

# SHIRE OF YORK

**MINUTES OF THE ORDINARY  
MEETING OF THE COUNCIL  
HELD ON 16 NOVEMBER, 2009  
COMMENCING AT 3.06PM IN THE  
LESSER HALL, JOAQUINA STREET, YORK.**

## **MISSION STATEMENT**

***"To build on our history to create our future"***



**SHIRE OF YORK**  
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GRAHAM STANLEY  
ACTING CHIEF EXECUTIVE OFFICER





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## SHIRE OF YORK

THE ORDINARY MEETING OF THE COUNCIL  
HELD ON MONDAY, 16 NOVEMBER 2009, COMMENCING AT  
3.06PM IN THE LESSER HALL, JOAQUINA STREET, 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  
*The Shire President, Cr Pat Hooper, welcomed everyone and declared the meeting open at 3.06pm.*
- 1.2 Chief Executive Officer to read the disclaimer  
*The Acting Chief Executive Officer, Graham Stanley, read the disclaimer.*
- 1.3 Announcement of Visitors  
*Nil*
- 1.4 Announcement of any Declared Financial Interests  
*Nil*

### 2. ATTENDANCE

- 2.1 Members  
*Cr Pat Hooper, President; Cr Brian Lawrance, Deputy President; Cr Tony Boyle; Cr Trevor Randell; Cr Roy Scott; Cr Tricia Walters*
- 2.2 Staff  
*Acting CEO Graham Stanley; Shire Planner Patrick Ruettjes; Manager of Administration and Technical Services Tyhscha Cochrane; Development Services Officer Nicole McNamara.*
- 2.3 Apologies  
*Nil*
- 2.4 Leave of Absence Previously Approved  
*Ray Hooper, CEO*
- 2.5 Number of People in Gallery at Commencement of Meeting  
*There were 7 members of the public in attendance 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**

Due to work commitments of the donors, presentations for the rates incentive prizes were made prior to the commencement of the meeting. Mr Tony Hunter accepted a certificate of appreciation on behalf of the Bendigo Bank. Shane & Megan Hayward won the first prize of a \$1000 bank account but was unable to attend (the Shire will ensure the prize is sent to Mr & Mrs Hayward).

Mr Gary Ashworth accepted a certificate of appreciation on behalf of Fuel Distributors of Western Australia. Ms Christine Buchanan won the second prize of a \$200 fuel voucher but was unable to attend (the Shire will ensure the prize is sent to Ms Buchanan).

Cr Hooper awarded the third prize on behalf of Aspen Parks to Mr Oliver Calnan (who was unable to attend). The third prize was one night's accommodation for two adults in a family cabin or standard room (the Shire will ensure the prize is sent to Mr Calnan).

Cr Hooper awarded the fourth prize on behalf of WASO (Western Australian Symphony Orchestra) to Mr John Dawson. The fourth prize was four tickets to Paul Daniel Conducts Elgar on Saturday November 21, 2009.

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

Council requested that the order be changed to reflect the order of meetings from the agenda.

7.1 Minutes of the Special Meeting of Council held October 19, 2009

Corrections Nil

Confirmation

**RESOLUTION**  
**011109**

**Moved: Cr Randell**

**Seconded: Cr Lawrance**

***"That the minutes of the Special Council Meeting held October 19, 2009 be confirmed as a correct record of proceedings."***

***CARRIED (6/0)***

7.2 Minutes of the Ordinary Meeting of Council held October 19, 2009

Corrections Nil

Confirmation

**RESOLUTION**  
**021109**

**Moved: Cr Boyle**

**Seconded: Cr Randell**

***“That the minutes of the Ordinary Council Meeting held October 19, 2009 be confirmed as a correct record of proceedings.”***

**CARRIED (6/0)**

7.3 Minutes of the Special Meeting of Council held October 29, 2009

Corrections Nil

Confirmation

**RESOLUTION**  
**031109**

**Moved: Cr Scott**

**Seconded: Cr Lawrance**

***“That the minutes of the Special Council Meeting held October 29, 2009 be confirmed as a correct record of proceedings.”***

**CARRIED (6/0)**

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

*Cr Hooper, Shire President thanked the donors of the prizes and those who participated in the rates incentive prizes.*

*Cr Hooper advised that the Junior and Senior Citizen and Sports Star Award nominations are open for applications. Applications close on Wednesday 2 December 2009. Andrew Reynolds was voted Junior Citizen of the Year 2008. Andrew was selected to go to Canberra to make a presentation as a representative of Rural Youth of Australia on behalf of Western Australia.*

*Sing Australia Group will be singing in the Town Hall at 4.00pm this afternoon. All are welcome to go and watch.*

**9. OFFICER’S REPORTS**



## **9.1 Development Services**





## **9.2 Administration Reports**



## 9. OFFICER'S REPORTS

### 9.2 ADMINISTRATION REPORTS

#### 9.2.1 Trews Road Closure – Rescind Resolution 050508

FILE NO:	Tr 1
COUNCIL DATE:	16 <sup>th</sup> November 2009
REPORT DATE:	10 <sup>th</sup> November 2009
LOCATION/ADDRESS:	Trews Road
APPLICANT:	Shire of York
SENIOR OFFICER:	G Stanley, ACEO
REPORTING OFFICER:	T Cochrane, MATS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appendix A – Report Appendix B – Location
DOCUMENTS TABLED:	Nil

#### Summary:

Council at its Special Council Meeting held on the 12<sup>th</sup> May 2009 resolved to formally close a portion of Trews Road in accordance with Section 58 of the Land Administration Act.

It is proposed to rescind this resolution, due to excessive costs to relocate power so that it is located within a road reserve.

#### Background:

Council at the Special Council Meeting resolved as follows:

*“That Council:*

- 1. accede to the proposed road closure of a portion of Trews Road, York, as shown on the map, tabled for information, for the purpose of facilitating public advertising in accordance with Section 58 of the Land Administration Act 1997 (as amended); and*
- 2. in the event that no adverse submissions are received during the advertising period, delegate authority to the Chief Executive Officer to finalise the road closure.*
- 3. Support the inclusion of the closed portion of Trews Road into Reserve 25727/28038 so it becomes part of the school property.”*

Council wrote to all the service agencies as per the Lands Administration Act on the 7<sup>th</sup> August 2009.

Western Power had not provided a response within the statutory timeframe and therefore Council extended the period to enable their comments to be received and assessed. The following was provided by way of email on the 2<sup>nd</sup> September 2009:

*“I don't think on seeing this one that I replied to this request. That said, Western Power will need to relocate approximately 300 metres of overhead high and low voltage conductoring, relocate a transformer with it's drop out fuses new stays etc etc. It will be a major project as such.*

*At present I wouldn't like to put a figure on this however from past experience and non binding in any form or manner, I feel that the shire would have little change from approx. \$80k - \$100k. However for a more detailed figure the shire can request to have this looked at by filling in a form called "Relocation of Western Power Assets".*

A meeting was arranged with Kim Cooper of Western Power, which detailed that the costs were above the \$100K.

Council wrote to the York District High School Principal on the 1<sup>st</sup> October 2009, after the meeting with Western Power regarding the road closure and advised of the following:

*“Further to the negotiations and actions on the re-alignment of Trews Road and the amalgamation of the car park area onto school property, I advise that the prohibitive costs imposed by Western Power to relocate power services has quashed the project as the \$100,000 plus is beyond the financial resources of Council.*

*Due to the above the Shire of York will stop all action on the closure of the section of Trews Road in the car park area and this will remain as a road reserve carrying services such as power, water and telecommunications. The Shire of York will proceed with the subdivision of the Shire land to create the new Trews Road alignment and the Shire of York will retain ownership of the balance of the lot.*

*Investigations will commence for the car park area to be leased to the school or the Department of Education to allow for control and management of parking for school purposes. This action can only commence when the road reserve subdivision is completed and a new title is issued.*

*I apologise for any confusion arising from the above, however the costs and requirements of Western Power cannot be met by Council...”*

**Consultation:**

Councillors were advised of the excessive costs associated with the relocation of power services via a memorandum on the 1<sup>st</sup> October 2009, which stated the following:

*“Advice from Western Power is that if Council continues with the road closure of the section of Trews Road from Ulster Road and the subdivision to amalgamate the car park area into the school site the Shire of York will be required to relocate all of the overhead lines etc at a minimum cost of \$100,000 which is not budgeted.*

*It is suggested that all action for road closure be stopped and the subdivision proposal to create the new Trews Road alignment proceed minus the provision to amalgamate the balance of the Shire land onto the school property.*

*The end result will be that the Shire of York will retain ownership of the car park land and be responsible for car park maintenance, however this is seen to be a far cheaper option to relocating power services...”*

**Statutory Environment:**

Lands Administration Act.

**Policy Implications:**

Nil.

**Financial Implications:**

Maintenance costs, insurance etc associated with the car park, as it will be on Council land.

**Strategic Implications:**

Nil.

**Voting Requirements:**

**Absolute Majority Required:** Yes

**Site Inspection:**

**Site Inspection Undertaken:** Yes

**Triple bottom Line Assessment:**

**Economic Implications:**

Discussed under Financial Implications.

**Social Implications:**

Not applicable.

**Environmental Implications:**

Not applicable.

**Comment:**

Due to further research and costs associated with the closure of a portion of Trews Road it is now deemed unsuitable for closure. It is therefore proposed that the original motion of Council be rescinded.

**OFFICER RECOMMENDATION**

**RESOLUTION**

**041109**

**Moved: Cr Lawrance**

**Seconded: Cr Walters**

***“That Council by an absolute majority, rescind motion 050508 of the Special Council meeting held on the 12<sup>th</sup> May 2008, which states as follows:***

***“That Council:***

- 1. accede to the proposed road closure of a portion of Trews Road, York, as shown on the map, tabled for information, for the purpose of facilitating public advertising in accordance with Section 58 of the Land Administration Act 1997 (as amended); and***
- 2. in the event that no adverse submissions are received during the advertising period, delegate authority to the Chief Executive Officer to finalise the road closure.***
- 3. Support the inclusion of the closed portion of Trews Road into Reserve 25727/28038 so it becomes part of the school property.”***

**Advice Note:**

***AN 1. All costs for the carpark e.g. maintenance requirements, insurance etc to be considered through budget deliberations.***

***AN2. A new subdivision/amalgamation proposal will be required.***

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL (6/0)**



17-256  
16/5/08

9. OFFICER'S REPORTS  
9.2 ADMINISTRATION REPORTS  
9.2.2 Road Closure

FILE NO:	Tr 1
COUNCIL DATE:	12 May 2008
REPORT DATE:	2 May 2008
LOCATION/ADDRESS:	Portion of Trews Road
APPLICANT:	Shire of York
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	T Cochrane, MATS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	Location of Area of Trews Road to be Closed

**Summary:**

To formally close a portion of Trews Road in accordance with Section 58 of the Land Administration Act.

**Background:**

Council has been undertaking road works on Trews Road, realigning the intersection to past the western entry to the School Administration building.

**Consultation:**

Department for Planning and Infrastructure – State Land Services.  
York & District High School;  
P & C Association;  
Education Department;  
Mark Burgess;  
Peter Atkins.

**Statutory Environment:**

Land Administration Act, 1997 (as amended) Section 58.

*"Closure of roads*

58.

- (1) *When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.*
- (2) *When a local government resolved to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.*
- (3) *A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.*

- (4) *On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) -*
  - (a) *by order grant the request;*
  - (b) *direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or*
  - (c) *refuse the request.*
- (5) *If the Minister grants a result under subsection (4) -*
  - (a) *the road concerned is closed on and from the day on which the relevant order is registered;*
  - (b) *any rights suspended under section 55 (3) (a) cease to be so suspended; and*
  - (c) *the Minister must cause notice of the registration of the relevant order to be published in a newspaper circulating in the district of the relevant local government.*
- (6) *When a road is closed under this section, the land comprising the former road -*
  - (a) *becomes unallocated Crown land; or*
  - (b) *if a lease continues to subsist in that land by virtue of section 57 (2), remains Crown land."*

Land Administration Regulations, 1998 (as amended), Part 2 – General, Regulation 9 – Preparation and Delivery by Local Government of Request to close a road permanently.

"9. *Preparation and delivery by local government of request to close a road permanently*

*For the purposes of preparing and delivering under section 58(2) of the Act a request to the Minister to close a road permanently, a local government must include with the request;*

- (a) *written confirmation that the local government has resolved to make the request, details of the date when the relevant resolution was passed and any other information relating to that resolution that the Minister may require;*
- (b) *sketch plans showing the location of the road and the proposed future disposition of the land comprising the road after it has been closed;*
- (c) *copies of any submissions relating to the request that, after complying with the requirement to publish the relevant notice of motion under section 58(3) of the Act, the local government has received, and the local government's comments on those submissions;*
- (d) *a copy of the relevant notice of motion referred to in paragraph (c);*
- (e) *any other information the local government considers relevant to the Minister's consideration of the request; and*



- (f) *written confirmation that the local government has complied with section 58(2) and (3) of the Act.*"

**Policy Implications:**

Nil.

**Financial Implications:**

The road closure will incur administration costs associated with staff time and advertising.

The realignment works is a project that was joint funded under the State Black Spot Project.

**Strategic Implications:**

Community Services – Key Result Area 7 – Objective 1 states:

*"To meet community needs in terms of physical infrastructure and overall community services."*

**Voting Requirements:**

**Absolute Majority Required:** No

**Site Inspection:**

**Site Inspection Undertaken:** Various

**Triple bottom Line Assessment:**

**Economic Implications:**

If the Minister agrees to the closure, the road reserve becomes Crown land.

**Social Implications:**

This procedure would not appear to impact on future developments within this area, however an advertising period will flush out any concerns.

The new alignment will provide for a safer route for those using Trews Road, in particular those that live on Trews Road, the School and the Hospital.

**Environmental Implications:**

Nil at this stage.

**Comment:**

This procedure will provide a true and correct record in due course if the recommendation is accepted.

**OFFICER RECOMMENDATION  
RESOLUTION 050508**

**Moved: Cr Lawrance**

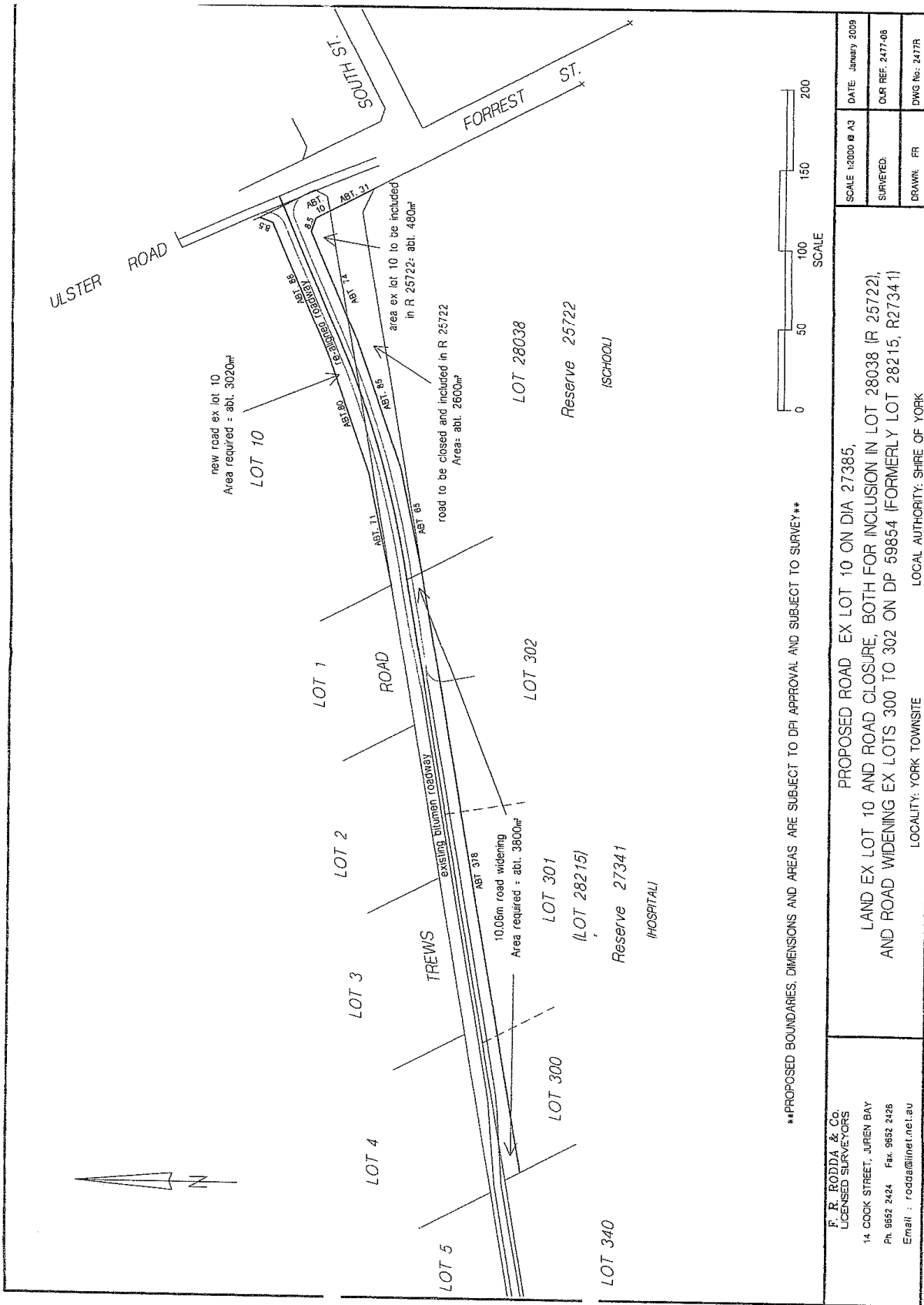
**Seconded: Cr Walters**

***"That Council:***

- 1. accede to the proposed road closure of a portion of Trews Road, York, as shown on the map, tabled for information, for the purpose of facilitating public advertising in accordance with Section 58 of the Land Administration Act 1997 (as amended); and***
- 2. in the event that no adverse submissions are received during the advertising period, delegate authority to the Chief Executive Officer to finalise the road closure.***
- 3. Support the inclusion of the closed portion of Trews Road into Reserve 25727/28038 so it becomes part of the school property."***

***(Carried 6-0)***

**Item 9.2.1**  
**Appendix B**





## **9. OFFICER'S REPORTS**

### **9.2 ADMINISTRATION REPORTS**

#### **9.2.2 Correction to Appointment of Authorised Persons – Bush Fires Act 1954**

<b>FILE NO:</b>	<b>LE.ACT</b>
<b>COUNCIL DATE:</b>	<b>16<sup>th</sup> November 2009</b>
<b>REPORT DATE:</b>	<b>11<sup>th</sup> November 2009</b>
<b>LOCATION/ADDRESS:</b>	<b>Not Applicable</b>
<b>APPLICANT:</b>	<b>Shire of York</b>
<b>SENIOR OFFICER:</b>	<b>G Stanley, ACEO</b>
<b>REPORTING OFFICER:</b>	<b>T Cochrane, MATS</b>
<b>DISCLOSURE OF INTEREST:</b>	<b>Nil</b>
<b>APPENDICES:</b>	<b>Appendix A – Extract of Minutes 17/8/2009</b> <b>Appendix B – Gazettal</b>
<b>DOCUMENTS TABLED:</b>	<b>Nil</b>

#### **Summary:**

The purpose of this report is to show a true and correct record of the Appointment of Authorised Persons under the Bush Fires Act 1954 – Fire Control Officers.

The Rangers for the Shire of York should have had their names included on the list of Authorised Officers. This was discussed however the names were inadvertently omitted and therefore endorsement by the Council is required.

#### **Background:**

The appointment of authorised officers was dealt with at the Ordinary Council Meeting held on the 17<sup>th</sup> August 2009.

#### **Consultation:**

Staff.

#### **Statutory Environment:**

Bush Fires Act 1976.

#### **Policy Implications:**

Nil.

#### **Financial Implications:**

Administration time associated with preparation of an agenda item.

#### **Strategic Implications:**

Not applicable.

#### **Voting Requirements:**

**Absolute Majority Required:** Yes

#### **Site Inspection:**

**Site Inspection Undertaken:** Not applicable

#### **Triple bottom Line Assessment:**

##### **Economic Implications:**

Not applicable.

**Social Implications:**

Potential improved customer service through the extended delegations of Authorised Officers.

**Environmental Implications:**

Not applicable.

**Comment:**

As per the discussions the officers were gazetted.

**OFFICER RECOMMENDATION*****RESOLUTION******051109******Moved: Cr Randell******Seconded: Cr Boyle******“That Council:***

- (1) add the names to the updated list of Authorised Persons for the Bush Fires Act 1954:***

***Stuart Hopwood; and  
Shane Fewster.”***

***CARRIED (6/0)***

**BUSH FIRES ACT 1954  
FIRE CONTROL OFFICERS**

*Shire of York*

**APPOINTMENT OF AUTHORISED PERSONS**

In accordance with the Bush Fires Act 1976 as amended, the following persons are hereby appointed as authorised Fire Control Officers and Fire Weather Officers as described for the Shire of York –

**Chief Bush Fire Control Officer**  
**Deputy Chief Bush Fire Control Officer**

Mr Peter Boyle  
Mr Terry Davies  
**Dual FCO – Shire of Beverley**

**Burges Siding Bush Fire Brigade**

Stephen Chipper  
Glen Davies  
Andrew Boulton  
Tony Robinson  
Peter Monger  
Warrick McGregor

**Greenhills Bush Fire Brigade**

Charles Boyle  
Graham Penny  
Paul Jenkinson **Dual FCO Beverley**  
David Jenkinson  
Simon Penny  
Jeremy Marwick  
Norm Whitburn **Dual FCO Beverley**

**Malebelling Bush Fire Brigade**

Peter Humphrey  
John Hewett  
Murray Hewett  
Chris Joyce  
Eddie Humphrey  
Tim Springbett  
Bruce Gentle

**Talbot Brook Bush Fire Brigade**

John Dawson  
Robert Chester  
Dave Emin  
Denis Luef  
Vin Green

**York FESA Unit**

John Weeks  
Richard Boulton  
Angela Plichota  
Warrick McGregor

**Fire Weather Officers**

Robert Chester  
Paul Jenkinson  
David Jenkinson  
John Hewett  
Vin Green  
Tim Springbett

**Dual FCO Inkpen Brigade Northam**

Clive Owen

All previous appointments are hereby revoked.

Signed .....  
RAY HOOPER  
Chief Executive Officer

Dated .....

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**BUSH FIRES ACT 1954  
FIRE CONTROL OFFICERS**

*Shire of York*

**APPOINTMENT OF AUTHORISED PERSONS**

In accordance with the Bush Fires Act 1976 as amended, the following persons are hereby appointed as authorised Fire Control Officers and Fire Weather Officers as described for the Shire of York –

**Chief Bush Fire Control Officer**  
**Deputy Chief Bush Fire Control Officer**

Mr Peter Boyle  
Mr Terry Davies  
**Dual FCO – Shire of Beverley**

**Burges Siding Bush Fire Brigade**

Stephen Chipper  
Glen Davies  
Andrew Boulton  
Tony Robinson  
Peter Monger  
Warrick McGregor

**Greenhills Bush Fire Brigade**

Charles Boyle  
Graham Penny  
Paul Jenkinson **Dual FCO Beverley**  
David Jenkinson  
Simon Penny  
Jeremy Marwick  
Norm Whitburn **Dual FCO Beverley**

**Malebelling Bush Fire Brigade**

Peter Humphrey  
John Hewett  
Murray Hewett  
Chris Joyce  
Eddie Humphrey  
Tim Springbett  
Bruce Gentle

**Talbot Brook Bush Fire Brigade**

John Dawson  
Robert Chester  
Dave Emin  
Denis Luelf  
Vin Green

**York FESA Unit**

John Weeks  
Richard Boulton  
Angela Plichota  
Warrick McGregor  
Stuart Hopwood  
Shane Fewster

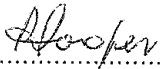
**Fire Weather Officers**

Robert Chester  
Paul Jenkinson  
David Jenkinson  
John Hewett  
Vin Green  
Tim Springbett

**Dual FCO Inkpen Brigade Northam**

Clive Owen

All previous appointments are hereby revoked.

Signed   
RAY HOOPER  
Chief Executive Officer

Dated 19.8.09



**9. OFFICER'S REPORTS**  
**9.2 ADMINISTRATION REPORTS**  
**9.2.3 2009 Elections**

**FILE NO:** OR.ELN.3.1  
**COUNCIL DATE:** 16<sup>th</sup> November 2009  
**REPORT DATE:** 27<sup>th</sup> October 2009  
**LOCATION/ADDRESS:** N/A  
**APPLICANT:** N/A  
**SENIOR OFFICER:** N/A  
**REPORTING OFFICER:** Ray Hooper, CEO  
**DISCLOSURE OF INTEREST:** Ray Hooper, CEO  
**APPENDICES:** Form 20 – Report to Minister  
**DOCUMENTS TABLED:** Nil

**Summary:**

As part of the reporting of the results of the election outlined in the Returning Officer's Manual the details of the election results and processes are provided.

York District Councillors	Candidate	Number of votes
	SIMON SAINT	344
	BRIAN LAWRENCE	652
	ROMA PATON	253
	BOB LEAR	294
	BRIAN WHEELER	219
	DAVID LAWN	182
	SILVIA DAVIDSON	89
	ALAN GENONI	197
	ROY SCOTT	424
	TONY BOYLE	790
Therefore the following people are elected as Councillors for the York District. Each Councillor will hold office until the date set out next to his or her name.		
Name		Expiry of term
BOYLE, Anthony Stephen		October 2013
LAWRENCE, Brian Raymond		October 2013
SCOTT, Roy Michael		October 2013

**Background:**

The 2009 York elections were held as an in person election with a participation rate of 51.37%. Early voting was popular with 369 taking this option and there were 49 postal votes and 1 absentee vote with only 1 vote being declared informal.

Polling booths operated at Talbot and Greenhills Halls in addition to the Shire Office however low voter turnout may negate the value of operating multiple booths.

The Shire of York was fortunate to have a representative of the Department of Local Government (Vicki Nassar) in attendance for the majority of the voting process and all of the counting process.

**Consultation:**

Department of Local Government

**Statutory Environment:**

Local Government Act and Election Regulations.

**Policy Implications:**

Nil

**Financial Implications:**

All staff and election costs allowed for in the 2009/10 budget allocations.

**Strategic Implications:**

Nil

**Voting Requirements:**

**Absolute Majority Required:** No

**Site Inspection:**

**Site Inspection Undertaken:** Not applicable

**Triple bottom Line Assessment:**

**Economic Implications:**

Economic growth is expected to continue under the new Council.

**Social Implications:**

High voter turnout gave a clear decision on the preferred candidates and the direction taken by Council to position York for the future.

