



SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 24 OCTOBER, 2011
COMMENCING AT 3.00pm
IN THE PAVILION, YORK**

SHIRE OF YORK

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RAY HOOPER
CHIEF EXECUTIVE OFFICER

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SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL
HELD ON MONDAY, 17 OCTOBER 2011, COMMENCING AT
3.00PM IN THE GREENHILLS HALL, GREENHILLS.

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

1. OPENING

- 1.1 Declaration of Opening
Cr Tony Boyle, Shire President, declared the meeting open at 3.00pm
- 1.2 Chief Executive Officer to read the disclaimer
Ray Hooper, Chief Executive Officer, read the disclaimer
- 1.3 Election of Deputy Shire President
Written nominations were received from Cr Brian Lawrance, Cr Roy Scott and Cr Denese Smythe.

A secret ballot was held with Cr Roy Scott being declared the new Deputy Shire President.

Cr Scott was sworn in by Gordon Marwick JP.

Cr Boyle congratulated Cr Scott on becoming the new Deputy Shire President.
- 1.4 Announcement of Visitors
Cr Boyle welcomed Freeman Gordon Marwick and thanked him for performing the Swearing In ceremony.
- 1.5 Announcement of any Declared Financial Interests
Cr Tony Boyle – Item 9.1.1 – Impartial

2. ATTENDANCE

- 2.1 Members
Cr Tony Boyle, Shire President; Cr Roy Scott; Cr Brian Lawrance; Cr Pat Hooper, Cr Denese Smythe; Cr Mark Duperouzel
- 2.2 Staff
Ray Hooper, Chief Executive Officer, Jacky Jurmann, Manager Planning Services; Gail Maziuk, Finance Officer/Project Co-Ordinator; Helen D'Arcy-Walker, Executive Support Officer

2.3 Apologies
Elizabeth Sherwood

2.4 Leave of Absence Previously Approved
Nil

2.5 Number of People in Gallery at Commencement of Meeting
There were 13 people in the Gallery at the commencement of the meeting.

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

3.1 Previous Public Questions Taken on Notice
Nil

3.2 Written Questions
Nil

4. PUBLIC QUESTION TIME
Nil

5. APPLICATIONS FOR LEAVE OF ABSENCE
Nil

6. PETITIONS / PRESENTATIONS / DEPUTATIONS
Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING
Nil

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION
Cr Tony Boyle congratulated Adelphe King on becoming the new Featured Artist for the West Australian Guild of China Painters. Adelphe has been a member of the Guild since its foundation in 1964.

9. OFFICER'S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Demolition of Grandstand and Redevelopment of York Racecourse at Spencers Brook Road, York

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

FILE NO: CCP.10, P699
COUNCIL DATE: 24 October 2011
REPORT DATE: 19 October 2011
LOCATION/ADDRESS: York Racecourse at Lots 91, 99-110 Spencers Brook Road, York
APPLICANT: York Racing Inc.
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: J Jurmann, MPS
DISCLOSURE OF INTEREST: Cr Boyle - Impartial
APPENDICES:
1 – Locality Plan
2 – Architectural Plans
3 – Heritage Impact Statement
4 – Heritage Council correspondence
5 – RAWA correspondence
6 – Shire response to Heritage Council
DOCUMENTS TABLED: Nil

Summary:

Council is in receipt of a planning application to demolish the State heritage listed grandstand at the York Racecourse on Spencers Brook Road, York and to replace it with modern facilities for future racing and other community functions.

The application has been advertised in accordance with the provisions of the York Town Planning Scheme No. 2 and five (5) submissions have been received regarding the proposal. Two of the submissions were objecting specifically to the demolition of the grandstand.

Advertising of the application included referral to relevant government agencies. Racing and Wagering WA responded favourably to the proposal. However, the Heritage Council of WA did not support the proposal. The issues raised in their submission are discussed in this report.

It is recommended that the application be approved subject to the conditions of consent listed at the end of this report and on the proviso that York Racing Inc. liaise with the Heritage Council of WA in the preparation of a feasibility study.

Background:

The York Racecourse is located on Spencers Brook Road at York approximately 3 kilometres north of the York township and is the oldest operating race track in the region.

The site was listed in the State Register of Heritage Places on 3 June 2005 and is described on the Heritage Council's website as follows:

“York-Beverley Racecourse comprises the race track, grandstand (1924), tote building (original) (c.1924) and bar area, J M Smyth pavilion (1972), committee rooms (former) (c.1924), stable and associated yards, track elements and grounds. It has been the home to the York Jockey Club, the oldest regional race club in Australia, since 1846 and is the oldest operating regional racetrack in WA.”

Unfortunately, the grandstand was affected by the dust storm that hit York on 29 January 2011. The roof on the grandstand was sheared off and the bar area destroyed. Following rains resulted in ingress of water, which has further damaged the timber and underneath facilities so significantly that the grandstand and facilities are no longer usable and requires re-building. York Racing Inc. have had builders estimate that the re-build costs would be in the vicinity of \$500,000.

To conduct official races, the facilities for jockeys, officials, owners, horses and the members of the public must meet relevant standards and be endorsed by Racing and Wagering WA.

The applicant in their application state:

“As a result of the January storm and subsequent ingress of winter rains the damage done to the grandstand is extensive. After many months of careful deliberation and consultation, the York Racing Inc. committee have decided to apply for demolition of the grandstand on three grounds:

- 1. Public health concerns due to the ever increasing growth of mould on the ceilings, walls and floors to the rooms underneath the grandstand due to the water damage.*
- 2. Public safety as the seating area of the grandstand is unsafe and the cost of repairs is excessive because it would be considered a rebuild and not a renovation.*
- 3. The overall cost to repair or attempt to replace the damaged grandstand is extremely high and the club is unable to hold race meetings because of this damaged grandstand and underneath structures and has no way of earning the money to pay for the necessary repairs.*

In place of the grandstand the club is looking to build a more modern building in keeping with the surrounding area and panoramic views of Mt Bakewell.

The committee is most sympathetic to the heritage value of the grandstand but we simply cannot see anyway to preserve it and have a building that will provide all the necessary requirements for racing and future development within the Equine Precinct.”

It is proposed to redevelop the racecourse to provide facilities for horse racing, other equine pursuits and for community events. The first stage following the demolition of the grandstand will be the construction of a large roofed area that will include modern tote, official and jockey facilities. It is also envisaged by the applicant that the area will be also utilised for a variety of community events, such as the York Agricultural Show and the York Jazz Festival.

The schedule of works submitted with the application, which will be undertake in stages, describes the future works that are considered as part of this planning application as follows:

- 62 new race day stalls;
- Relocation of broadcast box from Forrest Oval to Mt Bakewell Site (not part of this application);
- New main public entry with ticket box;
- Public car park on Lots 100, 101 and 101;
- 600 metre exercise track for thoroughbreds;
- Relocate demolished race day stalls to training facility site on Lots 109 and 110;
- Bridle paths;
- 1500 metre sand track between ambulance and harness training tracks;
- New barrier shelter on Lot 110;
- Erect exhibition shelter west side of Smyth (Members) Pavilion;
- Erect undercover equestrian arena;

- On course stabling area;
- Horse swimming pool;
- Horse exercise walking machine;
- Erect building to house racing museum and archival materials; and
- Perimeter fencing.

