amendments to the *Disability Services Act (1993, amended 2004)* now make community consultation mandatory.

The **minimum** requirements are that public authorities must call for submissions regarding DAIPs “either generally or specifically in:

- the local area newspaper or printed media
- on the authority’s website”.

In addition, the priorities identified in both the Shire’s Community Perceptions (Markyt) Survey undertaken early in 2017 and the Age-Friendly Community Plan adopted in 2017 have been incorporated into the draft DAIP 2018-2023.

- **Strategic**

*Theme 1: A Place to Live*

- 1.4 There are few barriers to people moving safely, freely and easily around the town of York and rural townships and to other communities.
- 1.5 Health, disability and family support services are accessible and locally provided wherever possible.

*Theme 4: Built for Resilience*

- 4.6 The town of York has a network of well-maintained and well-integrated, safe and reliable, roads, footpaths and cycle paths.
- 4.8 The town of York and other Shire communities have adequate public health services which are managed in a sustainable way.

- **Policy related**

*G2.9 Community Engagement and Consultation*

- **Financial**

Financial implications of the proposed actions in the DAIP will need to be considered as part of the annual budget process.

- **Legal and Statutory**

***Disability Services Act 1993***

***28. Disability access and inclusion plans***

- (1) *Each public authority must have a disability access and inclusion plan to ensure that in so far as its functions involve dealings with the general public, the performance of those functions furthers the principles in Schedule 1 and meets the objectives in Schedule.*
- (2) *A disability access and inclusion plan must meet any prescribed standards.*
- (3) *A public authority must lodge its disability access and inclusion plan with the Commission —*
  - (a) *if the authority was established before the commencement of the Disability Services Amendment Act 2004, without delay;*
  - (b) *if the authority is established after the commencement of the Disability Services Amendment Act 2004, within 12 months after the day on which it is established.*
- (4) *A public authority may amend its disability access and inclusion plan at any time.*
- (5) *A public authority may review its disability access and inclusion plan at any time.*
- (6) *After reviewing its disability access and inclusion plan, a public authority must lodge a report of the review with the Commission in accordance with subsection.*
- (7) *Not more than 5 years is to elapse —*
  - (a) *between the day on which a public authority first lodges its disability access and inclusion plan with the Commission and the day it lodges a report of a review of the plan with the Commission; or*
  - (b) *between the lodgement of the report of one review of a plan and the lodgement of the report of another review of the plan.*
- (8) *After reviewing its disability access and inclusion plan, a public authority may amend the plan or prepare a new plan.*
- (9) *If at any time a public authority amends its disability access and inclusion plan or prepares a new plan, whether after a review or not, it must lodge the amended or new plan with the Commission as soon as practicable after doing so.*
- (10) *A public authority must undertake public consultation in accordance with the procedure specified in the regulations when preparing, reviewing or amending a disability access and inclusion plan.*

**Disability Services Regulations 2004**

**10. Procedure for public consultation by authorities (s. 28)**

(1) For the purposes of section 28(10) of the Act, a public authority is to undertake consultation in relation to its disability access and inclusion plan by calling for submissions either generally or specifically —

- (a) by notice in a newspaper circulating throughout the State or, in the case of a local government, the district of that local government under the Local Government Act 1995; and
- (b) on any website maintained by or on behalf of the public authority.

(2) Nothing in subregulation (1) prevents a public authority from also undertaking any other consultation.

- **Risk related**

Should the Shire fail to develop a new plan or review its current plan, it will be in breach of Section 28 (7) of the *Disability Services Act 1993*. The development of a new plan mitigates this risk.

- **Workforce Implications**

The Draft DAIP 2018-2023 incorporates actions that have been assigned to existing and potential future staff. Achievement of these actions will be dependent upon the allocation of resources to implement them.

**Voting Requirements:**

**Absolute Majority Required:**      **No**

**OFFICER RECOMMENDATION:**

***“That Council:***

1. ***Endorses the Draft Shire of York DAIP 2018-2023 as attached to this report at Appendix A, for public advertising for a period of four weeks.***
2. ***Requests the Chief Executive Officer to present the final Draft Shire of York DAIP 2018-2023 to the Access and Inclusion Advisory Committee for endorsement and recommendation to Council following the public advertising period.***
3. ***Thanks those members of the community that attended the consultation workshops for their input into the Draft Shire of York DAIP 2018-2023.”***

## **SY043-04/18 - Engagement of a YRCC Project Officer**

**FILE REFERENCE:** CCP.7  
**APPLICANT OR PROPONENT(S):** Shire of York  
**AUTHORS NAME & POSITION:** Suzie Haslehurst – Executive Manager, Corporate and Community Services  
**RESPONSIBLE OFFICER:** Suzie Haslehurst – Executive Manager, Corporate and Community Services  
**PREVIOUSLY BEFORE COUNCIL:** Nil  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** Nil

### **Nature of Council's Role in the Matter:**

- Executive

### **Purpose of the Report:**

This report seeks Council's consideration of a proposal to engage a project officer to progress the transition of the management of the bar and kitchen facilities at the YRCC.