**Environmental Implications:**

Not applicable.

**Comment:**

The election process was relatively clean and trouble free which is a credit to the candidates.

The election process indicated a lack of voter registration where people have changed address or have not renewed occupier or owner details for inclusion on the combined electoral roll of 2441 electors.

All candidates received more than 5% of the votes cast and qualify for a refund of the nomination deposit.

**OFFICER RECOMMENDATION**

**RESOLUTION**

**061109**

**Moved: Cr Randell**

**Seconded: Cr Walters**

**“That Council:**

**Note the report by the Returning Officer and congratulate all candidates on the well run campaigns.”**

**CARRIED (6/0)**



Government of Western Australia  
Department of Local Government

**Form 20. Report to Minister**

**REPORT TO MINISTER**

*Local Government Act 1995, s. 4.79(2)*

*Local Government (Elections) Regulations 1997, reg. 81*

**Part 1 - General Information**

**Use one form for each election.**

<b>District and Date</b>	
District	Shire of York
Ward (if applicable)	Whole District
Election Date	Saturday, 17 October, 2009
<b>Vacancies</b>	
Number of Vacancies	3
Number of Vacancies Unfilled (i.e. vacancies for which no nominations were received at the close of nominations)	0
Method of Filling Office	At Large
Position(s)	Councillor(s)
Type of Election	In Person
<b>Number of Persons on Rolls</b>	
Number of persons on owners and occupiers roll	2316
Number of persons on residents roll	125
Total number of names of persons on rolls (roll, if consolidated)	2441

**Part 2 - Voter Turnout**

<b>Voter categories</b>	<b>Number of voters</b>
Absent voters whose voting papers were rejected <sup>1</sup>	0
Postal voters whose voting papers were rejected <sup>1</sup>	0
Absent voters whose voting papers were accepted <sup>2</sup>	1
Postal voters whose voting papers were accepted <sup>3</sup>	49
Early voters recorded on roll	360
Voters who voted in person on election day recorded on roll	844
Provisional voters whose voting papers were accepted <sup>4</sup>	0
Number of elected members voting in election ( <i>Elections by council ONLY</i> )	0
<b>Total voter turnout</b>	<b>1254</b>

<sup>1</sup> Assume the voting papers include a ballot paper for this election.

<sup>2</sup> Work out using number of accepted absent voter declarations retained.

<sup>3</sup> Work out using number of accepted elector certificates retained.

<sup>4</sup> Work out using number of Form 16s accepted by an electoral officer.

<sup>5</sup> Total number of eligible electors who attempted to vote by the close of poll.

**Part 3 - Number of late arriving postal packages**

Number of late arriving postal packages <sup>6</sup>	3
--	---

<sup>6</sup> Include packages arriving up to one week after the close of poll. Assume the voting papers include a ballot paper for this election.

**Part 4 - Details of ballot papers, candidates and votes**

**Ballot papers received**

Total	Formal	Informal	Informal as a percentage of total
1254	1253	1	0.08%

**Candidates and votes**

Last Name	Other Names	How Elected <sup>8a</sup>	Number of Votes <sup>8</sup>	Gender	Previous Member
Boyle	Anthony Stephen	First-Past-The-Post	790	Male	Yes
Davidson	Silvia	First-Past-The-Post	89	Female	No
Genoni	Alan	First-Past-The-Post	197	Male	No
Lawn	David	First-Past-The-Post	182	Male	No
Lawrance	Brian Raymond	First-Past-The-Post	652	Male	Yes
Lear	Robert	First-Past-The-Post	294	Male	No
Paton	Roma	First-Past-The-Post	253	Female	No
Saint	Simon	First-Past-The-Post	344	Male	No
Scott	Roy Michael	First-Past-The-Post	424	Male	No
Wheeler	Brian	First-Past-The-Post	219	Male	No

<sup>8a</sup>If the candidate was elected unopposed under section 4.55 of the Local Government Act 1995, insert "Unopposed" and delete columns 4 and 5.

**Part 5 - Candidate(s) Elected**

Last Name	Other Names	Year Term Expires	Type of Vacancy
Boyle	Anthony Stephen	2013	Ordinary
Lawrance	Brian Raymond	2013	Ordinary
Scott	Roy Michael	2013	Ordinary

**Returning Officer**

Full Name	Raymond Patrick Hooper
Email	ceosec@york.wa.gov.au
Date	Monday, 2 November, 2009





### **9.3 Finance Reports**



## **9.4 Confidential Reports**



## **9.5 Late Reports**



## **9. OFFICER'S REPORTS**

### **9.5 LATE REPORTS**

#### **9.5.1 Monthly Financial Reports**

<b>FILE NO:</b>	<b>FI.FRP</b>
<b>COUNCIL DATE:</b>	<b>16<sup>th</sup> November 2009</b>
<b>REPORT DATE:</b>	<b>12<sup>th</sup> November 2009</b>
<b>LOCATION/ADDRESS:</b>	<b>Not Applicable</b>
<b>APPLICANT:</b>	<b>Not Applicable</b>
<b>SENIOR OFFICER:</b>	<b>Graham Stanley, Deputy CEO</b>
<b>REPORTING OFFICER:</b>	<b>Colin Whisson, Administration Officer</b>
<b>DISCLOSURE OF INTEREST:</b>	<b>Nil</b>
<b>APPENDICES:</b>	<b>Yes – Appendix A as detailed in Summary</b>
<b>DOCUMENTS TABLED:</b>	<b>Nil</b>

#### **Summary:**

The Financial Report for the period ending 31 October 2009 is hereby presented for the consideration of the Council.

Appendix A includes the following:

- Statement of Financial Position
- Statement of Financial Activity
- Variance Report
- Bank Account Reconciliations
- Cheque drawings on the Municipal Account
- EFT drawings on the Municipal Account
- Cheque drawings on the Trust Account
- Reserve Accounts Balances Summary
- Payroll Direct Debits Summary
- Corporate Credit Card Summary and Transaction Listing
- Fuel Card Summary

#### **Consultation:**

Nil.

#### **Statutory Environment:**

Local Government Act 1995 (As Amended).

Local Government (Financial Management) Regulations 1996 (As Amended).

#### **Policy Implications:**

Nil.

#### **Financial Implications:**

The following information provides balances for key financial areas for the Shire of York's financial position as at 31 October 2009;

Sundry Creditors as per General Ledger	\$	<b>6,526.36</b>
Sundry Debtors as per General Ledger	\$	<b>277,682.87</b>
Unpaid rates and services current year (paid in advance inc. ESL)	\$	<b>1,267,464.31</b>
Unpaid rates and services previous years (inc. ESL)	\$	<b>238,170.07</b>

#### **Strategic Implications: Nil**

#### **Voting Requirements:**

**Absolute Majority Required: No**

**Site Inspection:**

**Site Inspection Undertaken:**           **Not applicable**

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

A zero balance or surplus end of year financial position will increase community confidence and cohesion and provide an opportunity for improved community benefits in future years.

**Social Implications:**

Not applicable.

**Environmental Implications:**

Not applicable.

**Comment:**

The Council currently has a large surplus position due to the fact that the rates have been raised and Royalties for Regions funds have been received. The surplus will decline as the year goes on and projects are completed. Improving investment interest rates should see the returns on Municipal Funds invested and Reserve funds come in above budget but this won't begin to show up in the accounts until the new year as many of the investments have been set for terms that mature in the third quarter to attain the best rate available.



**OFFICER RECOMMENDATION****RESOLUTION  
071109****Moved: Cr Boyle****Seconded: Cr Lawrance****“That Council:**

***Receive the Monthly Financial Report for October and ratify payments drawn from the Municipal and Trust accounts for the period ending 31 October 2009:***

	<b><u>VOUCHER</u></b>	<b><u>AMOUNT</u></b>
<b>MUNICIPAL FUND</b>		
<b><i>Cheque Payments</i></b>	<b><i>28459-28523</i></b>	<b><i>\$ 1,253,357.45</i></b>
<b><i>Electronic Funds Payments</i></b>	<b><i>6030-6128</i></b>	<b><i>\$ 317,606.55</i></b>
<b><i>Direct Debits Payroll</i></b>		<b><i>\$ 112,892.26</i></b>
<b><i>Bank Fees</i></b>		<b><i>\$ 3,404.29</i></b>
<b><i>Corporate Cards</i></b>		<b><i>\$ 3,211.53</i></b>
<b><i>Shell Cards</i></b>		<b><i>\$ 7.50</i></b>
<b><i>TOTAL</i></b>		<b><i>\$ 1,690,479.58</i></b>
<b>TRUST FUND</b>		
<b><i>Cheque Payments</i></b>	<b><i>3630-3631</i></b>	<b><i>\$ 73,072.10</i></b>
<b><i>Direct Debits Licensing</i></b>		<b><i>\$ 137,353.00</i></b>
<b><i>TOTAL</i></b>		<b><i>\$ 210,425.10</i></b>
<b><i>TOTAL DISBURSEMENTS</i></b>		<b><i>\$ 1,900,904.68</i></b>

**CARRIED (6/0)****Note to this item**

The Chief Executive Officer has delegated authority under Delegation DE1 (Council Meeting 22 September 2008) to make payments from the Municipal and Trust accounts.



SHIRE OF YORK  
STATEMENT OF FINANCIAL POSITION  
AS AT THE 31 OCTOBER 2009

2008/09 ACTUAL		2009/10 ACTUAL 31-Oct-09
\$		\$
	<b>CURRENT ASSETS</b>	
1,117,924	Cash	3,149,485
2,813,794	Cash Restricted	2,823,436
701,106	Receivables	1,801,255
20,936	Stock on Hand	24,772
0	Prepaid Expenses	0
<b>4,653,760</b>	<b>TOTAL CURRENT ASSETS</b>	<b>7,798,948</b>
	<b>CURRENT LIABILITIES</b>	
(211,089)	Accounts Payable	(187,510)
0	Income Received in Advance	0
(422,203)	Provision for Leave	(422,203)
(7,799)	Interest Bearing Liabilities	(7,799)
<b>(641,091)</b>	<b>TOTAL CURRENT LIABILITIES</b>	<b>(617,512)</b>
<b>4,012,669</b>	<b>NET ASSETS</b>	<b>7,181,435</b>
	<b>Less Items</b>	
(2,813,794)	Cash Restricted	(2,823,436)
7,799	Interest Bearing Liabilities Included in Budget	7,799
(8,363)	Self Supporting Loan Income	(8,363)
112,069	Add Back LSL	112,598
<b>1,310,380</b>	<b>TOTAL EQUITY</b>	<b>4,470,034</b>

SHIRE OF YORK STATEMENT OF FINANCIAL ACTIVITY AS AT 31 OCTOBER 2009						
	2009/10 ADOPTED BUDGET	2009/10 Amended Budget	2009/10 Budget Year to Date	2009/10 Actual	Variance % Budget to Actual	Variance \$ Budget to Actual
OPERATING REVENUE	\$	\$	\$	\$	\$	
General Purpose Funding	(1,049,230)	(1,049,230)	(251,918)	(274,542)	9%	22,624
Governance	(1,128,150)	(1,128,150)	(166,194)	(30,574)	(82%)	(135,620)
Law/Order Public Safety	(269,329)	(269,329)	(19,337)	(7,157)	(63%)	(12,180)
Health	(57,000)	(57,000)	(14,836)	(9,116)	(39%)	(5,720)
Education and Welfare	(19,800)	(19,800)	(6,600)	(6,565)	(1%)	(35)
Housing	-	-	-	-		-
Community Amenities	(668,025)	(668,025)	(487,283)	(465,187)	(5%)	(22,096)
Recreation and Culture	(2,174,274)	(2,174,274)	(629,125)	(629,868)	0%	743
Transport	(1,563,091)	(1,563,091)	(264,732)	(123,095)	(54%)	(141,637)
Economic Services	(125,700)	(125,700)	(41,904)	(61,913)	48%	20,009
Other Property and Services	(276,656)	(276,656)	(164,320)	(123,251)	(25%)	(41,069)
	(7,331,255)	(7,331,255)	(2,046,249)	(1,731,270)	(15%)	(314,979)
LESS OPERATING EXPENDITURE						
General Purpose Funding	160,019	160,019	42,932	41,646	(3%)	1,266
Governance	1,667,171	1,667,171	352,411	150,484	(57%)	201,927
Law, Order, Public Safety	355,006	355,006	121,528	104,595	(14%)	16,933
Health	320,300	320,300	78,938	53,269	(33%)	25,669
Education and Welfare	86,129	86,129	30,007	25,121	(16%)	4,866
Housing	-	-	0	-		-
Community Amenities	1,292,974	1,292,974	372,235	264,560	(29%)	107,675
Recreation and Culture	1,468,483	1,468,483	384,454	331,916	(14%)	52,538
Transport	2,320,154	2,320,154	773,144	996,556	29%	(223,412)
Economic Services	509,010	509,010	159,733	137,214	(14%)	22,519
Other Property & Services	95,000	95,000	46,704	108,237	132%	(61,533)
	8,274,246	8,274,246	2,362,086	2,213,597	(6%)	148,489

SHIRE OF YORK STATEMENT OF FINANCIAL ACTIVITY AS AT 31 OCTOBER 2009						
	2009/10 ADOPTED BUDGET	2009/10 Amended Budget	2009/10 Budget Year to Date	2009/10 Actual	Variance % Budget to Actual	Variance \$ Budget to Actual
ADD						
Proceeds on Sale of Assets	942,991	942,991	315,837	482,328	53%	(166,491)
Profit/Loss on Sale of Assets		-	0	-		
Increase(Decrease) Non Current Debtors Rates	(994,704)	(994,704)	8,813	-		
Increase(Decrease) Non Current Debtors S/S Loan	-	-	0	-		
Change Employee Leave Provisions	(8,363)	(8,363)	-	-		
Long Serv. Live Cash at Bank (Increase)/Decrease in Bal.	(5,323)	(5,323)	-	(529)		
Depreciation Written Back	(2,139,000)	(2,139,000)	(4,027,368)	(836,119)		
Book Value of Assets Sold Written Back	(700,278)	(700,278)	(153,613)	-		
	(3,847,668)	(3,847,668)	(4,172,168)	(836,648)	(80%)	(3,336,520)
	(2,904,677)	(2,904,677)	(3,856,331)	(354,320)	(91%)	(3,502,011)
LESS CAPITAL PROGRAMME						
Sub Total						
Purchase Tools	-	-	0	-		-
Purchase Land & Buildings	2,382,259	2,382,259	10,500	44,391	323%	(33,891)
Purchase Plant & Equipment	1,199,570	1,199,570	256,200	-	(100%)	256,200
Purchase Furniture & Equipment	99,000	99,000	18,500	-	(100%)	18,500
Infrastructure Assets - Roads	2,979,510	2,979,510	742,180	84,023	(89%)	658,157
Infrastructure Assets - Recreation Facilities	1,140,880	1,140,880	90,000	73,423	(18%)	16,577
Infrastructure Assets - Other	41,700	41,700	7,232	-	(100%)	7,232
Repayment of Debt - Loan Principal	22,491	22,491	4,108	4,109	0%	(1)
Transfer To Reserves	1,636,669	1,636,669	32,332	9,641		22,691
Transfer to Other Funds	-	-	0	-		-
	9,502,079	9,502,079	1,161,052	215,588	(81%)	945,464

SHIRE OF YORK STATEMENT OF FINANCIAL ACTIVITY AS AT 31 OCTOBER 2009						
	2009/10 ADOPTED BUDGET	2009/10 Amended Budget	2009/10 Budget Year to Date	2009/10 Actual	Variance % Budget to Actual	Variance \$ Budget to Actual
ABNORMAL ITEMS	-	-	0	-		-
	-	-	0	-		-
Plus Rounding	9,502,079	9,502,079	1,161,052	215,588	(81%)	945,464
	6,597,402	6,597,402	(2,695,279)	(138,733)	(95%)	(2,556,546)
Sub Total						
LESS FUNDING FROM						
Reserves	(1,424,384)	(1,424,384)	-	-		-
Other Funds	-	-	0	-		-
Loans Raised	(1,000,000)	(1,000,000)	-	-	#DIV/0!	-
Opening Funds	(1,146,040)	(1,146,040)	(1,146,040)	(1,310,380)	14%	164,340
Sundry Adjustments				429		(429)
Closing Funds	(3,570,424)	(3,570,424)	(1,146,040)	(1,309,950)	14%	163,910
Total To Be Made up from Rates	(3,026,978)	(3,026,978)	(3,019,154)	(3,021,351)	0%	2,197
						-
Net (Surplus) / Deficit	-	-	(6,860,473)	(4,470,034)	(35%)	(2,390,439)

**SHIRE OF YORK  
VARIANCE REPORT  
AS AT 31 OCTOBER 2009**

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**OPERATING REVENUE**

**General Purpose Funding**

No material variance to report

**Governance**

Timing of SEAVROC Member Contributions & SEAVROC PLUM Grant

**Law, Order Public Safety**

Timing of ESL Commission & ESL Grant/ Lower Dog Registration Collections & Less Other Council Reimbursements - These will rectify over coming months

**Health**

No material variance to report

**Education and Welfare**

No material variance to report

**Housing**

No material variance to report

**Community Amenities**

No material variance to report

**Recreation and Culture**

No material variance to report

**Transport**

Timing of Main Roads Grants/ Licensing Commission down 20%.

**Economic Services**

Building Fees well ahead of budget due to Swan Cottage Homes fees

**Other Property and Services**

Private Works Invoices to be raised. No reimbursements for Engineer as not employed yet.

**SHIRE OF YORK  
VARIANCE REPORT  
AS AT 31 OCTOBER 2009**

---

**OPERATING EXPENDITURE**

**General Purpose Funding**

No material variance to report

**Governance**

Timing of SEAVROC Project Expenditure and various Councillor Expenses

**Law, Order, Public Safety**

Timing of Various Fire and Animal Control Expenses

**Health**

New Health Officer yet to be employed./ Timing of maintenance on PML, Doctor's Housing

**Education and Welfare**

No material variance to report

**Housing**

No material variance to report

**Community Amenities**

Lower Waste Management Expenses, Town Planning down as part-time planner yet to start/ Cemetery Expenses lower due to timing of Cemetery Maintenance

**Recreation and Culture**

Timing Issues with the maintenance of various recreation facilities.

**Transport**

Excessive depreciation of road infrastructure assets/ Timing of Road Maintenance/ High Depot building maintenance

**Economic Services**

Timing Issues with festival assistance, town promotions, Visitor Centre Contribution & building control salaries.

**Other Property & Services**

Timing issues with allocation of plant operating costs and overheads. Additional Private Works Expenditure.



**SHIRE OF YORK  
VARIANCE REPORT  
AS AT 31 OCTOBER 2009**

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**CAPITAL PROGRAMME**

**Purchase Land & Buildings**

Timing of Budget Allocation for Forrest Oval Building Plans

**Purchase Plant & Equipment**

Timing of Plant Tenders

**Purchase Furniture & Equipment**

Timing of F&E purchases

**Infrastructure Assets Roads**

Timing of budget allocations for road construction program.

**Infrastructure Assets Recreation Facilities**

Timing of budget allocations for Forrest Oval Redevelopment.

**Infrastructure Assets Other**

Entry statement works not completed

**Repayment of Debt - Loan Principal**

No material variance to report

**Transfers to Reserves**

Timing of Reserve Term Deposits maturing.

**LESS FUNDING FROM**

**Transfers from Reserves**

No material variance to report

**Loans Raised**

No material variance to report

**Opening Funds**

End of year adjustments to occur in finalisation of accounts.

BANK RECONCILIATION				
OCTOBER 2009				
		MUNICIPAL	TRUST	RESERVE
OPENING BALANCE PER SYNERGY		2,712,927.79	519,836.31	2,821,215.61
Receipts as per daily cash book		977,586.92	172,556.08	
Muni NCD funds receipted from Bendigo to Westpac		1,150,000.00		
Reserve - Muni Transfer				
Trust Interest NCD			219.76	
Muni - Reserve Transfer				
Reserve Interest 119521748				0.92
Reserve Interest 11AM At Call a/c				2,219.14
<b>TOTAL RECEIPTS</b>		<b>2,127,586.92</b>	<b>172,775.84</b>	<b>2,220.06</b>
Payment as per schedule cheques	28459-28523	(1,253,357.45)		
EFT Direct payments	6030-6128	(317,606.55)		
Payment as per schedule chqs - Trust	3630-3631		(73,072.10)	
Direct Debit Licensing			(137,353.00)	
Direct Debit Payroll		(112,892.26)		
Bank fees BendigoTrust		(6.30)		
Bank fees Bendigo Muni		(446.74)		
Bank fees Bendigo Reserve				
Business Cards Bank Fees		(8.00)		
Dishonour Cheque Fee		(10.00)		
Eftpos Bank Fee Trust		(298.35)		
Eftpos Bank Fee Muni		(2,634.90)		
TOTAL BANK FEES	(3,404.29)			
Business Card Bendigo - CEO		(2,657.90)		
Business Card Bendigo - DCEO		(553.63)		
PAYMENTS IN ADVANCE - Previous month	0.00			
PAYMENTS IN ADVANCE - Current month	0.00			
NET PAYMENTS IN ADVANCE	0.00			
TOTAL BUSINESS CARDS Direct Debits SEPTEMBER	(3,211.53)			
Shell Card		(7.50)		
Reversal of rates pmt Sept (dishonoured cheque)		(1,400.00)		
Rounding		0.02		
<b>TOTAL EXPENDITURE</b>		<b>(1,691,879.56)</b>	<b>(210,425.10)</b>	<b>0.00</b>
<b>CLOSING BALANCE - CALCULATED</b>		<b>3,148,635.15</b>	<b>482,187.05</b>	<b>2,823,435.67</b>
<b>CLOSING BALANCE - SYNERGY</b>		<b>3,148,635.15</b>	<b>482,187.05</b>	<b>2,823,435.67</b>
DIFFERENCE		-	-	-

<b>BALANCES AS PER BANK STATEMENTS</b>				
BENDIGO MUNICIPAL 118630623		547,594.61		
BENDIGO MUNICIPAL AT-CALL ACCT 61158		520,000.00		
BENDIGO MUNICIPAL NCD DUE 31/12/09		505,054.79		
BENDIGO MUNICIPAL NCD DUE 23/11/09		100,000.00		
BENDIGO MUNICIPAL NCD DUE 4/11/09		250,000.00		
BENDIGO MUNICIPAL NCD DUE 31/12/09		250,000.00		
WESTPAC MUNICIPAL NCD DUE 23/3/10		500,000.00		
WESTPAC MUNICIPAL NCD DUE 5/4/10		320,000.00		
WESTPAC MUNICIPAL NCD DUE 5/2/10		330,000.00		
BENDIGO TRUST 13074174			241,118.36	
BENDIGO TRUST NCD Open space DUE 31/12/09			128,484.83	
BENDIGO TRUST TERM DEPOSIT			23,183.60	
BENDIGO TRUST TERM DEPOSIT			9,015.28	
BENDIGO TRUST TERM DEPOSIT			25,000.00	
BENDIGO TRUST TERM DEPOSIT			16,386.00	
BENDIGO TRUST TERM DEPOSIT			21,750.00	
BENDIGO TRUST TERM DEPOSIT			56,000.00	
BENDIGO TRUST TERM DEPOSIT			48,188.00	
BENDIGO RESERVE 119521748				851.52
BENDIGO RESERVE AT-CALL ACCT				114,000.00
BENDIGO RESERVE NCD DUE 31/12/09				577,584.15
BENDIGO RESERVE NCD DUE 17/11/09				331,000.00
BENDIGO RESERVE NCD DUE 29/01/10				400,000.00
WESTPAC RESERVE				0.00
WESTPAC RESERVE NCD DUE 26/11/09				300,000.00
WESTPAC RESERVE NCD DUE 26/12/09				300,000.00
WESTPAC RESERVE NCD DUE 24/2/10				300,000.00
WESTPAC RESERVE NCD DUE 5/4/10				500,000.00
<b>TOTAL PER BANK STATEMENTS</b>		<b>3,322,649.40</b>	<b>569,126.07</b>	<b>2,823,435.67</b>
<b>RECONCILING ITEMS</b>				
Plus Outstanding Deposits		5,604.33	5,498.90	
Adjustment Trust banked in to Muni		(2,325.25)	2,325.25	
Adjustment Muni banked in to Trust		6,105.82	(6,105.82)	
Less Outstanding cheques		(163,459.25)	(74,722.10)	
Less Outstanding Licence Debits			(14,435.15)	
Less October credits - receipted November		(26,339.76)		
Less Unidentified Direct Credit - Nov 07		(346.83)		
Less O/bank - unidentified money order 27/11/08		(250.00)		
Plus Dishonoured Cheque		7,000.83	500.00	
Adjustments		(4.14)	(0.10)	
<b>TOTAL CLOSING BALANCE - CALCULATED</b>		<b>3,148,635.15</b>	<b>482,187.05</b>	<b>2,823,435.67</b>
<b>- PER SYNERGY</b>		<b>3,148,635.15</b>	<b>482,187.05</b>	<b>2,823,435.67</b>
<b>DIFFERENCE</b>		<b>-</b>	<b>-</b>	<b>-</b>

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**SHIRE OF YORK  
MUNICIPAL CHEQUE PAYMENTS  
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28459		<b>SHIRE OF YORK</b>		
INV WESTP.		WESTPAC INVESTMENT - MUNI	320,000.00	320,000.00
28460		<b>SHIRE OF YORK</b>		
INV WESTP.		WESTPAC NCD MUNI	330,000.00	330,000.00
28461		<b>SHIRE OF YORK</b>		
INV WESTP.		WESTPAC NCD RESERVES	500,000.00	500,000.00
28462		<b>SYNERGY</b>		
INV 7854883		SECURITY LIGHTS ANNUAL RENTAL - PEACE, WHITELY, AV	2,643.55	2,643.55
28463		<b>WESTSCHEME SUPERANNUATION</b>		
INV SUPER		SUPERANNUATION CONTRIBUTIONS	119.07	119.07
28464		<b>AMP CORPORATE SUPERANNUATION</b>		
INV SUPER		SUPERANNUATION CONTRIBUTIONS	122.27	122.27
28465		<b>PRIME SUPER</b>		
INV SUPER		SUPERANNUATION CONTRIBUTIONS	152.03	152.03
28466		<b>YORK SHIRE COUNCIL (payroll only)</b>		
INV DEDUC		PAYROLL DEDUCTIONS	340.00	1,006.00
INV DEDUC			66.00	
INV DEDUC			600.00	
28467		<b>VERTI CUTTING &amp; TURF SERVICES</b>		
INV 360		WEED SPRAYING - TOWNSITE	2,340.00	2,340.00
28468		<b>THE UNIVERSITY OF WESTERN AUSTRALIA</b>		
INV 7630174		SPONSORSHIP - KWONGAN COLLOQUIUM 12/9/09	2,200.00	2,200.00
28469		<b>CENTRELINK</b>		
INV DEDUC		PAYROLL DEDUCTIONS	100.00	100.00
28470		<b>DOMINIC CARBONE</b>		
INV 9		SEAVROC MANAGEMENT & ADMIN SERVICES 27/6-23/7/09	5,036.20	5,036.20
28471		<b>DEPARTMENT OF PREMIER &amp; CABINET</b>		
INV 62938		ADVERT - GOVERNMENT GAZETTE - TPS2 AMENDMENT 21	308.76	308.76
28472		<b>AMP FLEXIBLE LIFETIME SUPERANNUATION</b>		
INV SUPER		Superannuation contributions	60.82	60.82
28473		<b>SUNCORP WEALTHSMART BUSINESS SUPER</b>		
INV SUPER		Superannuation contributions	184.56	184.56
28474		<b>AUSTRALIAN SERVICES UNION</b>		
INV DEDUC		UNION FEES	189.00	189.00
28475		<b>JOSCO FINISHING PRODUCTS</b>		
INV 021676		ROAD BROOM LINKAGE	616.61	616.61
		<b>NORM REYNOLDS RETRAVISION</b>		

