



NOTICE OF MEETING

Dear Councillors

I respectfully advise that the ORDINARY COUNCIL MEETING will be held in Council Chambers, York Town Hall, York on Tuesday, 22 August 2023, commencing at 5.00pm.

MEETING LATE AGENDA ATTACHED

Chris Linnell

CHRIS LINNELL
CHIEF EXECUTIVE OFFICER
Date: 18 August 2023

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MISSION STATEMENT
"Building on our history to create our future"

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12 BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING

SY105-08/23 PROVISION OF COMMUNITY RESOURCE CENTRE SERVICES BY THE SHIRE OF YORK

File Number: 4.0468

Author: Alina Behan, Executive Manager Corporate & Community Services

Authoriser: Chris Linnell, Chief Executive Officer

Previously before Council: Nil

Disclosure of Interest: Nil

Appendices:

1. Lumen WRUC Service Agreement - Confidential
2. Guide to Delivery of CRC Services - Confidential
3. CRC Services Variation Template - Confidential
4. Proposed CRC Deliverables against DPIRD Outcomes - Confidential

NATURE OF COUNCIL'S ROLE IN THE MATTER

Legislative

PURPOSE OF REPORT

To seek Council's approval to negotiate the continuation of a Community Resource Centre service for York.

BACKGROUND

In May 2023 the Shire was alerted to financial concerns at the York Community Resource Centre (YCRC).

On 22 May the Department of Primary Industries and Regional Development (DPIRD) deployed an auditor to evaluate the concerns. DPIRD continued to provide advice and guidance to the YCRC Committee to ensure the service was not lost to the York community.

On 19 July the YCRC Committee voted to enter voluntary administration and KPMG were appointed as Administrators. The Shire attended a meeting of Creditors held by KPMG on 31 July. KPMG notified all Creditors that only three (3) options are available regarding the former YCRC:

1. That the administration should end (and the Association revert back to its directors).
2. The Association (YCRC Inc) be wound up.
3. That the Association execute a Deed of Company Arrangement (DOCA) with an interested party.

The option taken will be decided by Creditors at their Second Meeting which is scheduled for 23 August 2023.

The Shire attended a subsequent meeting with KPMG, DPIRD and Lumen Regional University Centre (Lumen) on 19 July to discuss the future of the YCRC. At this meeting two (2) of the stakeholders indicated their desire to either novate or recommence their service contracts with the Shire.

At its August Concept Forum, Council received presentations from both DPIRD and Lumen and gave in principle support for Officers to develop a proposal for a Shire run Community Resource Centre.

Officers were requested to present a report to Council's August 2023 Ordinary Meeting for consideration. To enable this to be considered by KPMG and the Creditors, the Shire have expressed their interest to KPMG in executing a DOCA and requested an adjournment of the Second Meeting of Creditors to allow the Shire to formulate and propose a DOCA.

COMMENTS AND DETAILS

Considering Shire and community priorities, Officers are proposing that the following functions are undertaken by a Shire run Community Resource Centre:

Lumen University Services

Officers have been working closely with the Lumen to consider the re-establishment of this service to the York community and the Wheatbelt region.

Under a new fee for service contract the Shire proposes to provide Student Support Officers who will undertake the following:

1. Manage the day-to-day operations of the student support service.
2. Undertake recording and reporting to demonstrate Lumen outcomes.
3. Provide direct student support including pastoral care, study and technology support.
4. Establish a client network that fosters strong connectivity between the Lumen, its users and the community.
5. Assist with student placement opportunities.

In addition, the negotiated contract would cover consumables and some operating costs.

A full copy of the draft contract is presented in confidential Appendix 1 for Council's consideration.

In addition to providing student servicing the Lumen is requesting a continuance of accommodation arrangements.

