



SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 29 NOVEMBER 2010
COMMENCING AT 3.05pm
IN THE LESSER 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 MONDAY, 29 NOVEMBER 2010,
COMMENCING AT 3.05PM IN THE LESSER HALL, YORK

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

1. OPENING

- 1.1 Declaration of Opening
Cr Pat Hooper, Shire President, declared the meeting open at 3.05pm
- 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 Hooper – 9.2.1 – Financial – Member and Former Committee Member of York Racing Inc
Cr Scott – 9.2.1 – Impartial – Financial - Secretary of York Racing Inc
Cr Boyle – 9.2.1 – Financial – Committee Member, Financial Member of York Racing Inc
Ray Hooper, CEO – 9.2.1 – Financial – Member of York Racing Inc

2. ATTENDANCE

- 2.1 Members
Cr Pat Hooper, Shire President; Cr Brian Lawrance, Deputy Shire President; Cr Roy Scott; Cr Tony Boyle, Cr Trevor Randell; Cr Tricia Walters
- 2.2 Staff
Ray Hooper, CEO; Helen D'Arcy Walker, Executive Support Officer
- 2.3 Apologies
Nil
- 2.4 Leave of Absence Previously Approved
Nil
- 2.5 Number of People in Gallery at Commencement of Meeting
There were 0 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 Pat Hooper read, in its entirety, a letter from the Department of Local Government, Brendan Peyton, Manager Governance, who has delegated authority by the Minister for Local Government, the Director General giving approval of the Shire's application for Councillors Pat Hooper, Tony Boyle and Roy Scott to participate in the discussion and decision making procedures relating to Council's consideration of the York Racecourse.

9. OFFICER'S REPORTS

9.1 Development Services

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 York Racecourse Titles

FILE NO: CCP.10
COUNCIL DATE: 29 November 2010
REPORT DATE: 9 November 2010
LOCATION/ADDRESS: York Racecourse
APPLICANT: York Racing Inc
SENIOR OFFICER: R Hooper, CEO
REPORTING OFFICER: R Hooper, CEO
DISCLOSURE OF INTEREST: Cr Hooper, Cr Boyle & Cr Scott – Financial
R Hooper, CEO – Financial
Note: Exemption has been granted to Cr Hooper, Cr Boyle and Cr Scott under the provisions of Section 5.69 of the Local Government Act to take part in the discussion and decision making procedures relating to Council's consideration of the matters detailed in the agenda.
APPENDICES: Nil
DOCUMENTS TABLED: Nil

Summary:

Finalisation of the shared title for the York Racecourse land and improvements to meet the requirements of the Wheatbelt Development Commission funding agreement for track upgrading and to allow the Shire of York to write-off existing rate arrears and to deal with future rates.

Background:

The York Racecourse has been closed for racing from July 2008 to September 2010 due to track safety concerns.

The Wheatbelt Development Commission through York Racing Inc and in liaison with Racing & Wagering WA has provided grant funds for track upgrading and rectification works and the track is now approved for racing with three (3) meetings held since the 16th September, 2010.

On the 24th March, 2009 the following resolution was passed by Council:

OFFICER RECOMMENDATION

**RESOLUTION
220309**

MOVED: Cr Hooper SECONDED: Cr Boyle

“That Council:

Agree to the write-off of rates, service charges and interest fees for the land and buildings owned by the York Beverley Turf Club (currently \$53,731.10) when a grant to restore the racetrack to an approved race surface, as defined by Racing & Wagering WA, is received subject to the following matters being agreed and entered into:

- a. The land titles being transferred to the Shire of York with the current land conditions remaining in place; and***

b. The York Turf Club and the Shire of York entering into an agreement for the management and operations of all activities and facilities used for racing.”

CARRIED (5/1)

Cr Walters was recorded as voting against the motion.

In the period since that date discussions and agreements support a “tenancy in common with equal shares in the land and improvements” as the best means of protecting all parties.

The current Crown Grant in Trust has a restriction in place to protect current and future use for racecourse purposes and it is proposed that this remain in place for any joint ownership arrangement.

