

SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2

AMENDMENT NO. 37

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 37

Resolved that the Council, in pursuance of the Planning and Development Act 2005, amend the Town Planning Scheme by:

1. Rezoning a portion of Reserve 121 (Lot 606) from “Recreation and Open Space” to Rural Residential as indicated on the proposed scheme mapping.
2. Inserting the following requirements into Schedule 6 – Rural Residential:

AREA	REQUIREMENTS
<u>SPENCERS BROOK ROAD</u> Portion of Reserve 121 (Lot 606) Spencers Brook Road, York	No further subdivision of the subject lot is permitted.

Dated this _____ day of _____

CHIEF EXECUTIVE OFFICER

SCHEME AMENDMENT REPORT

1. **LOCAL AUTHORITY** : SHIRE OF YORK
2. **DESCRIPTION OF TOWN PLANNING SCHEME** : TOWN PLANNING SCHEME NO. 2
3. **TYPE OF SCHEME** : DISTRICT ZONING SCHEME
4. **SERIAL NUMBER OF AMENDMENT** : 37

REPORT

Summary

The purpose of the Scheme Amendment is to amend the Shire of York Town Planning Scheme No. 2 in order to rezone a portion of Reserve 121 (Lot 606) as indicated on the proposed scheme mapping from “Recreation and Open Space” to “Rural-Residential” to enable the purchase of 5974m² by Mr and Mrs Saunders who are the current leaseholders.

Reserve 121 is currently vested in the Shire of York and is approximately 57 hectares in area.

Land Tenure

The land is currently reserved for “Recreation and Open Space” purposes under the provisions of the York Town Planning Scheme No. 2.

The current vesting order for a portion of the reserve are required to be surrendered to the Crown for the conversion to a freehold title and made available for sale.

The details of the Vesting Order are York Part Lot 606 being set apart as Reserve No 121.

Background

A Scheme Amendment was initiated on 19 May 2008 by Council for the same rezoning purpose. However, the amendment stalled due to insufficient information and due to the time period lapsed, it was necessary to re-initiate the scheme amendment.

The amendment was originally initiated as a result of discussions with various government departments and Mrs and Mrs Saunders regarding the sale of the land. State Land Services advised Council on 19 March 2008 that the land should be rezoning for the purposes of sale or long-term lease as follows:

“In February 2007, because of a recent case involving this Department regarding sale of inappropriately zoned land, the Minister for lands re-confirmed the requirement for suitable zoning prior to sale, particularly where the land would end up in private ownership. Therefore in this case sale to the Saunders can’t occur until the land is re-zoned from “public purpose” to “residential”.

I would have thought that re-zoning should also occur for a long term lease.

In accordance with the management order, the Shire of York is currently able to offer a 21 year lease. When the land is re-zoned to “residential”, State Land Services will give favourable consideration to a sale to the Saunders, subject to the Saunders paying all costs and current unimproved value (at time of sale) for the land”.

Further correspondence from the DPI – SLS states as follows:

“In July 2006 our valuation of a 5000 square metre block contains the Saunders buildings was \$75,000 on an unimproved basis. The price since then would increased significantly, and if a sale proceeds in the future, a sale price will be determined after seeking the advice of Landgate’s valuers as to the unimproved land only.

The block created should comfortably contain all of the building belonging to the Saunders, and the frontage must coincide with the road boundary. It appears from measurements provided that about 5000 square metres will be sufficient. I attach a dimensioned sketch previously provided by the Shire of York.

In the first instance the Saunders surveyor should only produce a plan or sketch adequate for the purposes of rezoning. If sale to Saunders occurs in the future, a deposited plan will need to be lodged at Landgate at that time, and State Lands will issue instructions to the licensed surveyor concerned. State Lands has no objection to a plan or sketch being drawn to enable an application to be lodged for rezoning.”

A survey plan has been prepared on behalf of Mr and Mrs Saunders, proposing an area of 5947m² be excised from the reserve for purchase. This area contains the dwelling and associated structures belonging to the applicants.