### **Background:**

At the Ordinary Council Meeting held on 30 October 2017, it was resolved:

*"That Council;*

1. *Notes the submissions received from user groups regarding the management of the York Recreation and Convention Centre;*
2. *Agrees to establish a steering group to work through identified issues relating to the future management of the YRCC including;*
  - *Establishment of an incorporated association*
  - *Financial management and responsibilities*
  - *Operations and commitment by user groups*
  - *Volunteer management and support*
  - *Timeline for implementation*
3. *Requests the CEO to prepare a Terms of Reference for a steering group which includes;*
  - a) *a representative from each user group;*
  - b) *2 x community representatives with relevant skills and experience;*
  - c) *a Councillor representative;*

*to be considered by Council at the November Ordinary Council Meeting when it considers the Shire's other committees and working groups.*
4. *Notes that the proposed timeline and a volunteer management strategy will be considered as part of the Minor Strategic Review to be undertaken in November".*

The table below outlines the events that took place following this resolution.

November 2017	Council established the YRCC Management Steering Group, appointing Crs Trent and Warnick and requested the CEO to seek expressions of interest from user group members.
November 2017	Council reviewed the Shire's progress against the objectives of the Strategic Community Plan and Corporate Business Plan. It was noted that progress in the area of community development (youth, YRCC, recreation) had been limited due to available resources.
December 2017	Council endorsed the Revised Strategic Community Plan and Corporate Business Plan for public advertising. These included the engagement of a community development officer from 2018/19 to achieve Council's community development objectives.
February 2018	Council adopted the Strategic Community Plan 2018-2028 and Corporate Business Plan 2018-2022.
March 2018	Council appointed ten user group representatives and one community representative to the YRCC Management Steering Group and adopted the Terms of Reference for the Group.
April 2018	Officers wrote to all appointees to inform them of their appointment.

The first meeting of the YRCC Management Steering Group (YRCC MSG) is scheduled for Tuesday 1 May 2018.

#### **Comments and details:**

In order to maintain the momentum and progress the transition of the management of the bar and kitchen facilities at the YRCC, officers have scoped the work that needs to be undertaken which includes;

- Liaison with user groups to develop and gain agreement from the YRCC MSG for a constitution for a York Sports Association
- Undertaking the incorporation process
- Keeping Council informed of progress and seek approval where required
- Providing information to keep the community informed as required
- Negotiating a management agreement for the bar and kitchen facilities including an operating subsidy paid by the Shire that is envisaged to reduce over time
- Development of a consistent and overarching fee structure for user groups
- Negotiation of licences with user groups
- Identifying and developing new policies and procedures as required
- Development of a Volunteer Management structure to assist clubs
- Convening and administering the YRCC MSG meetings

In addition, there is a range of other issues to be resolved and procedures determined for future management for the Forrest Oval precinct. These include but are not limited to;

- Bookings and hire systems and processes
- Cleaning and maintenance
- Day to day asset management
- Leases, licence fees and agreements for users (including York DHS, Early Childhood Hub, York Hockey Club etc)

Given current workloads and other organisational priorities, delivery of these outcomes is being affected.

During the Minor Strategic Review process, it was recognised that the desired community development levels of service (ie youth activities, recreation and club development) were not being met due to limited resources. As a result, Council included consideration of a dedicated community development role in the Corporate Business Plan 2018-2022. Officers have included this position in the draft 2018-19 Budget.

However, to progress Council's objectives with regard to the YRCC management, officers are proposing that an additional resource is required in the short term.

The adopted staffing structure of the YRCC consists of a full-time Centre Manager, a part-time Bar Manager, a part-time Catering Manager, a part-time Kitchen Hand and casual kitchen, bar and cleaning staff. However, due to the difficulty in attracting staff and the uncertainty surrounding the management of the facility, the Shire has relied on casual kitchen and bar staff with the Centre Manager primarily undertaking the role of Hospitality Manager. Therefore, the Bar Manager and Kitchen Hand roles have remained vacant. It is proposed that these unallocated funds are used to engage a part-time YRCC Project Officer to assist with the transition of the management of the bar and kitchen facilities at the YRCC to a community group.

It is envisaged that this role will be required for a period of 18 months to two years. As it was proposed to use YRCC salaries allocations to fund the Community Development Officer position, this will delay the engagement of a Community Development Officer during that time. However, it should be acknowledged that community development levels of service will increase only in the area of recreation and officers recommend that this issue is reviewed during the next major strategic review scheduled to take place in October 2020.