Consultation:

York Racing Inc
Wheatbelt Development Commission
Department of Regional Development, Lands

Statutory Environment:

Local Government Act 1995 (As Amended)



Government of **Western Australia**
Department of **Local Government**

Our Ref: Y1-7#03; E1036467



Mr Ray Hooper
Chief Executive Officer
Shire of York
PO Box 22
YORK WA 6302

SHIRE OF YORK	
FILE: <i>CCP10</i>	
OFFICER: <i>RAY</i>	INITIALS: <i>[Signature]</i>
25 NOV 2010	
<i>1116852</i>	
REFERRED TO COUNCIL	
DATE	INITIALS

Dear Mr Hooper

I write to inform you that, in accordance with authority delegated by the Minister for Local Government, the Director General has approved the Shire's application under Section 5.69 of the *Local Government Act 1995* to allow Councillors Pat Hooper, Tony Boyle and Roy Scott to participate in the discussion and decision making procedures relating to Council's consideration of the following;

- Resolution to have the Shire of York registered on the York Racecourse land title (Crown Grant on Trust) as tenant in common with equal shares in land and improvements with York Racing Inc; and
- Resolution to allow Council to write off the current rate debt for York Racing Inc (currently \$53,731.10) and authority for the Shire of York to make future rate payments in relation to the land and facilities.

Subject to the following conditions:

1. the approval is only valid for the special meeting of Council to be held on 29 November 2010;
2. the disclosing members declare the nature and extent of their interest at the Council meeting when this matter is considered together with the approval provided;
3. the CEO is to provide a copy of the Department's letter advising of the approval to each declaring member; and
4. the CEO is to ensure that the declarations, including the approval given and any conditions imposed, are recorded in the minutes of the meeting when this matter is discussed.

Yours sincerely

Brendan Peyton
MANAGER GOVERNANCE

25 November 2010

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

6.63. Term used in this Subdivision

In this Subdivision —

service charge does not include a service charge imposed under section 6.38(1)(b) on the occupier of land who is not the owner of that land.

6.64. Actions to be taken

- (1) If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —
 - (a) from time to time lease the land;
 - (b) sell the land;
 - (c) cause the land to be transferred to the Crown; or
 - (d) cause the land to be transferred to itself.
- (2) On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.
- (3) Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.

6.65. Power to lease — procedure

Schedule 6.2 has effect in relation to the exercise of a power under section 6.64(1)(a) (in this Subdivision and that Schedule referred to as the **power to lease**).

6.66. Effect of lease

- (1) Where a local government exercises the power to lease in relation to any land that land does not cease to be rateable land because of the exercise of that power.
- (2) A lessee from a local government is entitled, during the term of the lease, to possession of the land as against persons who have an estate or interest in the land, but this subsection does not affect —
 - (a) the rights of the local government under the lease;
 - (b) easements in favour of the public which affect the land; or
 - (c) the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth.
- (3) The exercise by a local government of a power to lease any land does not prejudice or affect the recovery of rates or taxes if any, due to the Crown in right of the State or Commonwealth, or a department or agency of the Crown in right of the State or Commonwealth.

6.67. Release of property after payment of arrears

- (1) Where, within 12 years of the taking of possession of any land by a local government under section 6.64, an entitled person pays to the local government all rates and

service charges due and payable in respect of the land, the local government is required to give up possession of that land to the person unless it has exercised a power under section 6.64(1)(b), (c) or (d) in relation to the land.

- (2) If the local government has granted a lease of the land referred to in subsection (1) and the term of the lease has not expired, the lease subsists for the balance of the term as if it had been made between the lessee and the entitled person.
- (3) In this section —
entitled person means the person who, if the local government had not taken possession of the land under section 6.64, would be entitled to possession of that land.

6.68. Exercise of power to sell land

- (1) Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b) (in this Subdivision and Schedule 6.3 referred to as the **power of sale**) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due to it.
- (2) A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land.
- (3) Schedule 6.3 has effect in relation to the exercise of the power of sale.

6.69. Right to pay rates, service charges and costs, and stay proceedings

- (1) Up to 7 days prior to the time of the actual sale of any land for non-payment of rates or service charges a person having an estate or interest in the land may pay the rates or service charges and the costs and expenses incurred to that time in proceedings relating to the proposed sale.
- (2) At any time after the 7 days referred to in subsection (1) but prior to the time of the actual sale of any land the local government may, upon such terms and conditions as are agreed between the parties, accept payment of the outstanding rates or service charges.
- (3) On payment being made under subsection (1) or (2) the proceedings relating to the proposed sale are stayed and the local government is required to make such notifications and take such measures as are prescribed in relation to the payment and the cancellation of the proposed sale.