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		<b>NORM REYNOLDS RETRAVISION</b>		
28476		BLUETOOTH HANDSFREE CAR KIT - WORKS SUPERVISOR		109.00
INV 58250			109.00	
		<b>ST JOHN AMBULANCE ASSOCIATION</b>		
28477		SUPPLY/ RESTOCK FIRST AID KITS		342.65
INV YO4998			342.65	
		<b>TELSTRA</b>		
28478		INTERNET ACCESS 26/8-25/9/09 - CEO		72.15
INV 4062574		MOBILE PHONE 11/9-10/10/09 - WORKS	12.20	
INV BP0271		INTERNET ACCESS 26/8-25/9/09 - CEO	59.95	
		<b>WATER CORPORATION OF WA</b>		
28479		WATER USAGE 8/5-11/9/09 - RAILWAY RD STANDPIPE		3,150.40
INV 9007946		WATER USAGE 11/5-10/9/09 - HAMERSLEY RD STANDPIPE	510.80	
INV 9007967		WATER USAGE 7/5-11/9/09 - DOVEY CT STANDPIPE	10.45	
INV 9007946		WATER USAGE 8/5-11/9/09 - RAILWAY RD STANDPIPE	2,629.15	
		<b>SHIRE OF YORK</b>		
28480		FIRE STATION LEASE 09/10 - YORK TOY LIBRARY		286.00
INV 1922			286.00	
		<b>YORK AGRICULTURAL SOCIETY</b>		
28481		YORK SHOW SPONSORSHIP 09		3,151.50
INV 505			3,151.50	
		<b>WESTERN POWER CORPORATION</b>		
28482		MT BAKEWELL REPEATER SITE SHARE RENTAL 09/10		232.15
INV CORPB			232.15	
		<b>WA LOCAL GOVT SUPER PLAN PTY LTD, (ACN 0</b>		
28483		SUPERANNUATION CONTRIBUTIONS		10,725.30
INV SUPER			225.54	
INV DEDUC			161.11	
INV DEDUC			64.44	
INV SUPER			7,073.82	
INV DEDUC			884.45	
INV DEDUC			343.72	
INV DEDUC			663.50	
INV DEDUC			477.50	
INV DEDUC			30.80	
INV DEDUC			119.37	
INV DEDUC			29.84	
INV DEDUC			257.18	
INV DEDUC			88.62	
INV DEDUC			36.85	
INV DEDUC			147.42	
INV DEDUC			121.14	
		<b>YORK SHIRE COUNCIL (payroll only)</b>		
28484		PAYROLL DEDUCTIONS		1,940.60
INV A/L PA`			1,940.60	
		<b>BRIAN LAWRENCE</b>		
28485		ALLOWANCE 1/7-30/9/09		2,383.75
INV ALLOW			2,383.75	
		<b>PATRICIA WALTERS</b>		
28486		ALLOWANCE 1/7-30/9/09		1,827.50
INV ALLOW			1,827.50	
		<b>ANTHONY STEPHEN BOYLE</b>		
28487		ALLOWANCE 1/7-30/9/09		1,827.50
INV ALLOW			1,827.50	
		<b>TREVOR WILLIAM JOHN RANDELL</b>		
28488		ALLOWANCE 1/7-30/9/09		1,827.50
INV ALLOW			1,827.50	

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28489		<b>ASHLEY JAMES FISHER</b>		
INV ALLOW		ALLOWANCE 1/7-30/9/09	1,827.50	1,827.50
28490		<b>WESTSCHEME SUPERANNUATION</b>		
INV SUPER		SUPERANNUATION CONTRIBUTIONS	214.88	214.88
28491		<b>PRIME SUPER</b>		
INV SUPER		SUPERANNUATION CONTRIBUTIONS	139.43	139.43
28492		<b>YORK SHIRE COUNCIL (payroll only)</b>		
INV DEDUC		PAYROLL DEDUCTIONS	340.00	940.00
INV DEDUC			600.00	
28493		<b>CENTRELINK</b>		
INV DEDUC		PAYROLL DEDUCTIONS	100.00	100.00
28494		<b>AMP FLEXIBLE LIFETIME SUPERANNUATION</b>		
INV SUPER		Superannuation contributions	60.82	60.82
28495		<b>SUNCORP WEALTHSMART BUSINESS SUPER</b>		
INV SUPER		Superannuation contributions	184.56	184.56
28496		<b>AUSTRALIAN SERVICES UNION</b>		
INV DEDUC		UNION FEES	189.00	189.00
28497		<b>WA LOCAL GOVT SUPER PLAN PTY LTD, (ACN 0</b>		
INV SUPER		SUPERANNUATION CONTRIBUTIONS	7,097.65	11,094.09
INV DEDUC			369.16	
INV DEDUC			663.50	
INV DEDUC			477.50	
INV DEDUC			30.80	
INV DEDUC			119.37	
INV DEDUC			29.84	
INV DEDUC			257.18	
INV DEDUC			88.61	
INV DEDUC			36.85	
INV DEDUC			147.42	
INV DEDUC			121.14	
INV DEDUC			884.45	
INV SUPER			385.31	
INV DEDUC			275.22	
INV DEDUC			110.09	
28498		<b>LANDGATE</b>		
INV 5651502		CADSTRAL & TOPOGRAPHIC DATA - AVON TCE DRAINAGE	391.60	391.60
28499		<b>ROYAL LIFE SAVING</b>		
INV 16153		REQUALIFICATION - POOL LIFEGUARD - W LIVINGSTONE	115.00	115.00
28500		<b>AVON MIDLAND COUNTRY ZONE WA LGA</b>		
INV 152		AVON MIDLAND COUNTRY ZONE WALGA MEMBERSHIP 09/	1,980.00	1,980.00
28501		<b>SYNERGY</b>		
INV 3140037		ELECTRICITY 28/7-24/9/09 - ADMIN/ T/HALL/ TOURIST BUREAU	18.40	8,392.45
INV 2837726		ELECTRICITY 2/8-30/9/09 - CEMETERY	58.85	
		ELECTRICITY 28/7-24/9/09 - CRICKET CLUB ROOMS		

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		<b>SYNERGY</b>		
INV 4686639		ELECTRICITY 1/8-29/9/09 - SECURITY LIGHTING	18.40	
INV 9815007		ELECTRICITY 28/7-24/9/09 - CENT UNITS	87.80	
INV 5183369		ELECTRICITY 28/7-24/9/09 - ADMIN/ T/HALL/ TOURIST BUREAU	4,915.00	
INV 6402330		ELECTRICITY 28/7-24/9/09 - RAILWAY MEMORIAL	18.15	
INV 1023938		ELECTRICITY 28/7-24/9/09 - FORREST OVAL	29.40	
INV 9539156		ELECTRICITY 28/7-24/9/09 - REC CENTRE/ BOWLING CLUB	1,878.80	
INV 3699816		ELECTRICITY 1/8-29/9/09 - CANDICE BATEMAN PARK	22.45	
INV 5732039		ELECTRICITY 2/8-30/9/09 - RES MUS	737.05	
INV 5129019		ELECTRICITY 28/7-24/9/09 - FORREST OVAL BORE PUMP	18.15	
INV 5225153		ELECTRICITY 1/8-29/9/09 - AVON PARK	148.30	
INV 2543224		ELECTRICITY 28/7-24/9/09 - DEPOT	257.25	
INV 5842381		ELECTRICITY 1/8-29/9/09 - AVON PARK RETIC PUMP	24.90	
INV 0762568		ELECTRICITY 29/7-24/9/09 - FIRE STN COMMUNITY CENTRE	159.55	
		<b>WESTSCHEME SUPERANNUATION</b>		
28502		SUPERANNUATION CONTRIBUTIONS		334.15
INV SUPER			334.15	
		<b>AMP CORPORATE SUPERANNUATION</b>		
28503		SUPERANNUATION CONTRIBUTIONS		93.31
INV SUPER			93.31	
		<b>PRIME SUPER</b>		
28504		SUPERANNUATION CONTRIBUTIONS		139.43
INV SUPER			139.43	
		<b>YORK SHIRE COUNCIL (payroll only)</b>		
28505		PAYROLL DEDUCTIONS		940.00
INV DEDUC			340.00	
INV DEDUC			600.00	
		<b>CENTRELINK</b>		
28506		PAYROLL DEDUCTIONS		100.00
INV DEDUC			100.00	
		<b>DOMINIC CARBONE</b>		
28507		SEAVROC MANAGEMENT & ADMIN SERVICES 23/7-29/9/09		13,681.67
INV 10			13,681.67	
		<b>DEPARTMENT OF PREMIER &amp; CABINET</b>		
28508		ADVERT - GOVERNMENT GAZETTE - 25/8/09		572.70
INV 61619			572.70	
		<b>AMP FLEXIBLE LIFETIME SUPERANNUATION</b>		
28509		Superannuation contributions		60.82
INV SUPER			60.82	
		<b>SUNCORP WEALTHSMART BUSINESS SUPER</b>		
28510		Superannuation contributions		184.55
INV SUPER			184.55	
		<b>WILLIAM MCMULLEN ESTATE</b>		
28511		Rates refund for assessment A30645 GREENHILLS RD GREENHILL		1,608.30
INV A30645			1,608.30	
		<b>AUSTRALIAN SERVICES UNION</b>		
28512		UNION FEES		189.00
INV DEDUC			189.00	
		<b>LANDGATE</b>		
28513		GRV INTERIM VALS - COUNTRY FULL VALUE & FESA		643.44
INV 246287			357.18	
INV 246232		RURAL UV INTERIM VALUATION SHARED	232.26	
INV 225033		TITLE SEARCH - 58 NEWCASTLE ST	54.00	
		<b>TELSTRA</b>		
28514		TELEPHONES 24/9-24/10/09		2,329.79
INV 9434282			1,401.92	

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Cheque /EFT No	Date	Name Invoice Description	INV Amount	Amount
		<b>TELSTRA</b>		
INV 9436723		TELEPHONE 28/9-28/10/09 - RES MUS	47.10	
INV 3334864		MOBILE PHONES 11/9-11/10/09	880.77	
		<b>JTAGZ PTY LTD</b>		
28515		DOG TAGS X 500 BLUE - OCT 2012		222.00
INV 15682			222.00	
		<b>YORK DISTRICT HIGH SCHOOL P&amp;C ASSOC INC</b>		
28516		SPONSORSHIP 09/10 - SENIORS APPRECIATION DAY		1,500.00
INV SPONS			1,500.00	
		<b>WESTERN AUSTRALIAN ELECTORAL COMMISSION</b>		
28517		BALLOT BOOTHS X 6/ BALLOT BOXES X 3		120.00
INV 2129			120.00	
		<b>WA LOCAL GOVT SUPER PLAN PTY LTD, (ACN 0</b>		
28518		SUPERANNUATION CONTRIBUTIONS		10,153.00
INV SUPER			6,944.80	
INV DEDUC			884.45	
INV DEDUC			228.35	
INV DEDUC			663.50	
INV DEDUC			631.48	
INV DEDUC			119.37	
INV DEDUC			29.84	
INV DEDUC			257.18	
INV DEDUC			88.62	
INV DEDUC			36.85	
INV DEDUC			147.42	
INV DEDUC			121.14	
		<b>THE PERTH MINT</b>		
28519		CITIZENSHIP COINS X 20		113.30
INV CITIZEI			113.30	
		<b>PETTY CASH</b>		
28520		PETTY CASH RECOUP		497.00
INV PETTY			497.00	
		<b>NAVINE NISHAL SERVINA</b>		
28521		Rates refund for assessment A1241 GREAT SOUTHERN HWY GW		610.79
INV A1241			610.79	
		<b>THE VINES RESORT</b>		
28522		ACCOMMODATION - WORKS DIRECTOR - 12-13/8/09		380.00
INV 12270			380.00	
		<b>SHIRE OF YORK</b>		
28523		CONFERENCE EXPENSES 5-11/11/09 - CEO - NATIONAL ROAD		300.00
INV CONFEI			300.00	

**REPORT TOTALS**

Bank Code	Bank Name	TOTAL
1	MUNICIPAL FUND BANK	1,253,357.45
<b>TOTAL</b>		<b>1,253,357.45</b>



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		<b>SUPREME PRINTERS</b>		
EFT6030		WINDOW FACED ENVELOPES X 10,000		1,073.60
INV 24512			1,073.60	
		<b>CORPORATE EXPRESS</b>		
EFT6031		STATIONERY		828.12
INV WK1324			656.69	
INV N113660		WIRELESS MOUSE - DEPOT	40.54	
INV N113680		WIRELESS MOUSE - RECORDS OFFICER	72.60	
INV EW1128		MAGAZINE RACK/ DIVIDERS	58.29	
		<b>WHEATBELT OFFICE &amp; BUSINESS MACHINES</b>		
EFT6032		SERVICE REXEL SHREDDER		80.00
INV 3089			80.00	
		<b>YORK BUILDING SUPPLIES</b>		
EFT6033		PINE LOG - AVON PARK		447.36
INV 018275		STORMWATER PIPE/ ADAPTOR/ ELBOW - FORREST OVAL	114.47	
INV 018289		CONCRETE - PANMURE RD SIGNS	32.56	
INV 018378		DRILL/ NUT DRIVER - FORREST OVAL	89.03	
INV 018437		GRINDER DISC - FORREST OVAL	31.80	
INV 018578		PERMANENT MARKER - MINOR PLANT	7.70	
INV 018794		PINE LOG - AVON PARK	171.80	
		<b>YORK NEWSAGENCY</b>		
EFT6034		PAPERS/ STATIONERY - AUG 09		161.82
INV 3538			91.90	
INV 3724		PAPERS - SEP 09	69.92	
		<b>YORK AUTO ELECTRICS</b>		
EFT6035		REPAIR IGNITION WIRING - ICMQ210		374.00
INV 4479			374.00	
		<b>GEMINI MEDICAL SERVICES PL</b>		
EFT6036		PAYMENT IN LEIU OF DOCTOR'S VEHICLE -		497.60
INV S07052			497.60	
		<b>L J'S CAFE</b>		
EFT6037		REFRESHMENTS COUNCIL BRIEFING 21/9/09		182.60
INV 73			182.60	
		<b>ROSS FEAKES</b>		
EFT6038		REPAIR AIR CON - UNIT 2 & 4/40 MACARTNEY ST		132.00
INV 0037			132.00	
		<b>JOHNS LOCAL CLEANING SERVICE</b>		
EFT6039		CLEANING - RES MUSEUM - AUGUST 09		125.00
INV 361			125.00	
		<b>PETER STEVENS</b>		
EFT6040		REIMBURSE MEALS/ OVERNIGHT ALLOWANCE - WASTE CO		189.80
INV REIMB1			189.80	
		<b>TATTY PARROT BAKERY</b>		
EFT6041		REFRESHMENTS - 29/6/09 / 10/7/09 / 16/7/09 / 22/7/09		222.00
INV 016			222.00	
		<b>MACRI PARTNERS</b>		
EFT6042		AUDIT - SEAVROC RESOURCE RECOVERY PROJECT		550.00
INV YORK0			550.00	
		<b>CONPLANT</b>		
EFT6043		SUPPLY FILTER KIT - MULTI TYRED ROLLER		402.09
INV 164401			402.09	
		<b>MOTORCHARGE LTD</b>		
EFT6044		GULL CARD		782.33
INV 300909			782.33	
		<b>ALLROUND CONCRETE</b>		

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EFT6045 INV 1186		<b>ALLROUND CONCRETE</b> SUPPLY & LAY CONCRETE - MACARTNEY ST FOOTPATHS	11,352.00	11,352.00
EFT6046 INV 4451736		<b>SPECTRUM DISTRIBUTORS (ORICA AUSTRALIA PTY LTD)</b> CHLORINE SERVICE FEE - SWIMMING POOL/ FORREST OVAL	117.88	117.88
EFT6047 INV 1392032		<b>WESTNET PTY LTD</b> EMAIL WEB HOSTING 1/9/2009-1/9/2010	240.00	240.00
EFT6048 INV 13245		<b>JONESWAY TRANSPORT PTY LTD</b> FREIGHT - SEA CONTAINERS - YORK/ BEVERLEY/ BROOKTO	2,362.64	2,362.64
EFT6049 INV 2838		<b>JETPAVE</b> ROAD PATCHING	14,656.40	14,656.40
EFT6050 INV CH7737		<b>FUJI XEROX AUSTRALIA PTY LTD</b> PHOTOCOPIER METRE C HARGES - SEPTEMBER 09	1,909.16	1,909.16
EFT6051 INV 250809 INV 090909 INV 050809		<b>YORK GENERAL CONTRACTING</b> BOBCAT HIRE	1,468.50 2,123.00 5,265.04	8,856.54
EFT6052 INV 9402849		<b>CEMEX AUSTRALIA PTY LIMITED</b> SUPPLY & LAY CONCRETE - WATERFALL RD	445.28	445.28
EFT6053 INV 07219		<b>TRANSWEST ASSET PTY LTD</b> SUPPLY & DELIVER ROAD BASE	10,401.93	10,401.93
EFT6054 INV SUPER		<b>ING CORPORATE SUPER</b> Superannuation contributions	169.70	169.70
EFT6055 INV 63A-003		<b>UNITED EQUIPMENT</b> CHERRY PICKER HIRE - SEP 09	3,286.98	3,286.98
EFT6056 INV 30842		<b>HEARTLANDS VET HOPITAL</b> EUTHANASIA OF DOG	90.00	90.00
EFT6057 INV 56		<b>STATE WIDE TURF SERVICES</b> TURF CONSULTANCY - FORREST OVAL	1,529.00	1,529.00
EFT6058 INV 82092		<b>HODGE &amp; COLLARD ARCHITECTS</b> FORREST OVAL REDEVELOPMENT - PROGRESS PAYMENT 1	38,500.00	38,500.00
EFT6059 INV 447		<b>REPLANTS</b> SUPPLY GRASS TREES - RES MUSEUM	1,000.00	1,000.00
EFT6060 INV 2009302		<b>OCLC (UK) LTD</b> AMLIB ANNUAL SUPPORT & MAINTENANCE 1/9/09-1/9/10	1,331.15	1,331.15
EFT6061 INV 519581		<b>ARROW BRONZE</b> NICHE WALL PLAQUES,VASES	453.64	453.64
		<b>COURIER AUSTRALIA</b>		

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EFT6062		<b>COURIER AUSTRALIA</b>		
INV TRANSI		FREIGHT		88.84
INV TRANSI			31.39	
			57.45	
EFT6063		<b>DE-NEEFE SIGNS</b>		
INV 179030		RURAL STREET NUMBERS X 3		49.50
			49.50	
EFT6064		<b>KEITH WILLIAM MOORFIELD</b>		
INV 2600		REPAIR BRAKE LINE - 1TAJ721		280.95
			280.95	
EFT6065		<b>MUSEUMS AUSTRALIA NATIONAL OFFICE</b>		
INV 002186		MEMBERSHIP RENEWAL - MUSEUM AUSTRALIA 09/10		121.00
			121.00	
EFT6066		<b>NORTHAM CARPETS</b>		
INV 7388		SUPPLY & INSTALL CARPETS/ LINO - UNIT 6 MACARTNEY S		3,969.00
INV 7376			2,894.50	
		SUPPLY & INSTALL LINO - RANGERS OFFICE - DEPOT	1,074.50	
EFT6067		<b>PERFECT COMPUTER SOLUTIONS PTY LTD</b>		
INV 14256		PREPURCHASE COMPUTER HOURS 1/7/09-30/6/10		13,200.00
			13,200.00	
EFT6068		<b>AVON WASTE</b>		
INV 4770		RUBBISH COLLECTION		14,687.08
INV 4769		RECYCLING SERVICES	2,774.76	
INV 4786		RUBBISH COLLECTION	5,779.02	
			6,133.30	
EFT6069		<b>HOME HARDWARE</b>		
INV 371910		FLURO LIGHTS - ADMIN		1,227.58
INV 373369		DOOR LATCH - DEPOT	40.72	
INV 373416		PAINT - PML	56.00	
INV 373499		PAINT/ STEEL WOOL - PML	15.48	
INV 373970		GAS REGULATOR/ NUT/BOLT - MT BROWN	22.09	
INV 373972		PLANTS - ADMIN GARDEN	88.50	
INV 373973		TOILET DOOR BOLT - AVON PARK	40.95	
INV 373994		SPRAY PAINT/ SCREW/ CUT OFF WHEEL - AVON PARK	26.82	
INV 374192		DOOR HINGE - DEPOT	6.75	
INV 374195		NUT/ BOLT/ BLADE PLANER - RES MUSEUM	22.81	
INV 374249		PAINT/ TAPE/ GAP FILLER - DEPOT	18.59	
INV 372087		BUCKET/ GYPROCK SHEET/ PAINT - DEPOT	61.86	
INV 374616		NUT/ BOLT - REC CENTRE	5.27	
INV 374617		ANTISLIP TAPE/ LUBRICANT - TOWN HALL	73.86	
INV 375062		WINDOW WINDER - REC CENTRE	216.11	
INV 376150		KEY TAG/ PICTURE HOOK - ADMIN	14.94	
INV 376293		BROOM - T/HALL - HOWICK ST TOILETS	26.50	
INV 372181		ACCOUNT REPRINT FEE	7.34	
INV 372361		CHAIN/ SHACKLE - REC CENTRE	7.60	
INV 372600		GYPROCK SHEETING - AVON PARK TOILETS	16.92	
INV 373133		SCREW/ WASHER/ FOAM SEAL - TOWN HALL	27.35	
INV 373279		WASHER/ O RING/ WASHER SEAT - AVON PARK TOILETS	5.32	
INV 373289		PAINT - PML	56.00	
INV 373296		FLURO LIGHTS - ADMIN	297.00	
		GAS REFILL - STREET SWEEPER	72.80	
EFT6070		<b>MAL AUTOMOTIVES</b>		
INV 9193		VEHICLE SERVICE - 40,000KM - Y387		379.75
			379.75	
EFT6071		<b>FUEL DISTRIBUTORS</b>		
INV 91992		DISTILLATE X 6480 LTRS		13,442.89
		DISTILLATE X 4700 LTRS	5,801.68	

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MUNICIPAL EFT PAYMENTS  
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Cheque /EFT No	Date	Name Invoice Description	INV Amount	Amount
INV 96692		<b>FUEL DISTRIBUTORS</b> DISTILLATE X 6480 LTRS	7,641.21	
EFT6072 INV 613871		<b>LANDMARK</b> SEASOL FERTILISER - RES MUSEUM	62.87	62.87
EFT6073 INV 405277 INV 405405		<b>LO GO APPOINTMENTS</b> TEMP EMPLOYMENT FINANCE OFFICER - C WHISSON 16-22/8 TEMP EMPLOYMENT FINANCE OFFICER - C WHISSON 6-12/9/	1,540.00 1,034.00	2,574.00
EFT6074 INV 272008		<b>BURGESS RAWSON (WA) PTY LTD</b> STANDPIPE WATER USAGE - BURGESS SDG - 11/5-10/9/09	15.07	15.07
EFT6075 INV 368		<b>JOHNS LOCAL CLEANING SERVICE</b> CLEANING - RES MUSEUM - SEPTEMBER 09	125.00	125.00
EFT6076 INV 3716		<b>GRAHAM DUNLOP</b> LOCATE CABLES/ SEWER PIPES - AVON TCE DRAINAGE	628.65	628.65
EFT6077 INV 1097-08 INV 1097-08		<b>HORIZON SURVEYS PTY LTD</b> FEATURE & CONTURE SURVEY - AVON TCE ADDITIONAL FEATURE & CONTURE SURVEY - AVON TCE	3,773.00 1,320.00	5,093.00
EFT6078 INV 11406		<b>JOHN D IMPORTS</b> VARIOUS GIFTWARE - RESIDENCY MUSEUM	273.02	273.02
EFT6079 INV 275018 INV 375433 INV 376311		<b>HOME HARDWARE</b> HOSE/ COUPLING - RES MUSEUM ACCOUNT REPRINT FEE - RES MUSEUM	86.25 27.20 0.49	113.94
EFT6080 INV SPONSOR		<b>TALBOT BROOK LAND MANAGEMENT ASSOC.</b> SPONSORSHIP 09/10 - TALBOT CATCHMENT PROGRAMME	3,850.00	3,850.00
EFT6081 INV 123368		<b>CELLARBRATIONS DUKE OF YORK</b> REFRESHMENTS	256.93	256.93
EFT6082 INV 97336		<b>COOL CLEAR WATER BEVERAGES LTD</b> WATER FILTRATION UNIT - OCTOBER 09	66.00	66.00
EFT6083 INV 4475		<b>YORK AUTO ELECTRICS</b> REPLACE CHARGER LEAD - TALBOT FIRE TRUCK	57.42	57.42
EFT6084 INV ALLOW		<b>JOHN PATRICK HOOPER</b> ALLOWANCE 1/7-30/9/09	5,340.00	5,340.00
EFT6085 INV 1470		<b>RSA WORKS</b> ROAD SAFETY AUDIT	4,400.00	4,400.00
EFT6086 INV 75		<b>L J'S CAFE</b> REFRESHMENTS - FCO MEETING 7/10/09	144.82	144.82
EFT6087 INV 018		<b>TATTY PARROT BAKERY</b> REFRESHMENTS	629.50	629.50
		<b>4 FARMERS</b>		

