



APPENDICES

Ordinary Council Meeting

Monday, 24 June 2019

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SY083-06/19 Progress Report on the YRCC Management Transition Process

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NOTES OF YRCC MANAGEMENT STEERING GROUP MEETING
held Tuesday 21 May 2019
at the York Recreation and Convention Centre

Present:

Cr Denis Warnick (Chair) – Shire of York
Cr Kevin Trent – Shire of York
Ms Kathy Emin – York Agricultural Society
Mr Wayne Collins – York Football Club
Mr Preston Grigg – York Football Club
Mr Pat Hooper – York Bowling Club
Mr Peter Wright – Junior Football Club
Mr Ben Saunders – York Hockey Club
Mr David Jenkinson – York Junior Cricket Club
Cr David Wallace – Shire of York
Cr Jane Ferro – Shire of York
Ms Suzie Haslehurst – Shire of York
Cr Denis Warnick – Shire of York
Ms Jo Bryant – Shire of York

Apologies/Absent

Ms Jill Reynolds – York Netball Association
Mr Graeme Allen – York Lawn Tennis Club
Mr Mike Mount-Bryson – York Imperials Cricket Club
Mr Nick Bush – York Hockey Club
Mr Josh Creighton – Junior Cricket Club
Mr Bill Roy – Community Representative
Ms Lee Kearns – York Basketball Club

Notes

Ms Jo Bryant – Shire of York

- Cr Warnick opened the meeting at 7.02pm and asked the group to report on the delegate only meeting the week previous.
- Pat Hooper advised in general, delegates were disappointed with Council's decision to provide \$80,000 cash support of which \$40,000 is a loan to be repaid according to terms agreed by both parties.
- Questions remain as to how the loan is to be repaid, who is the guarantor and what is the Association set up going to look like. Several of the group expressed concern about themselves or their clubs being liable for the \$40,000 debt.
- Cr Warnick reiterated the objectives of the Steering Group meetings are to resolve issues such as:
 - **Constitution** – the principles according to which the Association is to be governed
 - **Business Plan** - the document of the Association's objectives and strategies for achieving them.
 - **Terms of Loan Repayment** – Council open to discussion about repayment terms, which could include annual community grant applications
- Cr Warnick said that the Association doesn't have to and shouldn't be solely made up of sporting club representatives. To get the skills needed it will be important to reach out to the wider community.
- Pat Hooper pointed out that there have been no approaches from the community to date.
- Cr Trent suggested looking at the IGA Cooperative model.
- Wayne Collins spoke as a community member and confirmed that he is happy to go to the next stage, to work out a business plan and marketing etc
- Kathy Emin asked if the time is right to put it to the community and ask who wants to be an office bearer for the Association. Kathy confirmed she does not want to take on a role on the new committee.

- Ben Saunders said that the group needs to do some research and come up with a basic concept of what it wants the business to look like. This is not the Shire's role.
- Cr Ferro explained that the York Motor Museum considered the skills that would be needed, e.g. marketing, finance, etc and then invited community members with the necessary skills to join.
- Pat Hooper moved that the committee endorses SH and JB to prepare a draft constitution for review by the group in one month or provide an update to the group. Wayne Collins seconded.
- Ben Saunders suggested looking at other organisations and seeing what constitutions exist.
- Cr Wallace volunteered to take on a role on the new committee.
- Peter Wright highlighted the importance of a member of Council being on the committee to ensure open communication with the Shire.
- Cr Warnick volunteered to take on a role on the new committee.
- Cr Warnick stated this is measurable progress.
- Pat Hooper stressed that financial aspect is still open for negotiation with the new Association.
- The name York Community & Sporting Association was briefly discussed.
- Suzie Haslehurst advised that a report to the June Ordinary Council Meeting will be prepared and that a draft constitution will be present to the group in four weeks' time.

Next Meeting Date

Tuesday 18 June 2019, 7pm YRCC

Meeting Close

Cr Warnick thanked everyone for their attendance and input and closed the meeting at 7.58pm.



Our Ref

AH:YORK:44324

Your Ref

5 June 2019

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Dear Ms Bryant

Advice regarding incorporated associations and cooperative structures

Thank you for your instructions to provide advice to the Shire on what maybe the appropriate structure for an entity which may take over from the Shire the operation of the York Recreation and Convention Centre Tavern and Restaurant.

Background

The York Recreation and Convention Centre (YRCC) which includes a tavern and restaurant is operated by the Shire.

The YRCC Tavern and Restaurant is an established business with a proven track record with an annual turnover of approximately \$500,000.

It is proposed that the Shire transfer the business of the YRCC Tavern and Restaurant to a not for profit entity (NFP) which is to be incorporated, the members of which will be members of the York community, principally members of local sporting clubs.