**Options:**

Council has the following options to consider:

1. Choose not to appoint a part-time Project Officer and wait until the consideration of the 2018/19 budget to determine whether a Community Development Officer will be included. This option risks losing the momentum established and delaying the progress of Council's objectives.
2. Engage more staff at the YRCC to enable the Centre Manager to undertake a more strategic role. This could be considered; however, officers believe it would take time to bring new staff up to speed with the hospitality requirements of the YRCC, therefore delaying the Centre Manager's ability to contribute.

Officers propose that Council considers amending the 2017/18 Budget to incorporate a part-time YRCC Project Officer utilising unallocated funds from the YRCC area budget.

**Implications to consider:**

- **Consultative**

It is proposed that this role is advertised publicly in accordance with the Shire's Recruitment and Selection Procedure.

- **Strategic**

A review of the YRCC management was included as a strategic priority in Year One of the *Corporate Business Plan 2016-2020* adopted by Council in May 2016. This action was changed to reflect implementation of the new management model in the *Corporate Business Plan 2018-22* adopted in February 2018.

- **Policy related**

*G 1.10 Workforce and Human Resources*  
*G 4.3 Financial Planning and Sustainability*

- **Financial**

The following outlines the unallocated funds in the YRCC 2017/18 budget proposed to be used to fund this position.

Item	Budget	Estimate based on YTD	Comment
YRCC Salaries	\$286,939	\$223,102	YRCC staff have undertaken cleaning duties
Casual Cleaners	\$13,307		
<b>Total 2017/18</b>	<b>\$303,875</b>	<b>\$223,102</b>	<b>\$80,773 unallocated 2017/18</b>

The costs related to the engagement of the YRCC Project Officer in the 2017/18 financial year are estimated as follows:

Item	Amount	Comment
Recruitment Costs	\$650	Advertising, police checks etc
Salary	\$5,760	Based on 3 days per week x 6 weeks to 30 June
On-costs	\$1,550	Superannuation, W/C etc
Set-up costs	\$1,500	IT, phone etc
<b>Total</b>	<b>\$9,460</b>	<b>GL Account 113160</b>

It is recommended that the annual amount of approximately \$57,000 is included in the 2018/19 budget process for Council's consideration.

### Legal and Statutory

#### Local Government Act 1995

##### 6.8. *Expenditure from municipal fund not included in annual budget*

(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —

- (a) is incurred in a financial year before the adoption of the annual budget by the local government; or
- (b) is authorised in advance by resolution\*; or
- (c) is authorised in advance by the mayor or president in an emergency.

\* Absolute majority required.

- **Risk related**

The major risk should Council choose not to approve the officer recommendation is the delay in achieving Council's objectives. This is considered extreme within the Shire's Risk Assessment Framework. In addition, there is a reputational risk if the project is delayed which is considered high.

- **Workforce Implications**

This is a request for an additional resource which arguably, has been identified in the Shire's Workforce Plan.

**Voting Requirements:**

**Absolute Majority Required:** Yes

**OFFICER RECOMMENDATION:**

*"That Council:*

1. *Approves the engagement of a YRCC Project Officer to progress Council's preferred management model of the York Recreation and Convention Centre.*
2. *Notes that this position will be funded using 2017/18 unused funds in GL Account 113160."*



## **SY044-04/18 - Outstanding Rates and Charges - Payment Agreements**

**FILE REFERENCE:** FI.DRS.3.1  
**APPLICANT OR PROPONENT(S):** VARIOUS  
**AUTHORS NAME & POSITION:** Anneke Birleson, Finance Officer  
**RESPONSIBLE OFFICER:** Suzie Haslehurst, Executive Manager Corporate & Community Services  
**PREVIOUSLY BEFORE COUNCIL:** 26 March 2018  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A – Table of Application Details (Confidential)

*The appendix of this item is confidential in accordance with Section 5.23(2)(b) of the Local Government Act 1995 as it contains information regarding the personal affairs of a person and Section 5.23(2)(e)(iii) as it deals with a matter that if disclosed, would reveal the financial affairs of a person.*

**Copies have been provided to Councillors, the Chief Executive Officer and Executive Managers only.**

**Nature of Council's Role in the Matter:**

- Executive

**Purpose of the Report:**

The purpose of this report is to provide Council with details regarding payment arrangement applications that the Shire has received, that do not qualify under Delegation DE3-3.

This report seeks Council's approval to accept the officer recommendation regarding the proposed arrangement as detailed in Confidential Appendix A.

**Background:**

At the Ordinary Council Meeting held on 27 November 2017, Council resolved to accept a revised Finance Policy F1.1 Revenue Collection.

The policy and Delegation 3-3 authorises the Chief Executive Officer to accept payment arrangements where there are no arrears and the balance will be paid in full by 30 June of the relevant financial year. Any applications outside this scope must be presented to Council for review and acceptance or rejection.

**Comments and details:**

Council has considered 20 applications since the adoption of the revised revenue collection policy.