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MUNICIPAL EFT PAYMENTS  
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Cheque /EFT No	Date	Name Invoice Description	INV Amount	Amount
		<b>4 FARMERS</b>		
EFT6088		GLYPHOSATE/ CHLOROSULFURON/ TRICLOPYR		1,555.40
INV 88705		GLYPHOSATE	418.00	
INV 84642		GLYPHOSATE/ CHLOROSULFURON/ TRICLOPYR	1,137.40	
		<b>SHIRE OF NORTHAM</b>		
EFT6089		TIPPING FEES AUGUST 09		6,435.75
INV 3187			6,435.75	
		<b>SPECTRUM DISTRIBUTORS (ORICA AUSTRALIA PTY LTD)</b>		
EFT6090		CHLORINE SERVICE FEE - SWIMMING POOL/ FORREST OVAL		117.88
INV 4451736			117.88	
		<b>BIOMAX</b>		
EFT6091		BIOMAX SYSTEM MAINTENANCE REPORT - CENT UNITS		167.20
INV 60153			167.20	
		<b>YORK &amp; DISTRICTS COMMUNITY MATTERS</b>		
EFT6092		ADVERTISING		631.40
INV 2226			631.40	
		<b>YORK IT &amp; COMMUNICATION</b>		
EFT6093		COMPUTER MONITOR X 2 - CEO/ PWS		504.95
INV 101597			500.00	
INV 101624		TELEPHONE EXTENSION PORT - DEPOT	4.95	
		<b>DARRY'S PLUMBING AND GAS</b>		
EFT6094		CLEAR BLOCKED DRAINS - 24 FORD ST		90.75
INV 349			90.75	
		<b>ING CORPORATE SUPER</b>		
EFT6095		Superannuation contributions		339.40
INV SUPER			169.70	
INV SUPER			169.70	
		<b>BUSY BEE PEST CONTROL</b>		
EFT6096		BEE ERADICATION - GREY ST		440.00
INV 07607			440.00	
		<b>YORK CHILDRENS CHRISTMAS PARTY</b>		
EFT6097		CONTRIBUTION STREET CHRISTMAS PARTY 2009		2,500.00
INV SPONSOR			2,500.00	
		<b>MAC CHENO EARTHMOVING</b>		
EFT6098		GRADER HIRE 16-30/9/09		14,729.00
INV 50			14,729.00	
		<b>AUSTRALIA POST</b>		
EFT6099		POSTAGE/ PAPER - SEPTEMBER 09		1,174.78
INV 618964-			1,174.78	
		<b>COURIER AUSTRALIA</b>		
EFT6100		FREIGHT		7.40
INV TRANSIT			7.40	
		<b>DE-NEEFE SIGNS</b>		
EFT6101		SIGNAGE - CHLORINE GAS STORAGE		160.60
INV 179810			160.60	
		<b>MCLEODS BARRISTERS AND SOLICITORS</b>		
EFT6103		LEGAL FEES - GT HOMES PLANNING PROSECUTION		2,052.41
INV 50775			1,401.76	
INV 50815		LEGAL FEES - YORK CARAVAN PARK EIGHTH RD	650.65	
		<b>AVON WASTE</b>		
EFT6104		RECYCLING SERVICES		20,452.84
INV 4847		RUBBISH COLLECTION	5,729.00	
INV 4848		RECYCLING SERVICES	2,774.76	
INV 4787			11,949.08	

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MUNICIPAL EFT PAYMENTS  
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Cheque /EFT No	Date	Name Invoice Description	INV Amount	Amount
EFT6105		<b>RURAL PRESS REGIONAL MEDIA (WA) PTY LTD</b>		
INV 1171507		ADVERTISING - SEP 09	1,954.92	1,954.92
EFT6107		<b>LANDMARK</b>		
INV 651644		SOCKET/ PROTECTIVE HAT	19.64	19.64
EFT6108		<b>SIGMA CHEMICALS</b>		
INV 23501/0		SODA ASH/ CHLORINE/ POOL STABILISER	1,649.12	1,649.12
EFT6109		<b>WHEATBELT FIRE EXTINGUISHERS</b>		
INV A811		ANNUAL INSPECTION - SHIRE FIRE EQUIPMENT 09	929.50	929.50
EFT6110		<b>DUSTRY PTY LTD</b>		
INV 582		BOBCAT HIRE - CEMETERY/ FORREST OVAL REDEVELOPME	1,485.00	1,485.00
EFT6111		<b>YORK LANDSCAPE SUPPLIES</b>		
INV 1524		FORKLIFT HIRE - AVON TCE POT PLANTS	55.00	55.00
EFT6112		<b>M &amp; R MACHINING</b>		
INV 845		STRAIGHTEN DROP SIDES - Y397		605.00
INV 868		WELD TAILGATE/ PIVOT LATCH - Y4099	55.00	
INV 846		GRADER BLADE REPAIRS - Y205	242.00	
		STRAIGHTEN DROP SIDES - Y397	308.00	
EFT6113		<b>FIRE &amp; EMERGENCY SERVICES AUTH. OF WA</b>		
INV 128218		ESL 2009/10 - SHIRE PROPERTIES	1,304.20	1,304.20
EFT6114		<b>DARRY'S PLUMBING AND GAS</b>		
INV 378		RETICULATION BYPASS - HOCKEY OVAL	715.00	1,983.30
INV 357		REPAIR WATER MAIN - FORREST OVAL	610.50	
INV 367		REPAIR WATER LINE/ REPLACE TAP - SUNDRY PARKS	129.80	
INV 377		SUPPLY & INSTALL CISTERN - LADIES TOILETS - TOWN HAL	528.00	
EFT6115		<b>YORK GENERAL CONTRACTING</b>		
INV 061006		BOBCAT HIRE	3,597.00	3,597.00
EFT6116		<b>COUNTRY METAL RECYCLERS</b>		
INV 90		SIDE TIPPER HIRE - TALBOT WEST RD	11,022.00	11,022.00
EFT6117		<b>HORIZON SURVEYS PTY LTD</b>		
INV 1044-09		SURVEY SERVICES - FORREST OVAL REDEVELOPMENT	6,105.00	8,800.00
INV 1052-09		FEATURE & CONTOUR SURVEY - MOKINE RD	2,695.00	
EFT6118		<b>MAC CHENO EARTHMOVING</b>		
INV 51		GRADER HIRE 1-16/10/09	17,875.00	17,875.00
EFT6119		<b>LIME LITE EVENTS</b>		
INV 14		DJ SERVICES - YAC YOUTH DANCE 16/5/09	440.00	440.00
EFT6120		<b>AYOUB, DAVID JOHN</b>		
INV 273		BOBCAT HIRE - SAND REMOVAL - FORREST OVAL REDEVEL	176.00	176.00
EFT6121		<b>ROUS, ERIC DAVID</b>		
INV 5342		SUPPLY & INSTALL 3 PHASE POWER OUTLET - HOCKEY CLU	748.00	748.00
		<b>SMITHS SHELL SERVICE</b>		

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**SHIRE OF YORK  
MUNICIPAL EFT PAYMENTS  
OCTOBER 2009**

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Cheque /EFT No	Date	Name Invoice Description	INV Amount	Amount
<b>SMITHS SHELL SERVICE</b>				
EFT6122		CHAINS/ STARTER CORD - MINOR PLANT		329.40
INV 225917			234.00	
INV 226127		SERVICE & REPAIR BRUSH CUTTER/ FUEL CAN	95.40	
<b>AVON VALLEY TYRE SERVICE</b>				
EFT6123		SUPPLY & FIRT GRADER TYRE X 2 - Y130		4,095.00
INV 2993		REPAIR GRADER TYRE - Y130	45.00	
INV 3005		TYRE PICTURE REPAIR - Y711	90.00	
INV 3032		SUPPLY & FIRT GRADER TYRE X 2 - Y130	3,440.00	
INV 3054		SUPPLY & FIT WINDSCREEN - Y711	520.00	
<b>YORK VISITORS CENTRE</b>				
EFT6124		YVC FUNDING - 2ND QUARTER 09/10		27,557.20
INV 3792			27,557.20	
<b>MAL AUTOMOTIVES</b>				
EFT6125		VEHICLE SERVICE 125000KM - Y4118		315.00
INV 9280			315.00	
<b>AVON EXPRESS</b>				
EFT6126		FREIGHT		247.50
INV 1655			247.50	
<b>FUEL DISTRIBUTORS</b>				
EFT6127		DISTILLATE X 5210 LTRS/ UNLEADED X 1000 LTRS		7,187.58
INV 98796			7,187.58	
<b>LANDMARK</b>				
EFT6128		LAWN FERTILISER - AVON PARK		44.00
INV 668577			44.00	

**REPORT TOTALS**

Bank Code	Bank Name	TOTAL
1	MUNICIPAL FUND BANK	317,606.55
<b>TOTAL</b>		<b>317,606.55</b>

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**SHIRE OF YORK  
TRUST CHEQUE PAYMENTS  
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Cheque /EFT No	Date	Name Invoice Description	INV Amount	Amount
3630		<b>SHIRE OF YORK</b>		
INV T24		SHIRE OF YORK FOOTY TIPPING 2009 - RECEIPT 141377	400.00	400.00
			400.00	
3631		<b>HAY PROPERTIES PTY LTD</b>		
INV T27		PALMBROOK DEFECTS LIABILITIES BOND REFUND 29/10/200	72,672.10	72,672.10
			72,672.10	

**REPORT TOTALS**

Bank Code	Bank Name	TOTAL
2	TRUST FUND BANK	73,072.10
<b>TOTAL</b>		<b>73,072.10</b>



<b>TOTAL RESERVES</b>	
<b>31-Oct-09</b>	
<b>Reserve Name</b>	<b>Current Balance</b>
4. Plant Reserve	345,032.64
6. Staff Leave Reserve	112,598.35
7. Town Planning Reserve	11,926.18
8. Recreation Complex Reserve	321,927.49
9. Avon River Maintenance Reserve	19,492.85
14. Industrial Land Reserve	89,183.36
15. Refuse Site Development Reserve	189,234.93
22. Centennial Gardens Reserve	106,326.94
23. Public Open Space Cont Reserve	302.82
24. Community Bus Reserve	36,822.97
25. Pioneer Memorial Lodge Reserve	130,075.11
26. Residency Museum Reserve	19,225.83
27. Carparking Reserve	56,938.52
30. Building Reserve	58,124.91
35. Disaster Reserve	23,070.01
37. Archives Reserve	21,346.48
38. Water Supply Reserve	6,778.29
40. Tied Grant Funds Reserve	765,174.11
42. Main Street (Town Precinct) Update Reserve	113,586.92
43. Strategic Planning Reserve	18,741.02
44. Cemetery Reserve	26,131.68
45. York Town Hall Reserve	39,205.91
46. RSL Memorial Reserve	19,031.55
47. Greenhills Townsite Development Reserve	20,965.71
48. Youth Capital Works	22,314.03
49. Roads	57,658.30
50. Land & Infrastructure	192,218.76
<b>TOTAL RESERVE FUNDS</b>	<b>2,823,435.67</b>
<b>Funded by</b>	
BENDIGO RESERVE 119521748	851.52
BENDIGO RESERVE AT-CALL ACCT	114,000.00
BENDIGO RESERVE NCD DUE 31/12/09	577,584.15
BENDIGO RESERVE NCD DUE 17/11/09	331,000.00
BENDIGO RESERVE NCD DUE 29/01/10	400,000.00
WESTPAC RESERVE	0.00
WESTPAC RESERVE NCD DUE 26/11/09	300,000.00
WESTPAC RESERVE NCD DUE 26/12/09	300,000.00
WESTPAC RESERVE NCD DUE 24/2/10	300,000.00
WESTPAC RESERVE NCD DUE 5/4/10	500,000.00
<b>Total Cash Funding</b>	<b>2,823,435.67</b>
<b>Comment</b>	
The Local Government Act 1995 Part 6 Division 4 Section 6.11 requires the reserves to be fully funded. The reserves are fully funded.	

STATEMENT OF PAYROLL DIRECT DEBITS FOR THE MONTH ENDING OCTOBER 2009	
8 October 2009	54,558.46
19 October 2009	3,542.45
22 October 2009	54,791.35
9 October 2009	1,940.60
<b>PAYROLL TOTALS</b>	<b>\$ 114,832.86</b>
(LESS PAYMENTS BY CHEQUE)	1,940.60
<b>TOTAL PAYROLL DIRECT DEBITS AS PER BANK REC</b>	<b>\$ 112,892.26</b>

SUMMARY OF CREDIT CARD PAYMENTS FOR THE MONTH ENDING OCTOBER 2009	
REFRESHMENTS	262.30
TRAINING & CONFERENCES	1,307.30
SEAVROC	1,028.34
FUEL	
HOUSING MAINTENANCE	
OTHER	613.59
<b>TOTAL PURCHASES</b>	<b>\$ 3,211.53</b>
PAYMENTS TO C/C IN ADVANCE	0.00
(LESS PREVIOUSLY PAID IN ADVANCE)	0.00
<b>TOTAL PAYMENTS TO C/C AS PER BANK REC</b>	<b>\$ 3,211.53</b>

TRANSACTION LISTING OF CREDIT CARD PAYMENTS FOR THE MONTH ENDING SEPTEMBER 2009		
<b>CARD 1</b>		
DATE	AMOUNT	DESCRIPTION
3/09/2009	44.50	Cafe Bugatti, YORK 0209
5/09/2009	110.00	NPA WA, PERTH 0109
6/09/2009	68.90	JANETTE CALLAGHAN, YORK 0309
18/09/2009	737.00	FLIGHT CENTRE, KARRINYUP 1609
18/09/2009	223.84	FLIGHT CENTRE, KARRINYUP 1609
20/09/2009	67.50	CHECK IN, KINGSFORD 1709
20/09/2009	209.00	MISS MAUD, PERTH GPO 1709
23/09/2009	59.96	BIG W W0443, MIDLAND 1909
25/09/2009	27.30	4U CAFE, WEST PERTH 2309
26/09/2009	86.00	7TH AVE BAR & RESTAURA, MIDLAND 2409
30/09/2009	35.60	MISS MAUD, PERTH GPO 2609
30/09/2009	33.30	CITY OF PERTH PIER ST, PERTH 2609
30/09/2009	955.00	CONFERENCE LOGISTICS, DEAKIN 2809
<b>TOTAL CARD 1</b>	<b>2,657.90</b>	
<b>CARD 2</b>		
DATE	AMOUNT	DESCRIPTION
18/09/2009	553.63	WA NEWS, OSBORNE PARK
<b>TOTAL CARD 2</b>	<b>553.63</b>	
<b>TOTAL CREDIT CARDS</b>	<b>\$ 3,211.53</b>	

**STATEMENT OF SHELL CARD PURCHASES  
FOR THE MONTH ENDING OCTOBER 2009**

0 Y - CEO		0.00
Y 00 - DCEO		0.00
Y 000 - EHO		0.00
CARD FEES		7.50
<b>TOTAL PURCHASES</b>	<b>\$</b>	<b>7.50</b>
<b>TOTAL PAYMENTS TO SHELL AS PER BANK REC</b>	<b>\$</b>	<b>7.50</b>

## **9. OFFICER'S REPORTS**

### **9.5 LATE REPORTS**

#### **9.5.2 Lot 47 Quellington Road – Motorcycle Track**

*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.*

<b>FILE NO:</b>	<b>Qu3.2704</b>
<b>COUNCIL DATE:</b>	<b>16 November 2009</b>
<b>REPORT DATE:</b>	<b>11 November 2009</b>
<b>LOCATION/ADDRESS:</b>	<b>Lot 47 (1238) Quellington Road, Caljie</b>
<b>APPLICANT:</b>	<b>Preplea Pty Ltd</b>
<b>SENIOR OFFICER:</b>	<b>Graham Stanley, Acting CEO</b>
<b>REPORTING OFFICER:</b>	<b>Patrick Ruettjes, Shire Planner</b>
<b>DISCLOSURE OF INTEREST:</b>	<b>Nil</b>
<b>APPENDICES:</b>	<b>A - Location plan B - SAT Decision [2009] WASAT 171</b>
<b>DOCUMENTS TABLED:</b>	<b>Application documents, Noise Assessment, Correspondence</b>

#### **Summary:**

Council is asked to consider an application for a private motorcycle track at Lot 47 (1238) Quellington Road, Caljie. The application is recommended for refusal based on deficiencies on the presented noise assessment and non-compliance with the *Environmental Protection (Noise) Regulations 1997*.

#### **Background:**

Lot 47 (1238) Quellington Road, Caljie, is zoned 'General Agriculture' under the Shire of York Town Planning Scheme No. 2 (the 'Scheme') and comprises an area of 67.4 ha. The land is owned by Preplea Pty Ltd (on behalf of the Markham Family Trust), the operators of Xtreme Motorbikes in Forrestfield.

In August 2008, the landowner notified the Shire of his intention to establish an off road motorcycle complex at the above property which he was in the process of purchasing. His correspondence includes a business plan designed to cater for up to 250 visitors. The landowner was advised to apply for planning consent, but no application was received.

In February 2009, a report was presented to the council meeting discussing planning compliance issues with the operation of a motorcycle track at Lot 47 (1238) Quellington Road, Caljie, consisting of jumps and tracks after earthworks had been undertaken on the property. At the same meeting, a petition against the motorcycle track was tabled, signed by 32 neighbours. Following the meeting, the operation ceased and the jumps were removed.

Motorcycle riding on the property, however, continued and numerous complaints were received throughout the following months, relating to noise and dust emissions and riding at inappropriate hours, i.e. through the night (see the 'Consultation' section of this report).

An application for planning consent for a private motorcycle track was received on 15 May 2009 and has been subject to consultation with adjoining landowners and assessment by various government departments. The responses are also listed in the 'Consultation' section of this report.

Following a request from the Shire and the Department of Environment and Conservation Noise Branch, an environmental noise assessment has been compiled by Herring Storer Acoustics in

July 2009. Several noise readings have been undertaken for the assessment to determine the possible impact of the proposed motorcycle track on dwellings on neighbouring properties. A location plan showing the distances to adjoining properties is attached. The noise readings for the location affecting Lot 2 Quellington Road indicate that they are not compliant with the *Environmental Protection (Noise) Regulations 1997* exceeding the assigned noise level by 2 and 7 decibels. No noise readings have been undertaken in regard to the impact on Lot 73 Quellington Road.

The DEC Noise Branch has commented on the noise assessment and acknowledges the criteria and methodology used. It advises, however, that there are major concerns with regard to the impact on neighbours, that major works are required to achieve compliance and that an afterward noise assessment is recommended. It also questions that no tonal noise is to be emitted from the motorcycle use.

The implications of the noise assessment will be discussed in further details in the 'Comment' section of this report.

In the report presented to the September 2009 Council meeting, a case from the State Administrative Tribunal has been attached outlining the problems with noise impact on adjoining properties. A new SAT case has emerged requiring the removal of a motorcycle track because of the noise impact on adjoining properties (and the incompatibility with the zoning which is not directly transferable to the property in Quellington Road). The decision is attached and will be discussed in the 'Comment' section as well.

#### **Consultation:**

The application for planning consent at Lot 47 (1238) Quellington Road, Caljie, has been advertised for comment to neighbouring landowners and referral agencies and a number of submissions have been received. The submissions have been grouped into four categories – submissions from referral agencies, submissions from landowners as part of the consultation process, ongoing (after the formal closure of the advertising period) and earlier submissions from landowners (dating back to August/September 2008 when the commercial proposal emerged and January/February 2009 when a track was established without approval that was later removed).

Seven submissions have been received from referral agencies. During the advertising period, 14 written submissions have been received by neighbouring landowners, strongly opposing the proposed development. Seven other submissions have been received since the formal closure of the advertising period outlining ongoing concerns with the use of the subject land. A total of nine earlier submissions is also attached.

#### **A. Submissions from referral agencies**

##### Submission 1

*"The River Conservation Society has some serious concerns regarding the proposal by Xtreme Motorbikes to develop a motorcycle track at Lot 47 on Quellington Road.*

*The maps and plans submitted in the application to the Shire show the proposed track is in close proximity to a highly sensitive part of the South Mortlock River and our concern is that this part of the river may be adversely affected by the proposed activity. There is also the potential for downstream impacts to occur as well as threats to the viability of the riparian vegetation in the vicinity of the proposed track.*

*Our plans of the area show that portion of the proposed bike track comes to within 50 metres of the river channel. An activity such as the continual riding of motorbikes on this sloping land has*

*the potential for serious land degradation, erosion, and during rain events the movements of sand and silt and fuel residues from the paddock into the river.*

*A short distance from where the track is to be sited is the Kelly Pool, one of the few permanent pools along this stretch of the Mortlock and an important element of the remaining biodiversity of the area. Pollutants entering the river could endanger this natural area.*

*The high-conservation value Shire Reserve No 1355 abuts the western boundary of Lot 47 and extends downstream for approximately 2km. Adjacent to Reserve No 1355 is the Jim Masters Conservation Reserve, No 3073, managed by the River Conservation Society and the Vale of York Reserves Committee. Both these reserves, along with Kelly Pool, constitute an extremely important conservation estate on this portion of the Mortlock River and as such any threat to their viability through increased siltation or pollution from vehicle fuels is of concern both to us and to surrounding residents in the Quellington area.*

*We believe an unfortunate precedent may occur if this application is approved and we therefore call on the York Shire Council to take our concerns into consideration when making their assessment."*

#### Submission 2

*"I refer to your letter dated 19 May 2009 whereby comment is requested from the Department of Environment and Conservation (DEC) in Northam regarding a proposed motorcycle track on Lot 47 (freehold) for exclusively private use by PREPLEA PTY LTD.*

*A desktop assessment of this proposal has been undertaken based on the information provided and information from DEC databases. DEC advises that the proposed motorcycle track for exclusively private use is unlikely to have a significant impact upon remnant native vegetation onsite, as the majority of the subject area has previously been cleared for agricultural purposes. The desktop assessment has confirmed that there are no recorded occurrences of Declared Rare or Priority Flora, Land for Wildlife sites Threatened or Priority Fauna species or Threatened or Priority Ecological Communities occurring in the proposed location for this industry. The East Branch of the Mortlock River that extends through the southern portion of Lot 47 is however a designated Environmentally Sensitive Area (ESA).*

*DEC advises that based on currently available information, this proposed motorcycle track is unlikely to cause any significant impacts to known conservation values. This advice should not be interpreted as endorsing or supporting the proposed works.*

*DEC offers the following comments on this proposed motorcycle track for exclusively private use:*

- 1. The area proposed for the motorcycle track has been designated as an area with a very high groundwater salinity rating. DEC therefore suggests that groundwater sources from onsite should not be used for dust suppression purposes due to the risk of possible adverse impacts on the adjacent remnant vegetation and sensitive riparian zone. Wetting of down access roads, the actual track and other areas likely to produce significant levels of dust, should only be done with surface water sourced from elsewhere; and*

- 2. In lieu of the fact that the Mortlock River is an ESA, the proponent should consider undertaking appropriate measures to protect the adjacent remnant and the riparian zone. These measures may, for example, include signposting these areas as "no go areas" for users of the motorcycle track.*

*The DEC Avon-Mortlock District office in Northam recommends the following:*

1. The proponent contacts Mr Bhabesh Das from the DEC Industry Regulation Branch in the Booragoon office, Perth (Tel 9333 7521) for advice on any possible noise and dust impacts associated with the proposed motorcycle track. This may include the need for the proponent to compile a dust and noise management plan as part of this application; and

2. The proponent contact the Department of Agriculture and the Department of Water in Northam to obtain comment son any possible land degradation and riparian zone impacts associated with this proposal.

Amendments to the Environmental Protection Act, 1986 (EP Act) were introduced on 8 July 2004 whereby clearing of native vegetation is prohibited, unless a clearing permit has been granted, or the clearing is for an exempt purpose. The penalty provisions of the EP Act provide for a maximum penalty for unlawful clearing of \$250,000 for an individual or \$500,000 for a body corporate.

Information regarding native vegetation clearing legislation and exemptions are available on DEC's website at [www.nvp.wa.gov.au](http://www.nvp.wa.gov.au) or by contacting Native Vegetation Conservation Branch on Tel 9219 8744. The State Publishers website, [www.slp.wa.gov.au](http://www.slp.wa.gov.au) has current electronic versions of all State legislation."

### Submission 3

"FESA wishes to acknowledge receipt of your correspondence of 19 May 2009 regarding the above matter.

We also wish to advise that we have no information or comment to provide at this time."

### Submission 4

"Reference is made to your letter of 19 May 2009 regarding the development of a motorcycle track at the above-mentioned location.

The Department of Water has no objection to the proposal on the condition that the motor cycle track does not interfere with the Mortlock River or its fringing riparian vegetation."

### Submission 5

"Thank you for your letter date 4 May 2009 referring the development application for Lots 47 and 1238 Quellington Road, Caljie to Tourism Western Australia for comment.

Tourism WA has no comments to make at this time"

### Submission 6

"The DEC Noise Regulation Branch has been invited by the Shire to make formal comments on the planning application and the noise assessment report attached to the application.

The Noise Branch has reviewed the environmental noise assessment report prepared by Herring Storer Acoustics and other relevant information, and would like to provide the following comments and advice.

In general, the criteria and methodology used for the environmental noise assessment report are adequate. The noise impact assessment results also seem reliable to the Noise Branch.

It was predicted by Herring Storer Acoustics that the noise from the proposed motorcycle track operation would exceed the noise assigned level by 2dB on weekdays and Saturdays and by 7dB on Sundays and Public Holidays at the closest neighbouring residence. This prediction



was based on the flat ground scenario, i.e. there was no berms or barriers that would attenuate noise levels. To fix this non-compliance problem, Herring Storer Acoustics recommended that 2 to 3 m high berms be built around the extremities, particularly at the northern end, when constructing the track. It was estimated by Herring Storer Acoustics that these berms would work as noise barriers, which should provide noise reduction in the order of 5-7 dB(A) at the closest residence located to the north.

The predicted result was also based on six motorbikes operating at the same time on the field riding around the proposed track. However, the proponent proposes not to have more than 4 or 5 motorbikes operating on the track at any time. This may indicate that the actual noise emission from the proposed motorcycle track will be lower than what was predicted. Together with the recommended berms, Herring Storer Acoustics suggested that the noise from the proposed motorcycle track would comply with the noise regulations. The Noise Branch would not dispute this estimation, if the required berms are properly built.

However, being able to comply with the noise regulations does not mean that there will be no noise impact on the neighbouring residences. As the proposed motorcycle track will be located in the middle of farming land, the existing background noise in the area can be very low. This will make the noise from motorcycles operating on the proposed track very noticeable to the neighbouring residences, which might become a source of complaint.

If the Shire decides to accept the planning application, the Noise Branch would recommend the following conditions to minimise the noise impacts on the neighbouring residences.

1. Limit the number of motorcycle riding events  
The proponent indicated that the riding would limit to family members or friends, and would mostly occur during winter and spring seasons when conditions are wet and muddy. It is practicable for the Shire to negotiate the total number of ridings that are allowed for each year with the proponent.
2. Limit the operating time to daytime only. For instance, 9:00am-17:00pm inclusively.
3. Limit the number of motorcycles to five at any time of an event.

The Noise Branch would also recommend that an afterward noise assessment be conducted. This assessment is to check if the tonality of the motorcycle is really masked by other bikes, if the berms have been properly built, and if noise compliance can be achieved."

