



SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 27 FEBRUARY, 2013
COMMENCING AT 8.30AM
IN COUNCIL CHAMBERS,
YORK TOWN HALL, YORK**

SHIRE OF YORK
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RAY HOOPER
CHIEF EXECUTIVE OFFICER

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SHIRE OF YORK

THE SPECIAL MEETING OF THE COUNCIL
HELD ON WEDNESDAY, 27 FEBRUARY, 2013, COMMENCING AT
8.30AM 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
Cr Roy Scott, Deputy Shire President, declared the meeting open at 8.30am
- 1.2 Chief Executive Officer to read the disclaimer
Ray Hooper, Chief Executive Officer, read the disclaimer
- 1.3 Announcement of Visitors
Nil
- 1.4 Announcement of any Declared Financial Interests
*Cr Roy Scott - Item 9.4.1 – Impartial –
Complaints being investigated by Department of Local
Government made by Mr & Mrs Saint*

2. ATTENDANCE

- 2.1 Members
*Cr Roy Scott, Deputy Shire President;
Cr Brian Lawrance; Cr Pat Hooper; Cr Mark Duperouzel, Cr Denese Smythe*
- 2.2 Staff
*Ray Hooper, Chief Executive Officer; Helen D'Arcy-Walker, Executive Support
Officer*
- 2.3 Apologies
Cr Tony Boyle, Shire President
- 2.4 Leave of Absence Previously Approved
Nil
- 2.5 Number of People in Gallery at Commencement of Meeting
There was 1 person 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

4. PUBLIC QUESTION TIME

Public Question Time commenced at 8.32am

- 4.1 Written Questions – Current Agenda
Nil

- 4.2 Public Question Time

Ms Tanya Richardson

Question 1:

Under LG Operational Guidelines No 14 item 1C clearly states that a Councillor must have acted in good faith and must not have acted in a way which constitutes improper conduct to be eligible to apply for financial assistance for legal representation. Is this not than a contradiction in terms if Cr Boyle is under question regarding misconduct and defamation in the first place? Doesn't this deem him ineligible?

Response:

Cr Scott replied that legal representation costs may be approved, where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee.

Question 2:

When were the community and Councillors asked if this statement should and could be made on their behalf?

Response:

Taken on Notice

Question 3:

Can Council please explain how these comments were in our interests?

Response:

Taken on Notice

Question 4:

Is it correct that the CEO after all this time still does not know whether this item would be covered under the Shires insurance policy but has recommended Council approve this application regardless?

Response:

Taken on Notice

Question 5:

To Council feel that this will be setting a precedent here today if voting yes to this request?

Response:

The CEO stated that it is necessary for Councillors to have protection against cases such as this otherwise community members would not become Councillors and Local Government would grind to a halt.

Question 6:

Do Councillors agree that contrary to the Officers comments regarding attraction of new Councillors without protection being difficult, that if new Councillors conduct themselves in accordance with rules and regulations that there would be no reason for us to have to pay for their protection?

Response:

There have been no findings that Councillors have not conducted themselves in accordance with rules and regulations and as the Local Government Guideline clearly states there is the power to provide financial support under the Act.

Question 7:

Do Councillors think it is fair to use up to \$30,000 of our money to represent a Councillor who made comments.

Response:

Taken on Notice

Public Question Time concluded at 8.37am

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

Nil

9. OFFICER'S REPORTS

9.1 Development Services

9.2 Administration Reports

9.3 Works Reports

9.4 Financial Reports

9. OFFICER'S REPORTS
9.4 FINANCE REPORTS
9.4.1 Financial Assistance – Legal Action

FILE NO: AS.RMT.221
COUNCIL DATE: 27 February 2013
REPORT DATE: 26 February 2013
LOCATION/ADDRESS: N/A
APPLICANT: Cr AS Boyle
SENIOR OFFICER: CEO, Ray Hooper
REPORTING OFFICER: CEO, Ray Hooper
DISCLOSURE OF INTEREST: Cr Boyle – Financial Interest – Legal Action – Defamation Claim – S&H Saint
Cr Scott – Impartial – Complaints being Investigated by Department of Local Government made by Mr & Mrs Saint
APPENDICES: Request for Financial Assistance – AS Boyle
DOCUMENTS TABLED: Nil

Summary:

Elected member request for approval for financial support to obtain legal advice and representation, if required, in an action brought against an individual Councillor for a claim for defamation.