The Shire has received one further application that does not qualify under DE3-3 and therefore, requires Council consideration.

The application that is subject to this report relates to a ratepayer that was referred for pre-legal debt collection proceedings.

Confidential Appendix A details the current debt and a brief reason why the ratepayer cannot meet the requirements of a standard payment arrangement. The table also provides an officer recommendation for the application.

Any application that is approved is subject to the condition where any default will result in legal action for debt recovery without further notice. Debtors are also made aware that interest continues to accrue and that the 2018/19 rates will be added in July.

Applications are assessed on a case by case basis, taking into consideration people's circumstances, in accordance with policy F1.1 Principle (c).

Following the issue of the 2018/19 rates and charges, the applicant will need to apply to enter into a new arrangement and the expectation will be that the full amount will be cleared prior to 30 June 2019.

**Options:**

Council could elect to approve or reject the officer recommendation. Officers have worked with the applicant regarding their current financial circumstances and ability to pay. One of the principles of the revenue collection policy is that people's circumstances are taken into account.

The majority of the debt will be cleared by 30 June 2018, but the ratepayer will find it difficult to clear the full balance prior to 30 June 2018. Therefore, as the applicant is proposing to make regular payments it would be more productive to encourage payment based on the application and then make a new arrangement once the 2018/19 rates and charges have been levied.

**Implications to consider:**

- **Consultative**

Officers have liaised with the applicant.

- **Strategic**

Theme 5: Strong Leadership and Governance

5.3 The Shire's public finances are sustainable in the short and long-term.

- **Policy related**

F1.1 Revenue Collection

DE3-3 Agreement as to Payment of Rates and Service Charges

- **Financial**

The total debt associated with the payment arrangement as at 27 March 2018 is \$1,412.25. The rate payer has been making regular payments.

This represents approximately 0.09% of the current outstanding debt.

- **Legal and Statutory**

***Local Government Act 1995***

***6.49. Agreement as to payment of rates and service charges***

*A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.*

***Shire of York Finance Policy F1.1 Revenue Collection***

***Principles***

- a) *the Shire's cashflow is optimised and bad debts minimised by ensuring timely collection of all revenue owing to the Shire.*
- b) *the recovery of the Shire's revenue is clear, equitable, consistent and transparent.*
- c) *that account is taken of the circumstances of people with debt owing to the Shire.*
- d) *all reasonable action be undertaken to recover revenue before the debt is written off.*

e) *debt collection activities are in accordance with relevant legislation and standards and credit controls are monitored to minimise potential financial loss.*

- **Risk related**

The Financial Risk is Insignificant (1).

The Likelihood of occurrence is Likely(4).

The overall Risk rating is Low (4).

The risk can be considered acceptable as there is a policy in place to control and manage the risk. Should any of the debtors default on their arrangement, legal action can be taken to recover the due amounts.

- **Workforce Implications**

The scope of this report will have a minor impact on the workforce, relating to ongoing monitoring of payments.

**Voting Requirements:**

**Absolute Majority Required:**      **No**

**OFFICER RECOMMENDATION:**

***“That Council:***

1. ***Approves the application for a payment agreement as detailed within Confidential Appendix A to this report, with the condition that any default will result in legal action.***
2. ***Requests the Chief Executive Officer to report back to Council regarding progress after 30 June 2018.”***



## **SY045-04/18 - Outstanding Rates and Sundry Debtors**

**FILE REFERENCE:** FI.DRS.1, FI.DRS.3, FI.DRS.4  
**APPLICANT OR PROPONENT(S):** Various  
**AUTHORS NAME & POSITION:** Anneke Birleson, Finance Officer  
**RESPONSIBLE OFFICER:** Suzie Haslehurst, Executive Manager  
Corporate & Community Services  
**PREVIOUSLY BEFORE COUNCIL:** 27 November 2017  
**DISCLOSURE OF INTEREST:** Nil  
**CONFIDENTIAL APPENDICES:** A - Schedule of Outstanding Rates (Non-Pensioners)  
B - Schedule of Outstanding Sundry Debtors

*The appendices are confidential in accordance with Section 5.23(2)(e)(iii) of the Local Government Act 1995 as they deal with matters that if disclosed, would reveal information about the financial affairs of a person.*

*Copies have been provided to Councillors, the Chief Executive Officer and Executive Managers only.*

**Nature of Council's Role:**

- Executive

**Purpose of the Report:**

The purpose of this report is to provide Council with an update regarding current outstanding rates, services and sundry debts for the period ending 30 October 2017.

This report seeks confirmation and direction from Council regarding the recommended courses of action to be taken against defaulting rate payers and sundry debtors.

**Background:**

Council has a significant number of outstanding rates and sundry debts.