At its September 2022 Ordinary Meeting, Council considered a request from Regional Development Australia – Wheatbelt WA to support the establishment of a Wheatbelt Regional University Centre and resolved (010922):

“That, with regard to Support for the Wheatbelt Regional University Centre, Council:

- 1. Provides support for the establishment of a Wheatbelt Regional University Centre (RUC) in York.***
- 2. Requests the Chief Executive Officer to negotiate a funding amount which more accurately reflects current usage of the space proposed for the RUC with the York Community Resource Centre.***
- 3. Requests the Chief Executive Officer to identify possible funding sources within the 2022/23 budget once an amount has been established and present this adjustment to Council for approval by no later than the mid-year budget review.”***

Officers continued negotiations and re-presented this to Council at its October 2022 Ordinary Meeting where Council resolved (021022):

“That, with regard to the Request for Budget Amendment - Support for the Wheatbelt Regional University Centre, Council:

- 1. Approves a budget amendment of \$8,960 from GL: 113335 Trails Ranger Program and allocates it to the newly created Wheatbelt Regional University Centre GL: 138151 for the purpose of providing financial support to the Wheatbelt Regional University Centre at the York Community Resource Centre.***
- 2. Requests the Chief Executive Officer to include an allocation in the 2023/24 and 2024/25 budgets for the purpose of providing financial support to the Wheatbelt Regional University Centre at the York Community Resource Centre.”***

The Shire proposes to continue to offer accommodation support to the Lumen which may take the form of a sub-lease to any arrangement with the Administrators or a licence agreement in future permanent accommodation.

Department of Primary Industries and Regional Development Services

The DPIRD contract with the former YCRC is still allocated to the Association, which is under the control of the Administrators, KPMG. Subject to satisfying the conditions of the funding contract, DPIRD have expressed interest in novating the contract for CRC services to the Shire.

CRCs deliver a range of community services for the DPIRD, as presented in confidential Appendix 2. As part of the Western Australian Community Resource Network (WACRN), CRCs contribute towards the Community Level Outcomes (CLO) for the WACRN program.

These CLO are:

TABLE 1.

CLO1	Development of vibrant and sustainable regional communities
CLO2	Regional communities have improved access to the State Government and community information they need
CLO3	Regional communities improve their economic health
CLO4	Regional communities improve their social cohesion and capacity

Each CRC service provider contributes towards these through their work in delivering services tailored to address the Service Level Outcomes (SLO) for the WACRN.

The SLO are:

TABLE 2.

SLO1	Community members are provided with access to State Government and community information and services
SLO2	Local businesses and the workforce have access to activities and initiatives that improve skills and capacity to foster economic growth in the local community
SLO3	Community members have access to activities and initiatives that create or improve community connectedness and capacity

A full description of the proposed service offerings to meet each SLO is presented in confidential Appendix 3 along with the service variation form as presented in confidential Appendix 4 required to be negotiated with DPIRD.

Services Australia

Officers have not yet been in contact with Services Australia representatives but seek Council's approval to negotiate to continue offering a computer terminal and staff support to assist community members to access key government services.

Shire of York Services

At its September 2020 Ordinary Meeting Council resolved to enter into a Multiyear Funding Agreement with the YCRC to assist the Shire in the delivery in community events, and support to seniors and vulnerable groups and resolved (030920):

"That Council

- 1. *Receives the request for multiyear funding from York Community Resource Centre as attached (Confidential Appendix 1).***
- 2. *Requests the Chief Executive Officer to negotiate a multiyear funding agreement with York Community Resource Centre under the following conditions:***
 - (a) *The agreement will commence October 2020 and expire on 30 June 2023***

(b) The amount of sponsorship will be provided in accordance with the table below:

FY	Activity	Per Annum	Milestone Payments
2020/21	Youth Programs (2) Business Capacity Building Vulnerable Groups	24000 pro-rata	October 2020 & March 2021
2021/22	Youth Programs (4) Business Capacity Building Vulnerable Groups	24000	July & November 2021
2022/23	Youth Programs (4) Business Capacity Building Vulnerable Groups	24000	July & November 2022

(c) Payment will be subject to all milestone conditions of the agreement being met

3. Authorises the Shire President and the Chief Executive Officer to endorse the final agreement.”

The YCRC had submitted a new request for a further three (3) year Multiyear Funding Agreement for Council’s consideration just prior to entering Voluntary Administration. The Shire seeks Council’s approval to repurpose funds that would have been granted to the YCRC to run these activities in house.