#### Submission 7

"The Department of Environment and Conservation (DEC) has now reviewed your dust management plan in the application. Based on the information provided, DEC considers that dust management plan for the operation is acceptable."

### **B. Submissions from neighbouring landowners as part of the consultation process**

#### Submission 8

"In reply to your letter regarding a proposal from Mr Markham to build a bike track on his property at 1238 Quellington Road, York.

Sadly this is the second time our community of surrounding neighbours are having to ban together to try to keep our quiet lifestyle in tact.

While I appreciate Mr Markham wants to ride off road motorbikes on his farm, he refuses to realise the effect it has on his neighbours.

*We listened and watched when he built the 1st track and only 2 off road bikes were running, this noise was heard easily more than 2klm away in a straight line, on the front lawn of our home.*

*The dust was blowing straight across paddocks and high into the air.*

*This ONE person wants to come up on the odd weekend, make noise and disrupt peoples lives, then get in his car and drive home to HIS QUIET house.*

*We chose this quiet and peaceful area to live and retire in and also because I suffer from a medical condition called atrial fibrillation which can be brought on by stress, this can be confirmed by my Doctor at Gwelup Medical Centre and the York Hospital..*

*My husband sacrifices 3 hours a day in travelling just to be able to relax on the weekend.*

*Mr Markham admits himself that he too would also object to someone applying for similar approval in his backyard.*

*We have spent in excess of one millions dollars building a large home for our future only to have it threatened by one selfish person.*

*This will have a detrimental affect to property values in the immediate area. We sill have concerns about the extra traffic on Quellington Road.*

*Both the [...] and ourselves have south legal advice about the proposal and will do whatever is necessary to stop this happening in our backyard.*

*[...]*

*We sincerely hope that the Counsellors will consider the wellbeing of the many of the permanent residents in the surrounding area and not just one person. We rely on councillors for guidance and good decision making and hope that you will realize our predicament and vote against this proposal.”*

#### Submission 9

*“I wish to advise yourself and the Councillors of the York Shire that I have received written notification from council that an application has been submitted to the shire to develop land (30 acres), for the purpose of constructing a motorcycle/Quadbike track for private use by family and friends.*

*My immediate response to the application submitted by Graham Markham is that I submit there will be no positive comment to the above mentioned proposal.*

*We are all aware of Mr Markham’s attempt to develop this land for similar purposes on a commercial basis (payment on entry).*

*It was borne out of a petition and many letters of objection submitted by residents in the Caljie area, that Mr Markham had taken it on his own initiative to construct a track for commercial usage, and that he had no negotiations with the shire to ascertain if he could in effect contemplate a track prior to purchasing this property.*

*Mr Markham approached me personally on my property and introduced himself, he spoke with supreme confidence of his intensions,*

- 1. Constructing a large motorcycle / quadbike track because he owned a motorcycle shop in Forrestfield*
- 2. Having a track would enhance his sales by promoting the track.*
- 3. In addition to the track he would build an ablution block and kiosk.*
- 4. That the grand opening would be Easter 2010.*

*I stated to him I had no desire to have a track of this sort at my front door and immediately conversed with neighbours at the prospect, hence the original petition.*

*Mr Markham stated he was riding his venture on a report that there were limited places to ride etc, 'and that it would be an extremely brave shire to knock back his application'. Mr Markham did not make an application to the shire, it was only when this matter was drawn to the shire's attention that the issue came to a head.*

*In other words he just did his thing Carte-Blanche and circumvented the shire, for what ever reason, who knows, probably to save money.*

*Low and behold after Mr Markham was informed to submit an application (retrospective?) it was promptly denied by council with a recommendation he be prosecuted for his contravention of activities and restore his property.*

*Mr Markham replied to council after knowledge of the outcome and shire meeting and dropped his venture. We now see this person attempting to crank up a track on the groups it is for private use only.*

*Having pursued the application submitted by Mr Markham (obviously with professional assistance) on Friday the 22nd May 2009 he says he will not use it for*

- 1. Commercial reasons in any way*
- 2. Use only every 2nd or 3rd weekend*
- 3. No building / structures*
- 4. No access for pedestrians*
- 5. Only owner and friends vehicles to have access.*
- 6. No Parking areas*
- 7. No loading or unloading*
- 8. No storage*
- 9. No landscaping*
- 10. Wants to use it as a weekend retreat*

*He goes onto talk about re-furbishing the house, constructing gates, and re-surfacing his driveway, what on earth has only of this to do with a motorbike track and the associated noise problem?*

*Mr Markham wants to use the track every 2nd or 3rd weekend with around 5 bikes maximum on the property at one time. What assurance do we have that this will be adhered to if approval is given?*

*Who is going to monitor the situation?*

*What preventive measures will be taken by the shire as to his activities and at what cost and inconvenience if in the Shires wisdom permission is granted for this track?*

*I can only stress my point; the proposal for a track of this nature in General Agricultural area is not desirable. I am not alone on this issue.*

*All the residents in this district or in close proximity to the proposed development are simply aggrieved and annoyed at the likely hood of a race track being plonked in their backyards.*

*It is peaceful and tranquil here and the Status Quo should remain. That is why there war a strong reaction to the first proposal, thankfully it was vetoed.*

*The crux of the matter here is residents do not want to put up with noise, dust, traffic, fire hazards, littering and listening to revving bikes.*

*Mr Markham informed me at his first attempt at developing a track that he could muster up to 500 people at one time to be on his property, just imagine the racket and the other things they may get up to.*

*The entrance to Mr Markham's property is on the crest of a hill and the coming and going of traffic is of concern.*

*I personally have medical issues, one is hearing, loud sharp continuous noises especially those emitted by quad bikes and 2 stroke motorcycles has a profound effect on me.*

*One other aspect I would raise is, the development if approved could potentially decrease property values should one desire to sell, financial loss could then occur.*

*To my mind I feel that this application is just an attempt to come in through the back door, gain entry and once this is achieved who knows where it will go from there.*

*I am not biased or prejudiced against the applicant and as I suggested to him he may have been better off purchasing a larger property where there would be no aggravation to other parties that his hopes and desires may have come to fruition.*

*I trust that council is considering the application can understand the objection and reasons all the residents feel, the track is not desirable under any terms.*

*The ratepayers/residents likely to be affected are speaking out loud and clear on this issue and therefore should not be ignored by the councillors in their deliberation."*

#### Submission 10

*"In regards to the application of a private motor track at 1238 Quellington Road, Caljie. I oppose the application for the following reasons.*

*1. Life style – as stated by Mr Markham, he bought the property initially as a business venture, which was to build a motor cycle track on the above mentioned property and charging people an entrance fee to come from near and far for the weekends and enjoy motor cross riding. As history will show, there was no council approval for the track, no investigations taken by Mr Markham as to the validity of building a track, but yet it was built. After the local residents' sort council ruling on the track, even though it had been built, the decision was made by council that the land be returned to it's original lay. Mr Markham has now stated that since then, meaning after his first attempt, that he has now fallen in love with the place and wants to build the same track, but only inviting family and friends up on every 2nd or 3rd weekend to enjoy what he calls his relaxation period, which I believe we, as individuals are entitled to, as long as it does not interfere with other people's relaxation.*

*On the application it was stated that bikes would not be ridden before breakfast or after dinner, or to that effect. What should be taken into account is that the weekends, that they propose to ride the bikes for their rest and recreation is in fact encroaching on the local full time residents rest period, most of whom have bought small lots ranging from 10 hectares to 120 hectares (approximately) and live permanently on these properties because they were looking for a quality life style change.*

*2. Location – the owners of 1238 Quellington Road have mentioned that they have spoken to some of the neighbours, not once have they taken the time to discuss the issue with either my wife or myself, even though the rear boundary of the above mentioned property is part of our side boundary, a boundary that is situated, less than 500 metres from the proposed track and a paddock that we run sheep in.*

#### *3. Water –*

*(a) As stated by Mr Markham a 100,000 litre rain water tank is being or has been installed on the property, I presume, catching water from the roof of the house as the shed is quiet small and away from the house. If this is the case, taking into account the average rain fall for the area, a roof area of 330 square metres would be required to fill it, in the last 2 seasons (at least) we have fallen short of the average, which would mean a lot larger roof area to fill the tank. If this tank has been installed, has there been a raised take off point for house and dust suppression and a lower take off point for fire fighting water. E.g. ensuring that there is always water for fire fighting.*

*No mention of the quantity of water that would be used for dust suppression per day was made, but working on the conservative side, 5,000 – 10,000 litres per day could be used for dust suppression for a dirt track spanning 30 acres, 1000,000 litre tank could be consumed in 10 days or if there was a raised take off point (fire fighting water) less than this. Excluding domestic use (this property is not on scheme water).*

*(b) Dam water has been mentioned as another source, firstly over the years dams have very seldom filled because of the style that is now used in seeding, rotation of areas are no longer done, but being cropped every year which restricts water run off. I believe this property, excluding the 30 acres for the proposed track has recently been leased to be cropped for the*

next 3 years, therefore the dam could not be relied upon as a reliable water source for fire fighting water.

In the application it was mentioned that the Carob tree area is irrigated, this is factual, but is irrigated off the dam, and that it should not be taken into consideration as a reliable water course as all pipes through this area are "poly" pipes and would be burnt in the advent of a fire in that area, rendering this system useless.

Water in any area is a very precious commodity and should be used wisely, for the reasons stated above there is not enough water storage capacity on the property and stand pipes off the scheme water system through out the area, if used for this, would be very negligent on the users behalf.

4. Policing – Several things have been stated on the application that lend them selves to being very 'grey' areas.

(a) Every 2nd or 3rd weekend

(b) Family and friends

(c) 4 or 5 bikes or quads at any time

(d) after breakfast and before dinner

This is what has been stated on the application, whose responsibility would it be to ensure that it happened, or what are the penalties if these 3 or 4 fundamentals were broken.

To people that are not directly involved or do not believe that it will affect them, it may seem a trivial matter, but to the residents of the immediate area, it is seen as a real threat to the life style that was sought when they sifted into the area. It should also be remembered that this track has gone from a business venture with no regard for the neighbour's thoughts, to a family affair that now love the place, but want to build the same size track.

I implore the York council to ensure the life style of decades in the immediate area is not changed because of the very small minorities wish."

#### Submission 11

"I wish to table my absolute objection to the proposed PRIVATE motor bike track at 1238 Quellington Road, York and would like to let the council know that as a united group of residents we have sought legal advice from..

Mackinlays Solicitors

2 Sleat Road, Applecross

9364 8933

We have been advised that they have handled such cases before and would be prepared to represent us should the need arise.

My first question is, please define the difference between Public and Private, other than money changing hands?

2. How do we know these "friends: are not being charged? Therefore making it a 'just lets say private, but we all know, its there if you quietly pay for it' motorbike track.

3. 4 to 5 bikes at any one time, does this mean there will only be 4 to 5 bikes on the property at any one time, so there may be rest periods in between the noise, or does this mean any number of bikes no the property with 4 to 5 bikes constantly going around and around for hours on end without a break? Who is going to monitor this?

Can you imagine 4, 2 stroke bikes for just a few hours, around and around.

4. I am glad to see the problem of fire has been addressed, a 100 litre water tank is very admirable, how does he proposed to keep it filled, from the small amount of run off from the house roof? The dam will not be full all year round, especially in summer, the time of most danger and least rainfall. I object to this much water continuously being taken from the stand pipe just to keep the dust down in order to do something that should not be happening in the first place.

5. He wants to use the track only every second or third weekend, who is going to monitor this?

6. He assures us that the bikes are not loud enough to disturb us, the buffer zone adequate, and there is in his own words 'no noise problem of any kind', so why, so generously offer not to start before breakfast and finish before dinner, is this not a contradiction, are the bikes loud or not?

The answer is yes they are very loud, we have experienced just 2 at the same time and the noise is loud and disturbing, for humans and animals alike. Lets not forget this is an agricultural area not a recreational area for motorbike riders.

7. How does leasing land for cropping relate to the noise of many motorbikes, CROPS DO NOT STOP MOTORBIKE NOISE, the land is merely being used for what it is zoned to be used for.

How does what he has done to the home relate to motorbike noise?

How does installing large gates at the entry relate to motorbike noise?

No one cares if he builds the Taj Mahal and puts the Great Wall of China around it. WE AS RESIDENTS OF THE AREA DO NOT WANT MOTORBIKES AND THEIR NOISE ON THE SCALE HE INTENDS.

This just shows what little understanding or care he has of the problem.

8. If Peter is a champion motor cross rider I would presume he would soon become very bored riding around a simple track, then what will be built and extended? NO permission was asked the first time around, why would he bother this time, he would then have carte blanche to do as he pleases if council permits this proposal, once again, who monitors whether further extensions are added, 30 acres is not a small area, further jumps etc makes further noise, e.g. revving motors.

After reading the proposal I believe Mr Markham has realised what a beautiful area he has bought into, I understand his wish for REST and RELAXATION at his weekend retreat, which he wishes to use for PLEASURABLE purposes. I completely understand as they are some of the main reasons my husband and I and many of our neighbours moved to live here PERMANENTLY. We also need our PLEASURABLE purposes and we also cherish our REST and RELAXATION time. I am pleased Mr Markham understands how we feel and thank him for acknowledging that he would also object to someone applying for similar approval in his backyard. My question to this selfish and arrogant man is, what right does he have to take from us what he pursues for himself? My husband and I moved here nearly four years ago, we are working hard to improve our property and have a good quality of life. My husband works overseas and he makes sacrifices in order to achieve our dreams, he is away for 9 weeks at a time and looks forward to coming back to a QUIET home to enjoy HI REST and RELAXATION time.

Mr Markham has offered for neighbours and also the council to report quarterly on his activities, I am afraid I have better things to do with my time than monitor my neighbour, and doubt that the ratepayers of York would be happy about the amount of money it would also cost the council.

I feel the proposal is written in an arrogant and condescending manner with smoke and mirrors at every point. He has failed at his first attempt and is now trying to get in the back door, once in, he will do as he wishes as no one can possibly monitor his activities. Mr Markham stated on many occasions when he was trying to do this as a commercial venture that 'it will be a brave council that stops me' (surely an implied threat). We are but a small group of residents being affected by this, I am asking the council Are you brave enough to stand up for OUR rights, to a PLEASURABLE lifestyle? Are you brave enough to put hard working community members before the monetary cost of stopping this unacceptable proposal?

Can you put yourself in our position and understand just how horrible the thought of motorbikes constantly going around and around would be.

We all like to have the kids etc having a ride on their bikes around our properties, our neighbour Brian Ball farms and uses his property as a weekend retreat for REST and RELAXATION and PLEASURABLE pursuits, his son also rides his motorbikes with his friends, they are considerate neighbours and offend no one, and in reverse we consider their feelings with our activities, but what Mr Markham is wanting is totally different, this is being approached in a business manner, the proposal may state private but it is being put forward by a man who owns a motor bike

*company, by a son that is a professional, this is not a weekend of pleasurable activities, this is serious business.*

*Noise pollution is also serious business, noise causes many problems for people in many different ways, it can be mentally draining, leading to psychological and physical problems, noise from neighbours comes in many different forms and the world is becoming a noisier place to live, we all need to find ways of coping with it, most of the time its best to accept and move on, which can be done with dogs barking, loud music, children playing etc, that's just life in general, but constant motor bike's weekend after weekend is just asking to much, we all need to give and take, no one can just take.*

*I ask that the council takes very seriously the fears of residents in this area because I believe if this starts it will take on a life of its own. We LIVE here, we do not want it under any definition. I ask the council to please put this matter to rest once and for all."*

#### Submission 12

*"My husband and I have heard there has been an application submitted for a Motor Cycle Track to be put in at Quellington Road, Caljie.*

*We have strong oppositions in regards to this submission as we live around the corner at Bogling Road, Caljie. We moved to the country to enjoy the peace and quiet and not to listen to motorcycles racing around. There is already a motorcycle track located in York and I believe that 1 in the area is all that is required.*

*As per normal councils, I believe the policy is that all residents shall be allowed quiet enjoyment in their homes without the obtrusive and excessive noise from others. I believe this track would be intrusive upon all the residents of the area.*

*In the application it says that only him and a few friends would use it. We would like to know*

- 1. Who would police this?*
- 2. Who would police the hours that they are doing this?*

*If you could please give careful consideration towards this track it would be greatly appreciated for my family and the other residents in the area."*

#### Submission 13

*"Thank you for your email. My concern regarding the proposal remains the same as I indicated in my earlier email in February. Mainly hazards, pollution, property values.*

*The Applicant has stated that this proposal is no longer a commercial venture but a 'private motorbike track'. The question has to be asked why the applicant is a company? I do not believe we need this in our area."*

#### Submission 14

*"Further to the above submission, as owners of one of the surrounding properties, we wish to lodge our objection to the proposed use of part of the site as recreational motorcycle track, on the following grounds:*

- 1. The properties surrounding 1238 Quellington Road are all working farms with livestock on site, as is Lot 1238. Our objection is based on our believe that the use of quad / motorbikes as proposed will threaten the quiet enjoyment of our property, with factors such as dust, noise and additional traffic being major issues.*
- 2. Another possibility is that of trespass by unauthorised persons as word spreads of the existence of the track. By their own admission, the owners are not at the property full time. Petty*

*left and threats to livestock and property of neighbours by trespassers is likely – something that has not been an issue in our area to date.*

*3. the proposed measures to monitor compliance will cost Council and is ultimately unworkable in the long term. We are concerned that the 'private', 'domestic' slant on this application could be used as a method of running a 'defacto' commercial venture, as advised by the owners was the original plan.*

*4. As property owners, we also enjoy the freedom of being able to use our property as we like, however, such use should be within the scope of what the property is designed and zoned for and not to the detriment of surrounding property owners."*

#### Submission 15

*"I object to the proposed motorcycle track on the grounds that its not suitable for a motorcycle track apart from the noise and dust. He states for private use. That could mean a number of things, private club etc. the word private can be stretched, he can use the track for commerce any way its rural and should stay that way."*

#### Submission 16

*"We object to this proposal of motor bike circuit on grounds (noise dust) and peace which is why we have our property. So we vote NO to now or ever having it at any time in the future."*

#### Submission 17

*"I have read the above mentioned application lodged by Mr Markham and wish to lodge this formal objection on behalf of my wife and myself.*

*Our property is located at Bogling Road, Caljie and while not adjacent to the subject property, we are close enough that when the property was previously being used for unapproved motor bike activity we could clearly hear their noise on days when the wind was from the north. There can be few noises more annoying than the constant roaring of motor cycle engines, it is a very debilitating sound and gets inside ones head to the extent that it creates a serious assault on ones aural amenity. We urge Council to reject this application for this reason.*

*I note that the applicant volunteers to limit the activity to 5 machines at any one time. (The noise from just one is enough to cause offence). This does not preclude a continual flow of machines so that as one or more machines cease activity other might arrive so that we could be faced with 5 units operating continuously through the designated weekend hours. This would be totally unbearable on days when the prevailing wind put us in the noise envelope. God help those of our neighbours closer to scene of action who will be affected whatever the wind."*

#### Submission 18

*"On our farming property in Quellington we remain the Malebelling 4x4 fire truck. Together with my son we voluntarily attend out of control fires with this unit, and help extinguish the problem. Most of the fires are as a result of operating machinery or from lightning strikes. Ones community efforts are severely tested when a potential fire hazard is created by a group of people from Perth and surrounds come into our farming district to ride motorbikes for pleasure, particularly on a day when the temperature is soaring and our kelpies are seeking relief from the midday sun.*

*An example of this thoughtless action in February this year. It was on a Sunday 15th, the Shire Ranger was unavailable to attend, the chief fire officer was out of town, the temperature was soaring (39) and the weather conditions were such that a vehicle movement ban within paddocks must have been imminent. I received a call from a close neighbour to the motor bike property; that bikes were being used on lot 47. 'Could I Help'.*



*I drove out to the property owned by Graham and Julie Markham and spoke to a group of riders at approx 3pm. They agreed to stop riding for the day. They advised me that they had a tank of water on a trailer for use in emergency, but did not have a pump.*

*We will always attend a fire emergency but do not wish to have the extra burden of unnecessary fire risks thrust upon us because of someone riding motorbikes for pleasure.*

*We therefore oppose this proposal for Mr Markhams motor bike track."*

#### Submission 19

*"As a resident on Sees Road, Quellington, I wish to raise my concerns regarding the proposed motorcycle track at the above location.*

*I have no wish to hinder people in their proposed recreational pursuits however my concern with this proposal is that this activity will impact on our lifestyle due to the noise that will be produced from the proposed activity.*

*Although the proponent has suggested limitations to the activity I am not satisfied that these limitations are good enough to ensure the activity will not have a large impact on myself and other local residents.*

*The proposal states that there will be no more than 5 motorcycles racing / going at one time around a motorcycle track. This track is in the middle of approx 100-acre property.*

*Several questions are raised by this proposal.*

*What is the noise level (decibels) that this activity will generate when 5 motorbikes are racing at once?*

*How far will this noise carry over the paddocks before it dissipates?*

*How far will the noise spread when the strong easterly winds in summer are blowing?*

*How many hours per day will this activity be allowed?*

*Will local residents find they are not living with noise similar to if they were living in Perth right next to the Kwinana Freeway rather than a quiet country setting?*

*Who is going to monitor the noise level?*

*Who is going to monitor the number of bikes being used?*

*Although this property is approximately 5 kilometres from our house the noise this activity will generate will be considerable. Five kilometres may seem a long distance from the said location however our house is on a hill and noise travels very easily. An example of this is shown by the fact that we can easily hear the trains go past even though the railway line is 12 kilometres away from us. Also motorbikes going up Quellington Road can easily be heard from our house. Noise travels a long way so it is not just the closer residents that this activity will have an impact on.*

*There appears to be no time limit on the proposed activity.*

*Does this mean that the activity can continue all day and into the evenings?*

*Farming machinery may be loud but it doesn't continue day and night in the one place therefore this proposed activity would be very different from any farming activities that occur at present. This means a negative impact on quality of lifestyle for all other residents in the area.*

*Due to this impact I request that the Shire ensure a study of the noise level and impact of this noise level on other residents be obtained prior to any discussion of approval of this activity.*

*If Councillors are unsure of this impact perhaps a trial could be held with their attendance both on site and at other near by properties before any decision is made.*

*Please can my concerns be forwarded to all Shire Councillors."*

## Submission 20

*"We have read the details of the proposal for a Motocross Track (Private) at 1238 Quellington Road, Caljie.*

*As you will be aware he has already tried to build a commercial motocross park at this location that was inspected and closed down.*

*We would like to point out a few issues that we have about the new proposal.*

*1. We do not feel that he will be able to control the dust and noise all of the time, as when the breeze blows in any direction it will be heading towards someone's home. Also we are concerned about noise as you can appreciate this is a quiet community and wish for it to stay that way.*

*2. The fire hazards at the property that he states he has under control via the 100,000 litre rainwater tank and the dam are only full because no one has lived at the property for quite a while and the property does not have scheme water.*

*3. He states that there will be only 5 bikes on the track at a time but we feel that this could be abused in the way that there could be more bikes waiting to go out on the track as soon as the first give are off therefore more bikes revving up. He is the owner of a reparable motorcycle shop and we feel that this track could be used as a testing place for sale of bikes meaning that the work 'PRIVATE' could be used in a roundabout way for a commercial track.*

*4. He states in his proposal that he is now going to run the property as an agricultural property and has gone about this by leasing the front of the property to Jorn lb for 3 years. To us this does not indicate that he is going to farm it as he has not bought any machinery and after 3 years if this track has been allowed to go ahead it may then become commercialised. We are not against motor racing in anyway as [a neighbour] used to ride motorbikes for a living and we appreciate that everyone should be entitled to enjoy the chosen sport but we believe that this track should be built in the middle of nowhere away from properties, and not on a 160 acre property we don't believe that 160 acres is a big enough buffer zone for noise / dust etc. We also feel that this gentlemen being a business man should have made sure he could build such a track prior to purchasing the property.*

*Also on a personal note – since purchasing the property there has been activity there on some weekends and bikes have been ridden there by adults and children. One particular bike is noisy and we do hear it down at our house which is approx. 700 metres away so what will 5 bikes sound like? They have also been riding along the west boundary fence where our horses are and on occasions have spooked them even when my daughter has been riding, which makes it very dangerous for her. The riding area is the other side of their fence and so when a bike come out of the driveway and down the boundary behind or in front of a horse suddenly it does spook them.*

*With what has happened so far we feel that this proposal should be rejected as this is quiet agricultural land for the purpose of agricultural pursuits."*

## Submission 21

*"I wish to strongly object to the proposal of a Private Motorbike track at 1238 Quellington Road, York*

*Please define the meaning of a PRIVATE track opposed to a PUBLIC track.*

*How do you know these friends that are coming are not paying to use the track?*

*Is there only 4 to 5 bikes at one time allowed on the property and on the track with breaks from the noise or many bikes at the property with 4 or 5 bikes on the track constantly going round and round with no break from the noise.*

*Would the rules of "A Total Harvest Ban" apply to this property in the summer time?*

*The 100,000 litre water tank is commended but is he going to be able to fill it from his dam in summer time when there is no rain to fill his dam. Then will the water come from the stand pipe. Will this compromise the water supply to the other properties in the area?*

*How do we know it will only be used every 2nd or 3rd weekend? By weekends does he mean Saturday and Sunday or just one day/*

*Is there a noise level restriction?*

*As his son is a Champion Motor Cross rider will the track be upgraded to satisfy his training program.*

*The Mortlock River runs through this property are there going to be any contaminates run into the River.*

*How big will this track be allowed to get?*

*If this proposal is rejected will there be any more attempts to get this track off the ground.*

*As a concerned property owner of more than 20 years in the area in which this motorbike track is going, I would like to know how Mr Markham can reapply for a PRIVATE track proposal when the PUBLIC track proposal was rejected by council.*

*Would he object to someone else applying for a similar proposal in his backyard then why does he think I should accept his proposal?*

*As the proposal put forward by Mr Markham has stated that he has come to love the area and wishes to enjoy rest and relaxation in his weekend retreat. This is fine but why should we have to put up with his pleasurable activities of a motorbike track that will have motorbikes going round and round all day long. We too would like to enjoy rest and relaxation but will not be able to with the sound of revving motorbikes all weekend. What is to say that Mr Markham wants to have motorbikes there every weekend and not every 2nd or 3rd weekend as he has stated. The Shire of York has better things to do than checking on Mr Markham's track and he knows this and will do as he pleases.*

*Mr Markham has stated that the motorbikes will only be ridden on the track but in his proposal he states that friends and relatives can ride their quad bikes and go walking to explore. Does this mean that many bikes will be ridden all over his property?*

*I only go to my property on weekends and I don't need to hear the revving of motorbikes all day while I am here.*