On 27 November 2017 Council resolved the following:

**RESOLUTION 331117**

Moved: Cr Trent

Seconded: Cr Ferro

*"That Council, following a comprehensive review conducted with the Council appointed debt collection firm:*

1. *Receives the updated summary of Outstanding Rates and Sundry Debtors as at 31 October 2017 as attached to this report as Confidential Appendices A and B and notes the work undertaken by officers to date to recover outstanding monies owed to the Shire.*
2. *Approves the recommendations contained in Confidential Appendix A – Outstanding Rates noting that;*
  - (a) in six instances, the Shire will be proceeding with actions in accordance with Section 6.64 of the Local Government Act 1995;*
  - (b) in one hundred and thirteen instances, the unpaid rates and charges are to be referred for debt collection.*
3. *Approves the recommendations contained in Confidential Appendix B – Outstanding Sundry Debtors noting that in ten instances the debtor is to be referred for debt collection."* CARRIED: 7/0

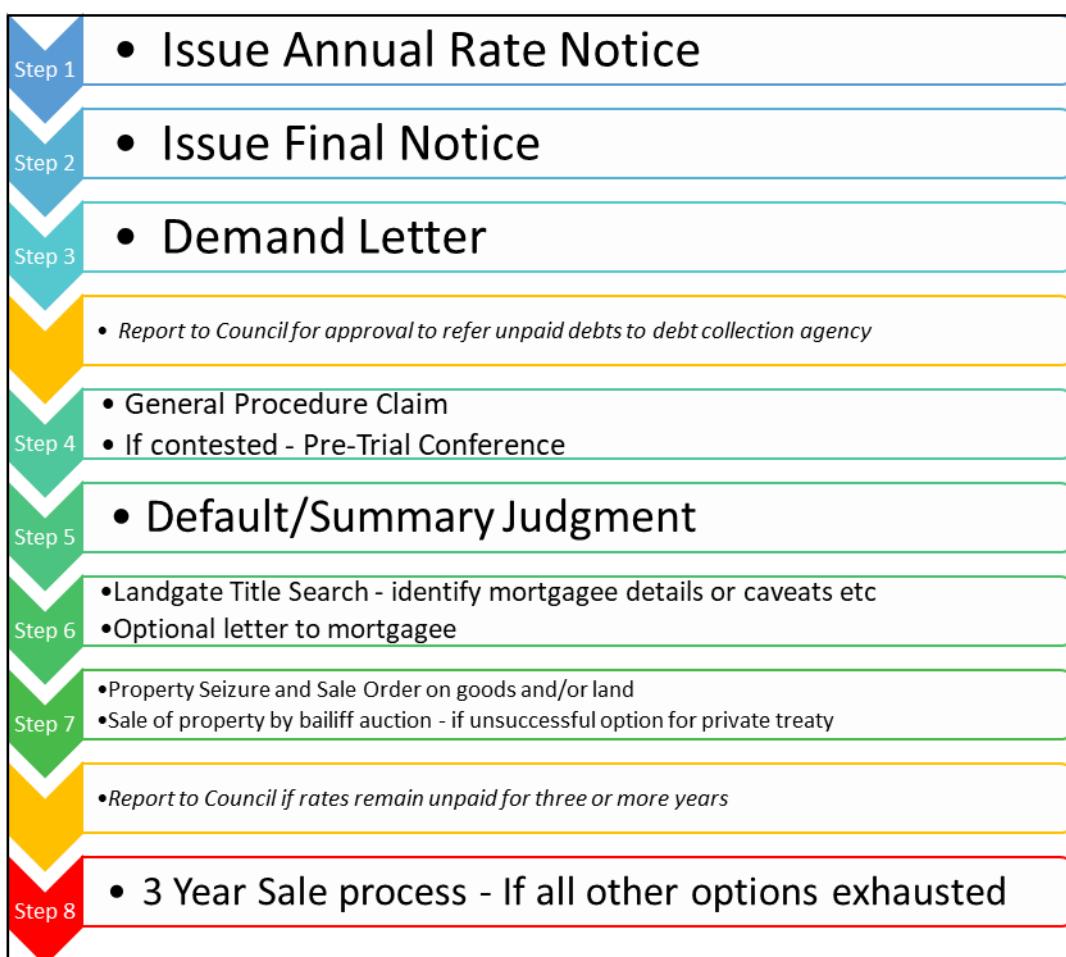
Council's Policy *F1.1 Revenue Collection* adopted on 27 June 2016, outlines the legal recovery process. A number of instances have been identified when Council is to be informed and to approve the Officer recommended step for debt recovery.

On 18 September 2017, Council awarded the tender for debt collection services to Milton Graham Lawyers. There are no open accounts with the previous Debt Collection agency.

**Comments and details:**

Attached to this report is a confidential summary of all outstanding sundry debts and rates. The documents include recommended strategies for implementation to recover amounts owing for Council's consideration and approval.