Officers propose to run a Shire CRC service as a program within the Community and Place team, with operational costs covered by funding from stakeholders and Shire municipal funds. The CRC would be housed in the current building subject to a short-term lease agreement being negotiated with KPMG while they complete the Administration process. A risk exists to the service, should Creditors vote that the Association be wound up at their Second Meeting. To mitigate this risk, Officers seek Council’s permission to negotiate a DOCA which will be presented to Council for consideration at its September 2023 Ordinary Meeting. This will enable to Shire to secure the building asset in the longer term.

It is important to note that any DOCA arrangement would include full responsibility of all outstanding debts owed by the YCRC. The Administration will work with KPMG to ensure all such details are reported to Council, via the draft DOCA, before any decisions are made.

OPTIONS

Council has the following options:

Option 1: Council could choose to direct the Chief Executive Officer to finalise negotiations with stakeholders to ensure current levels of CRC funding and services remain available to the community and to commence the preparation of a DOCA with KPMG to be presented to Council at its September 2023 Ordinary Meeting.

Option 2: Council could choose to direct the Chief Executive Officer to finalise negotiations with specific stakeholders only, clarifying which services are to remain available to the community and to commence the preparation of a DOCA with KPMG to be presented to Council at its September 2023 Ordinary Meeting.

Option 3: Council could choose not to enter into any negotiations to deliver a Shire run CRC.

Option 1 is the recommended option.

IMPLICATIONS TO CONSIDER

Consultative

KPMG

DPIRD

Lumen

Council Concept Forum 8 August 2023

Council Agenda Briefing 15 August 2023

Executive Leadership Team

Strategic

Strategic Community Plan 2020-2030

Goal 1: The Place to be

To be a close-knit community, full of life, in a welcoming and accessible place for all.

Goal 4: Our Built Environment

To have a built environment which support community, economy and the environment, respects the past and creates a resilient future.

Goal 5: Strong Leadership and Governance

To have effective and responsive leadership and governance, where a sense of collective purpose and shared direction combine to work together.

Policy Related

G19 Rick Assessment and Management

Financial

Through the approval of the 2023/24 budget, funds to support the Lumen and delivery of Shire programs formally delivered by the YCRC will be allocated.

Officers will present a detailed financial outline once direction has been given to negotiate contracts. Officers are seeking a cost neutral solution for the continuation of the service. However, this will depend upon the terms negotiated as part of the DOCA process.

Legal and Statutory

Part 9 of the *Associations Incorporation Act 2015* is applicable to the Administration and Winding Up of an Incorporated Association (i.e. the YCRC) and states:

“Part 9 – Administration and winding up

Division 1 — Voluntary administration and winding up

120. Administration under Corporations Act

- (1) This section makes provision for the voluntary administration under the Corporations Act of an incorporated association.*
- (2) Subsection (3) is made for the purposes of the Corporations (Ancillary Provisions) Act 2001 Part 3.*
- (3) The administration of an incorporated association is declared to be an applied Corporations legislation matter in relation to the Corporations Act Part 5.3A subject to the following modifications —*
 - (a) the modifications to the text of that Act set out in Schedule 3;*
 - (b) such other modifications (within the meaning of the Corporations (Ancillary Provisions) Act 2001 Part 3) as may be prescribed by the regulations.*