Although a considerable amount of time has passed since the initiation of the original scheme amendment, the applicants continue to pursue the sale of the land.

Economic Implications

The applicants have put a considerable amount of infrastructure on this Reserve at their own costs and with all the appropriate licences in place.

Social Implications

The excision of land out of Reserve 121 would not appear to impact on future developments within this area.

The dwelling has been sited near the Airfield and within 370 metres of a waste transfer station. The proximity to these facilities have not resulted in complaints from the applicants, the location would not appear to be a barrier. It is considered appropriate that a notification be placed on the Certificate of Title regarding the proximity of these facilities for notation of any prospective purchasers.

SHIRE OF YORK
TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 37
SCHEDULE OF MODIFICATIONS

Nil.

PLANNING AND DEVELOPMENT ACT 2005

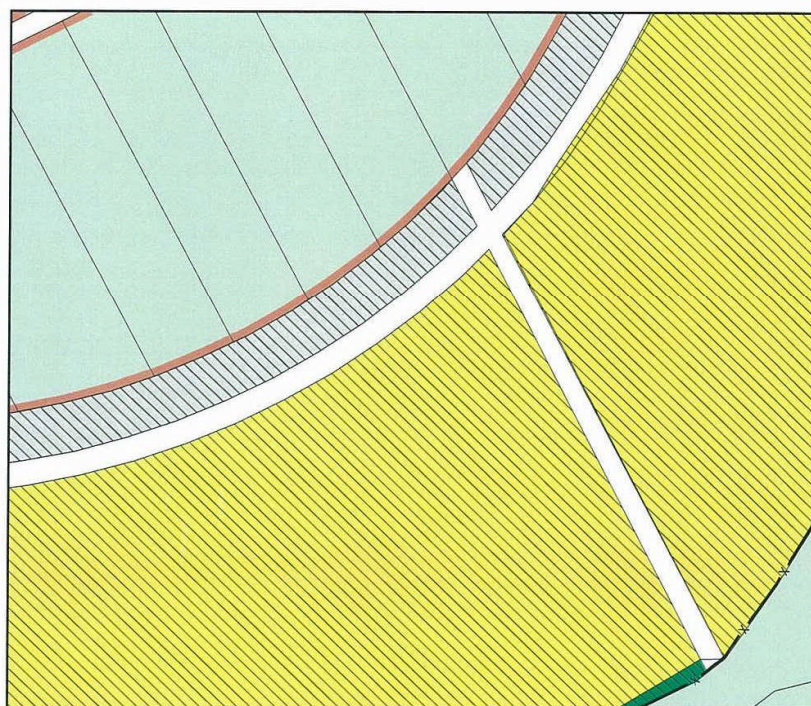
SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 37

The Shire of York Council, under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 hereby amends the above Town Planning Scheme by:

1. Rezoning a portion of Reserve 121 (Lot 606) from “Recreation and Open Space” to Rural Residential as indicated on the proposed scheme mapping.
2. Inserting the following requirements into Schedule 6 – Rural Residential:

AREA	REQUIREMENTS
<u>SPENCERS BROOK ROAD</u> Lot 606, Reserve 121 Spencers Brook Road, York	No further subdivision of the subject lot is permitted.



EXISTING ZONING

LEGEND

York Z 2

-  ROAD
-  GENERAL AGRICULTURE
-  RURAL RESIDENTIAL
-  PUBLIC PURPOSES
-  RAILWAY
-  RECREATION AND OPEN SPACE
-  LPS Town Bdy Land Act - Enquiry data
-  LPS Cadastre - Capture data