The following Council adopted Recovery Process (Resolution 180616) outlines the steps the Shire is to take when attempting to recover outstanding rates and charges.



**Sundry Debts**

There are four outstanding sundry debt amounts that are recommended to be referred for debt collection, mostly relating to unpaid fees and charges. An additional two are currently in the pre-legal debt collection stage.

In three instances the debt collection process has had no success so the next recommended step is to commence legal action.

### **Rates and Charges**

Officers are recommending that in five instances, Council proceeds with the sale of land for unpaid rates in accordance with Section 6.64 of the Local Government Act 1995. Two properties have been through this process, one is in the process of being transferred to the Shire, the other is now recommended to also be transferred to the Shire.

The sale of property through the debt recovery process is seen as the last resort however, prior to Council being able to go through the sale process, as provided for in the *Local Government Act 1995*, Council must make all reasonable attempts for collection through the courts. This is outlined in Council's Policy *F1.1 Revenue Collection*.

There are 77 properties that have been referred to Milton Graham Lawyers for pre-legal or legal action. A further 29 debts are now recommended for referral for pre-legal debt collection.

Forty properties listed in Appendix A have payment arrangements in place for the 2017/18 financial year and are to be monitored and reviewed once the 2018/9 rates have been issued.

In accordance with Council Policy F1.1, once legal action is initiated, Council recognises that the Chief Executive Officer is to monitor the process and make decisions regarding courses of action, unless there is an issue that requires Council input, such as sale of land under Section 6.64 of the *Local Government Act 1995*.

It is worthwhile to note that for those accounts that have not been previously sent for debt collection, no costs are incurred unless legal action is taken.

### **Options:**

Council could choose to alter the number of outstanding debts to be referred for debt collection. However, officers have made the recommendations based on the length of time the debts have remained outstanding and the likelihood of an acceptable payment arrangement being entered into and honoured.

### **Implications to Consider:**

- **Consultative**

Milton Graham Lawyers  
AMPAC Debt Recovery  
Price Sierakowski  
Baycorp

- **Strategic**

Theme 5: Strong Leadership and Governance

- 5.3 The Shire's public finances are sustainable in the short and long-term.
- 5.4 There is a major focus on systems which improve and maintain accountability and transparency.

The current outstanding amount of rates and charges is approximately \$1.4 million (including instalment payers and pensioners).

- **Policy related**

*F1.1 Revenue Collection*

Shire of York Finance Policy *F1.1 Revenue Collection*, identifies that the Shire is to ensure timely cashflow and minimise bad debts. In addition, the Shire must ensure that appropriate measures are undertaken to recover outstanding amounts. The recovery of these outstanding debts must be fair, consistent and transparent.

- **Financial**

As at 31 March 2018 the amount of outstanding rates debt was \$1,398,915.11. This includes those on instalments and pensioners.

As at 31 March 2018 the amount of outstanding sundry debt was \$288,969.78.

- **Legal and Statutory**

*Local Government Act 1995*

*Subdivision 5 — Recovery of unpaid rates and service charges*

#### **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.*

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

#### **6.64. Actions to be taken**

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

- (a) *from time to time lease the land; or*
- (b) *sell the land; or*
- (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.

- **Risk related**

Rates equate to approximately 50% of Council's revenue and unpaid debts hold significant risk for the organisation. It is essential that focus is given to the debt collection process, adopted by Council to mitigate this risk.

The current situation can be assessed as follows:

The Financial Impact is Extreme (5)

The Likelihood of Recurrence is almost certain (5).

This results in an Extreme Risk to the Shire of York.

This assessment may be significantly reduced depending on the success of the debt recovery process.

- **Workforce Implications**

The process of handing over accounts for debt collection will impact on the workload of the Finance Department, particularly in respect of collating necessary documentation and communication with the debt collection provider in the initial set up phases. However, referring them to an external provider may result in a more successful recovery outcomes.

**Voting Requirements:**

**Absolute Majority Required:** No

**OFFICER RECOMMENDATION**

***"That Council, following a comprehensive review conducted with the Council appointed debt collection firm:***

1. ***Receives the updated summary of Outstanding Rates and Sundry Debtors as at 28 March 2018 as attached to this report as Confidential Appendices A and B and notes the work undertaken by officers to date to recover outstanding monies owed to the Shire.***
2. ***Approves the recommendations contained in Confidential Appendix A – Outstanding Rates noting that;***
  - (a) ***in seven instances, the Shire will be proceeding with actions in accordance with Sections 6.64 and 6.75 of the Local Government Act 1995;***
  - (b) ***in twenty nine instances, the unpaid rates and charges are to be referred for debt collection.***
3. ***Approves the recommendations contained in Confidential Appendix B – Outstanding Sundry Debtors noting that in four instances the debtor is to be referred for debt collection."***