6.70. Effect of changes in boundaries of local government area

An alteration in —

- (a) the boundaries of a district of a local government;
- (b) the constitution of the local government or its council; or
- (c) its name or status,

does not preclude the local government from exercising in respect of any land on which rates or service charges were lawfully imposed by it under this Division, the powers conferred by this Subdivision.

6.71. Power to transfer land to Crown or to local government

- (1) If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the *Transfer of Land Act 1893*, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —
 - (a) the Crown in right of the State; or
 - (b) the local government.
- (2) When a local government exercises the power referred to in subsection (1)(a) in relation to any land all encumbrances affecting the land are, by virtue of this section of no further force or effect against that land and the Registrar of Titles or the Registrar of Deeds, as the case requires, is to give effect to this section.
- (3) When exercising the power referred to in subsection (1)(b) the local government is required to pay the sum secured by, or payable under, a mortgage, lease, tenancy, encumbrance or charge in favour of the Crown in right of the State or a department, agency, or instrumentality of the Crown in right of the State.
- (4) Schedule 6.3 has effect in relation to the exercise of the power referred to in subsection (1).

6.72. Title to land sold or transferred

Where a transfer or conveyance of an estate in fee simple in land is made in purported exercise of a power under section 6.64(1)(b), (c) or (d) the title transferred or conveyed is not impeachable on the ground that —

- (a) no case had arisen to authorise the sale;
- (b) the proper procedures were not followed; or
- (c) the power was otherwise improperly or irregularly exercised,

and a person who claims there has been an unauthorised or improper or irregular exercise of the power has a remedy in damages against the relevant local government but not against the Crown or the State with the Registrar as the nominal defendant under the *Transfer of Land Act 1893*.

[Section 6.72 amended by No. 81 of 1996 s. 153(1).]

6.73. Discharge of liability on sale of land

A sale of land by a local government or a transfer or conveyance of land to the Crown or a local government under this Subdivision discharges —

- (a) the land; and
- (b) the owners (present and past) of the land,

from any liability to the local government for rates, service charges or other money due to the local government which were, at the time of the sale, transfer or conveyance —

- (c) secured by a charge over the land; or
- (d) otherwise recoverable, whether under this Act or another written law, by the local government in respect of the land.

6.74. Power to have land revested in the Crown if rates in arrears 3 years

- (1) If land is —
 - (a) rateable land;
 - (b) vacant land; and
 - (c) land in respect of which any rates or service charges have been unpaid for a period of at least 3 years,

the local government in whose district the land is situated may apply in the form and manner prescribed to the Minister to have the land revested in the Crown in right of the State.

- (2) The Minister is to consider the application and the circumstances surrounding the application and may grant or refuse the application.
- (3) If the application is granted the Minister is to execute a transfer or conveyance of the land to the Crown and is to deliver the transfer or conveyance to the Registrar of Titles or the Registrar of Deeds, as the case requires, for registration.
- (4) Upon the delivery of the transfer or conveyance Schedule 6.3 clause 8 has effect in relation to the exercise of the power referred to in subsection (1).

[Section 6.74 amended by No. 49 of 2004 s. 64(1).]

6.75. Land to be vested in the local government

- (1) Where, at the expiration of 12 years from the taking of possession of any rateable land by a local government under section 6.64 —
 - (a) all rates and service charges due and payable in respect of the land have not been paid; and
 - (b) the land has not, under the provisions of this Subdivision, been —
 - (i) sold by the local government;
 - (ii) transferred to the local government; or
 - (iii) transferred to the Crown,

by operation of this section the fee simple in the land is to be transferred to the local government subject to —

- (c) easements in favour of the public which affect the land;
 - (d) the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth; and
 - (e) rates and taxes (other than local government rates and service charges) due on the land,
- but free from other encumbrances.
- (2) Schedule 6.3 has effect in relation to a transfer under this section.

LAND ADMINISTRATION ACT 1997 - SECT 75

75. Minister may transfer Crown land in fee simple subject to conditions

- (1) The Minister may transfer Crown land in fee simple subject to such conditions concerning the use of the land (*the specified use*) as the Minister determines.