Consultation:

The application was advertised in accordance with Clause 7.3 of the York Town Planning Scheme No. 2, including an advertisement in the Avon Valley Gazette, on Council's website and Office, and directly to adjoining landowners. Two submissions were received in response to the notification objecting to the demolition of the grandstand.

Additionally, other authorities were consulted in accordance with Clause 7.4 of the Scheme. Responses were received from Racing and Wagering WA and the Heritage Council of WA. RAWA were supportive of the redevelopment to ensure the future of racing at the York Racecourse, whereas the Heritage Council were not supportive of the proposal and have requested the preparation of a feasibility study.

Statutory Environment:

Planning and Development Act 2005

Section 163 of the Act states:

"Where any land comprised within a place entered in the Register maintained by the Heritage Council under the Heritage of Western Australia Act 1990, or of which such a place forms part, is to be the subject of development, an application for approval of the development is to be made –

- (a) in the case of an application under a local planning scheme or local interim development order, to the responsible authority; and*
- (b) in any other case, to the Commission."*

A planning application has been submitted to the Shire of York as the responsible authority in accordance with the Act and the York Town Planning Scheme No. 2.

Heritage of Western Australia Act 1990

Section 78(1) of the Act states:

"Where any land is entered in the Register all –

- (a) applications for approval of development in a planning control area made under Part 7 of the Planning and Development Act 2005; and*
- (b) applications for approval under section 135, 136 or 162, or approvals for the purposes of section 147, of the Planning and Development Act 2005; and*
- (c) licence applications under section 374 or 374A of the Local Government (Miscellaneous Provisions) Act 1960; and*
- (d) applications for a certificate of approval under section 25 of the Strata Titles Act 1985; and*
- (e) other prescribed applications,*

then before a decision-making authority in respect of that land shall, except in so far as the Council may otherwise in writing agree with the decision-making authority, not be further proceeded with until the application in question has been referred by the decision-making authority to the Council and the advice of the Council received.”

The application was referred to the Heritage Council on 19 September 2011 in accordance with the Act. A written response was received by the Shire on 18 October 2011 containing the advice of the Council and that it did not support the demolition of the grandstand.

In response, correspondence was forwarded to the Heritage Council on 19 October 2011 advising the Council of the recommendation of this report. The Heritage Council's Development Referrals Manager has consequently advised:

“If the York Council chooses to act contrary to HCWA's advice, it must determine that there is no feasible and prudent alternative to doing so. This is set out in Section 11(3)(c) of the Heritage of Western Australia Act 1990. The Act does not state in what way the Council is to determine this but I would assume that the York Shire would have to make a resolution that there is no feasible and prudent alternative other than to demolish the grandstand.”

The following legal advice on the assessment of “no feasibly and prudent alternative” was also received from the Heritage Council:

“Section 11, subsection (3), of the Heritage of Western Australia Act 1990 (the Act) provides as follows:

(3) A decision-making authority shall not take any action that might (whether or not adversely) affect to a significant extent a registered place or a place which is the subject of a Heritage Agreement (even though that action is not directly related to the place) unless —

- (a) subsection (2) has been complied with by the authority;*
- (b) the authority has informed the Council of the proposed action and given the Council a reasonable opportunity to consider it and to advise both the Minister and that authority;*
- (c) that action is consistent with advice received from the Council, or there is no feasible and prudent alternative to the taking of that action; and*
- (d) the decision-making authority has used its best endeavours to ensure that all measures which can reasonably be taken by any person involved in the implementation of the proposal are taken so as to minimize any adverse effect.*

Paragraph (c) is of particular interest with respect to demolition proposals. Although the Heritage Council generally does not support demolition of a registered place, it is ultimately for the decision-making authority to decide whether to approve demolition.

The inclusion of paragraphs (c) in the Act reflect Parliament's view that a decision that is contrary to the advice of the Heritage Council is not to be made lightly. Thus, the only exception to the rule that the final decision must be consistent with the advice of the Heritage Council is where there is, in fact, no feasible and prudent alternative to making a decision that is not consistent.

There has been some confusion as to the proper interpretation of “no feasible and prudent alternative”. To the extent that this phrase has been interpreted by the courts, however, it is clear that paragraph requires some analysis of a situation before the decision-maker can conclude that there is no feasible and prudent alternative to its preferred course of action. Simply concluding that there is no feasible and prudent alternative to the least-cost option, for example, is not sufficient.

The phrase was analysed at length by Finkelstein J of the Federal Court of Australia in the 2003 decision Friends of Merri Creek Incorporated v Meakins and Another [2003] FCA 671. The Federal Court held that, whether an alternative is “feasible” is a question of whether it is technically practicable and cost-effective, and whether it is “prudent” involves consideration of whether an alternative offers economic benefits and environmental and social merits.

Thus, it can be said that there is no feasible and prudent alternative to a course of action if the decision maker finds that there is no alternative that is technically practicable and cost effective that offers economic benefits and environmental and social merits.

The cost of restoring a place and the lost opportunity of a possibly more profitable redevelopment of the land does not by itself support the conclusion that there is “no feasible and prudent alternative” to demolishing the place. Rather, there must exist truly unusual factors, or the cost of alternatives (e.g., restoration or adaptive re-use) must reach extraordinary magnitudes such that the alternatives present unique problems.

It is obvious that in most cases considerations of restoration cost, alternative uses of the land and potential profit resulting from subdivision and redevelopment will indicate that a neglected place on the state register should be demolished whenever possible. There will always be a smaller outlay required to simply demolish a place than to restore it. Such factors are common to most registered places. Thus, if Parliament intended these factors to be on an equal footing with conservation of heritage places there would have been no need for paragraph (c) of section 11(3) of the Heritage Act.

Parliament clearly did not intend that cost was to be ignored by the decision maker. But the very existence of paragraph (c) indicates that protection of heritage places was to be given paramount importance. If paragraph (c) is to have any meaning, the decision-making authority cannot approve demolition of a registered, contrary to the advice of the Heritage Council, without first making a formal determination that all the alternatives present unique problems or that the cost of alternatives – such as restoration – reach extraordinary magnitudes.

Protection of the cultural heritage of Western Australia is to be considered a basic requirement, and is to be used to eliminate other options. Demolition cannot be accepted unless there are reasons of technical impracticability and cost or extraordinary economic hardship or environmental and social disadvantage in conserving the place.

Because every situation is unique, the Office of Heritage recommends that the decision-making authority obtain legal advice before making a decision that relies on the “no feasible and prudent alternative” exception.”