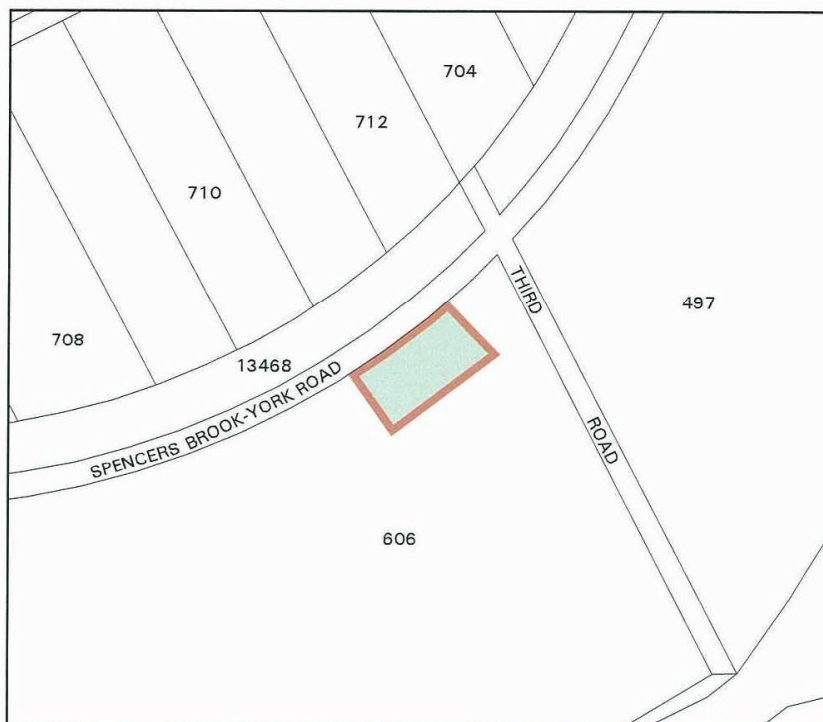
Government of Western Australia
Department for Planning and Infrastructure

SHIRE OF YORK
TOWN PLANNING SCHEME NO 2
AMENDMENT NO. 37



Scale 1:5000

0  50 m



SCHEME AMENDMENT MAP

LEGEND

 LPS Cadastre - Capture data

York Z 2

 RURAL RESIDENTIAL



Government of Western Australia
Department for Planning and Infrastructure

SHIRE OF YORK
TOWN PLANNING SCHEME NO 2
AMENDMENT NO. 37



Scale 1:5000

0  50 m

RESOLUTION TO AMEND SCHEME

Adopted by resolution of the Council of the Shire of York at the Ordinary Meeting of the Council held on theday of.....

EXECUTIVE OFFICER

CHIEF

SHIRE PRESIDENT

RESOLUTION TO ADOPT AMENDMENT TO SCHEME

Adopted by resolution of the Council of the Shire of York at the Ordinary Meeting of the Council held on the day of

(a) that the amendment to the Scheme be adopted with or without modification;

~~(b) that it does not wish to proceed with the amendment to the Scheme,~~
(delete whichever is not applicable)

The Common Seal of the Shire of York was hereunto affixed
by authority of a resolution of the Council in the presence of:

CHIEF EXECUTIVE OFFICER

SHIRE PRESIDENT

Recommended/Submitted for Final Approval

DELEGATED UNDER s. 16 OF THE PD ACT
2005

Date: _____

Final Approval Granted

MINISTER FOR PLANNING

Date: _____

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Reserve 121 – Rezoning – Scheme Amendment 37

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.

FILE NO:	Sp 1.9261
COUNCIL DATE:	19 May 2008
REPORT DATE:	10 April 2008
LOCATION/ADDRESS:	Spencers Brook Road, York
APPLICANT:	Mr & Mrs Saunders
SENIOR OFFICER:	R Hooper, CEO
REPORTING OFFICER:	T Cochrane, MATS
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Appendix A – Scheme Amendment 37
DOCUMENTS TABLED:	Nil

Summary:

The applicant has been requesting to purchase a portion of Reserve 121 – 1¼ acres in area, which is vested in Council. The whole reserve is approximately 57 hectares in area. To allow this to occur, Council is required to complete a Scheme Amendment to change the zoning of the land to incorporate all infrastructures relating to the land leased by Mr and Mrs Saunders from Public Purposes to Rural Residential.

Background:

Council has had ongoing discussions with various departments and the applicants regarding selling a portion of Reserve 121.