*Mr Markham stated that neighbours can do quarterly reports on his activities, but I have better things to do with my time than report on him. Mr Markham could get nasty and say that all we are doing is complaining about him and his track. I am sure the Shire of York has better things to do than check up on Mr Markham and what is happening on his property. I am sure the rate payers of York would like to see their rates put to better use than checking on Mr Markham's motorbike track.*

*This is the second time that we in the area have had to go through this process so please could the Shire say no to this proposal and put this motorbike track to rest.*

*I ask that the Shire take into account the concern of all property owners in the area of this motorbike track because if it is approved it will not stop at what he has stated in the proposal. Will it be extended and the jumps made larger because the friends and relatives will get sick of the same things."*

### **C. Ongoing submissions from neighbouring landowners**

#### **Submission 22**

*"On Saturday night 4th into Sunday morning until 2am, our neighbours were riding quad motorbikes around their property.*

*On Sunday 5th some riders were sighted riding on our property along by the river. The owner obviously intends to have a race track no matter what."*

#### Submission 23

*"On the 20th and 21st of June, a number of young people were driving motor bikes and cards around the property next to ours. The cars were driving over planted crops and motor bikes were driving in the conservation area along by the river. They have no regard for people's property of environment."*

#### Submission 24

*"On Saturday 1st August the Markham family came to spend some rest and relaxation time at their weekend retreat, the motorbikes started mid morning and went for most of the day. During the afternoon I could hear loud explosions which continues into the night, the explosions were becoming louder and louder and approx 10pm there were two really loud ones, one after the other, at 10.30 an explosion went off that shook the windows in our house, by this time I was quite worried, our dogs were going crazy and our sheep with their week old lambs were really upset and noisy. I then decided to call the police, the police attended around 11pm and said they were in a "bad way" and throwing aerosol cans into a fire, the explosions then stopped. I have lived here for 4 years, much of the time on my own as my husband works away for 9 weeks at a time and never in those years have I left the need to lock my doors or draw the curtains, but when the Markham family arrive for their rest and relaxation weekends, everything changes.*

*I know this is going beyond a Council problem but this type of activity just goes to show the foolishness of these people and lack of consideration of their neighbours, all we need is for something like this in the middle of summer and we will have a big problem on our hands.*

*How can we possibly believe a work state in Mr Markham's application when we have these continuous problems each time they arrive, most weekends we ignore their behaviour but this is the second occasion I and my neighbours have needed to contact the police because of dangerous and unruly acts fuelled by alcohol."*

#### Submission 25

*"We too had the scary experience of loud explosions on Sat night from the Markham farm.*

*I have always been quite comfortable being on my own here, when [my husband] is working away, but sadly after the last Sat night I will barricade myself in at night, drunken hooligans with easy access to all our homes along the river is a very scary thought.*

*This time it went so far as having to call the police in the hope of quietening them down and stop the bombs being thrown into a huge fire that was easily seen from our home.*

*Sadly this is an ongoing saga that none of us in the surrounding area can see an end to."*

#### Submission 26

*"On Saturday I returned from Perth with my wife who had been in hospital for a week after surgery.*

*When I got out of the car I was greeted with the sound of motorbikes on Mr Markhams farm, the noise continued well into the night until we finally stopped and we got to sleep at 11.30pm.*

*Sunday morning at approx 11am I was planting trees when I heard about 3 or 4 bikes start up at the same time and were full on, this repetitive noise is an example of what these hoons expect us to put up with.*

*We chose to live in this area for our health as well as the tranquil setting. We contribute voluntary work to local groups along with some substantial donations, unlike these hoons who merely disrupts a community and then go back to Perth.*

*I would expect the council to show some support and stop these motorbike hoons operating in the YORK SHIRE."*

#### Submission 27

*"On Sunday June 7th we were continually disturbed by motor bike noise coming from Lot 1 Quellington Road. There were numerous bikes riding for most of the day and the noise could be heard until sundown. I am writing to you with two concerns.*

*1. The worry of more and more motorbikes encroaching on our piece and quiet, always people from the city coming up on weekends and ruining the reason we live here.*

*2. If we can hear the noise from this property we are certainly going to be disturbed by Mr Markham and his noise.*

*I am not complaining for the sake of it, I know everyone has a right to do as they wish on their own properties but the noise from these bikes is becoming a bigger and bigger problem, and because we are within easy access from Perth the problem is only going to get worse. I hate to think of the cost to the council so far with Mr Markham and it is now happening with another property, we pay our rates for worthwhile projects to the community not to waste time and money trying to stop a never ending invasion of motorbike noise. We need the council to look closely at some way of controlling this problem, I understand what a difficult position the council is in and what a huge problem you are looking at, but we really need help."*

#### Submission 28

*"Yesterday the 8th of June it was plainly heard the sound of motorbikes racing around on Mr Markhams property.*

*Sandy his clause of (buffer zone for noise) in his proposal is one of the things that is in no way going to work.*

*This noise was easily heard from our home a klm away.*

*Please put yourselves in our shoes when you go home in the evening or sit down outside your home for a quiet drink in the weekend after a working week, would you like to be on the receiving end of revving motorbikes disturbing your peace."*

#### **D. Earlier submissions (January/February 2009 and August/September 2008)**

##### Submission 29

*"Today [15 February 2009] motorbikes starting using the newly built motorbike jump track and circuit. This started at 8am this morning.*

*The dust from bikes is shown in the photos we have taken and have sent to records@york.wa.gov.au.*

*By 3pm this afternoon we had had enough of the noise and the dust.*

*We phoned the environment man Peter Stevens who advised us to put this all in writing and that there was nothing immediate he could do. He also advised us to call the local person for fire prevention Peter Doyle, we had already done this and he said he could do nothing without a phone number. This we got for him and he must have phoned them as he was told that the owner had WITHDRAWN his application and it was only for his personal use.*

*This is a huge track and is definitely not just for one or two bikes this has been built on a grand scale, and a lot of money is being spent to prepare it.*

*On his xtreme motorbikes website (the owner of the property) he is advertising a bike track park for the public, we would be silly to think it would be anywhere else but Quellington Road.*

*We then phoned the local volunteer fire officer and he said that there is no fire ban today but by this time of the day it had reached 40deg and the wind was really blowing, he said he would go out and see them.*

*Robin phoned me an hour later and said that he had spoken to 3 young men and one young lady who were riding there and they said they didn't realise how hot it was and would ride no more today.*

*He also asked to see their fire equipment and they pointed him to a truck with a tank on the back, this had NO fire pump with it, so would have been totally useless.*

*He also advised us that he had seen the track and described a large steel framed jump which is used to get height.*

*My husband had seen this large black steel object being towed up here and go into their place by a young man sometime ago.*

*This is becoming quiet distressing as the fire danger (only one of the current hazards) is high and we are getting to the stage where we are nervous of leaving our home unattended in fear of fire.*

*With the Victoria fires and their fatalities still sharp in our minds we hope something urgently can be done to stop this idiot before someone gets hurt or even killed."*

#### Submission 30

*"Further to our phone conversation on Monday 2nd February 2009, I would like to up date you with regards to the motorbike track on Quellington Road.*

*I have noticed work has continued during the week and Saturday 7th was extremely busy with machinery moving about the property.*

*I have also noticed on his website [www.xtrememotorbikes.com](http://www.xtrememotorbikes.com) he is advertising an off road riding park, when I click onto it nothing comes up, but I am wondering just where this park is?"*

#### Submission 31

*"I am writing to inform you more work has been done at 1238 Quellington Road with regard to the intended motorbike track.*

*On Thursday night 29.01.09 we could hear machinery working until 10pm and over the weekend 31.01.09 and 1.02.09 there was machinery working every day. My understanding is that the owner of the property has not lodged an application for any work and I am very worried as to what he plans to do with the property as this is a rural environment."*

#### Submission 32

*"Works are still going on, on the property of Quellington Road, we flew over it on Sun morning and there was a bobcat and a tractor making more racing tracks, several weeks ago we took aerial photos of this work in progress, and again on Sun 1st Feb 2009, they were also working late into the night of Thurs 29th.*

*Please be aware that we are totally opposed to any public race track near our home."*

#### Submission 33

*"I am writing to you in your capacity as a York Shire Councillor.*

*My Husband and I have been residents of York for the past 2 ½ years, we moved here with the intention of having a small farm with happy healthy livestock, and look to retire here over the next few years.*

*The property at 1238 Quellington Road has recently sold and the new owners have the intention of opening a Public Motor Bike track. This property backs onto ours and the adjoining corners are where the track is apparently going to be located. I have spoken to many neighbours in the area and we are all in agreement that a business of this type is completely unacceptable.*

*We feel the noise level would ruin our quality of life, we came to the country for peace and quiet not to live near to a motor bike track, and the applicant is apparently looking to open his business Friday through to Sunday. Many of us have livestock and the noise from both the bikes and number of people attending these meetings would cause great distress to our animals. We are worried about the environmental effects these activities would have on the Mortlock River as amenities would have to be provided for the public.*

*We are worried about security to our properties as the river runs along and through many of our boundaries. Our property values would be reduced significantly and many of us are working hard and spending considerable amounts of money to improve our properties. The risk of fires during the summer months would be increased considerably, this is something as residents we are so aware and careful about, large numbers of people moving about at this time of the year would be such an added danger. While the Council works hard to maintain Quellington Road the added traffic especially during harvest when the road is busy with large hay trucks would become a dangerous problem.*

*We are aware of the need to explore all avenues to bring tourism to York but we feel this type of business in our area is just not acceptable and would be of little benefit to the community.*

*I realise until the application has been submitted to council there is nothing we can do but because we feel so strongly and are so worried about the implications of such business I have decided to write to you in the hope of stopping this as soon as possible.*

*I and many of my neighbours have written to the council and I am in the process of obtaining signatures on a petition to present to the council at the appropriate time.*

*I understand you must remain impartial and fair to all on these matters but I am hoping that once you have read the application that you will understand our distress and why I have written you now rather than later”.*

#### Submission 34

*“We are writing in regards to the above property.*

*The property has been for sale for some time and has recently been sold with the intention of building a motorbike track for public use.*

*We have been lead to believe that such a proposal is shortly to be put before the Shire.*

*Our property overlooks the said property and the noise factor from motorbikes would be totally unacceptable.*

*The stress to us, our surrounding neighbours, the farmer’s livestock, the pollution of our much loved Mortlock River would be disastrous.*

*Another devastating factor would be through the summer when we are banned from riding vehicles over properties because of the huge fire risks, an accidental fire started from these vehicles could cause huge damage to the bush along the Mortlock River as well as nearby farms and livestock loss.*

*Deciding to build a retirement home here was because of the peace and quiet from living in the country.*

*We have had our property values by registered valuers this year, and should this proposal go ahead the value of our property would devalue, should this happen we would then have to take legal steps to recover any financial loss of our property.*

*We would like this letter to be tabled at the next Public meeting please”.*

#### Submission 35

*“To whom it may concern.*

*With the recent sale of the above property, we wish to express our concern on hearing about the intention of the purchaser to create 2 motorbike / quadbike tracks.*

*The purchaser approached [the owner] of 1277 Quellington Road Caljie and conveyed his intention to build 1 large track for adults and a smaller track for juniors. He also plans to build a snack bar / kiosk and ablution block to cater for patrons which he expects to number between 300 to 500.*

*There are 3 key issues which concern us greatly about this “commercial venture”.*

- 1. Impact on local property owners.*
- 2. Environmental issues.*
- 3. Increase in hazards.*

*We can go into greater detail on the 3 issues above if needed.*

*We would appreciate a reply to our email”.*

#### **Submission 36**

*“I am writing with regards to the property at 1238 Quellington Road York.*

*The property has been for sale for sometime and recently it has come to my attention that it may have been sold with the intention of building a motor bike track which will be open for public use. Our property adjoins the above and after speaking with neighbours also surrounding this property we are in agreement that any such proposal would be completely unacceptable and we would fight to stop any business of this type being established in our area.*

*We feel the level of noise would affect our quality of life, cause great distress to our livestock and significantly reduce property values. Whilst we appreciate the council works hard to maintain Quellington Road the added traffic would also become a burden to all who use the road.*

*I would appreciate any information regarding such a proposal that the council would be at liberty to divulge, and any information as to where the residents of this area stand in relation to stopping such a proposal”.*

#### **Submission 37**

*“We have just been informed that a motor bike track is now proposed on the adjoining property. Apart from the noise factor, and the type of young people it would attract into the area, the ground is covered in flint-type rock.*

*We have problems now with people riding round the river side corridor and opening gates letting stock out. The area is tinder dry with a lot of wood and it would only take a cigarette butt or a person with a grudge and we would have a major problem. It’s rural – let it stay that way!”*

#### **Statutory Environment:**

Shire of York Town Planning Scheme No. 2;

The Town Planning Scheme states:

*“4.15 General Agriculture Zone*

*4.15.1 Objectives:*

*(a) To ensure the continuation of broad-hectare agriculture as the principal land use in the district encouraging where appropriate the retention and expansion of agricultural activities.*

*(b) To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.*

*(c) To allow for facilities for tourists and travellers, and for recreation uses.*



(d) To have regard to residential use of adjoining land at the interface of the General Agriculture zone with other zones to avoid adverse effects on local amenities.

#### 4.15.2 Development:

Having regard to the scenic values of the district and the views from roads the local government may refuse an application for planning consent if, in the opinion of the local government, the development if approved will have a detrimental effect on the rural character and amenities.

#### 4.15.3 Site Requirements:

The following minimum building setbacks shall apply:

Front	:	15.0m
Rear	:	15.0m
Side	:	15.0m

#### 4.15.4 Retention of Vegetation:

Except for:

- (a) establishment of a firebreak required to comply with a regulation or local law, or
- (b) provision of access to a building site, or
- (c) the area of building, or
- (d) cash crops;

not more than 2000m<sup>2</sup> on any lot shall be cleared of indigenous trees or substantial vegetation. If the local government is satisfied upon receipt of a submission the clearing of an area greater than 2000m<sup>2</sup> will not adversely affect the amenity, character and landscape qualities of the locality it may approve such land to be cleared subject to conditions as may be required by the local government.

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3.2.4 If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type or class of activity of any other use the local government may:

- (a) determine that the use is consistent with the objectives and purposes of the particular zone and is therefore permitted; or
- (b) determine that the use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of clause 7.3 in considering an application for planning consent; or
- (c) determine that the use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted."

Planning and Development Act 2005.

State Administrative Tribunal – Decisions Database (see attachment),  
[http://decisions.justice.wa.gov.au/SAT/SATdcsn.nsf/PDFJudgments-WebVw/2009WASAT0171/\\$FILE/2009WASAT0171.pdf](http://decisions.justice.wa.gov.au/SAT/SATdcsn.nsf/PDFJudgments-WebVw/2009WASAT0171/$FILE/2009WASAT0171.pdf); accessed 11/11/2009.

**Policy Implications:**

Nil

**Financial Implications:**

The assessment and dealing with complaints have required Shire resources.

**Strategic Implications:**

Key Result Area 2 – Economic Development and Tourism – Objectives 1, 4 & 5 states:

*“To encourage a sustainable community by increasing employment opportunities in York, attracting investment and businesses to the town, and achieving diversification of industries.”*

*“To utilise the unique features of York’s heritage and rural lifestyle, where appropriate, as the basis for economic development.”*

*“To ensure that economic development does not conflict with York’s heritage, lifestyle and environment.”*

Key Result Area 1 – Objective 1:

*“To develop a framework to facilitate planning and decision-making in order to identify and meet community needs, develop opportunities and implement change.”*

**Voting Requirements:**

**Absolute Majority Required:           No**

**Site Inspection:**

**Site Inspection Undertaken:           YES, several**

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

Additional recreation facilities for public or private use may be beneficial in some cases, but any proposal has to be compatible to the surrounding land use and the potential for land use conflict and associated costs have to be taken into consideration.

**Social Implications:**

As mentioned above and as discussed in detail in the attached SAT case, the potential for land use conflict between ‘noisy sports and recreation’ and ‘quiet rural amenity’ is very prevalent in many areas of WA, including the rural areas of the Shire of York. While landowners have to accept some level of noise from various sources, there are boundaries as to what is acceptable and what is not.

**Environmental Implications:**

Motorcycle tracks have to be established in a very sensitive way. Noise, dust, fire risk, erosion and pollution have to be addressed responsibly and are likely to rule out most proposals because of non-compliance with these issues.

**Comment:**

As mentioned in the September 2009 Council report, the application for a motorcycle track at Lot 47 (1238) Quellington Road, Caljie, has been assessed by the Shire and various referral agencies with the comments received being presented in the ‘Consultation’ section of this report.

Two issues arise from the comments and documents received – the number of ongoing complaints with the use for motorcycle riding and the results of the noise assessment.

*“However, being able to comply with the noise regulations does not mean that there will be no noise impact on the neighbouring residences. As the proposed motorcycle track will be located in the middle of farming land, the existing background noise in the area can be very low. This will make the noise from motorcycles operating on the proposed track very noticeable to the neighbouring residences, which might become a source of complaint.”*

As the ‘Consultation’ section demonstrates, there is strong opposition against the proposal by surrounding landowners, constant complaints have been received on an ongoing basis and no supporting comments has been received at all.

The main issue, however, is the noise assessment itself. While the DEC Noise Branch acknowledges that:

*“In general, the criteria and methodology used for the environmental noise assessment report are adequate. The noise impact assessment results also seem reliable to the Noise Branch.”*

It also states that:

*“If the Shire decides to accept the planning application, the Noise Branch would recommend the following conditions to minimise the noise impacts on the neighbouring residences.*

1. *Limit the number of motorcycle riding events*  
*The proponent indicated that the riding would limit to family members or friends, and would mostly occur during winter and spring seasons when conditions are wet and muddy. It is practicable for the Shire to negotiate the total number of ridings that are allowed for each year with the proponent.*
2. *Limit the operating time to daytime only. For instance, 9:00am-17:00pm inclusively.*
3. *Limit the number of motorcycles to five at any time of an event.*

*The Noise Branch would also recommend that an afterward noise assessment be conducted. This assessment is to check if the tonality of the motorcycle is really masked by other bikes, if the berms have been properly built, and if noise compliance can be achieved.”*

Following the receipt of the comment, officers have discussed the matter with a senior officer of the DEC Noise Branch.

While the noise assessment states that the non-compliance with the *Environmental Protection (Noise) Regulations 1997* can be overcome by building up to 3 m high berms around the track, this does not guarantee compliance and will still result in a large number of complaints from neighbours.

The noise assessment acknowledges that the closest residence at Lot 2 (1277) Quellington Road is most affected and subject to the non-compliance with the *Environmental Protection (Noise) Regulations 1997*, but there have been no noise readings towards Lot 73 (1120) Quellington Road to the west of the subject property with the residence just some 550 m away from the proposed track.

This can be considered a major inconsistency in the presented noise assessment.

Reference is also made to the attached SAT case where the Shire of Murray and the proponent of a motorcycle track both had different noise assessments done that varied quite significantly [12 dB(A) and 17 dB(A) versus 22 dB(A)].

This can be anticipated in the proposed development as well, depending on wind direction and other circumstances.

A second major inconsistency in the noise assessment is the statement that no tonal noise will be emitted. The following comment has been made by the DEC Noise Branch:

*“This assessment is to check if the tonality of the motorcycle is really masked by other bikes [...].”*

Subsequent discussion with the Shire’s Environmental Health Officer and the DEC Noise Branch Senior Officer indicates that the proposal would be the very first motorcycle track in Western Australia where motorcycles would not emit tonal noise.

While it is acknowledged that most referral agencies have no comment to provide and that most issues, such as dust, fire risk and the proximity to the Mortlock River, appear to be manageable by adequate measures, a number of details, such as where the water for dust oppression is exactly coming from, how fire risk will be addressed with the local volunteer fire brigade and how it will be ensured that there is no interference with the riparian area of the Mortlock River, need clarification, which also leaves the question how the various measures are to be enforced.

It is not considered that the noise impact can be overcome by the proposed development and the measures proposed in the noise assessment. Any measures will be very costly to install and may not alleviate the noise impact adequately. This means, the applicant will be required to have further significant costs and expenses and still may not comply and the Shire will still be inundated with complaints.

The Shire has an obligation to minimise land use conflicts and it is therefore proposed to refuse the application for planning consent for a use not listed (private motorcycle track) at Lot 47 (1238) Quellington Road, Caljie, for the following reasons:

- Non-compliance with the *Environmental Protection (Noise) Regulations 1997* with respect to Lot 2 Quellington Road;
- Potential non-compliance with the *Environmental Protection (Noise) Regulations 1997* with respect to other adjoining properties due to deficiencies in the presented noise assessment;
- It is disputed that no tonal noise is emitted by the operation of motorcycles as stated in the noise assessment;

Therefore the proposal is considered to be inconsistent with the objectives of the ‘General Agriculture’ zone and should be considered in the context of clause 3.2.4 (c) of the Shire of York Town Planning Scheme No. 2 and it is proposed that Council

- (c) determine that the use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted.”*

## **OFFICER RECOMMENDATION**

### **RESOLUTION**

**081109**

**Moved: Cr Randell**

**Seconded: Cr Lawrance**

**“That Council -**

**Advises the applicant that it refuses the application for planning consent for a use not listed (private motorcycle track) at Lot 47 (1238) Quellington Road in accordance with clause 3.2.4 (c) of the Shire of York Town Planning Scheme No. 2 for the following reasons:**

- 1. The Herring Storer Acoustics Environmental Noise Assessment demonstrates that the proposed use of a private motorcycle track will not comply with the Environmental Protection (Noise) Regulations 1997;**
- 2. The Herring Storer Acoustics Environmental Noise Assessment has not considered the noise impact on Lot 73 Quellington Road;**
- 3. The Herring Storer Acoustics Environmental Noise Assessment has not allowed for tonal noise emissions from motorcycles; and**
- 4. The impact the proposal has on adjoining properties and the amenity of the area is considered inconsistent with the objectives of the ‘General Agriculture’ zoning.**

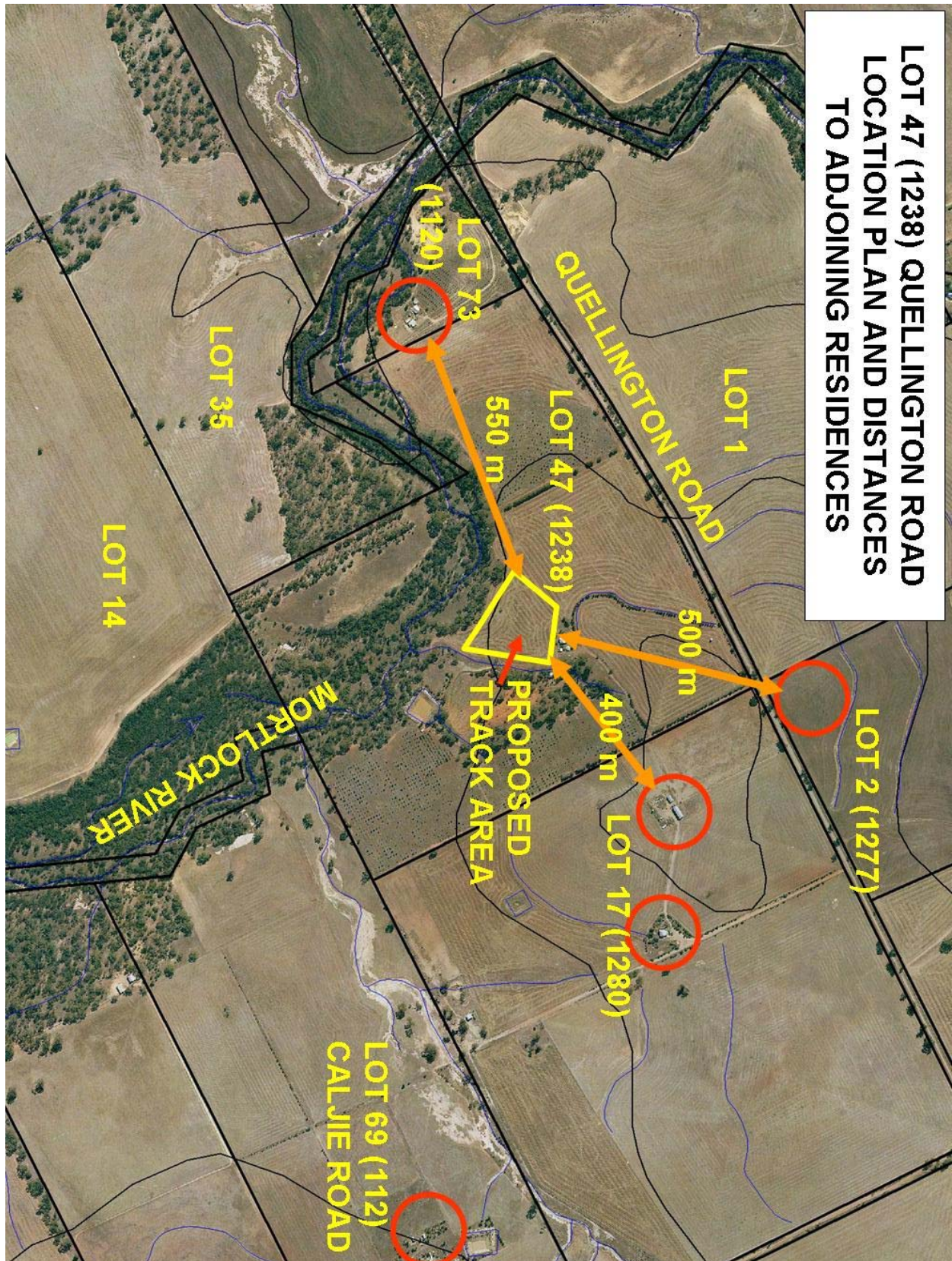
#### **Advice note:**

**Should the applicant be aggrieved by this decision, a right of appeal may exist under the provisions of the Planning and Development Act 2005.”**

***CARRIED (6/0)***











[2009] WASAT 171

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**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : DEVELOPMENT & RESOURCES

**ACT** : PLANNING AND DEVELOPMENT ACT 2005 (WA)

**CITATION** : ROBERTSON and SHIRE OF MURRAY  
[2009] WASAT 171

**MEMBER** : MR D R PARRY (SENIOR MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 4 SEPTEMBER 2009

**FILE NO/S** : DR 348 of 2008

**BETWEEN** : PETER JOHN ROBERTSON  
YVONNE ROBERTSON  
Applicants

AND

SHIRE OF MURRAY  
Respondent

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*Catchwords:*

Town planning - Development application - Motorcycle track - Special use equestrian-based zone - Whether proposed development requires development approval - Whether motorcycle track is 'development' - Whether motorcycle track is a 'work' - Whether riding motorcycles on motorcycle track is incidental or ancillary to residential or equestrian use - Whether requirement for development approval is obviated by authorisation under the *Control of Vehicles (Off-road Areas) Act 1978* (WA) - Whether proposed development is capable of approval under local planning scheme - Local planning scheme states land 'may only be used for training, trotting and stabling of horses and associated activities including residential' - Whether there is power to approve proposed development

despite non-compliance with provision - Whether provision is a 'standard or requirement' prescribed under local planning scheme - Amenity - Noise - Whether requirement in reg 7 of *Environmental Protection (Noise) Regulations 1997* (WA) that noise should not exceed assigned levels at nearest affected premises does not apply because of reg 14 of *Environmental Protection (Noise) Regulations 1997* (WA) - Whether a motorcycle is 'specified equipment' - Whether the land is 'residential premises' - Whether motorcycle would be used in a reasonable manner - Whether noise would unreasonably interfere with amenity - Whether proposed development is consistent with zoning - Local government direction - Direction to remove motorcycle track and to restore land - Whether direction too broad - Direction to cease use of motorcycle track