It is considered that there is no feasible or prudent alternative to the demolition of the grandstand for the following reasons:

1. The extraordinary costs of rebuilding the grandstand is beyond the ability of York Racing Inc. (a not for profit organisation) and will result in continued financial hardship for the group.
2. The rebuilding of the grandstand is not considered a cost effective action that will not result in any economic benefits or environmental or social merits.
3. Grant funding is only available for the re-establishment of racing. There are no funds available for the re-building of the grandstand.
4. The highest priority for York Racing is to re-establish racing to provide an income to ensure the future of racing.
5. The insurance and continual maintenance of the grandstand is a significant burden to York Racing and could significantly affect their ability to hold race meetings and to provide compliant facilities for jockeys, horses and the public.
6. The January 2011 dust storm was a freak weather event and in itself could be considered exceptional circumstances, which makes this situation unique.

7. The only prudent alternative identified in this assessment at present is to exclude the demolition from the current proposal and to fence the grandstand for public safety. This action will result in further deterioration and eventual demolition.
8. The demolition of the grandstand will not result in the loss of the place (racecourse) or the cultural significance of the place.

State Planning Policy 3.5 – Historic Heritage Conservation

The SPP sets out the principles of sound and responsible planning for the identification, conservation and protection of Western Australia's historic heritage.

Section 5 of the SPP outlines the statutory framework for the assessment and conservation of heritage places as follows:

“Any development to a state-registered place requires approval from the responsible authority, usually the Western Australian Planning Commission or local government, on the advice of the Heritage Council.”

Advice has been sought from the Heritage Council in accordance with the relevant Acts and the SPP.

Section 6.6 of the SPP outlines development control principles that should be applied in considering planning applications in relation to a place entered in a heritage list. However, the section also notes that the weight given to heritage as a consideration will vary, depending on the degree of significance of a place or area, and relevant economic, social or environmental factors that may apply.

In relation to demolition of a heritage place, the SPP principles are:

- *“Demolition of a State heritage place is rarely appropriate and should require the strongest justification. Demolition of a local heritage place should be avoided wherever possible, although there will be circumstances where demolition is justified. The onus rests with the applicant to provide a clear justification for it.*
- *Demolition approval should not be expected simply because redevelopment is a more attractive economic proposition, or because a building has been neglected. Consideration of a demolition proposal should be based upon the significance of the building or place; the feasibility of restoring or adapting it, or incorporating it into new development; the extent to which the community would benefit from the proposed redevelopment; and any local planning policies relating to the demolition of heritage places.”*

Justification has been provided by the applicant in support of the demolition proposal and emphasises that the significance of the place will be protected to benefit the community.

With regards to alterations, extensions or change of use affecting a heritage place, the SPP principles are:

- *“Development should conserve and protect the cultural significance of a heritage place based on respect for the existing building or structure, and should involve the least possible change to the significant fabric.*
- *Alterations and additions to a heritage place should not detract from its significance and should be compatible with the siting, scale, architectural style and form, materials and external finishes of the place. Compatibility requires additions or alterations to site well with the original fabric rather than simply copying or mimicking it.*
- *In some cases, the conservation and protection of a heritage place may require a change of use to ensure a reasonable beneficial use or return. Sympathetic adaptation and change of use should be supported in such cases.*

- *Development should be in accordance with any local planning policies relating to heritage.”*

The proposal has been developed to protect the cultural significance of the racecourse.

York Town Planning Scheme No. 2

The site is reserved for Recreation and Open Space purposes under the provisions of the Scheme. The proposal is consistent with the purposes of the reserve.

Approval is required prior to the commencement of development, unless the development is permitted development as outlined in section 4.2 of the Scheme. As the site is State heritage listed, no development, including development, is permitted development and therefore requires planning approval.

Section 5.1 of the Scheme applies to heritage precincts and places and section 5.1.4 outlines the requirements for dealing with applications for development approval as follows:

- 5.1.4.1 *“In dealing with any matters which may affect a Heritage Precinct or individual entry on the Heritage List, including any application for planning consent, the local government shall have regard to any heritage policy of the local government.*
- 5.1.4.2 *The local government may, in considering any application that may affect a Heritage Precinct or individual entry on the Heritage List, solicit the views of the Heritage Council of WA, and those of any other relevant bodies, and take those views into account when determining the application.*
- 5.1.4.3 *Notwithstanding any existing assessment on record, the local government may require a heritage assessment to be carried out prior to the approval for any development proposed in a Heritage Precinct or individual entry listed on the Heritage List.*
- 5.1.4.4 *For the purposes of this part the term “development” shall have the meaning as set out in the Act but shall also include, in relation to any building, object, structure or place entered in the Heritage List or contained within a heritage precinct, any act or thing that is likely to significantly change the character of the building, object or structure, or place.”*

The provisions of the LPP have been assessed below in accordance with section 5.1.4.1 of the Scheme. Additionally, the views of the Heritage Council have been obtained in accordance with section 5.1.4.2.

As indicated earlier in this report, consultation for this application has been carried out in accordance with sections 7.3 and 7.4 of the Scheme.

Section 7.5 outlines matters to be considered when assessing an application for planning consent. The matters have been considered as follows:

- (a) *The aims and provisions of the Scheme and any other relevant town planning schemes operating within the scheme area.* The redevelopment proposal is consistent with the objectives of the scheme. However, the demolition of the grandstand is contradictory to the objective of the scheme to preserve historic buildings.
- (b) *The requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, which has been granted consent for public submissions to be sought.* There are no new schemes or amendments applicable to the land.
- (c) *Any approved statement of planning policy of the Commission.* No statements applicable to this proposal.

- (d) *Any approved environmental protection policy under the Environmental Protection Act 1986. No policies are applicable to this proposal.*
- (e) *Any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State. The State Planning Policy No. 3.5 – Historic Heritage Conservation has been considered in this assessment.*
- (f) *Any Planning Policy adopted by the local government under clause 8.8, any policy for a designated heritage precinct adopted under clause 5.1.3, and any other plan or guideline adopted by the local government under the Scheme. The Local Planning Policy – Heritage Precincts and Places has been considered in the assessment of this proposal.*
- (g) *In the case of land reserved under the Scheme, the ultimate purpose intended for the reserve. The land is reserved for Open Space and Recreation purposes and the proposal is consistent with the reserved purpose.*
- (h) *The conservation of any place that has been entered in the Register within the meaning of the Heritage of Western Australia Act 1990, or which is included in the Heritage List under clause 5.1.2, and the effect of the proposal on the character or appearance of a heritage precinct. The site is listed on the State Register of Heritage Places.*
- (i) *The compatibility or a use or development with its setting. The proposed redevelopment of the racecourse is compatible with the site and setting within the Equine Precinct.*
- (j) *Any social issues that have an effect on the amenity of the locality. There are positive and negative issues associated with the proposal. The redevelopment of the racecourse will have a positive social outcome for the community of York through the continuation of racing and tradition at the historic racecourse, the establishment of a venue for community events and the strengthening of the equine precinct.*
- (k) *The cultural significance of any place or area affected by the development. The cultural significance of the York Racecourse is highly valued by the York community, Avon Valley and the wide racing community. It is important to the social and economic development of York that the racecourse continues to provide and operate a venue for cultural activities. It is also hoped in the future to establish a museum that will provide the community and visitors a history of the racecourse.*
- (l) *The likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment. There are unlikely to be any environmental impacts as a result of the proposal. Any impacts can be mitigated through management.*
- (m) *Whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bushfire or any other risk. There are no environmental constraints that restrict the proposed development.*
- (n) *The preservation of the amenity of the locality. The proposal will not impact on the amenity of the locality.*
- (o) *The relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal. The proposal is in context with the adjoining land and precinct.*
- (p) *Whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles. Provision has been made for access and egress to and from the racecourse that will improve the existing situation.*