## **SY046-04/18 – Financial Report for March 2018**

**FILE REFERENCE:** FI.FRP  
**APPLICANT OR PROPONENT(S):** Not Applicable  
**AUTHORS NAME & POSITION:** Tabitha Bateman, Financial Controller  
**RESPONSIBLE OFFICER:** Suzie Haslehurst, Executive Manager Corporate and Community Services  
**PREVIOUSLY BEFORE COUNCIL:** No  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:**

- A. Monthly Statements
- B. List of Creditors Payments
- C. Corporate Credit Card Transaction Listing

### **Nature of Council's Role in the Matter:**

- Legislative
- Review

### **Purpose of the Report:**

The purpose of financial reporting and the preparation of monthly financial statements is to communicate information about the financial position and operating results of the Shire of York to Councillors and the community and monitors the local government's performance against budgets.

### **Background:**

Local governments are required to prepare general purpose financial reports in accordance with the *Local Government Act 1995*, the *Local Government (Financial Management) Regulations 1996* and the *Australian Accounting Standards*.

A statement of financial activity and any accompanying documents are to be presented to the Council at an ordinary meeting of the Council within two months after the end of the month to which the statement relates. The Statement of Financial Activity summarises the Shire's operating activities and non-operating activities.

Each financial year, a local government is to adopt a percentage or value to be used in statements of financial activity for reporting material variances. For the 2017/18 financial year Council adopted a variance of 10% or \$10,000 *whichever is the greater*, to capture material variances. During the recent interim audit undertaken by Moore Stephens it was determined that further information was required in the Variance Report to recognise variances greater than \$10,000. To date officers have reported on variances greater than 10%. Accordingly, a column has been added to the Variance Report within Attachment A and comments provided where applicable.

### **Comments and details:**

The Financial Report for the period ending 31 March 2018 is presented for Council's consideration and includes the following;

- Monthly Statements for the period ended 31 March 2018
- List of Creditor's Payments
- Corporate Credit Card Transaction Listing

The following information provides balances for key financial areas for the Shire of York's financial position as at 31 March 2018;

### **Outstanding Rates and Services**

The total outstanding rates as at 31 March 2018 were \$1,398,915 compared to \$1,958,021 as at 28 February 2018.

3 years and over	\$267,768.89	19.14%	of rates outstanding
2 years and over	\$244,659.63	17.49%	of rates outstanding
1 year and over	\$287,018.12	20.52%	of rates outstanding
<b>Total Prior Years outstanding</b>	<b>\$799,446.64</b>	57.15%	of rates outstanding
Current Rates	<u>\$599,468.47</u>	42.85%	of rates outstanding
<b>Total Rates Outstanding</b>	<b><u>\$1,398,915.11</u></b>		

*Outstanding Sundry Debtors*

Total outstanding sundry debtors as at 31 March 2018 were \$288,970 compared to \$309,965 as at 28 February 2018.

90 days and over	\$272,435.30	94.28%	of sundry debtors outstanding
60 days and over	\$3,106.20	1.07%	of sundry debtors outstanding
30 days and over	\$9,006.30	3.12%	of sundry debtors outstanding
Current	<u>\$4,421.98</u>	1.53%	of sundry debtors outstanding
<b>Total Debtors Outstanding</b>	<b><u>\$288,969.78</u></b>		

Council is currently in the process of finalising a number of large long-standing debts contained within the above balances. As a risk mitigation strategy, a contingent liability has been included in the Balance Sheet.

**Implications to consider:**

- **Legal and Statutory**

*Local Government Act 1995*

6.10. *Financial Management Regulations may provide for —*

- (a) *the security and banking of money received by a local government; and*
- (b) *the keeping of financial records by a local government; and*
- (c) *the management by a local government of its assets, liabilities and revenue; and (d) the general management of, and the authorisation of payments out of —*
- (i) *the municipal fund; and (ii) the trust fund, of a local government.*

*Local Government (Financial Management) Regulations 1996*

**34. Financial activity statement required each month (Act s. 6.4)**

(1A) *In this regulation —*

**committed assets** means revenue unspent but set aside under the annual budget for a specific purpose.

- (1) A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail—
  - (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and
  - (b) budget estimates to the end of the month to which the statement relates; and
  - (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and
  - (d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and
  - (e) the net current assets at the end of the month to which the statement relates.
- (2) Each statement of financial activity is to be accompanied by documents containing—
  - (a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and
  - (b) an explanation of each of the material variances referred to in subregulation (1)(d); and
  - (c) such other supporting information as is considered relevant by the local government.
- (3) The information in a statement of financial activity may be shown—
  - (a) according to nature and type classification; or
  - (b) by program; or
  - (c) by business unit.
- (4) A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be—
  - (a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and
  - (b) recorded in the minutes of the meeting at which it is presented.
- (5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.

[Regulation 34 inserted in Gazette 31 Mar 2005 p. 1049-50; amended in Gazette 20 Jun 2008 p. 2724.]