As part of the transition it is proposed that the NFP will:

1. be granted a lease by the Shire of the YRCC Tavern and Restaurant for a nominal annual rent;
2. be advanced a loan by the Shire for the purposes of assisting with the operation of the YRCC Tavern and Restaurant;
3. take a transfer of the liquor licence from the Shire;
4. be structured so that any profit is to be distributed to community groups in York; and
5. seek income and other tax exemption from the ATO.

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Advice regarding incorporated associations and cooperative structures

We have been advised that the Shire is finding it difficult to find an entity or group to take over the operations of the YRCC Tavern and Restaurant.

Summary of our advice

1. We recommend that serious consideration be given by the Shire recommending that an association incorporated under the *Associations Incorporation Act 2015* is the appropriate entity to be incorporated to become the owner of the business of the YRCC Tavern and Restaurant and tenant of that premises.
2. We recommend an association incorporated under the *Associations Incorporation Act 2015 (Act)* is the appropriate entity for the following reasons:
 - (a) The persons who are likely to be the members of the entity would be familiar with the operations of an association;
 - (b) As there has been some resistance from the York community groups to taking over the operation of the YRCC Tavern and Restaurant it is important to choose an entity structure that is relatively simple to manage, has limited liability, and for which onerous corporations law duties are not imposed;
 - (c) Onerous penalties are not levied for breach of the responsibilities imposed by the Act;
 - (d) Registration and administration of associations incorporated under the Act is straightforward.

Our advice

Please find **attached** a table that summarises a comparison between the two types of entity structures the Shire has been asked to consider for the NFP, associations and cooperatives (distributing and non- distributing) .

We also provide, for your information a copy of the model rules of a non - distributing cooperative and model rules for an association.

Most commentary on cooperatives confirm that co-operatives are more difficult to form. The main difficulty in forming a co-operative is the need for agreement by a group of people (minimum of five by law) with a similar need or interest who commit to future co-operation. In this way forming a cooperative has some similarities to forming a partnership under a contract.

We can provide more detailed commentary if required by the Shire but we thought we would highlight below one of the main disadvantages to the use of a cooperative structure for the NFP.

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Advice regarding incorporated associations and cooperative structures

Management Committee vs Board of directors

You will note that in the table we outline that an incorporated association is run by the management committee and a cooperative is run by a board of directors.

The management committee manages the affairs of the incorporated association and includes the following officeholders: the chairperson, the deputy chairperson; the secretary and the treasurer. These officeholders do not have similar responsibilities (and face similar penalties) to company directors.

Whereas there are onerous obligations attached to registering a co-operative. For instance directors of cooperatives have similar responsibilities (and face similar penalties) to company directors.

The directors, other officers and employees of a cooperative are required to:

- be honest and act in good faith, and;
- not to use information acquired in their duties, nor to use their position, recklessly or with intent for personal gain or for personal or indirect advantage or to the detriment of the cooperative;
- to declare the nature and extent of any interest in proposed or current contracts;
- to exercise a reasonable degree of care and diligence;
- to make every business judgement in good faith for a proper purpose, without a material personal interest, having informed themselves to an extent they feel is appropriate, and for what they believe to be the best interests of the co-operative.

Criminal penalties of up to \$200,000 or five years in prison, or both, may apply for serious breaches of these duties by directors of cooperatives both distributing and non- distributing.

The co-operative must keep proper financial records, membership records and registers and these responsibilities are more onerous than those for associations incorporated under the Act.

Whilst incorporated associations' members do have similar duties, the penalties are not as punitive.

We note in particular that it is likely that the community members who will be involved with the NFP will be involved in the NFP as an ancillary to their roles in sporting groups who currently use the YRCC Tavern and Restaurant. These members will be taking on responsibilities over and above what they have in their own work life and in their sporting groups. In such circumstances we query why would they be likely to take on a structure that is onerous, time consuming and includes the risk of penalties?

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Advice regarding incorporated associations and cooperative structures

Next steps

Please do not hesitate to contact Anne Hurley on her direct line 9424 9208 if you wish to discuss.

If the Shire proposes to proceed with the incorporated association structure for the NFP we can provide information on the next steps for incorporation.

The Shire may also wish to consider that the Shire and the relevant parties who would take over the YRCC Tavern and Restaurant enter into a non-binding memorandum of understanding which would set out the intentions of the parties, the structure for the NFP, the details of the transition of the business and how that transition is to take place, the timing of the transition and what formal binding documents will be entered into and by what parties.

Yours faithfully



Contact: Anne Hurley
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Partner responsible: Fiona Grgich

Encl: Model Rules and Guidance Notes
Model rules of a non-distributing co-operative without share capital
Comparison Table

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