Background:

There has been an extended period of dispute between Council and the owners of two properties in Avon Terrace which culminated in a Shire President's statement to the September 2012 Ordinary Meeting of Council.

Consultation:

Department of Local Government

Statutory Environment:

LOCAL GOVERNMENT ACT 1995 - SECT 9.56

9.56 . Certain persons protected from liability for wrongdoing

(1) A person who is —

(a) a member of the council, or of a committee of the council, of a local government; or

(b) an employee of a local government; or

(c) a person appointed or engaged by a local government to perform functions of a prescribed office or functions of a prescribed class,

is a protected person for the purposes of this section.

(2) An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or under any other written law.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act or under any other written law may have been capable of being done whether or not this Act or that law had been enacted.

(4) This section does not relieve the local government of any liability that it might have for the doing of anything by a protected person.

(5) In this section —

(a) a reference to the doing of anything includes a reference to the omission to do anything;

(b) a reference to the doing of anything by a protected person in the performance or purported performance of a function under any written law other than this Act is limited to a reference to the doing of anything by that person in a capacity described in subsection (1)(a), (b) or (c), as the case may be.

LOCAL GOVERNMENT ACT 1995 - SECT 6.7 (2)

6.7 . Municipal fund

(2) Money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by this Act or any other written law.

LOCAL GOVERNMENT ACT 1995 - SECT 3.1

3.1 . General function

(1) The general function of a local government is to provide for the good government of persons in its district.

(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.

(3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

Policy Implications:

Nil

Financial Implications:

Unknown at this stage however it could be in the range of \$1,000-\$12,000 in the initial stages and up to \$30,000 if it proceeds to Court action.

The claim will be referred to Council's Insurer to determine if the insurance cover in place relates to this type of claim.

A commitment is in place with the applicant that if costs are recovered from the complainants these funds will be reimbursed to the Shire of York to cover all or part of any agreed expenditure.

Strategic Implications:

Nil

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

There are no additional economic implications other than the financial implications detailed above unless a defamation judgement with monetary penalties is imposed which may impact on current and future budgets.

Social Implications:

Councillors, as the elected representatives of the community and providing good governance for the benefit of the district, need a level of support and assistance in legal claims as without these it is unlikely that community members will be prepared to nominate for Council.

Environmental Implications:

Nil

Comment:

Protection against legal action is considered necessary for elected members and staff undertaking their roles and functions in good faith for the benefit of the community as a whole.

The comments made by the Shire President at the September 2012 meeting were made on behalf of Council and the community.

RESOLUTION

390213

Moved: Cr Lawrance

Seconded: Cr Hooper

“That Council:

- 1. Approve the application for financial support by Cr AS Boyle to obtain legal advice and representation, if necessary, for the defamation claim lodged by S&H Saint to an initial value of up to \$12,000 subject to any costs recovered from the complaints being reimbursed to the Shire of York as any comments made by Cr Boyle in his role as Shire President were made in the interests of the community and related to the good governance of the district under the role and function applicable to his position.***
- 2. Prepare a draft Policy on Legal Representation for Council Members and Employees as outlined in the Local Government Operational Guidelines No. 14.”***

CARRIED: 4/1

Cr Smythe was recorded as voting against this motion.

Item 9.4.1 - Appendices

9.5 Late Reports

9.6 Confidential Reports

10. CLOSURE

Cr Scott thanked everyone for their attendance and declared the meeting closed at 8.48am.