- **Policy**

Policy F1.2 Procurement

Policy F1.5 Authority to make payments from Trust and Municipal Funds

**Voting Requirements:**

**Absolute Majority Required:**      **No**

## OFFICER RECOMMENDATION

***“That Council receives the Monthly Financial Report and the list of payments drawn from the Municipal and Trust accounts for the period ending 31 March 2018 as summarised below:***

Mar-18	
	AMOUNT
MUNICIPAL FUND	
Cheque Payments	17,065.38
Electronic Funds Payments	713,102.35
Payroll Debits	167,572.53
Payroll Debits - Superannuation	37,363.02
Bank Fees	1,016.89
Corporate Cards	1,552.19
Fuji Xerox Equipment Rental	161.41
Fire Messaging Service	570.46
TOTAL	938,404.23
TRUST FUND	
Electronic Funds Payments	2,368.30
Cheque Payments	0.00
Direct Debits Licensing	123,348.75
TOTAL	125,717.05
TOTAL DISBURSEMENTS	1,064,121.28

”

## **SY047-04/18 - Investments - March 2018**

**FILE REFERENCE:** FI.FRP  
**APPLICANT OR PROPONENT(S):** Not Applicable  
**AUTHORS NAME & POSITION:** Tabitha Bateman, Finance Manager  
**RESPONSIBLE OFFICER:** Suzie Haslehurst, Executive Manager Corporate and Community Services  
**PREVIOUSLY BEFORE COUNCIL:** No  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A. Investment Portfolio

### **Nature of Council's Role in the Matter:**

- Legislative
- Review

### **Purpose of the Report:**

To report to Council the balance of investments held by the Shire of York as at 31 March 2018.

### **Background:**

Council's policy F1.4 - *Investment* requires Council to review the performance of its investments on a monthly basis. In accordance with the policy, a report of investments is presented to Council to provide a summary of investments held by the Shire of York.

### **Comments and details:**

The Shire of York Investment Portfolio includes the following items that highlight Council's investment portfolio performance:

- a) Council's Investments as at 31 March 2018
- b) Application of Investment Funds
- c) Investment Performance

### **Implications to consider:**

- **Legal and Statutory**

*Local Government Act 1995*

#### **6.14. Power to invest**

- (1) *Money held in the municipal fund or the trust fund of a local government that is not, for the time being, required by the local government for any other purpose may be invested as trust funds may be invested under the Trustees Act 1962 Part III.*
- (2A) *A local government is to comply with the regulations when investing money referred to in subsection (1).*
- (2) *Regulations in relation to investments by local governments may—*
  - (a) *make provision in respect of the investment of money referred to in subsection (1); and*  
*[b) deleted]*
  - (c) *prescribe circumstances in which a local government is required to invest money held by it; and*
  - (d) *provide for the application of investment earnings; and*
  - (e) *generally provide for the management of those investments.*

*Local Government (Financial Management) Regulations 1996*

**19. Investments, control procedures for**

- (1) *A local government is to establish and document internal control procedures to be followed by employees to ensure control over investments.*
- (2) *The control procedures are to enable the identification of—*
  - (a) *the nature and location of all investments; and*
  - (b) *the transactions related to each investment.*

**19C. Investment of money, restrictions on (Act s. 6.14(2)(a))**

(1) *In this regulation—*

**authorised institution** means—

- (a) *an authorised deposit-taking institution as defined in the Banking Act 1959 (Commonwealth) section 5; or*
- (b) *the Western Australian Treasury Corporation established by the Western Australian Treasury Corporation Act 1986;*

**foreign currency** means a currency except the currency of Australia.

- (2) *When investing money under section 6.14(1), a local government may not do any of the following—*
  - (a) *deposit with an institution except an authorised institution;*
  - (b) *deposit for a fixed term of more than 3 years;*
  - (c) *invest in bonds that are not guaranteed by the Commonwealth Government, or a State or Territory government;*
  - (d) *invest in bonds with a term to maturity of more than 3 years;*
  - (e) *invest in a foreign currency.*

- **Policy**

Policy F1.4 *Investment*

**Voting Requirements:**

**Absolute Majority Required:** No

**OFFICER RECOMMENDATION**

***“That Council receives and notes the Shire of York Investment Portfolio attached to this report.”***

**10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

**11 QUESTIONS FROM MEMBERS WITHOUT NOTICE**

**12 BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING**

**13 MEETING CLOSED TO THE PUBLIC**

13.1 Matters for which the meeting may be closed

***SY048-04/18 - Confidential - Transfer of Land and Write Off of Rates and Charges***

13.2 Public reading of resolutions to be made public

**14 NEXT MEETING**

The next Ordinary Meeting of Council will be held on Monday, 28 May 2018 at 5.00pm at Talbot Hall, Talbot.

**15 CLOSURE**