121. Voluntary winding up under Corporations Act

- (1) *This section applies to an incorporated association that has surplus property to be distributed on winding up.*
- (2) *An incorporated association may be wound up voluntarily if the association so resolves by special resolution.*
- (3) *The voluntary winding up of an incorporated association is declared to be an applied Corporations legislation matter in relation to the Corporations Act Parts 5.5 and 5.6 subject to the following modifications —*
 - (a) *the modifications to the text of that Act set out in Schedule 3;*
 - (b) *such other modifications (within the meaning of the Corporations (Ancillary Provisions) Act 2001 Part 3) as may be prescribed by the regulations.*

122. Further application of Corporations Act

Any matter declared under section 120 or 121 to be an applied Corporations legislation matter is, in addition, an applied Corporations legislation matter in relation to the Corporations Act Part 5.9 Division 3, subject to the following modifications —

- (a) *the modifications to the text of that Act set out in Schedule 3; and*
- (b) *such other modifications (within the meaning of the Corporations (Ancillary Provisions) Act 2001 Part 3) as may be prescribed by the regulations.*

Division 2 — Winding up by Supreme Court**123. Grounds on which winding up may be ordered**

An incorporated association may be wound up by the Supreme Court on application made on any ground specified in Schedule 4.

124. By whom application may be made

An application to the Supreme Court for the winding up of an incorporated association may be made by —

- (a) *the incorporated association; or*
- (b) *a member of the incorporated association; or*
- (c) *the Commissioner; or*
- (d) *the Minister; or*
- (e) *a creditor, in the case of an application based on the ground specified in Schedule 4 item 5.*

125. Application of Corporations Act

- (1) *The winding up of an incorporated association (other than by a voluntary winding up) by the Supreme Court is declared to be an applied Corporations legislation matter in relation to the Corporations Act Part 5.7, subject to the following modifications —*
 - (a) *the modifications to the text of that Act set out in Schedule 3; and*
 - (b) *the provisions of Part 5.7 of that Act are to be read as if they extended to the winding up of the affairs of an incorporated association in the State; and*
 - (c) *such other modifications (within the meaning of the Corporations (Ancillary Provisions) Act 2001 Part 3) as may be prescribed by the regulations.*
- (2) *Any matter declared under this section to be an applied Corporations legislation matter is, in addition, an applied Corporations legislation matter in relation to the Corporations Act Part 5.9 Division 3, subject to the following modifications —*
 - (a) *the modifications to the text of that Act set out in Schedule 3;*

- (b) *such other modifications (within the meaning of the Corporations (Ancillary Provisions) Act 2001 Part 3) as may be prescribed by the regulations.*

126. Cancellation of incorporation upon winding up by Supreme Court

- (1) *When the Commissioner is satisfied that the winding up of an incorporated association under this Division has been completed the Commissioner must, in writing, cancel the incorporation of the association with effect on and from a day that the Commissioner considers appropriate and specifies.*
- (2) *The Commissioner may cause notice of a cancellation under subsection (1) to be published in the Gazette if the Commissioner considers that public notification of the cancellation is desirable.*

Division 3 — Offence related to incurring of debt

127. Duties of management committee members with respect to incurring of debt

- (1) *If an incorporated association incurs a debt and —*
- (a) *the association is insolvent at the time the debt is incurred or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and*
- (b) *immediately before the debt is incurred —*
- (i) *there are reasonable grounds to expect that the association is insolvent; or*
- (ii) *there are reasonable grounds to expect that, if the association incurs the debt, the association will become insolvent,*

any person who was a member of the management committee of the association at the time the debt was incurred commits an offence.

Penalty: a fine of \$5 000.