*Legislation:*

*Control of Vehicles (Off-road Areas) Act 1978* (WA), s 6, s 6(1), s 45, s 47, s 47(1)  
*Environmental Protection Act 1986* (WA), s 3(1)  
*Environmental Protection (Noise) Regulations 1997* (WA), reg 2(1), reg 3, reg 7, reg 8, reg 9, reg 14, reg 14(2), Sch 1 Pt C  
*Planning and Development Act 2005* (WA), s 214, s 214(2), s 214(3), s 252(1), s 255(1)  
*Shire of Murray Town Planning Scheme No 4*, cl 1.7, cl 3.1.2, cl 3.5(c), cl 6.6, cl 13.3.1, Sch V, Appendix 1

*Result:*

Application for review dismissed  
Development approval for construction and use of a motorcycle track at No 64 (Lot 21) Greenlands Road, Pinjarra refused  
Direction to remove motorcycle track and to restore the land at No 64 (Lot 21) Greenlands Road, Pinjarra confirmed but varied to enable removal and restoration to be completed by 4 December 2009  
Direction to cease use of motorcycle track at No 64 (Lot 21) Greenlands Road, Pinjarra confirmed

*Category:* A

**Representation:**

*Counsel:*

Applicants : Mr S Steenhof  
Respondent : Mr C Slarke

*Solicitors:*

Applicants : Cornerstone Legal  
Respondent : McLeods

**Case(s) referred to in decision(s):**

Australian Racing Drivers' Club Limited v Baulkham Hills Shire Council  
(1981) 2 APA 127  
City of Swan v Taylor [2005] WASCA 88  
Claude Neon Limited v City of Perth (1982) 53 LGRA 267  
Marana Holdings Pty Ltd v Commissioner of Taxation (2004) 141 FCR 299;  
(2004) 214 ALR 190  
Marley-Duncan v Corporation of the Town of Gawler [2003] SAERDC 28  
Morea Architects and Town of Vincent [2006] WASAT 263;  
(2006) 44 SR (WA) 301  
O'Donovan and Town of Vincent [2005] WASAT 120  
Parramatta City Council v Shell Company of Australia Limited  
(1972) 26 LGRA 25  
Sunbay Developments Pty Ltd and Shire of Kalamunda [2006] WASAT 74;  
(2006) 150 LGERA 116  
The Council of the City of Parramatta v Brickworks Limited (1972) 128 CLR 1  
Townsend and Shire of Donnybrook/Balingup [2005] WASAT 276  
University of Western Australia v City of Subiaco (1980) 52 LGRA 360

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Summary of Tribunal's decision***

- 1 Mr and Mrs Robertson own a property which 'may only be used for training, trotting and stabling of horses and associated activities including residential', under a special use provision in the local planning scheme. Mr and Mrs Robertson constructed a 465 metre long motorcycle track, including lengthy sections adjoining property boundaries, over approximately 30% of the area of their land (excluding an access handle). The motorcycle track was used by Mr and Mrs Robertson's son for competition training. Mr and Mrs Robertson did not seek or obtain development approval under the local planning scheme for the construction or use of the motorcycle track.
- 2 The proceedings involved the review of the decisions of the local shire to:
  - give a direction to remove the motorcycle track and to restore the land;
  - give a direction to cease use of the motorcycle track; and
  - refuse development approval for a modified 356 metre long motorcycle track.
- 3 The principal issues in the proceedings were:
  - whether the proposed development requires development approval;
  - whether the proposed development is capable of approval;
  - whether the proposed development is acceptable in relation to noise;
  - whether the proposed development is consistent with the zoning; and
  - whether the directions should be confirmed, varied or set aside.
- 4 The Tribunal determined that the proposal involves the carrying out of 'development' and therefore requires development approval. The proposal is a 'work' which involves significant physical alteration of a

permanent nature to a substantial part of the site. Furthermore, the riding of motorcycles on the track is a land 'use' that is not incidental or ancillary to either the equestrian or residential use of the land.

- 5        The Tribunal determined that the proposed development is not capable of approval because it does not involve training, trotting or stabling of horses or associated activities. Furthermore, the scheme provision that restricts permissible uses of the land is not a 'standard or requirement' that is capable of variation under the scheme.

- 6        The Tribunal found that the proposed development is not acceptable in relation to noise. The noise is likely to exceed the prescribed standard for noise emissions at the closest affected premises by a substantial extent. The Tribunal also found that the proposal is inconsistent with the zoning and, in particular, with the special use provision applicable to the site. The Tribunal therefore determined that, if the proposed development were capable of approval, then the application would warrant refusal in the exercise of discretion.

- 7        The Tribunal then considered whether it should confirm, vary or set aside the directions. It concluded that the directions should be confirmed, but that Mr and Mrs Robertson should be given three months, rather than 28 days, to remove the motorcycle track and to reinstate the land.

### ***Introduction***

- 8        Mr and Mrs Robertson own a 1.78 hectare battleaxe-shaped property at No 64 (Lot 21) Greenlands Road, Pinjarra (site), which is located approximately 1.5 kilometres south of the main commercial and civic area of the Pinjarra Townsite. In accordance with the Special Use zoning of the site and surrounding properties under the *Shire of Murray Town Planning Scheme No 4* (TPS 4 or Scheme), 'the land may only be used for training, trotting and stabling of horses and associated activities including residential'.

- 9        Mr and Mrs Robertson constructed a motorcycle track with a length of approximately 465 metres in the northern part of the site without having obtained development approval under the Scheme. Mr and Mrs Robertson propose to reduce the length of the motorcycle track to approximately 356 metres. The proposed modified motorcycle track would have a surface area of approximately 1,400 square metres and the part of the site comprising the motorcycle track would have an area of approximately 4,500 square metres.

10 Mr and Mrs Robertson sought review by the Tribunal of the decisions of the Shire of Murray (Shire or Council) to refuse development approval for the proposed modified motorcycle track under the Scheme and to issue directions to Mr and Mrs Robertson to remove the motorcycle track and to reinstate the site, and to cease use of the motorcycle track. The Tribunal directed that the matter shall be determined entirely on the documents with a view.

11 On 4 August 2009, I had a view of the site accompanied by Mr and Mrs Robertson and the parties' representatives. In particular, I walked the whole of the existing motorcycle track and the parties indicated where and how the proposed modified motorcycle track would differ from the existing track. I also viewed the site accompanied by the parties' representatives from Mr and Mrs Hazelden's property that adjoins the site to the west.

*Site and locality*

12 In addition to the existing motorcycle track, the site contains two horse stables and a paddock for horses, a dam, and a single house, swimming pool and shed. The 4,500 square metre area comprising the existing and proposed modified motorcycle track occupies substantially the whole of the northern part of the site between the shed and the northern boundary. The area comprising the motorcycle track is approximately 26.5% of the site area or, excluding the access handle, approximately 30% of the site area.

13 The site adjoins eight properties to the west, east and south-east that are also subject to the same Special Use zoning under the Scheme.

14 Clause 6.6 of the Scheme states that:

No person shall, in respect of any land included in [the Special Use] zone:

- (i) use any land or any buildings or structures erected thereon; and
- (ii) carry out any development thereon;

except in accordance with the Special Provision[s] applicable to the specified land as set out in Schedule V of the Scheme.

15 The Special Provisions in Sch V of the Scheme applicable to the site and 15 other lots, including the eight adjoining properties, include the following:

- (i) The land may only be used for training, trotting and stabling of horses and associated activities including residential.

...

- (iv) No more than one dwelling shall be erected on any lot and no dwelling shall be erected other than in association with the erection of a stable or stables.

...

16 The eight adjoining properties have been generally developed for equine purposes with active stables, associated dwellings and ancillary facilities including outbuildings and swimming pools.

17 The site adjoins a Crown Reserve, which is identified as Regional Open Space under the *Peel Region Scheme*, to the north.

18 The Pinjarra Paceway (Trotting Club) is located on the southern side of Greenlands Road approximately 150 metres east of the road frontage of the site.

19 As noted earlier, the site is located approximately 1.5 kilometres south of the main commercial and civic area of the Pinjarra Town site.

***Existing motorcycle track***

20 In the early 1990s, Mr and Mrs Robertson constructed a track for a variety of purposes, including the riding of go-karts and motorcycles, in the northern part of the site. The construction of the track involved approximately 450 cubic metres to 500 cubic metres of soil, mostly extracted from the dam on the site. Mr and Mrs Robertson also incorporated natural features of the surrounding landscape, such as rises and dips, into the circuit. Mr and Mrs Robertson did not seek or obtain development approval for the construction of the track under TPS 4. The Scheme had commenced prior to the construction of the track on 23 June 1989.

21 In around the year 2000, Mr and Mrs Robertson's son, Liam Robertson, developed an interest in motocross riding and began using the track for that purpose. In about 2004, Liam Robertson started to compete in motorcycle events throughout Australia. At about the same time, Mr and Mrs Robertson began adding to and modifying the track in order, in Mr Robertson's words, 'to keep pace with Liam's increasing motocross skills'. The track additions and modifications included:

- ski jumps;
- ramps;
- a 'tabletop';
- a bridge/flyover with tunnel; and
- associated raised earthworks.

22 Mr Hazelden gave evidence that, in late 2006 and early 2007, he observed deliveries of earth by semitrailers to the site throughout a number of days. Mr Hazelden observed a loader and other heavy equipment build the motorcycle track using the imported soil. Mr and Mrs Robertson did not obtain development approval under TPS 4 for any of the additions or modifications to the motorcycle track.

23 By November 2008, the existing motorcycle track on the site was approximately 465 metres long, contained 12 jump elements, including a tabletop and a concrete bridge, and 10 banked turns.

***First direction***

24 Following a complaint made by Mr and Mrs Hazelden in early 2008 relating to the construction and use of the motorcycle track on the site, and ensuing correspondence between the Shire and Mr and Mrs Robertson, on 20 August 2008, the Shire gave Mr and Mrs Robertson a direction under s 214(3) of the *Planning and Development Act 2005* (WA) (PD Act) (first direction). The first direction recited that the following development was undertaken on the site without development approval under TPS 4 and therefore in contravention of the Scheme:

The motorcycle track consisting of berms, tabletops, ski jumps, ramps, bunds, a bridge/flyover with tunnel and any associated raised earthworks.

25 The first direction required Mr and Mrs Robertson to:

- (i) remove the Development within 28 days of the service of the Direction and
- (ii) to restore the [site] as nearly as practicable to its condition immediately before the Development started, to the satisfaction of the Shire.



26 On 17 September 2008, Mr and Mrs Robertson sought review by the Tribunal under s 255(1) of the PD Act of the Shire's decision to give them the first direction. Mr Robertson gave evidence that he has:

nonetheless made a conciliatory effort by:

- (a) Removing the substantial man made elements of the Track, including a metal framed concrete bridge;
- (b) Levelling out several of the dirt jumps that formed part of the Track; and
- (c) Shortening the length of the Track on two separate occasions.

***Second direction***

27 On 31 October 2008, the Shire gave Mr and Mrs Robertson a direction under s 214(2) of the PD Act (second direction). The second direction recited that the following development has been carried out without development approval under TPS 4 and therefore in contravention of the Scheme:

The use of the motorcycle track on the [site], for the riding of motorcycles.

28 The second direction required Mr and Mrs Robertson to:  
immediately stop, and not recommence, the Development.

29 Mr and Mrs Robertson have complied with the second direction. Although Mr and Mrs Robertson did not file an application for review by the Tribunal of the Shire's decision to give them the second direction under s 255(1) of the PD Act, they presented their case on the basis that the proceedings were also for review of the decision to give the second direction. As Mr and Mrs Robertson presented their case on this basis, and as, for reasons set out below, I consider that both directions should be confirmed, I am content to grant leave to amend the application for review to incorporate the review of the decision to give the second direction.

***Proposed development***

30 In late February 2009, Mr and Mrs Robertson applied to the Shire for retrospective development approval for a modified motorcycle track on the site, described on the development application form as 'domestic motorcycle track containing of [sic] 6 elements more than 600 mm above natural ground level'.

31 The proposed modified motorcycle track would:

- be approximately 356 metres in length, being a reduction in length of the existing motorcycle track of 109 metres or approximately 23%;
- contain seven jump elements, being a reduction of five elements from the existing motorcycle track; and
- contain eight banked turns, being a reduction of two banked turns from the existing motorcycle track.

32 The development application does not nominate the heights of the six elements identified as 'more than 600 mm above natural ground level'. Having walked the entirety of the motorcycle track with Mr and Mrs Robertson and the parties' representatives, it appears that these elements are, and are proposed to remain, at a height of up to 1.0 metre - 1.5 metres. Some of these elements have a substantial length and footprint.

33 The proposed modified motorcycle track would have a surface area of approximately 1,400 square metres and would include sections that are substantially parallel to the northern boundary of the site and parts of the eastern and western boundaries of the site. In particular, an approximately 70 metre length of the track would be located within approximately 2 metres to 5 metres of the northern boundary, an approximately 65 metre length of the track would be located within approximately 3 metres to 7 metres of the western boundary and an approximately 40 metre length of the track would be located within approximately 2 metres of the eastern boundary. The existing and the proposed modified motorcycle track also winds back and forth in four lengths connected by sharp turns in sections between the parts that are adjacent to the eastern and western boundaries of the site. In total, the part of the site that comprises the proposed modified motorcycle track has an area of approximately 4,500 square metres and occupies essentially the whole of the northern part of the site between the shed to the north of the house and the northern boundary. This area occupies approximately 26.5% of the total site area and approximately 30% of the site area excluding the access handle.

34 The development application also proposed the following restrictions on the use of the proposed modified motorcycle track:

- a maximum of two riders would use the track at any one time;

- the track would be used for a maximum of two hours per day during daylight hours only, with no use on Tuesdays or Thursdays;
- only motorcycles which have been 'officially noise tested' would be used on the track; and
- additional landscaping would be installed between the track and the western property boundary.

35 In addition, Mr and Mrs Robertson had previously offered to build a bund near to their common boundary with Mr and Mrs Hazelden's property to the west in order to screen the view of the track from the adjoining property and to mitigate its noise impact.

36 The development application was advertised by the Shire. A total of 17 submissions were received. Seven submissions were individual letters of objection from residents within 200 metres of the proposed modified motorcycle track, one submission was from Mr and Mrs Robertson's planning consultant, one submission was an individual letter of support and seven submissions were pro forma letters of support. The owners of five properties adjoining the site supported the proposal while the owners of three other adjoining properties objected to it. In addition, the resident of one of the adjoining properties supported the proposal although the property owner objected to it.

37 On 28 May 2009, the Council accepted its officer's recommendation to refuse development approval for the proposed modified motorcycle track under TPS 4 for the following six reasons:

- (a) a motorcycle track is not permitted under the 'Special Use' zoning of the land and cannot reasonably be determined as being incidental to the residential enjoyment of the land;
- (b) the use of the motorcycle track would add significantly to the level of noise expected in an area specifically established for equestrian-related purposes;
- (c) the nature of the proposal is incompatible with the intended character and amenity sought by the equestrian-based zoning of the land;
- (d) approval of the proposal would be detrimental to the owners of adjacent land who, quite reasonably, have purchased their land with the expectation that surrounding land would be developed consistent with its zoned purpose;

- (e) approval of the proposal would be inconsistent with the principles of orderly and proper planning; [and]
- (f) approval of the proposal would set an undesirable precedent[.]

38 On 5 June 2009, with the consent of the Shire, the Tribunal granted leave to Mr and Mrs Robertson to amend their application to the Tribunal to seek a review of the Shire's decision to refuse development approval for the proposed modified motorcycle track under s 252(1) of the PD Act. While, strictly, a fresh application for review was required to be filed under s 252(1) of the PD Act, the matter has proceeded on the basis that the proceedings involve the review of each of three decisions of the Council, namely, the decisions to:

- give the first direction;
- give the second direction; and
- refuse to grant development approval under TPS 4 for the proposed modified motorcycle track.

39 The Tribunal will determine the proceedings on this basis.

***Issues for determination***

40 The following five principal issues arise for determination in these proceedings:

- 1) Whether the proposed development requires development approval under the Scheme.
- 2) Whether the proposed development is capable of approval under the Scheme.
- 3) Whether the proposed development is acceptable in relation to noise impact.
- 4) Whether the proposed development is consistent with the zoning of the site.
- 5) Whether the directions should be confirmed, varied or set aside.

41 The Tribunal will consider each of these issues in turn.

***Does the proposed development require development approval under the Scheme?***

42 Clause 3.1.2 of TPS 4 states as follows:

Subject to the provisions of the Scheme, a person shall not commence or carry out the development of any land:

- (i) without the approval of the Council to carry out that development; and
- (ii) if that approval is granted subject to any conditions, otherwise then in accordance with and compliance with those conditions.

43 The term 'development' is defined by cl 1.7 and Appendix 1 of the Scheme as follows:

'Development' - means the development or use of any land, including any demolition, erection, construction, alteration or addition to any building or structure on the land and the carrying out on the land of any excavation or other works ...

44 In *University of Western Australia v City of Subiaco* (1980) 52 LGRA 360 (*University of Western Australia*) at 363 - 364, Burt CJ said in relation to a definition of 'development' which was, relevantly, substantially the same:

In my opinion the definition of 'development' in the Town Planning and Development Act makes use of and it encompasses two ideas. The first is the 'use' of the land which 'comprises activities which are done in ... or on the land but do not interfere with the actual physical characteristics of the land' and the second being 'activities which result in some physical alteration to the land which has some degree of permanence to the land itself': see *Parkes v Environment Secretary* (1978) 1 WLR 1308 at 1311 per Lord Denning MR.

45 The Shire contended that the proposed modified motorcycle track involves the carrying out of 'development' in both the sense of physical alteration to the land with a requisite degree of permanence to the land itself and the 'use' of the land for the riding of motorcycles on the track. The Shire argued that, for both of these reasons, the proposed development requires development approval under cl 3.1.2 of TPS 4.

46 In contrast, Mr and Mrs Robertson contended that their proposal does not involve the carrying out of 'development' in either sense of physical alteration or use. Consequently, approval of the proposal is not required by the Scheme.

47 Mr and Mrs Robertson argued that the proposal does not involve physical 'development' requiring approval under the Scheme because:

- (a) the surface area of the Modified Track is less than 10% of the total area of the [site] and therefore would result in a negligible degree of change to the residential and equine use of the [site];
- (b) the Modified Track interwinds with the native vegetation so as to minimise alterations to the [site];
- (c) parts of the Modified Track are either naturally occurring features of the landscape or involve only minor modifications (less than 600 mm) to the natural contours of the [site]; and
- (d) the [site] is located in a rural type setting.

48 Alternatively, Mr and Mrs Robertson submitted that only those parts of the proposed modified motorcycle track 'which involve a not insignificant degree of physical alteration (more than 600 mm above natural ground level) to the [site] constitute "development" and consequently require planning approval'.

49 Mr and Mrs Robertson also argued that the proposal does not involve 'development' in the sense of land 'use' requiring approval under the Scheme, for two reasons.

50 First, Mr and Mrs Robertson argued that the proposal is incidental to the residential and equestrian-related use of the site. Referring to the discussion of the phrase 'incidental to' by Johnson J in *City of Swan v Taylor* [2005] WASCA 88 (*City of Swan*) at [67], Mr and Mrs Robertson submitted that the proposed modified motorcycle track 'naturally attaches to their use of the [site] particularly given their son Liam's long-term involvement with motocross and the fact that [they] and their family have ridden motorcycles on the [site] for almost 20 consecutive years'. They submitted that the following factors indicate that the proposed modified motorcycle track is incidental to the residential use of the site:

- (a) the sole user of the Modified Track would be [Mr and Mrs Robertson's] son Liam Robertson, who resides on the [site] and is engaged in fulltime employment;
- (b) the use of the Modified Track would be subject to the Proposed Restrictions;
- (c) the surface of the Modified Track would cover less than 10% of the total area of the [site]; and

- (d) the Modified Track does not impinge on the ability of [Mr and Mrs Robertson] to use the [site] for equestrian-related purposes.

51 Second, Mr and Mrs Robertson submitted that 'the [Shire] has no power to prohibit the riding of off-road motorcycles on the [site] as this would be inconsistent with s 6 of the [*Control of Vehicles (Off-road Areas) Act 1978* (WA)] which permits such activity'.

52 The Tribunal considers that the proposed modified motorcycle track involves the carrying out of 'development' in both senses referred to by Burt CJ in *University of Western Australia* and requires development approval under cl 3.1.2 of TPS 4 for the following reasons.

53 A 'work' is 'the physical product of labouring operations': *The Council of the City of Parramatta v Brickworks Limited* (1972) 128 CLR 1 at 24 *per* Gibbs J with whom Barwick CJ, at 3, and Owen J, at 4, agreed. In *Parramatta City Council v Shell Company of Australia Limited* (1972) 26 LGRA 25 (*Parramatta*) Street J in the Supreme Court of New South Wales said the following, at 31, in the course of his Honour's consideration as to whether the depositing of 1,200 cubic yards of fill on land constituted 'development':

As was pointed out during the course of argument, the depositing of filling on land may or may not be of such significance as to be regarded as a 'work', and thus a 'development', within the relevant legislation. The building-up of a large sports ground or oval could readily and properly be regarded as a 'work'. At the other end of the scale, the construction in a private garden of a small earth pocket in which to plant a shrub would not seem to be of such significance as to justify description as a 'work'. In selecting where, between these two extremes, the present case falls, I am of the view that both the quantity of the filling as well as its significance in relation to the site is of importance. The spreading of 1,200 cubic yards of filling or topsoil over a very large area might very well not be of such significance as to amount to a 'work'. But the depositing of that quantity in a suburban allotment, having the effect of building up the height of that allotment at one corner to a point 8 feet 6 inches above its natural level, and the creation of a relatively level surface extending over most of a block of land such as this, is, in my view, a 'work' within the meaning of the Act. I am accordingly of the view that the depositing of this filling amounted to 'development' ...

54 Having referred to the statement by Burt CJ in *University of Western Australia* and the statement by Street J in *Parramatta*, Pidgeon J in the Supreme Court of Western Australia held in *Claude Neon Limited v City of Perth* (1982) 53 LGRA 267 at 270, in the course of determining

whether signs proposed to be erected on a building in Perth comprised a 'development', as follows:

I consider therefore that the answer to [this] question is dependent upon a finding of fact as to the degree of change of use or physical alteration to the land and it would include as envisaged by [Burt CJ] an examination of the degree of permanence of the physical alteration. It must be looked at subjectively having regard to the location of the land concerned and the area it is in.

55 Having regard to these authorities, the proposed modified motorcycle track in this case is clearly a 'work' which involves significant physical alteration of a permanent nature to a substantial part of the site, and is therefore, 'development'.

56 The surface area of the proposed modified motorcycle track would be approximately 1,400 square metres. It would be established over a total land area of approximately 4,500 square metres or approximately 30% of the area of the site excluding the access handle. The quantity of fill that has been imported for the purposes of constructing the proposed modified motorcycle track, namely, initially approximately 450 to 500 cubic metres of soil, and, more recently, semi-trailer loads of earth delivered over a number of days, is significant in the context of the size of the area over which the track is formed. The proposed modified motorcycle track and, in particular, the substantial, filled parts of it, are visually apparent not only from within the site but from the adjoining properties, particularly given the close proximity of long sections of the track to property boundaries. As noted earlier, certain elements forming part of the track are of a height of up to 1.0 metre - 1.5 metres and have a substantial length and footprint.

57 While it is correct that parts of the proposed modified motorcycle track are naturally occurring features of the landscape, it is not correct, as contended by Mr and Mrs Robertson, that other elements that are less than 600 millimetres in height involve 'only minor modifications ... to the natural contours of the [site]'. While some elements of the track are not significant in themselves, they clearly present as part of a significant and permanent work, namely, the track.

58 While the site is located in a rural-type setting, it and surrounding properties are zoned and generally developed for equestrian purposes. Other than the area comprising the proposed modified motorcycle track, the site and surrounding properties appear to be generally flat. In contrast, the area comprising the proposed modified motorcycle track has been



significantly altered in its landform for the purposes of constructing the track. Because of the significant alteration in the landform of the northern part of the site for the purposes of the proposal, and because of the track itself, approximately 30% of the area of the site excluding the access handle would not be available, or at least would not be readily available, for horses.

59        While some native vegetation has been retained within the northern part of the site, the degree of physical alteration to the land is substantial, with a sufficient degree of permanence, such that the proposed modified motorcycle track is a 'work' and, therefore, 'development' requiring development approval under cl 3.1.2 of TPS 4.

60        Under cl 3.5(c) of TPS 4, a single house and its ancillary outbuildings is exempt from the requirement to obtain development approval under the Scheme. However, the proposed modified motorcycle track is not incidental or ancillary to the residential use of the site, nor is it incidental or ancillary to its equestrian use. In *City of Swan*, Johnson J held at [67] that the determination of whether a particular land use is 'incidental to' another land use:

... requires the identification of a predominant use and a determination of whether the proposed use is consequent on such a use or naturally attaching, appertaining or relating to such a use.

61        In the circumstances of this case, the riding of motorcycles on the proposed modified motorcycle track is not consequent on, nor naturally attaching, appertaining or relating to either the residential or equestrian use of the site. There is plainly no relationship or connection between the riding of motorcycles on the proposed modified motorcycle track and the keeping of horses on another part of the site. The only relationship or connection between the riding of motorcycles on the proposed modified motorcycle track and residential use of the site is that the principal proposed rider currently resides with his parents at the site. However, the use of the site for the riding of motorcycles on the proposed modified motorcycle track is not consequent on, nor naturally attaching, appertaining or relating to, the residential use of the site, because, as Mr Rodney Peake, a town planner and the Shire's Director of Planning and Development Services, said in evidence:

The physical extent of the track and the amenity implications of its use, particularly in the context of an equestrian-based area, is more than that which could be reasonably argued as being 'incidental' or 'ancillary' to the residential use of the land ...