- (2) For the purposes of this section and of section 76, the unimproved value of conditional tenure land must be calculated as if the use of the land were not subject to any conditions.
- (3) The fee simple of conditional tenure land may be transferred under subsection (1) for a nominal price or a discounted price because of the community benefit to be provided by the proposed development of the conditional tenure land for the specified use.
- (4) When conditional tenure land is used in breach of any condition concerning the specified use —
 - (a) the conditional tenure land is liable to be forfeited under section 35; and
 - (b) the Minister may recover from the holder of the freehold in the conditional tenure land —
 - (i) if the fee simple in the conditional tenure land was transferred under subsection (1) for a nominal price, an amount equal to the unimproved value of the conditional tenure land at the time of that recovery; or
 - (ii) if the fee simple in the conditional tenure land was transferred under subsection (1) for a discounted price, an amount calculated using the following formula —

$$A = ((P - DP) / P) \times R$$

where —

- A is the amount the Minister may recover from the holder of the freehold in the conditional tenure land;
- P is the unimproved value of the conditional tenure land at the time the discounted price was paid;
- DP is the discounted price;
- R is the unimproved value of the conditional tenure land at the time of the recovery, by action in a court of competent jurisdiction as a debt due to the Crown.
- (5) Neither the fee simple, nor any other estate or interest, in conditional tenure land can be transferred without the written permission of the Minister, which may be given subject to conditions.
 - (6) Conditional tenure land cannot become the subject of any licence, mortgage, charge, security or other encumbrance without the written permission of the Minister, which may be given subject to conditions.
 - (7) The Minister may by order, on the application of the holder of the freehold in conditional tenure land accompanied, subject to subsection (7a), by payment to the Minister of the relevant amount referred to in subsection (4)(b)(i) or (ii), cancel the conditions to which the use of the conditional tenure land is subject.

- (7a) The Minister may in prescribed circumstances, with the prior approval of the Treasurer, waive in whole or part the payment of the relevant amount referred to in subsection (4)(b)(i) or (ii), subject to such conditions as the Minister determines.
- (8) The rule against perpetuities does not apply to conditions referred to in subsection (1).

[Section 75 amended by No. 59 of 2000 s. 19.]

LAND ADMINISTRATION ACT 1997 - SECT 76

76 . Obligations of mortgagees of land transferred in fee simple subject to conditions concerning its use

- (1) If the holder of the freehold in conditional tenure land subject to a mortgage defaults under the mortgage, the mortgagee must give the Minister notice in writing not less than 28 days before the mortgagee exercises any power under the mortgage in respect of that default.
- (2) Subject to subsection (3), the mortgagee must not exercise his or her power of sale under the mortgage until the Minister has been paid the relevant amount referred to in section 75(4)(b)(i) or (ii) in respect of the conditional tenure land.
- (3) The Minister may allow the mortgagee to exercise the power of sale referred to in subsection (2) before payment of the relevant amount referred to in that subsection if the mortgagee gives the Minister security to the satisfaction of the Minister for the payment of that amount on completion of that exercise.
- (4) When the fee simple of the conditional tenure land is sold by the mortgagee in accordance with this section, the land ceases to be subject to the conditions referred to in section 75(1).

LAND ADMINISTRATION ACT 1997 - SECT 77

77 . Application of purchase moneys arising from mortgagee sales

The proceeds of a sale by a mortgagee in accordance with section 76 are to be applied —

- (a) first, in payment of the amount referred to in section 75(4)(b)(i) or (ii) if payment of that amount has not already been made under section 76;
- (b) second, in payment of any amount owed by the mortgagor under the mortgage;
- (c) third, in payment of the expenses of and incidental to that sale;
- (d) fourth, in payment of amounts outstanding in respect of all subsequent encumbrances in respect of the land concerned; and
- (e) fifth, in payment of any remaining surplus to the beneficial holder of the freehold.

Policy Implications:

Not applicable

Financial Implications:

The rates outstanding at the York Racecourse as at the 9th November, 2010 are \$81,713.79.

Strategic Implications:

To safeguard York's heritage and history.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Numerous over the past two (2) years

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

Having a viable race club in York has flow on economic benefits for local employment and businesses and tourism and there is potential future income for racecourse development from land sales/leases of racecourse property.