- (q) *The amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.* Roads are capable of catering for traffic generated as a result of the redevelopment.
- (r) *Whether public transport services are necessary and, if so, whether they are available and adequate for the proposal.* Public transport could be provided for larger events by way of buses.
- (s) *Whether public utility services are available and adequate for the proposal.* Existing utility services are adequate for the proposal.
- (t) *Whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities).* Facilities can be provided.
- (u) *Whether adequate provision has been made for access by disabled persons.* Access will be provided.
- (v) *Whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved.* Landscaping will be enhanced as part of the development.
- (w) *Whether the proposal is likely to cause soil erosion and degradation.* Sediment and erosion measures will be required during construction.
- (x) *The potential loss of any community service or benefit resulting from the planning consent.* The closure of the racecourse would result in the loss of a major community service and benefit for the York community. The retainment of the grandstand but loss of racing would result similarly.
- (y) *Any relevant submissions received on the application.* There were two submissions from the community objecting to the demolition of the grandstand.
- (z) *The potential impacts of noise, dust, light, risk, and other pollutants on surrounding land uses.* The redevelopment of the racecourse is unlikely to result in adverse impacts on surrounding land uses, particularly as it is located in a dedicated equine precinct and that the racecourse has been operating for an extended period of time.
- (aa) *The comments or submissions received from any authority consulted under clause 7.4.* The Heritage Council of WA and Racing and Wagering WA both made submissions on the proposal. The Heritage Council did not support the demolition of the grandstand. Whereas RAWA have supported the demolition and redevelopment. Both submissions are attached to this report.
- (bb) *Any other planning consideration the local government considers relevant.* Nil.

Local Planning Policy – Heritage Precincts and Places

Section 2.4.3 of the LPP sets out the considerations for application for demolition of heritage places or in a heritage precinct and states that justification should be based upon the following:

- a) *“The significance of the building or place;*
- b) *The feasibility of restoring or adapting it or incorporating it into new development;*
- c) *The extent to which the community would benefit from the proposed development; and*
- d) *The provisions of this Local Planning Policy.”*

These issues have been considered and are detailed in the Heritage Impact Statement.

Section 2.5 requires that a Heritage Impact Statement and Structural Condition Assessment are submitted with a planning application for demolition. Both documents have been submitted, together with physical inspection by Council’s Planning Manager and Health and Building Manager.

Section 2.6 states that any development proposals affecting places on the State Register must be referred by the Shire of York to the Heritage Council for advice as per the *Heritage of Western Australia Act 1990*. The application has been referred.

Policy Implications:

The redevelopment proposal is consistent with the objectives of the local planning scheme. Although, the demolition of the grandstand is contradictory to the objective of the scheme to preserve historic buildings, however as discussed in this report, the continuation of racing at the York racecourse is as important from a cultural heritage point of view.

Financial Implications:

“York Racing Incorporated is a volunteer not-for-profit organisation and its members are from thoroughbred and harness racing backgrounds. Funds are raised from holding race meetings and venue hire for conferences and community events. Grants are available for race clubs from a limited number of sources.

The viability of the racecourse is dependent on holding race meetings. To hold meetings the facilities for the jockeys, officials, horses, owners and the public at the racecourse must be upgraded.

The ongoing maintenance and insurance requirements associated with the grandstand, notwithstanding the potential re-build costs estimated at \$500,000, is a substantial liability for the club and will significantly affect the viability of the club and therefore the racecourse. These factors can be attributed directly to the current instability of the club financially and the previous decision to under insure the grandstand.

The proposal will ensure the future financial sustainability of the club, and the racecourse, by providing the ability to hold race meetings. It will ensure that the racecourse will remain an important social and cultural venue for the community of York, the Avon Valley and the wider Western Australian racing community.” *Heritage Impact Statement, 2011*.

Strategic Implications:

There are two strategies in the York Local Planning Strategy that are relevant to this application:

1. Heritage

- a. The objective for Heritage is to: *“Recognise the opportunity to protect and preserve the significant heritage values of York and promote new development that integrates and enhances these values”*.
- b. There are no specific actions relating to the racecourse or grandstand.

2. Equine Precinct

- a. The objective of the Equine Precinct is to: *“Facilitate the development of a well-integrated ‘purpose built’ precinct for all equine pursuits, that is centred around the historic York Racecourse and the surrounding Mt Bakewell rural residential area”*.
- b. Action 86 is: *“To liaise with the Avon Racing and Racing and Waging WA to ensure the long-term viability of racing and pacing in York and the Avon Valley”*.

A feasibility study and business plan for the Equine Precinct was initially prepared in 2000. The study was to investigate establishing an equine precinct that would incorporate both gallops and trotting with associated facilities including on course training and stabling facilities. The Study determined that the precinct was a viable proposal as it was centred around utilising the existing racecourse.

The continuation and development of the racecourse, including co-location of other equine activities, is consistent with the strategic objectives of the Local Planning Strategy.

Voting Requirements:**Absolute Majority Required: No****Site Inspection:****Site Inspection Undertaken: Yes****Triple bottom Line Assessment:****Economic Implications:**

Economic development and tourism is a key result area for Council, and includes objectives such as:

1. To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.
2. To increase tourism to achieve business viability and growth.
3. To increase the net disposable income of the York community and investigate ways of increasing spending within the Shire.
4. To utilise the unique features of York's heritage and rural lifestyle, where appropriate, as the basis for economic development.
5. To ensure economic development does not conflict with York's heritage, lifestyle and environment.

Ensuring the viability of an operating racecourse is consistent with the economic development and tourism objectives. The racecourse and training facility delivers on the objective of this clause through its close links to both agricultural and tourism. The use of the site for horse training and for racing will provide economic opportunities to the Shire of York and will further support the local agricultural land uses, many of which involve equestrian uses. The convening of regular race meetings at the site will provide employment opportunities for local residents.

Social Implications:

There are positive and negative social implications associated with the proposal. The redevelopment of the racecourse will have a positive social outcome for the community of York through the continuation of racing and tradition at the historic racecourse, the establishment of a venue for community events and the strengthening of the equine precinct. Negatively, will be the loss of the iconic grandstand if demolished.

