



# SHIRE OF YORK

**MINUTES OF THE SPECIAL  
MEETING OF THE COUNCIL  
HELD ON 20 JANUARY 2016  
COMMENCING AT 5.23PM  
IN COUNCIL CHAMBERS,  
YORK TOWN HALL, YORK**



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## SHIRE OF YORK

THE SPECIAL MEETING OF THE COUNCIL  
HELD ON WEDNESDAY, 20 JANUARY 2016, COMMENCING  
AT 5.23PM 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 David Wallace, Shire President, declared the meeting open at 5.23pm.*

#### 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

##### **RESOLUTION 010116**

**Moved: Cr Randell**

**Seconded: Cr Walters**

***"That Council:***

***Suspend Clause 10.6 and 9.5 of Standing Orders."***

**CARRIED: 7/0**

**RESOLUTION  
020116**

**Moved: Cr Smythe**

**Seconded: Cr Ferro**

***“That Council:***

***Close the meeting to members of the public and the press to deal with:***

***Legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting”***

**CARRIED: 7/0**

Note to this Item:

The doors were Closed at 5.25pm

1.4 Announcement of Visitors  
*Nil*

1.5 Declarations of Interest that Might Cause a Conflict

**Financial Interests**

*Nil*

**Disclosure of Interest that May Affect Impartiality**

*Nil*

**2. ATTENDANCE**

2.1 Members

*Cr David Wallace, Shire President; Cr Denese Smythe, Deputy Shire President;  
Cr Heather Saint; Cr Pam Heaton; Cr Jane Ferro; Cr Trevor Randell; Cr Tricia Walters*

2.2 Mentoring/Monitoring Panel

*Ms Jenni Law, Department of Local Government & Communities*

2.3 Staff

*Mark Dacombe, Acting Chief Executive Officer; Gordon Tester, Manager Development Services; Gael Ferguson, Governance; Helen D’Arcy-Walker, Executive Support Officer*

2.4 Apologies

*Nil*

2.5 Leave of Absence Previously Approved

*Nil*

2.6 Number of People in Gallery at Commencement of Meeting

*There were nil people in the Gallery at the commencement of the meeting*

**3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

*Nil*

#### **4. PUBLIC QUESTION TIME**

*The Presiding Member read the following statement in full at the commencement of Public Question Time:*

##### **Statement by the Presiding Member at the Opening of Public Question Time at Ordinary and Special Council Meetings**

“Public Question Time is provided for under the provisions of Section 5.24 of the Local Government Act and the Local Government (Administration) Regulations 1996.

To provide equal opportunity for people to ask questions a limit of two (2) questions per person per time will be applied.

##### **Procedures**

- Public Question Time is limited to 15 minutes but may be extended by resolution of the Council
- Questions submitted in writing prior to the meeting about matters on the agenda for the meeting will be dealt with initially.
- Questions from the floor will be taken in the order recorded in a register.
- Statements or long preambles are not permitted.
- Questions requiring research will be taken on notice and a response will be prepared in a reasonable timeframe. The original questions and the response will be included in the Agenda and Minutes of the next Ordinary Council meeting.
- 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.
- The minutes may only record a summary of the question asked and the response given.
- Where possible oral questions asked should be submitted in writing at the completion of question time or at the end of the meeting.
- At Special Council Meetings questions must relate to the items on the Agenda.

##### **PRESIDING OFFICER**

21 December 2015

4.1 Written Questions – Current Agenda

*Nil*

4.2 Public Question Time

*Nil*

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

*Nil*

#### **6. PETITIONS / PRESENTATIONS / DEPUTATIONS**

*Nil*

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

*Nil*

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

*Nil*

**9. OFFICERS' REPORTS**



## SY001-01/16 - Lot 46 Christie Retreat – Connection to Sewer

**FILE REFERENCE:** CH4.1760  
**APPLICANT OR PROPONENT(S):** Simon Dempster  
**AUTHORS NAME & POSITION:** Gordon Tester MDS  
**PREVIOUSLY BEFORE COUNCIL:** Yes  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** Extract TPS2 Clause 4.9.3(g) & TPS 2  
Amendment No.51  
(Previously issued to Councillors)

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

The nature of Councils role in this matter is to provide an indication to the State Appeals Tribunal of how this matter stands with Council.