- (2) *In any proceedings against a person under subsection (1) it is a defence if the accused proves that, at the time the debt was incurred, the accused had reasonable grounds to expect, and did expect, that the incorporated association was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.*
- (3) *Without limiting subsection (2), in any proceedings against a person under subsection (1) it is a defence if the accused proves that, at the time the debt was incurred, the accused —*
- (a) *had reasonable grounds to believe and did believe —*
- (i) *that a competent and reliable person (the **other person**) was responsible for providing to the accused adequate information about whether the association was solvent; and*
- (ii) *that the other person was fulfilling that responsibility;*
- and*
- (b) *expected, on the basis of information provided to the accused by the other person, that the incorporated association was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.*
- (4) *In any proceedings against a person under subsection (1) it is a defence if the accused proves that, at the time the debt was incurred, because of illness or for some other good reason, the accused did not take part at that time in the management of the incorporated association.*
- (5) *In any proceedings against a person under subsection (1) it is a defence if the accused proves that the accused took all reasonable steps to prevent the incorporated association incurring the debt.*
- (6) *In determining whether a defence under subsection (5) has been proved, the matters to which regard must be had include, but are not limited to the following —*

- (a) *any action the accused took with a view to appointing an administrator of the incorporated association;*
- (b) *when that action was taken;*
- (c) *the results of that action.”*

Sections 436A and 438A of the *Corporations Act 2001* (Cwlth) is applicable and available via the following link <https://www.legislation.gov.au/Details/C2023C00194>.

Risk Related

There is a financial risk should the cost of the provision of a Shire run CRC be underestimated, or service contracts not be able to be negotiated. A financial risk also exists in relation to the negotiation of the DOCA as the level of creditor debt is not yet known. This could present an immediate burden on the current budget. This risk will be mitigated by undertaking thorough negotiations with KPMG and outlining the financial arrangement to Council for its consideration and approval.

A reputational risk exists should the service be lost to the York community.

Workforce

This workflow cannot be met with current staffing requirements. It is proposed to fund 1.5 new FTE via contract arrangements to provide a CRC service. A further 0.5 FTE is requested in the Shire's budget to complete complementary community activities, taking the staffing of this new program to 2 FTE.

VOTING REQUIREMENTS

Absolute Majority: Yes

RECOMMENDATION

That, with regard to the Provision of Community Resource Centre Services by the Shire of York, Council:

- 1. Authorises the Chief Executive Officer to finalise negotiations with stakeholders as listed below to ensure current levels of Community Resource Centre funding and services remain available to the community as soon as possible:**
 - a. Regional Development Australia – Wheatbelt WA – Lumen Regional University Centre**
 - b. Department of Primary Industries and Regional Development Services**
 - c. Services Australia**
 - d. KPMG**
- 2. Authorises the Shire President and Chief Executive Officer to engross any legal documents with the above stakeholders and apply the Common Seal to the document(s) (if required).**
- 3. Approves the allocation of \$10,000 (Lumen) and \$25,000 (Shire community program formerly York Community Resource Centre Multiyear Funding Agreement) to support the Shire run Community Resource Centre as part of the 2023/24 budget adoption.**
- 4. Directs the Chief Executive Officer to commence the preparation of a Deed of Company Arrangement with KPMG to be presented to Council at its September 2023 Ordinary Meeting.**
- 5. Authorises the Chief Executive Officer to make any minor typographical and formatting changes to documents prior to signing.**

SY106-08/23 USE OF COMMON SEAL - CHIEF EXECUTIVE OFFICER'S CONTRACT OF EMPLOYMENT VARIATION

File Number:	4.6084
Author:	Vanessa Green, Council & Executive Support Officer
Authoriser:	Chris Linnell, Chief Executive Officer
Previously before Council:	25 July 2023 (150723)
Disclosure of Interest:	Nil
Appendices:	Nil

NATURE OF COUNCIL'S ROLE IN THE MATTER

Legislative

PURPOSE OF REPORT

This report requests permission for the use of the Common Seal.