Social Implications:

The York Racecourse has significant heritage values from a community perspective and it provides a social hub for races and other events.

Environmental Implications:

The built environment (heritage) and the natural environment will be fully considered in any remedial or restoration works.

Comment:

Negotiations on funding, rating and associated matters have reached the critical stage and endorsement by the relevant parties is required to effect joint ownership as tenants in common with equal shares in the land and buildings.

The purpose of having the Shire of York as a tenant in common is for the protection of the community in the event that racing is withdrawn from York for any reason. The Minister for Lands would be able to provide a management order to allow other activities to racing to be conducted at the site rather than have it revert to Crown Land for sale or disposal.

The options for additional use to racing are many and varied e.g. the very successful 2010 York Show, 2008 Inland Regatta, previous York Jazz Festivals, etc. All of these will raise the profile and the viability factor of York Racing Inc.

The cost for Council to obtain a half share land title right to the land is the value of rates outstanding at this time and agreement either not to levy future land rates or for the Shire of York to pay these rates to keep track of the ongoing financial contribution on behalf of the York community.

It must be noted that the addition of the Shire name to the title does not change the control conditions/restrictions in place and neither party can sell or dispose of land/buildings without the other parties consent and all proceeds must be used for racecourse/racing purposes.

York Racing Inc will hold a Special Meeting on the 28th November, 2010 to deal with their part in the process.

While this matter has been drawn out it is important that due processes are followed for the protection and benefit of all parties.

The previous resolution No. 220309 relates to the land titles being transferred to the Shire of York and this resolution needs to be rescinded and be replaced as per the officer recommendation below.

In the event of the demise of York Racing Inc for whatever reason the constitution of this organisation should include a clause transferring its equal share of the tenancy in common to the Shire of York for community use and benefit purposes e.g. recreation, equine facility.

Item was declared Null In Void due to three Councillors being on the Committee of the Racecourse.

Mr Ray Hooper, CEO declared an Interest Affecting Impartiality to this item and left the room at 3.08pm.

**RESOLUTION
011110**

Moved: Cr Randell

Seconded: Cr Lawrance

“That Council:

- 1. Rescind Resolution 220309***

OFFICER RECOMMENDATION

**RESOLUTION
220309**

MOVED: Cr Hooper SECONDED: Cr Boyle

“That Council:

Agree to the write-off of rates, service charges and interest fees for the land and buildings owned by the York Beverley Turf Club (currently \$53,731.10) when a grant to restore the racetrack to an approved race surface, as defined by Racing & Wagering WA, is received subject to the following matters being agreed and entered into:

- a. The land titles being transferred to the Shire of York with the current land conditions remaining in place; and***
- b. The York Turf Club and the Shire of York entering into an agreement for the management and operations of all activities and facilities used for racing.”***

CARRIED (5/1)

Cr Walters was recorded as voting against the motion.

-
- 2. Approve the transfer of the title for the land and buildings registered in the names of the York Beverley Turf Club Inc (now York Racing Inc) and the Shire of York as tenancy in common in equal shares of the land and improvements with the current Crown Grant in Trust conditions remaining in place.***

- 3. Following the issue of a new title:***

- (a) authorise the write-off of the existing debt relating to rates and interest***

(b) authorise the Shire of York to meet the cost of future rates as an ongoing contribution to the operations of the racecourse land and facilities.

Advice Note:

- **York Racing Inc will manage and operate the racecourse and facilities in the interests of thorough bred racing for as long as the racecourse is accredited by Racing & Wagering WA as an official race track.**
- **Land and improvements cannot be sold or leased without the approval of both parties and the consent of the Minister for Lands and all proceeds must be used for racecourse facilities.”**

CARRIED: 5/1

Cr Walters was recorded as voting against this motion.

Mr Ray Hooper, CEO returned to the room at 3.20pm.

9.3 Works Reports

9.4 Finance Reports

9.5 Confidential Reports

9.6 Late Reports

10. NEXT MEETING

**RESOLUTION
021110**

Moved: Cr Scott

Seconded: Cr Boyle

“That Council:

hold the next Ordinary Meeting of the Council on December 20, 2010 at 3.00pm in the Lesser Hall, York”

CARRIED: 6/0

11. CLOSURE

Cr Hooper thanked all for their attendance and declared the meeting closed at 3.20pm.