The Council's legal advisor has asked for guidance on whether in this instance the Council wishes to maintain the sewerage connection requirement, or is the Council prepared to waive the requirement of provision of reticulated sewerage in this case if it had the legal power to do so?

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

To provide Council with information make an informed decision regarding whether or not they want reticulated sewer connected to Lot 46 Christie Retreat or to decide that they would rather have the legislative ability to waive the requirement that is not currently available to Council.

### **Background:**

This property was rezoned as a result of Scheme Amendment No. 51, which was gazetted on 3 September 2013. Appropriate authorities were consulted during this process, including the Department of Water.

This property must be connected to the sewer as a condition of rezoning

On 17 September 2013 an application for planning consent was received from Mr Simon Dempster (Registered Builder) on behalf of his client Mr Simon Palmer (Owner) to construct a dwelling house on Lot 46 Christie Retreat.

On 16 January 2014 the application for planning consent to construct a dwelling house on Lot 46 Christie Retreat was approved under delegated authority.

The approval for planning consent was conditional as indicated below.

- *The property shall be connected to the Water Corporations reticulated sewerage system prior to commencement of any works on site.*
- *The dwelling shall be connected to the Water Corporations reticulated sewerage system prior to occupation of the dwelling.*
- *The existing septic system shall be decommissioned prior to the occupation of the new dwelling.*

None of the above conditions have been complied with at the time of writing this report.

On July 18 John Coles (Shire Environmental Health Officer) advised the builder that he would consider favourably the utilisation of the existing onsite effluent disposal system by enlarging the irrigation disposal area.

Mr Coles appeared to be unaware of the requirement to connect this property to the reticulated sewage system.

None of the required works were undertaken.

In mid-September 2015 Mr Palmer attended Councils Administration offices and attempted to submit an application to alter his onsite effluent disposal system.

Mr Palmer was advised that there was a requirement to connect his dwelling to sewer and that his application would not be processed.

Mr Palmer was given a copy of his planning consent and advised to discuss the matter with his builder.

This matter was referred to the Health Department who subsequently advised that as the existing effluent disposal system was functioning adequately they had no problems with the proponent connecting the new house to the existing system.

Councils Environmental Health Officer was given a verbal estimate that the cost of connection to sewer was approximately \$80,000.00 by a Water Corporation Officer

No written quotes have been provided or sighted by Council staff.

**Comments and details:**

The applicant is requesting that the Shire amend their existing development approval and vary the scheme development standard which requires Lot 46 Christie Retreat to be connected to reticulated sewer, which is a development requirement of the Town Centre Zone - cl 4.9.3 (g). The property falls within the 100 year flood fringe, as identified in the Avon River Flood Study therefore, in accordance with cl 5.4 (b) of the scheme, development approval is required for a single house, which otherwise would be exempt.

There are two pertinent questions here:

1 – Can the applicant apply to amend their existing approval to remove conditions related to sewer connection?

2 – Can the Shire vary the scheme requirement for sewer connection on Lot 46 Christie Retreat, York?

*1 – Can the applicant apply to amend their existing approval to remove conditions related to sewer connection?*

The new deemed provisions of the scheme (cl 77 (1)) provide the applicant with the ability to apply to amend or cancel a development approval. To do this, the applicant basically applies as if it were an application for development approval. In the previous scheme (before the deemed provisions) this ability was limited and could only be done prior to commencement of works, however now the application can be made at pretty much any time.