The Department for Land Administration wrote to Council requesting the following information on 26 August 2002:

“I refer to a request received by this office to purchase a portion of the above reserve shown bordered yellow on the attached plan by Mr & Mrs Saunders.

Would Council please advise on the following matters:

- 1. is the road fronting the house to an acceptable standard.*
- 2. given that the current lease expired on 30 June 2002, has Council entered into a further lease and if so when does it expire.*
- 3. who owns the improvements on the subject site.*
- 4. has Council issued any other interests over reserve 121 to any other parties.*
- 5. has Council any other comments or objection to the proposal.*

Furthermore a Statutory Declaration will be required from Council to validate the Title over the whole Reserve. An example is enclosed for your information.”

Council considered this matter at its Ordinary Council meeting held on 16 September 2002, where the following motion laid on the table:

“That Council advise the Department of Land Administration that it has no objection to the sale of portion of Reserve 121, as shown in Appendix “A”, and Part York Town Lot 606 Spencer’s Brook Road to Mr and Mrs Saunders on the understanding that no costs are to be charged to the Council.”

Council wrote to the Department of Planning and Infrastructure October 2003, which is detailed as follows:

“The Council is interested in purchasing approximately five hectares of Reserve 121 as shown on the attached map (Appendix A).

You may be aware that the Council operates a Waste Transfer Station within the area shown on Appendix A and is licensed by the Department of Environmental Protection (Licence No 7002/07).

The Council is progressing through a partnership agreement to add on to the transfer station by building a recycling station and in the short term a complete waste recovery facility.

The Council would appreciate you obtaining a valuation on the land and corresponding with the agencies, Water Corporation, Water and Rivers, Western Power etc to determine whether any objections to the sale would be apparent.

Your assistance in progressing this matter as soon as possible would be appreciated, and your contact, should you have any questions, would be welcomed.”

The applicant submitted the following letter on 22 July 2005:

“Since 1951 my family has resided at the above address, my father built the house that stands on this property. The land that the home is built on we lease from the shire.

We would like to do renovations and improvements on the house but are reluctant to do to much as we only own the house and not the land on which it sits.

This letter is a request to see if there is a way we can purchase this acre and a quarter of land.

Our current lease expired on 30th July 2005 we are asking that our lease be renewed at this current time for the next few years or until we hopefully are successful with our endeavour to purchase lot 121.

Hoping to hear from York Shire Council on our above inquiry at your earliest convenience.”

Council wrote to the Department for Planning and Infrastructure regarding the applicants' request and the following response was received:

"I refer to your letter dated 25 August 2005 regarding the sale of a portion of Reserve 121 to Mr Saunders.

A previous request from Mr Saunders to purchase the subject land has been considered previously. However, advice received from the Shire of York that sale should not proceed until options for the surrounding land had been explored, your reference PM:ml 8RM69.

Should the Shire of York support the sale of a portion of Reserve 121 to Mr Saunders, then a formal investigation can be recommenced."

Council considered the proposal at its Ordinary Council meeting on the 21st November 2005, where it was resolved as follows and provided these details in correspondence to the Department for Planning and Infrastructure on the 1st December 2005:

"That Council:

- 1. advise the Department for Planning and Infrastructure that it supports Mr G Saunders request to purchase a portion of Reserve 121 as detailed on the attached map labelled 'Appendix A' and request that a formal investigation commence.*
- 2. advise the applicant that all costs incurred associated with this proposal will be their full responsibility.*

Advice Note:

- a. Department for Planning and Infrastructure - Please disregard Council's correspondence dated 27 October 2003 relating to building a recycling station on this reserve."*

The Department for Planning and Infrastructure wrote to Council on the 8th March 2006 as follows:

"This department is currently awaiting on clearances/comments from service authorities and also a current valuation from the Valuer General's Office.

In the meantime please be aware that Mr Saunders will be responsible for the arrangement and costs of survey."