Environmental Implications:

It is unlikely that the proposal will result in any detrimental environmental impacts. However, any environmental impacts can be appropriately managed.

Comment:

There is no doubt of the significance of the grandstand as a representative example of a regional racecourse from the first half of the twentieth century and the racecourse as one of the few remaining regional racecourses incorporating a grandstand in Western Australia, incorporating timber buildings constructed in the interwar period.

It could be argued that the place has as much cultural heritage significance as the buildings have for built heritage. The following statement made in the Heritage Impact Statement:

"The place is historically significant for its long and ongoing association with the development of country horseracing and horseracing in general within Western Australia.

The place is highly valued by the community as a place of social and cultural focus for not only people involved in the racing industry, but also those within the local community and Western Australia who recognise the contribution of the York Racecourse as a major local venue for community events and the institution of horseracing in Australia.

Horse racing is a significant aspect of Australian culture.

The cultural significance of the York Racecourse will not be detrimentally affected by the demolition of the grandstand. The demolition will result in the viability of the York Racecourse and therefore preserving and enhancing the cultural significance of the York Racecourse.”

The viability of the place (racecourse) is dependent on holding race meetings. To hold race meetings the facilities for the jockeys, officials, horses, owners and the public at the racecourse must be upgraded.

The ongoing maintenance and insurance requirements associated with the grandstand, notwithstanding the potential re-build costs estimated at \$500,000, is a substantial liability for the club and therefore the racecourse.

The proposal will ensure the future financial sustainability of the club, and the racecourse, by providing the ability to hold race meetings. It will ensure that the racecourse will remain an important social and cultural venue for the community of York, the Avon Valley and the wider Western Australian racing community.

Section 7.10 of the Scheme enables a planning consent to be granted:

- (a) *for the use or development for which the approval is sought;*
- (b) *for that use or development, except for a specified part or aspect of that use or development; or*
- (c) *for a specified part or aspect of that use or development.*

Section 7.11 of the Scheme enables Council to grant approval subject to later approval of details as follows:

7.11.1 Where an application is for a development that includes the carrying out of any building or works, the local government may grant approval subject to matters requiring the subsequent planning consent of the local government. These matters may include the siting, design, external appearance of the buildings, means of access, landscaping, and such other matters as the local government thinks fit.

7.11.2 In respect of an approval requiring subsequent planning consent, the local government may require such further details as it thinks fit prior to considering the application.

7.11.3 Where the local government has granted approval subject to matters requiring the later planning consent of the local government, an application for approval of those matters must be made not later than 2 years after the date of determination of the first approval, or such other period as is specified in the approval.

Therefore, Council may decide to determine the application by:

- (a) approving the application as submitted subject to submission of further details and conditions of consent; or
- (b) approving the application subject to submission of further details and the applicant liaising with the Heritage Council with regards to the offer of a feasibility study, subject to conditions of consent; or
- (c) approving part of the application i.e. the new construction works and delaying the determination of the portion of the application relating to the demolition of the grandstand, subject to submission of further details and conditions of consent; or
- (d) deferring determination of the application in its entirety until receipt of legal advice as recommended in the advice received from the Heritage Council (last paragraph of the advice); or

- (e) deferring determination of the application in its entirety until completion and receipt of the feasibility study requested by the Heritage Council; or
- (f) refusing the application.

As demonstrated in this report, it is considered that there is no feasible or prudent alternative to the demolition of the grandstand and it is recommended that Option (b) is the most appropriate resolution for Council to enable the recommencement of racing and the redevelopment of the racecourse to proceed without significant delays that would result in the preparation of a feasibility study as recommended by the Heritage Council.

Cr Boyle declared an Interest Affecting Impartiality - on the Committee of a non for profit organisation with no financial gain. Advice obtained from the Department of Local Government on 24th October, 2011 – can declare impartiality and participate in debate.

OFFICER RECOMMENDATION

“That Council:

APPROVE the planning application for demolition of the State Heritage Listed grandstand and redevelopment of the York Racecourse located at Lot 103 Spencers Brook Road, York, subject to the following conditions of consent:

- 1. Development must substantially commence within two (2) years from the date of this decision.*
- 2. The development shall take place in accordance with the stamped approved plans and the application documentation, including schedule of future works.*
- 3. Development may take place in stages, subject to the conditions of this consent and the requirements for the issue of the demolition or a building licence. Any modifications will require prior Council consent.*
- 4. Prior to the issue of a demolition licence for the grandstand, the applicant is to provide written confirmation showing evidence of consultation with the Heritage Council of WA.*
- 5. The development hereby permitted being in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts and the requirements of the Heritage Council of Western Australia. Colours and materials will be required to be submitted for approval prior to issue of a building licence for the relevant stage.*
- 6. Prior to the issue of a demolition or building licence, the application shall submit plans or documentation detailing the reuse of the timber from the grandstand.*
- 7. Photographic records of before and after construction must be kept and forwarded to the local government for inclusion in the Municipal Heritage Inventory.*
- 8. Disabled access and facilities shall be provided in accordance with the requirements of the Building Code of Australia.*
- 9. Car parking shall be provided on site in accordance with the provisions of the York Local Planning Scheme No. 2. A car parking and traffic management plan shall be submitted for approval prior to the construction of the parking.*
- 10. An overall drainage management concept plan shall be submitted prior to the issue of a building licence for approval by the local government.*
- 11. An Environmental Management Plan must be prepared and approved to the satisfaction of the local government prior to the use of the new horse facilities.*
- 12. Any new advertising signage will require separate planning approval.*

Notes to consent:

- Note 1: *If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of determination, the approval will lapse and be of no further effect.*
- Note 2: *Where an approval has so lapsed, no development is to be carried out without the further approval of the local government having first been sought and obtained.*
- Note 3: *If an applicant is aggrieved by this determination there is a right of appeal under the Planning & Development Act 2005. An appeal must be lodged within 28 days of the determination.*
- Note 4: *This approval is not a building or demolition licence. In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1960, an application for a building or demolition licence must be submitted to, and approval granted by the local government prior to the commencement of any works within the development hereby permitted.*
- Note 5: *Any new crossovers will require prior permission of the Shire of York.*
- Note 6: *Any public events, with the exception of horse racing events, will require the submission and approval of a Public Event Management Plan.*
- Note 7: *This approval does not include subdivision or convey Council's position on subdivision of any existing parcels.*

**RESOLUTION
211011**

Moved: Cr Scott

Seconded: Cr Lawrance

That Council Amend the Officer Recommendation to read:

"That Council:

APPROVE the planning application for demolition of the State Heritage Listed grandstand and redevelopment of the York Racecourse located at Lot 103 Spencers Brook Road, York, subject to the following conditions of consent:

- 1. Development must substantially commence within two (2) years from the date of this decision.***
- 2. The development shall take place in accordance with the stamped approved plans and the application documentation, including schedule of future works.***
- 3. Development may take place in stages, subject to the conditions of this consent and the requirements for the issue of the demolition or a building licence. Any modifications will require prior Council consent.***
- 4. Prior to the issue of a demolition licence for the grandstand, the applicant is to provide written confirmation showing evidence of consultation with the Heritage Council of WA including the designated feasibility study to be completed by 31st December, 2011 and fully funded by the Heritage Council.***
- 5. The development hereby permitted being in accordance with the Shire of York Local Planning Policy for Heritage Places and Precincts and the requirements of the Heritage Council of Western Australia. Colours and materials will be required to be submitted for approval prior to issue of a building licence for the relevant stage.***
- 6. Prior to the issue of a demolition or building licence, the application shall submit plans or documentation detailing the reuse of the timber from the grandstand.***
- 7. Photographic records of before and after construction must be kept and forwarded to the local government for inclusion in the Municipal Heritage Inventory.***

- 8. Disabled access and facilities shall be provided in accordance with the requirements of the Building Code of Australia.**
- 9. Car parking shall be provided on site in accordance with the provisions of the York Local Planning Scheme No. 2. A car parking and traffic management plan shall be submitted for approval prior to the construction of the parking.**
- 10. An overall drainage management concept plan shall be submitted prior to the issue of a building licence for approval by the local government.**
- 11. An Environmental Management Plan must be prepared and approved to the satisfaction of the local government prior to the use of the new horse facilities.**
- 12. Any new advertising signage will require separate planning approval.**

Notes to consent:

- Note 1:** *If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of determination, the approval will lapse and be of no further effect.*
- Note 2:** *Where an approval has so lapsed, no development is to be carried out without the further approval of the local government having first been sought and obtained.*
- Note 3:** *If an applicant is aggrieved by this determination there is a right of appeal under the Planning & Development Act 2005. An appeal must be lodged within 28 days of the determination.*
- Note 4:** *This approval is not a building or demolition licence. In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1960, an application for a building or demolition licence must be submitted to, and approval granted by the local government prior to the commencement of any works within the development hereby permitted.*
- Note 5:** *Any new crossovers will require prior permission of the Shire of York.*
- Note 6:** *Any public events, with the exception of horse racing events, will require the submission and approval of a Public Event Management Plan.*
- Note 7:** *This approval does not include subdivision or convey Council's position on subdivision of any existing parcels.*

CARRIED: 5/1

The Officer Recommendation was amended in Item 4 to include the undertaking of a fully funded Feasibility Study by the Heritage Council.

Item 9.1.1 - Appendices

9.2 Administration Reports

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.1 Proposal to Make Parking and Parking Facilities Amendment Local Law 2011

FILE NO:	LE.LLW.8
COUNCIL DATE:	18 October 2011
REPORT DATE:	24 October 2011
LOCATION/ADDRESS:	N/A
APPLICANT:	Shire of York
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Darren Long – DL Consulting
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appendix A – Local Laws Parking and Parking Facilities – 1999 Appendix B – Parking and Parking Facilities Amendment Local Law 2011
DOCUMENTS TABLED:	Nil

Summary:

The purpose of this report is to:

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

Background:

At its ordinary meeting of 16 August 2011, Council resolved to commence the process to make a Shire of York Parking and Parking Facilities Amendment Local Law.

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

An advertisement was placed in the West Australian on 24 November 2010, with the submission period for public comment closing on Wednesday 19 January 2011.

At its ordinary meeting on 20 June 2011, Council considered the proposed Amendment local law and expressed concern over the implications of clause 3.2(3) in the existing Parking local law, and the fact that it prevented motorcycles from using a parking bay that is not marked "M/C". The following was presented and Council resolved that the item be deferred:

OFFICER RECOMMENDATION

“That Council:

1. *Reject the submission from Mr D Paton on the proposed changes to the Parking and Parking Facilities local law;*
2. *Notes the submission from the Department of Local Government in relation to the proposed Shire of York Parking and Parking Facilities Amendment Local Law 2010;*
3. *Council resolves to make the Shire of York Parking and Parking Facilities Amendment Local Law 2011, as per the Attachment, incorporating amendments outlined by the Department of Local Government, in accordance with section 3.12 of the Local Government Act 1995;*
 - (a) *the purpose of which is to amend the Shire of York Parking and Parking Facilities local law to include additional provisions that reflect current legislative requirements, and review modified penalties; and*
 - (b) *the effect is to ensure that the local law is consistent with other legislation;*
4. *Publish the Shire of York Parking and Parking Facilities Amendment Local Law 2011, as per (3) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government;*
5. *Forward a copy of the gazetted local law, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review; and*
6. *Authorise the affixing of the Common Seal of the Shire of York to the Shire of York Parking and Parking Facilities Amendment Local Law 2011.”*

RESOLUTION
120611

Moved: Cr Scott

Seconded: Cr Walters

“That Council:

Defer this matter until further notice.”

CARRIED: 5/0

The local law was referred back to Council's Consultant dealing with the local law review for further comment and revision.

Consultation:

As required by section 3.12 the Local Government Act 1995, an advertisement was placed, in a state-wide newspaper, inviting the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks (42 days), closing on 19 January 2011.

Statutory Environment:

Local Government Act 1995.

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

Road Traffic Act 1974.

Road Traffic Code 2000.

Policy Implications:

The adoption of relevant policies, if required, should be undertaken after the final adoption of the local law.

Financial Implications:

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

Strategic Implications:

Resource Management.

Voting Requirements:

Absolute Majority Required: YES

Site Inspection:

Site Inspection Undertaken: Not Applicable

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

Not applicable.

Social Implications:

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

Environmental Implications:

Not applicable.

Comment:

Council advertised, both locally and state-wide, for public comment on the draft Parking and Parking Facilities Amendment Local Law 2010. At the close of the submission period, one public submission had been received. A summary of this submission is detailed in the following table.

Submission/Applicant Name	Comment	Officer/Consultant Comment	Recommended Action
Submission 1 Mr D Paton	<p>Clause 3.2(3) – Restrictions on parking in particular areas</p> <p>At present there is some designated parking for motorcycles outside Saint's Cafe and some parking bays for these vehicles further along Avon Terrace. I have never heard complaints from visitors or local York people about these motorcycles taking up space in ordinary car parking bays, in fact many people admire the polished gems that people ride to York. If the Shire of York is going to penalise these riders with parking fines when they come to York it will have six guaranteed results-</p>	Clause 3.2(3) has been deleted in the amendment local law.	It is recommended that Council uphold the submission from Mr D Paton in relation to clause 3.2(3) of the Parking and Parking Facilities Amendment Local Law.