62 The significant physical extent of the track was discussed earlier in these reasons. The adverse amenity implications of the use of the track in terms of noise impacts, particularly in the context of an equestrian-based area, are discussed below in relation to issue 3. While Mr Brian Robinson, a consultant town planner who gave evidence on behalf of Mr and Mrs Robertson, said that he was aware that 'historically within the Shire[,] residents on land of more than one hectare have traditionally used motorbikes for private recreation purposes, in most cases riding along internal firebreaks', there is no evidence that lawful, or even unlawful, motorcycle tracks of the nature proposed in the development application are located in the area.

63 It is recognised that:

Rural areas generate a variety of 'externalities' - mainly noise and dust emissions. One cannot expect to reside in such a zone and necessarily expect a quiet and serene rural environment. (*Marley-Duncan v Corporation of the Town of Gawler* [2003] SAERDC 28 at [21])

and

'People ... who choose to live beyond the urban fringe should do so in the knowledge that they may have to live with a less pleasant environment than they may have originally expected. (*Australian Racing Drivers' Club Limited v Baulkham Hills Shire Council* (1981) 2 APA 127 at 130).

64 However, the noise impacts of riding motorcycles on a track with a significant length and, for large parts, within just a few metres of common boundaries, in a locality zoned and generally developed for equestrian purposes, for up to 10 hours a week, including up to four hours on weekends, is plainly inconsistent with reasonable amenity expectations of residents in the locality. As the Tribunal found in relation to a similar proposal in a similar location in *Townsend and Shire of Donnybrook/Balingup* [2005] WASAT 276 at [70]:

Reflecting the activity that produced it, the noise here is not, in the Tribunal's view, comparable to the 'usual' but largely transient and intermittent sounds that one might be exposed to in a rural residential area.

65 A further reason why the proposed use is not incidental or ancillary to the residential use of the site is, to quote Mr Peake's evidence:

The purpose of the track is to provide for the regular and specific motorcycle training and testing needs of the owner's son for competition

purposes. Such needs are more akin to a use in its own right than that which would generally be expected in an incidental domestic situation;

66 As Mr Robertson said in evidence, his son Liam Robertson would use the proposed modified motorcycle track for testing, tuning and running in motorbikes, prior to competing in motorcycle events throughout Australia. The regular use of land for the purposes of one's profession, occupation or calling, including training for motorcycle competitions, is not incidental or ancillary to residential use, even if one also resides on the land. The use is not consequent on, nor naturally attaching, appertaining or relating to the residential use, but rather is a separate and distinct use.

67 Mr and Mrs Robertson relied on s 6, s 45 and s 47 of the *Control of Vehicles (Off-road Areas) Act 1978* (WA) (Off-road Vehicles Act) in support of their argument that the riding of off-road motorcycles on the proposed modified motorcycle track does not require the Shire's approval. Section 6(1) of the Off-road Vehicles Act creates an offence for a person to drive or use an off-road vehicle otherwise than on private land by consent or on land comprised within a permitted area, with certain exceptions. Section 45 of the Off-road Vehicles Act permits a local government to make local laws for the purposes of that Act. Section 47(1) of the Off-road Vehicles Act authorises the Governor, by notice published in the *Government Gazette*, to revoke or amend a local law or local planning scheme which, in the opinion of the Governor, is 'repugnant to or inconsistent with the provisions of this Act ... insofar as it is so repugnant or inconsistent ...'.

68 However, the Off-road Vehicles Act does not obviate the requirement to obtain development approval for the construction or use of the proposed modified motorcycle track under cl 3.1.2 of TPS 4. The Off-road Vehicles Act does not purport to override planning laws, except through the process prescribed in s 47 of the Act. There is no evidence that a notice has been published in the *Government Gazette* revoking or amending any part of TPS 4 under s 47(1) of the Off-road Vehicles Act.

69 It follows that the proposed development requires development approval under the Scheme.

***Is the proposed development capable of approval under the Scheme?***

70 As noted earlier, cl 6.6 of TPS 4 states that no person shall carry out any development in the Special Use zone 'except in accordance with the Special Provision[s] applicable to the specified land'. The

Special Provisions, relevantly, include that the land 'may only be used for training, trotting and stabling of horses and associated activities including residential'. The proposed development does not involve the training, trotting or stabling of horses or associated activities.

71 Notwithstanding these provisions, Mr and Mrs Robertson contended that the proposed development is capable of approval under TPS 4 for each of two reasons.

72 First, Mr and Mrs Robertson submitted that the proposed development is incidental to the residential and equestrian-related use of the site. This argument was considered, and rejected, in relation to the first issue above.

73 Second, Mr and Mrs Robertson submitted that, in any event, the Council has the power to approve the proposed modified motorcycle track irrespective of any non-compliance with the Scheme by virtue of cl 13.3.1 of TPS 4 which states as follows:

Except for development in respect of which the Residential Design Codes apply, if a development is the subject of an application for approval to commence development and does not comply with a standard or requirement prescribed under the Scheme, the Council may, despite the non-compliance, approve the application unconditionally or subject to such conditions as it thinks fit.

74 However, in *O'Donovan and Town of Vincent* [2005] WASAT 120, the Tribunal held, at [39], as follows:

[A] 'standard' is a level which is regarded as normal, adequate or acceptable, and a 'requirement' is something which is demanded, obligatory or needed. It is, therefore, apparent that these terms refer to something which regulates an aspect of a permitted use or development, not something which absolutely prohibits, or does not permit under any circumstances, a particular type of use or development.

75 The Special Provision relating to the site that the land may only be used for training, trotting and stabling of horses and associated activities including residential is not a 'standard or requirement prescribed under the Scheme' within the meaning of cl 13.3.1 of TPS 4, because it is a provision that absolutely prohibits, or does not permit under any circumstances, a particular type of use or development, rather than something which regulates an aspect of a permitted use or development. As the riding of motorcycles on the proposed modified motorcycle track does not involve the use of the site for training, trotting and stabling of horses and associated activities including residential, it is absolutely

prohibited by the Special Use zoning of the site, with the consequence that the proposed development is not capable of approval under the Scheme.

- 76 In consequence of this finding, it is strictly unnecessary to address issue 3 and issue 4. However, as the assessment of issue 3 bears, to some extent, on the Tribunal's analysis in relation to issue 1, and as these issues were addressed in evidence and submissions, the Tribunal will proceed to consider them.

***Is the proposed development acceptable in relation to noise impact?***

- 77 The Tribunal had the benefit of expert evidence in relation to noise from two acoustics engineers, Mr Timothy Reynolds, called by Mr and Mrs Robertson, and Mr Michael Cake, called on behalf of the Shire. The noise experts agreed that, if reg 7 of the *Environmental Protection (Noise) Regulations 1997* (WA) (Noise Regulations) applies to the proposed development, then it is likely that the noise emission would not comply with the assigned levels when received at the nearest noise-sensitive premises and, therefore, would not comply with reg 7. Mr Reynolds calculated the exceedance as between 12 dB(A) and 17 dB(A) at the nearest noise-sensitive premises, whereas Mr Cake calculated the exceedance as 22 dB(A).

- 78 However, the noise experts also referred the Tribunal to reg 14 of the Noise Regulations. Regulation 14 of the Noise Regulations states as follows:

- (1) In this regulation -

***specified equipment*** means any item of equipment which requires the constant presence of an operator for normal use.

- (2) Regulation 7 does not apply to noise emitted from residential premises from the use of specified equipment on any day if -

- (a) the specified equipment is used in a reasonable manner;

- (b) the specified equipment has not been used -

- (i) in the case of equipment other than a musical instrument, for more than 2 hours since the beginning of the relevant day; or

- (ii) in the case of a musical instrument, for more than one hour since the beginning of the relevant day;

- (c) the noise resulting from the use of that specified equipment on those premises, having regard to the duration of the noise emission, the frequency of similar noise emissions from those premises and the purpose for which the equipment is used, does not unreasonably interfere with the health, welfare, convenience, comfort or amenity of an occupier of premises receiving the noise; and
- (d) the specified equipment is used -
  - (i) between 0700 hours and 1900 hours on Monday to Saturday inclusive; or
  - (ii) between 0900 hours and 1900 hours on a Sunday or public holiday.

79 While the noise experts disagreed in relation to whether para (a) and para (c) of reg 14(2) of the Noise Regulations would be met in the circumstances of this case, they agreed that a motorcycle is 'specified equipment' and that the site is 'residential premises' for the purposes of reg 14 of the Noise Regulations. However, the proper interpretation of the terms 'specified equipment' and 'residential premises' is a question of statutory interpretation for the Tribunal. The Tribunal invited the parties to make specific submissions in relation to these issues in their submissions in reply and gave each party the further opportunity to reply to the other party's submissions on these issues.

80 The Tribunal considers that reg 14 of the Noise Regulations is not applicable in the circumstances of this case for the following three reasons.

81 First, motorcycles are not 'specified equipment' within the meaning of reg 14. The most apposite meanings of the noun 'equipment' in *The Macquarie Dictionary* (4th ed, 2005) (Macquarie Dictionary) at 479 are:

1. anything used in or provided for equipping ... 5. a collection of necessary implements (such as tools).

82 The verb 'equip' is defined as follows:

1. to furnish or provide with whatever is needed for services or for any undertaking; to fit out, as a ship, office, kitchen, etc. 2. to dress out; array.

83 A motorcycle is not something used in or provided for equipping, or a necessary implement, and is not, therefore, 'equipment'. Indeed, the

Noise Regulations recognise that a motor vehicle is not equipment, because it separately refers to noise emissions from motor vehicles: see reg 3.

84 Section 3(1) of the *Environmental Protection Act 1986* (WA) (EP Act) states that in that Act 'unless the contrary intention appears':

*Equipment* means any apparatus, appliance, boiler, chimney, crane, device, dredge, engine, facility, fireplace, furnace, generator, incinerator, instrument (including musical instrument), kiln, machine, mechanism, oven, plant, railway locomotive, retort, structure, tool, vehicle or vessel or any other equipment of any kind whatsoever.

85 While the definition of equipment in s 3(1) of the EP Act significantly expands the ordinary meaning of that word, and includes, in particular, 'any ... vehicle', a contrary intention to the application of the definition appears in reg 14 of the Noise Regulations. Regulation 14 relates specifically to noise emitted from specified equipment used on 'residential premises'. Many of the types of 'equipment' referred to in the definition in s 3(1) of the EP Act, such as crane, dredge, furnace, plant and railway locomotive, are plainly inapplicable to residential premises. In consequence, the ordinary meaning of the word 'equipment' applies to the expression 'prescribed equipment' in reg 14 of the Noise Regulations.

86 Furthermore, a rider of a motorcycle is not an 'operator' and the words 'the constant presence of an operator for normal use' are not apt to include the riding of a motorcycle. The noun 'operator' is relevantly defined in the Macquarie Dictionary at 1006 as follows:

a worker; one employed or skilled in operating a machine, apparatus, or the like; *a wireless operator; telephone operator.*

87 The verb 'operate' is relevantly defined as 'to work or use a machine, apparatus, or the like'.

88 The riding of a motorcycle does not involve the working or using of a machine.

89 Second, notwithstanding Mr and Mrs Robertson's submission to the contrary, and the Shire's concession that the site 'is capable of being described as residential premises, as it is occupied mainly for residential purposes', the site, and certainly the part of the site comprising the proposed modified motorcycle track, is not relevantly 'residential premises' within the meaning of reg 14 of the Noise Regulations.



90 Rather, than 'residential premises', the site falls within the definition of 'rural premises' in reg 2(1) of the Noise Regulations, namely:

Premises used primarily for pastoral or agricultural purposes on land classified or zoned agricultural or rural use, or for rural lifestyle living, under a town planning scheme prepared or adopted under the [PD Act].

91 Although the site is zoned 'Special Use', Special Provision (i) applicable to the site is relevantly classification or zoning for rural use under the Scheme. The adjective 'rural' is defined in the Macquarie Dictionary at 1421 as follows:

1. of, relating to, or characteristic of the country (as distinguished from towns or cities), country life, or country people; rustic. 2. living in the country. 3. of or relating to agriculture: *rural economy*.

92 Zoning restricting the use of land for training, trotting and stabling of horses and associated activities involves use relating to, or characteristic of the country, as distinguished from towns or cities. The keeping of livestock, including horses, is use for a pastoral purpose: see the definitions of 'pastoral' at 1048, 'stock' at 1387 and 'livestock' at 836 of the Macquarie Dictionary.

93 Mr and Mrs Robertson referred to the statement by the Full Court of the Federal Court in *Marana Holdings Pty Ltd v Commissioner of Taxation* (2004) 141 FCR 299; (2004) 214 ALR 190 at [57] that the expression 'residential premises' 'includes premises which are occupied as a residence, or intended to be, and capable of being so occupied'. However, read in the context of the Noise Regulations as a whole, land that falls within the definition of 'rural premises' does not constitute 'residential premises', even though, as is characteristic of rural premises, people may reside in a residence located on the rural premises. It should be noted that this does not mean that rural premises are not 'noise-sensitive premises' for the purpose of determining the assigned level which is not to be exceeded at affected premises under reg 7, reg 8 and reg 9 of the Noise Regulations. 'Rural premises' are expressly included in the expression 'noise-sensitive premises': see definition of 'noise-sensitive premises' in reg 2(1) and Sch 1 Pt C.

94 Furthermore, the part of the site comprising the proposed modified motorcycle track is not occupied as a residence and, as found earlier, the riding of motorcycles on that part of the site is not incidental or ancillary to residential use of the site. While reg 14 is not restricted to noise emitted from specified equipment used within a residence or ancillary



structures, and can extend to noise emitted from specified equipment used outside, for example a lawnmower, the regulation is not intended to extend to the use of specified equipment on land that is used otherwise than for residential purposes.

95 Third, assuming that a motorcycle is 'specified equipment' and that the site is 'residential premises' for the purposes of reg 14 of the Noise Regulations, para (a) and para (c) of reg 14(2) are not satisfied in the circumstances of this case. In particular, the motorcycles would not be used in a reasonable manner and the noise resulting from the use would unreasonably interfere with the amenity of occupiers of premises receiving the noise.

96 As Mr Peake said:

The use of the motorbike track to the extent and frequency proposed in the application is not considered consistent with the noise levels that would otherwise be expected in an equestrian-based zone and in my view the noise levels would therefore be inconsistent with the zoned purpose of the land and inconsistent with the character and amenity that the [Shire's] Scheme has sought to establish for the area. This is reinforced by the ongoing complaints that have been received by the [Shire] by an abutting landowner.

97 The abutting landowner referred to by Mr Peake is Mr Hazelden. Mr and Mrs Hazelden purchased their property six years ago 'as it is situated in an equestrian area, and we keep and train horses'. Mr and Mrs Hazelden's house is set back approximately 120 metres to 130 metres from the common boundary with the site. Mr Hazelden gave the following evidence, which was not questioned or contradicted, and which the Tribunal accepts:

When the bikes are being used on the track [on the site,] it is not possible to hear the television in our house unless the back door to the house is shut. It is not possible to have a normal conversation on the telephone with the back door open. ...

The noise from the motorbikes used to stir our horses up. One was injured when it ran into a fence to get away from the noise after revving of the motorbikes started.

On one occasion, at about teatime (6pm)[,] motorbikes were being used on the Robertsons' property and my wife went to calm one of our horses down to try to stop it from smashing into the fences. She was injured when she tried to calm the horse down. ...

We had to sell the horses we originally kept on the property because they kept reacting to the noise from the motorbikes, and getting injured. We presently have a trotter and a girl's pony as they were purchased after the Shire ensured the use of the track ceased. These animals have also been spooked by the revving of motorbikes. ...

I am aware that the proposal now made by the Robertsons seeks approval for the use of the track for a maximum of two riders at any one time, for a maximum of two hours per day during daylight hours, but with no use on Tuesdays or Thursdays. But as stated previously the horses are there permanently (as it is a horse zone) and a family member is generally always home. Therefore there will still be a noise problem and the likelihood of injury to the horses from being spooked. ...

The noise from the use of the track by up to two motorbikes, for up to two hours per day, is far too much. While the motorbike track is in use[,] it is impossible to not only enjoy a normal life in what is meant to be a quiet equestrian area[,] but we are unable to safely train and own horses on our property. This is the reason we purchased the property in the first place.

98        Having regard to this evidence, and assuming that a motorcycle is 'specified equipment' and that the site is 'residential premises' for the purposes of reg 14 of the Noise Regulations, the use of up to two motorcycles for up to 10 hours a week, including up to four hours on weekends, is not use in a reasonable manner in a locality zoned and generally developed for equestrian purposes. Furthermore, having regard to the contemplated duration and frequency of noise from the proposed development and the purpose for which the motorcycles would be used, namely, testing, tuning and running of motorbikes prior to competition, rather than the equestrian-based purpose of the zoning, the noise resulting from the use would unreasonably interfere with the amenity of an occupier of premises receiving the noise, namely, Mr and Mrs Hazelden.

99        Mr Robinson gave evidence that, in considering the potential impact of the noise, regard should be given to both the existing and likely future amenity of the area and, in particular, to the fact that the site is located approximately 500 metres from future industrial land, 150 metres from a commercial trotting track and with frontage to a significant rural road. However, the fact that the site is 500 metres away from future industrial land and 150 metres from the trotting track does not make the likely noise impact of the proposed development in any way acceptable. The extent of noise impact from possible future industrial development half a kilometre away is entirely speculative. The nature of noise from a trotting track is different to a motorcycle track. Noise emissions from vehicles operating on roads are not subject to the Noise Regulations: see reg 3(a).

100 Mr Robinson also said that he was aware that, historically within the Shire, residents on land of more than 1 hectare in area have used motorbikes for private recreation purposes, in most cases riding along internal firebreaks, and that, given the size of land parcels in the area, some noise from motorbikes can and should be anticipated. However, there is no evidence of any lawful, or even unlawful, motorcycle track in the locality of the nature proposed in the development application.

101 Mr Robinson also sought to draw in aid the fact that five out of the eight adjoining landowners have supported the application. However, as Barker J said in *Sunbay Developments Pty Ltd and Shire of Kalamunda* [2006] WASAT 74; (2006) 150 LGERA 116 (*Sunbay*) at [30]:

Planning law 'is concerned with the use of land – and not with the identity of the user': per Cripps J in *Moslem Alaway Society Ltd v Canterbury Municipal Council* (1983) 51 LGERA 79 at 82. The identity of those who undertake development and those who are affected by it are likely to change during the lifetime of a development. The task of a planning consent authority, including the Tribunal on review, is to consider the objective impact of a development on the existing and, where relevant, likely future amenity of the locality, including impact on adjoining or adjacent properties, irrespective of current ownership arrangements.

102 Objectively determined, the impact of the proposed development on the existing and likely future amenity of the locality is unacceptable. Significantly, the site and adjoining properties constitute half of a group of lots that have been specifically zoned 'Special Use' for equestrian-related purposes. The zoning contemplates residential use associated with equestrian purposes. The evidence clearly indicates that the noise that has been generated by the riding of motorcycles on the existing motorcycle track has had significant adverse impacts on residential amenity and the wellbeing of horses. The amenity of the locality is not likely to change. While the proposed development would limit the use of the proposed modified motorcycle track to up to 10 hours per week during daylight and to no more than two riders at any one time, as Mr Hazelden said, the horses are present at all times and a family member is generally always present.

103 Finally, Mr Robinson suggested a condition requiring the construction of a bund wall adjacent to the western boundary of the site. However, as Mr Peake observed, given the proximity of the proposed modified motorcycle track to the boundaries of the site, the construction of a bund 'would be impractical unless the track was redesigned in a manner that provided a greater setback from the side boundary'.

Furthermore, as Mr Peake observed, a potentially substantial bund 'would ... tend to reinforce the inappropriateness of the track in an equestrian-based area'.

104 It follows that reg 14 of the Noise Regulations does not relevantly exempt the proposal from the operation of reg 7 of the Noise Regulations. The noise experts agreed that the proposal does not comply with the prescribed standard for noise emissions in reg 7 of the Noise Regulations. On either of their evidence, the exceedance would be substantial.

105 As Barker J held in *Sunbay* at [41]:

[S]ubject to any applicable planning provision to the contrary, evidence of likely non-compliance by a development with the Noise Regulations in a planning assessment might well indicate that the noise generation of the development will give rise to an adverse impact on the amenity of the locality.

106 In this case, the likely exceedance by the proposal of the prescribed standard for noise emissions under reg 7 of the Noise Regulations by a significant degree indicates that the proposed development is unacceptable in relation to noise impact.

***Is the proposed development consistent with the zoning?***

107 The Tribunal accepts Mr Peake's evidence that 'there is an obvious incompatibility between equestrian uses and the motorcycling activity[,] and the use of land for each of these two uses would result in significant differences in terms of character and amenity'. This opinion is supported by Mr and Mrs Hazelden's experience about horses being 'spooked' and injured as a result of the use of the existing motorcycle track.

108 Furthermore, the area comprising the track is a substantial part of the site which would not be available, or, at least, not readily available, for equestrian purposes.

109 Finally, Mr Robinson expressed the opinion that 'the compatibility of the zoning is ... demonstrated by the number of landowners in the vicinity that own and use private motorbikes on their property for recreation purposes'. However, as noted earlier, there is no evidence of any lawful, or even unlawful, motorcycle track of the nature proposed in the development application in the locality.

110 It follows that the proposed development is inconsistent with the zoning and, in particular, with the Special Provision applicable to the site

and surrounding properties that they may only be used for training, trotting and stabling of horses and associated activities.

***Determination in relation to development application***

- 111 Development approval under TPS 4 is required for the carrying out of the proposed development involving the proposed modified motorcycle track. However, the proposed development is not capable of approval. If, however, the development application were capable of approval, then, for reasons discussed earlier in relation to noise impact and zoning, the application would warrant refusal in the exercise of discretion.

***Determination in relation to directions***

- 112 In *Morea Architects and Town of Vincent* [2006] WASAT 263; (2006) 44 SR (WA) 301 (*Morea*) at [63], the Tribunal referred to five important matters for consideration in the exercise of discretion as to whether a direction should be given under s 214 of the PD Act. These considerations are as follows:

- it is in the public interest of orderly and proper development (including use) of land that planning laws should generally be complied with. It is expected that, normally, those who use or physically develop land should comply with the planning legislation and any applicable approval in relation to that activity;
- the impact of the contravention of the scheme on the affected locality and environment;
- the factual circumstances in which the contravention of the scheme took place;
- the time which has elapsed since the development was undertaken in contravention of the scheme; and
- the expense and inconvenience which would be involved in the remedying of the contravention of the scheme.

- 113 Having regard to these matters for consideration, the Tribunal considers that each of the directions should be confirmed.

- 114 It is in the public interest that planning laws should generally be complied with. Mr and Mrs Robertson have carried out development, namely, the construction and use of the existing motorcycle track, without development approval.

115       The impact of the contravention of the Scheme on the affected  
locality and environment is apparent from the evidence of Mr Hazelden  
referred to earlier. The impact of the contravention is unacceptable in  
relation to noise.

116       There is nothing in the factual circumstances in which the  
contravention of the Scheme took place which would warrant the setting  
aside of the directions.

117       While a substantial period of time has elapsed since the construction  
of the original multi-purpose track in the early 1990s, considerable  
additions and modifications were made to the track in late 2006 or early  
2007. The Shire acted reasonably in investigating the complaint received  
in early 2008 and in issuing the directions to abate the subject matter of  
the complaint.

118       There will no doubt be considerable expense and inconvenience in  
remedying the contravention of the Scheme. Although I consider that a  
period of three months, rather than 28 days, should be given for  
compliance with the first direction to remove the development and  
reinstate the land, the expense and inconvenience of remedying the  
contravention does not warrant that the unlawful development should  
remain.

119       As the Tribunal observed in *Morea* at [62], the factors which guide  
or inform the exercise of discretion under s 214 of the PD Act cannot be  
exhaustively stated. A further factor which, in my opinion, is relevant in  
the present case is that the physical alteration of the site for the purposes  
of the existing motorcycle track precludes, or at least impedes, the use of  
the northern part of the site for equestrian purposes. Given that the site  
and 15 other lots in the vicinity have been specifically zoned for  
equestrian purposes, it is appropriate that the site should be restored as  
nearly as practicable to its condition before it was altered for the purposes  
of the track and therefore be available for equestrian purposes.

120       Finally, it is noted that in the application for review,  
Mr and Mrs Robertson contended that the first direction was too broad to  
be able to be complied with and did not provide sufficient  
particularisation. This contention was not advanced in their evidence or  
submissions. In any case, the Tribunal considers that the first direction is  
clear and able to be complied with. Compliance with the direction  
requires the removal of all earth, gravel, topsoil and other materials  
between the shed to the north of the house and the northern boundary of

the site that have been taken to that part of the site since the early 1990s for the purpose of constructing the motorcycle track. The direction also requires the restoration of the site as nearly as practicable to its condition immediately before physical works for the purposes of the original multi-purpose track commenced in the early 1990's. This requires the original contours of the site to be re-established as nearly as practicable once the imported material has been removed.

**Orders**

121 The Tribunal makes the following orders:

1. The applicants have leave to amend the application to include an application for review of the respondent's decision made on 31 October 2008 to give a direction to the applicants under s 214(2) of the *Planning and Development Act 2005* (WA) requiring the applicants to immediately stop, and not recommence, the use of the motorcycle track on Lot 21 on Diagram 73689 for the riding of motorcycles.
2. The application for review is dismissed.
3. The direction given by the respondent to the applicants on 20 August 2008 under s 214(3) of the *Planning and Development Act 2005* (WA) requiring the applicants to:
  - (i) remove the motorcycle track consisting of berms, tabletops, ski jumps, ramps, bunds, a bridge/flyover with tunnel and any associated raised earthworks (development) within 28 days of the service of the direction, and
  - (ii) restore Lot 21 on Diagram 73689 as nearly as practicable to its condition immediately before the development started to the satisfaction of the Shire,is confirmed but varied to require the applicants to remove the development and to restore Lot 21 on Diagram 73689 under the direction by 4 December 2009.
4. The direction given by the respondent to the applicants on 31 October 2008 requiring the applicants to immediately

stop, and not recommence, the use of the motorcycle track on Lot 21 on Diagram 73689 is confirmed.

5. The decision of the respondent made on 28 May 2009 to refuse development approval under the *Shire of Murray Town Planning Scheme No 4* for a motorcycle track at No 64 (Lot 21) Greenlands Road, Pinjarra is affirmed.

I certify that this and the preceding [121] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**MR D R PARRY, SENIOR MEMBER**



## 10. NEXT MEETING

**RESOLUTION**  
**091109**

**Moved: Cr Boyle**

**Seconded: Cr Walters**

***“That Council:***

***hold the next Ordinary Meeting of the Council on December 21, 2009, commencing at 3.00pm in the Lesser Hall , York.”***

**CARRIED (6/0)**

## 11. CLOSURE

Cr Hooper thanked everyone for their attendance and declared the meeting closed at 3.08pm.