BACKGROUND

At its July 2023 Ordinary Meeting Council considered the performance appraisal and key performance indicators for the Chief Executive Officer and resolved (150723):

“That, with regard to the Use of Common Seal - Chief Executive Officer's Contract of Employment Variation, Council:

- 1. Notes the Salaries and Allowances Tribunal Determination of 6 April 2023 (effective 1 July 2023).***
- 2. Notes an increase in the Superannuation Guarantee Levy from 10.5% to 11% effective 1 July 2023.***
- 3. Notes the outcomes of the Elected Member Performance Survey undertaken in July 2023 with the Chief Executive Officer being assessed as “Exceeds Expectations” in this year’s performance appraisal, as presented in confidential Appendix 1.***
- 4. Adopts the modified performance criteria metrics for the 2023/24 performance period, as presented in Section 7.6 of confidential Appendix 2.***
- 5. Approves a variation to the Chief Executive Officer’s contract to a Total Remuneration Package as per Option Six, as presented in Section 6.5 of confidential Appendix 1, and authorises the Shire President to sign a contract variation.***
- 6. Notes the Chief Executive Officer’s requests in Section 5 of confidential Appendix 1 and supports the request for professional development and authorises the Shire President to sign a contract variation to clause 11.2 of the Chief Executive Officer’s Employment Contract.***
- 7. Schedules the next review of the Chief Executive Officer’s performance and Total Remuneration Package for consideration by Council in July 2024.***
- 8. Complies, as per Division 3 of the Local Government (Administration) Regulations 1996 Schedule 2 Clause 18, by resolution of an Absolute Majority of Council, to endorse the Chief Executive Officer’s performance review.***

- 9. *Complies, as per Division 3 of the Local Government (Administration) Regulations 1996 Schedule 2 Clause 19, by notifying the Chief Executive Officer of the results of this performance review.***

COMMENTS AND DETAILS

Section 9.49A(2) of the *Local Government Act 1995* requires a resolution of Council (the local government) to affix the Common Seal to a document.

While points 5 and 6 of Council's resolution authorises the Shire President to sign a contract variation, the resolution does not provide authority to affix the Common Seal to the contract variation document.

The Common Seal is affixed to the Chief Executive Officer's contract of employment in accordance with Council's August 2021 resolution (170821). As such, the Common Seal should also be affixed to the contract variation. Therefore, this report recommends Council authorise affixing the Common Seal to the Chief Executive Officer's contract variation to complete the appraisal process.

OPTIONS

Council has the following options:

- Option 1:** Council could choose to authorise affixing the Common Seal to the Chief Executive Officer's employment contract variation.
- Option 2:** Council could choose not to authorise affixing the Common Seal to the Chief Executive Officer's employment contract variation.

Option 1 is the recommended option.

IMPLICATIONS TO CONSIDER

Consultative

Nil

Strategic

Strategic Community Plan 2020-2030

Goal 5: Strong Leadership and Governance

To have effective and responsive leadership and governance, where a sense of collective purpose and shared direction combine to work together.

Policy Related

G21 Execution of Documents & Use of the Common Seal

Financial

Nil

Legal and Statutory

Section 9.49A of the *Local Government Act 1995* is applicable and states:

"9.49A. Execution of documents

- (1) *A document is duly executed by a local government if —*
- (a) *the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or*
 - (b) *it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.*

- (2) *The common seal of a local government is not to be affixed to any document except as authorised by the local government.*
- (3) *The common seal of the local government is to be affixed to a document in the presence of—*
 - (a) *the mayor or president; and*
 - (b) *the CEO,**each of whom is to sign the document to attest that the common seal was so affixed.*
- (4) *A local government may, by resolution, authorise the CEO, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.*
- (5) *A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.*
- (6) *A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.*
- (7) *When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.”*

Risk Related

There is a risk of legislative non-compliance if the Common Seal is affixed to the contract variation without a resolution of Council.

Workforce

The scope of this report can be managed within current resources.

VOTING REQUIREMENTS

Absolute Majority: No

RECOMMENDATION

That, with regard to Use of Common Seal - Chief Executive Officer's Contract of Employment Variation, Council:

- 1. Authorises the Shire President and Chief Executive Officer to affix the Common Seal of the Shire of York to the contract variation for the Chief Executive Officer in accordance with Resolution 150723.**