	<p>(1) They will not ride to York anymore.</p> <p>(2) They will trash York's reputation.</p> <p>(3) It will have a detrimental effect on Saint's Cafe.</p> <p>(4) It will destroy York's reputation as a destination for visitors.</p> <p>(5) They will lose York many of thousands of dollars income over a year's period.</p> <p>(6) If certain elements of motorcycle groups decide that the laws are not fair to them they could possibly bring riots and mayhem to York with no chance of the local police having any control over the consequences.</p>		
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One submission from the Department of Local Government was received on 19 January 2011. The comments from the Department of Local Government, set out in the table below, have been incorporated into the final draft of the amendment local law.

Department Comment	Officer/Consultant Comment	Action Taken
It is recommended that as your laws will not be gazetted until 2011 – that the year in the title of the proposed law be changed to “2011”.	Noted and agreed.	Year in title and citation has been amended to 2011.
Clause 2 – Commencement To be consistent with current drafting standards please replace the word “fourteen” with the numeral “14”.	Noted and agreed.	In clause 2, the word “fourteen” has been replaced with the numeral “14”.
Clause 3 – Principal Local Law The reference to the title of the principal local law should be italicised. Delete the words “as follows” and replace with a fullstop in last sentence.	Noted and agreed.	In clause 3, title of principal local law has been italicised and the words “as follows” in last sentence have been replaced with a fullstop.
Clause 4.1 appears to be more of a note rather than part of the law. Recommend this subclause be deleted.	Noted and agreed.	Subclause (1) deleted.

Clause 6 – To prevent inconsistency with relevant legislation please amend the identified defined terms to have the meaning given to them in the Code.	Noted and agreed.	Clause 5 in amendment local law has been redrafted to amend the terms “bicycle, carriageway, centre, footpath, motorcycle, no parking area, parking area, special purpose vehicle and vehicle” to reflect their definition in the Code.
Clause 6 – The term “symbol” needs to be amended to reflect the current Australian Standard.	Noted and agreed.	Clause 5 in amendment local law has been redrafted to amend term “symbol” to reference AS1742.11-1999.
In accordance with previous alterations, it is presumed that the Shire does not have any parking stations. As such please amend the heading of Part 2 and the contents of clause 2.1 to remove all references to parking stations.	Noted and agreed.	Clauses 7 and 8 have been inserted in amendment local law to amend Part 2 heading and amend clause 2.1 to remove references to parking stations. In addition clause 6 of amendment local law has been inserted to remove references to parking stations in clause 1.4.
Clauses 8 and 9 – Needs to be reformatted to reflect contemporary drafting standards.	Noted and agreed.	Clauses 9 and 10 in amendment local law have been redrafted to reflect new drafting standards.
Clause 10(2) - Needs to be reformatted to reflect contemporary drafting standards.	Noted and agreed.	Clause 11(2) amended accordingly.
Clause 11 – delete “a Person” and insert “Unless otherwise permitted by a sign, a person”	Noted and agreed.	Clause 12 has been amended to reflect wording.
A new amendment is required to clause 3.7(2) of principal local law to make this subclause subject to any written law relating to intersections.	Noted.	A new subclause(1) in clause 13 has been inserted into the amendment local law to accommodate this change.
Clause 3.7(3) of principal local law is inconsistent with the Road Traffic Code 2000.	Noted	A new subclause (7) has been inserted in Clause 13 to amend the principal local law to comply with the Code. New subclauses (8) and (9) have also been inserted to amend subclauses 3.7(4) and (5) of the principal local law.
Clause 14 needs to be amended so that the reference to ‘part’ is in capitals.	Noted.	Clause 17 of the amendment local law has been altered to reflect this change.
Clause 16(2) needs to be amended so that wording is consistent with clause 5.	Noted	The renumbering of all clauses and subclauses has been moved to clause 28 of the amendment local law and has been redrafted to reflect the changes suggested.
Clause 5.2 in principal local law needs to be deleted as it is an averment clause.	Noted	New clause 19 in amendment local law deletes clause 5.2.

Clauses 16 and 17 should be headed Schedule 1 and Schedule 2 respectively	Disagree	The terms First Schedule and Second Schedule are the terms used in the principal local and as such need to reflect these terms. The amendments in clauses 21 and 22 reflect the change in term use by amending the headings to Schedule 1 and Schedule 2.
Prescribed offences in Schedule 2 do not match up with clauses And require amendment.	Noted	Clause 22 in amendment local law has been altered so that the prescribed offences match the relevant clauses.

In addition to the above changes, a number of minor formatting and setting out errors have been corrected in the amendment local law.

The Council has requested a review of the proposed changes to clause 3.2(3) relating to the parking of motorcycles. The wording of clause 3.2(3) in the existing Parking Local Law is as follows-

- (3) A person shall not park a motorcycle, without a sidecar or a trailer, or a bicycle, in a parking stall unless the stall is marked "M/C".

This prevents motorcycles from being parked in a stall (bay) unless it is marked "M/C".

The proposed wording in the amendment local law is as follows-

- (3) A person shall only park a motorcycle, without a sidecar or a trailer, or a bicycle, in a parking bay where there is no bay marked "M/C" in the parking region.

The intent of the proposed amendment was to provide for where the Council did not specifically mark bays "M/C" and provide for motorcycles. The amendment does not allow for motorcycles to park in a normal bay, where all 'M/C' bays are full and there are no vacant bays available. It would be extremely difficult to draft an amendment to allow for the application of such circumstances, and such a clause would prove problematic in its administration.

If Council wishes to permit motorcycles to park in any stall (bay), then this clause will need to be removed (deleted). Based on discussions with Council officers, it is recommended that clause 3.2(3) be deleted. The deletion of this subclause will require amendments to the renumbering of the other remaining subclauses in clause 3.2, and also effecting changes to Schedule 2 – Prescribed Offences.

The attached amendment local law incorporating all identified drafting changes is not considered significantly different than the proposed local law that was advertised for public comment, permitting Council to proceed with adopting the local law.

The purpose of the Parking and Parking Facilities Amendment Local Law 2011 is to amend the Shire of York Parking and Parking Facilities local law to include additional provisions that reflect current legislative requirements, and to review the modified penalties.

The effect of the Parking and Parking Facilities Amendment Local Law 2011 is to ensure that the local law is consistent with other legislation.