*2 - Can the Shire vary the scheme requirement for sewer connection on Lot 46 Christie Retreat, York?*

Council's power to vary scheme development standards is set out in clause 4.6 of the scheme. Clause 4.6 (below) is that the scheme is quite restrictive over the types of development standards that might be varied by Council (as shown in bold below). Clause 4.6 does not list "provision of reticulated sewerage" as a standard that can be varied, and it is difficult to consider sewer as a matter related to minimum lot sizes, building height, setbacks, site coverage, and car parking.

#### 4.6 Discretion to modify development standards

*Except for development in respect of which the R Codes apply under this Scheme, if a development the subject of an application for planning consent does not comply with a standard prescribed by the Scheme **with respect to minimum lot sizes, building height, setbacks, site coverage, car parking, landscaping and related matters**, the local government may, notwithstanding that non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit. The power conferred by this clause may only be exercised if the local government is satisfied that:*

- a) Approval of the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenities of the locality;*
- b) The non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality.*

On the basis of this, it appears - on face value - that Council does not have the power in the scheme to waive/vary/amend the requirement for sewer connection on this lot. It's not a question of merit, it's a question of power to vary the requirement.

A property on Redmile Road is where an application on financial grounds has been accepted in the past – this is not relevant to Lot 46. Redmile Road is not zoned Town Centre and therefore is not subject to the same scheme requirement. CI 4.9.3 (g) very clearly identifies that Lots 103-107, 800 and 801 Avon Terrace and Lot 46 Christie Retreat have provision of reticulated sewerage prior to subdivision or development. This is not a general scheme requirement, it only applies to certain lots.

Therefore the requirement could only be relaxed if provision of reticulated sewerage would be considered to relate to “minimum lot sizes, building height, setbacks, site coverage, car parking, landscaping and related matters”. Looking at the interpretation on face value, I do not think it does and therefore Council may not have the power to relax the requirement.

A legal opinion has been obtained that discusses the above in great detail with the bottom line being there does not appear to be an ability under the scheme to relax this requirement.

A copy of this opinion is available for Councillors perusal upon request.

As this matter will be subject to a State Appeals Tribunal Hearing it will be of benefit for Councils position in this matter to be made clear in the following manner.

Does the Council wish to maintain the sewerage connection requirement, or is the Council prepared to waive the requirement of provision of reticulated sewerage in this case if it had the legal power to do so?

The original development requiring a Town Centre Zoning is not proceeding at this stage however the requirement to sewer all blocks subject to the provisions of Amendment No 51 remain.

If the requirement to waive the provision for connection to deep sewer is considered favourably by SAT a future development in this area may see the sewer extended past Lot 46 Christie Retreat which will provide an opportunity to connect this block to sewer at some future time.

It is therefore recommended that Councils position should be that Council would like to have the ability to waive the provision of reticulated sewerage in this case if it could be.

**Implications to Consider:**

The legal and statutory implications have been discussed at length in the comments section of this report.

**Voting Requirements:**

**Absolute Majority Required:           No**

**RESOLUTION  
030116**

**Moved: Cr Ferro**

**Seconded: Cr Heaton**

***“That Council:***

***Adopt the position that the requirement to provide a reticulated sewerage connection to Lot 46 Christie Retreat under Clause 4.9.3(g) of TPS No 2 be waived in this case if it could be.***

***However should reticulated sewerage be provided to the Town Centre, Zone Scheme Amendment No. 51 of TPS No 2, the owner of Lot 46 Christie Retreat will be required to connect to the reticulated sewer system.”***

***CARRIED: 4/3***

**RESOLUTION  
040116**

**Moved: Cr Randell**

**Seconded: Cr Ferro**

***“That Council:***

***Open the meeting to members of the public and the press.”***

***CARRIED: 7/0***

Note to this Item:

The doors were Opened at 6.11pm

## **10.CLOSURE**

*The Shire President thanked everyone for their attendance and closed the meeting at 6.11pm.*