**RESOLUTION
221011**

Moved: Cr Duperouzel

Seconded: Cr Scott

“That Council:

- 1. uphold the submission from Mr D Paton on clause 3.2(3) of the Parking and Parking Facilities Local Law and delete clause 3.2(3) from the Parking and Parking Facilities Local Law;***
- 2. notes the submission from the Department of Local Government in relation to the proposed Shire of York Parking and Parking Facilities Amendment Local Law 2010;***
- 3. Council resolves to make the Shire of York Parking and Parking Facilities Amendment Local Law 2011, as per the Attachment, incorporating amendments outlined by the Department of Local Government, in accordance with section 3.12 of the Local Government Act 1995;***
 - (a) the purpose of which is to amend the Shire of York Parking and Parking Facilities Local Law to include additional provisions that reflect current legislative requirements, and review modified penalties; and***
 - (b) the effect is to ensure that the local law is consistent with other legislation;***
- 4. Publish the Shire of York Parking and Parking Facilities Amendment Local Law 2011, as per (3) above, in the Government Gazette and provide copies of the local law to the Minister for Local Government;***
- 5. Forward a copy of the gazetted local law, explanatory memoranda and associated documentation to the Joint Standing Committee on Delegated Legislation for review; and***
- 6. Authorise the affixing of the Common Seal of the Shire of York to the Shire of York Parking and Parking Facilities Amendment Local Law 2011.”***

CARRIED: 6/0

Item 9.2.1 - Appendices

9.3 Works Reports

9.4 Financial Reports

9. OFFICER'S REPORTS

9.4 FINANCE REPORTS

9.4.1 Bowls, Tennis, Lights Tender 01 - 1112

FILE NO:	AS.TEN.27
COUNCIL DATE:	24 October 2011
REPORT DATE:	24 October 2011
LOCATION/ADDRESS:	Forrest Oval Sports Precinct
APPLICANT:	Tenderers
SENIOR OFFICER:	Ray Hooper CEO
REPORTING OFFICER:	Gail Maziuk
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	All tender documents

Summary:

Tenders were called for the design and construction of 2 x 7 rink synthetic grass surfaced bowling greens, 8 x synthetic grass surfaced tennis courts, lights for new bowling, new tennis and 3 existing netball courts. Tender opened on Saturday 24 September 2011 and closed at 4.00pm on Tuesday 18th October 2011.

Background:

The design and construction of bowling rinks and tennis courts and lighting to the new facilities plus lighting for the 3 existing netball courts is stage 3 of the redevelopment of Forrest Oval Sports Precinct. The tender was issued in 3 parts – Part A Bowling Rinks, Part B Tennis Courts, Part C Lights for Bowling, Tennis, and Netball. Tenderers could tender for all or any of the 3 parts called.

The tender document included a specific provision for the Shire of York to be able to undertake designated works as detailed below

Note (1) The Shire of York retains the right to undertake specific works subject to the tender price received.

Note (2) Shire equipment – grader, loader, trucks, rollers are available for hire by the successful tender/s for use on this project

A total of 7 tenders were received for consideration.

Tenders were received from the following companies:

- Hutch Contracting – Bowls and Tennis
- Tiger Turf - Bowls and Tennis
- ABS Sports Systems – Bowls, Tennis, Lights
- Australian Bowls Constructions – Bowls
- Lightbase Pty Ltd – Lights
- Green Planet Grass – Tennis
- Evergreen synthetic Surfaces - Bowls

All tenders were conforming and satisfied the qualitative criteria as specified in the tender document

- Relevant experience
- Key Personnel skills and experience
- Resources
- Demonstrated understanding of the requirements of the contract

Prices submitted by tender were:

Hutch Contracting	- Bowling Rinks	\$ 906,402.55
	-Tennis Courts	\$ 502,321.59
Tiger Turf	- Bowling Rinks	\$ 918,833.00
	-Tennis Courts	\$ 543,227.00
ABS Sport Systems	- Bowls Rinks with Lights	\$ 575,648.00
ABS Sport Systems	- Tennis Courts with Lights	\$ 448,830.00
ABS Sport Systems	- Netball	\$ 43,364.00
Lightbase Pty Ltd	- Lights	\$ 363,000.00
Green Planet Grass	- Tennis Courts	\$ 449,000.00
Evergreen Synthetic Grass	- Bowling Rinks	\$ 626,210.00

Advice note: Where multiple choice tenders were received for the different surfaces an average has been used in the above table and a full summary of all tender options will be provided to councillors.

Consultation:

Consultation with several sport surface suppliers has been undertaken since the inception of the project. Consultation has also been undertaken with the Bowling and Tennis clubs and their preferred surfaces have been given every consideration. Research into the standards for playing surfaces and lights set by the governing bodies for Bowls and Tennis has been carried out as well as the lighting standards set by the governing body for Netball to ensure all standards for design and construction would be satisfied.

All design and construction will meet Australian Standards.

The tender was advertised in the West Australian newspaper in accordance with the requirements of the Local Government Act 1995

Statutory Environment:

Local Government Tender Regulations

Policy Implications:

Nil

Financial Implications:

The following revenue provisions have been included in the 2011/12 budget being:

- ◆ Loan funds \$499,155
- ◆ Royalties for Regions direct grant 2011/12 \$452,363
- ◆ Department of Sport & Recreation project grant \$300,000
- ◆ York Bowling Clun Inc cash contribution \$80,000

Total revenue provisions \$1,331,518

Budget provisions have been made in 2011/12 to meet construction costs incurred in this financial year. There is an opportunity to make savings up to \$213,959 if the Shire of York undertakes some or all of the earthworks and fencing for the tennis courts ie: obtained by the Shire and installed by the tennis club.

Provision will be required for shade, seating and fencing to bowling greens.

Strategic Implications:

Key Result Area –To enhance sport and recreational opportunities for all Shire of York residents, particularly young people

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

The greatly improved facility will enable a significant increase in competitive and social netball in York, it will also assist in attracting regional and other competitions and carnivals as well as the opportunity to attract a high standard of coaching and development clinics to York.

Social Implications:

The completion of stage 3 of the Forrest Oval Sports Precinct Redevelopment Project will provide the community with co-located sports facilities finished to a very high standard ensuring the communities of York and surrounding districts have the ability to enjoy sport and recreation in one precinct designed and built to enhance the lifestyle of individuals, sporting groups and families.

Environmental Implications:

Drainage and other environmental issues will be dealt with in the construction process.

Comment:

This project will meet a community need identified over a number of years by providing high quality shared facilities for the benefit of community members and sporting groups.

The total of the three tenders is \$1,438,210 compared to the budget allocation of \$1,331,518, however potential savings within the tenders have been identified being:

Bowling Greens

- ◆ Shade shelters \$84,000
- ◆ Colorbond fencing \$27,172
- ◆ Earthworks and fill materials \$52,787

Tennis Courts

- ◆ Earthworks and fill materials \$30,000
- ◆ Fencing (not identified separately within the tender) estimated at \$20,000

Separate provision will need to be made for acceptable standard shade cover and fencing for the bowling greens in the mid year review, the 12/13 budget, or on finalisation of the tender contract documents.

RESOLUTION

231011

Moved: Cr Lawrance

Seconded: Cr Hooper

“That Council:

Defer this item for one (1) week for further discussion.”

CARRIED: 6/0

9.5 Late Reports

9.6 Confidential Reports

10. NEXT MEETING

RESOLUTION
241011

Moved: Cr Hooper

Seconded: Cr Scott

“That Council:

hold a Special Meeting of the Council on October 31, 2011 at 3.00pm in the Lesser Hall, York for the purpose of the:

- *Bowls, Tennis, Lights Tender 01-1112.”*

CARRIED: 6/0

11. CLOSURE

Cr Boyle thanked everyone for their attendance and declared the meeting closed at 3.29pm.