Correspondence was sent back and forward to the applicants and the Department for Planning and Infrastructure (periods between 10 March 2006 – 25 May 2006) and it was agreed that the applicants would meet all costs. On the 25th May 2006 the following advice was received from the Department for Planning and Infrastructure to State Land Services (different section within the Department) and the following was advised, which Council was provided a copy:

“I refer to your request for comments on the proposed conversion of a portion of the above reserve to freehold.

While it is understood that the land has been leased for some time, conversion is not supported at this stage. The Shire of York is currently advertising a local planning strategy and further consideration needs to be given to the ultimate use of this land.

Once appropriate land use has been determined, structure planning would be required to plan comprehensively and in a co-ordinated manner. In addition the land should be zoned appropriately before any freehold titles are created.

Approval of the proposal prior to these steps would be premature and would set an undesirable precedent for other similar actions in the locality.

The above correspondence was not provided to Council until the 7th August 2006 from the Department for Planning and Infrastructure – Country Branch where the following information was provided:

“Regarding your request dated 1 December 2005, copy enclosed for your reference. State Land Services is unable to proceed at this point in time until the Shire satisfies the concerns of WA Planning Commission letter dated 25th May 2006, copy of which is enclosed for your reference.

For your information I wish to advise that as Reserve 121 is vested to the Shire of York for “Municipal Endowment” only income in the form of rental can accrue to the Shire over Endowment lands. The proceeds from the sale of any portion of Reserve 121 will be retained by the State of WA.”

The applicants were advised of the above correspondence on the 10th August 2006 and further correspondence was sent to the Department for Planning and Infrastructure – State Land Services on the 25th August 2006, which stated as follows:

“Council is aware that structured planning is required and as such has included as part of the Local Planning Strategy an Outline Development Plan primarily for an Equine Precinct that will extend to include the peripheral land that abuts the Avon River.

Council is aware that the sale of this land will be retained by the State of WA.

It is expected that an endorsed Local Planning Strategy should be back from the Western Australian Planning Commission by the end of September and Council looks forward to progressing with this request.”

On the 22nd May 2007 the Department for Planning and Infrastructure – State Land Services requested the status of the Local Planning Strategy Council, at this stage the Local Planning Strategy had still not been endorsed. Council wrote to the Department and advised as follows:

“Attached for your information is an extract from the Equine Precinct Outline Development Plan, which you will note in paragraph two (2) that it states no further subdivisions east or south of Spencers Brook Road should be supported. Please be advised that Council has already supported the subdivision of this lot (up to a maximum of 2 hectares) and therefore the sale of a portion of the land by the Department is supported.

Please note that Council has amended and forwarded the Local Planning Strategy in accordance with the Western Australian Planning Commission’s request. Council is yet to receive an endorsed copy from the Commission, however through Council’s structured planning it has been deemed that no changes will occur to this reserve other than the excision of land, which is to be negotiated with Mr and Mrs Saunders for a freehold title.”

Correspondence received on the 19th March 2008 from the Department for Planning and Infrastructure – State Land Services, states as follows:

“In February 2007, because of a recent case involving this Department regarding sale of inappropriately zoned land, the Minister for lands re-confirmed the requirement for suitable zoning prior to sale, particularly where the land would end up in private ownership. Therefore in this case sale to the Saunders can’t occur until the land is re-zoned from “public purpose” to “residential”.

I would have thought that re-zoning should also occur for a long term lease.

In accordance with the management order, the Shire of York is currently able to offer a 21 year lease. When the land is re-zoned to “residential”, State Land Services will give favourable consideration to a sale to the Saunders, subject to the Saunders paying all costs and current unimproved value (at time of sale) for the land”.

Letter dated 9 April 2008 from Mr & Mrs Saunders.

“In 2006 we agreed to incur all costs associated with the excise of 2 hectares around the dwelling on Lot 121. We contacted Crossland & Hardy Pty Ltd in March 2006, they gave an estimated cost, we were happy with that. We notified DPI on 27th March 06 that we had the estimation from Crossland & Hardy Pty Ltd and looked forward to hearing from them soon.

We are keen to proceed however we need to know the rezoning will be going ahead. We are agreeable to paying the rezoning fees.

This 2 Hectares of land has been leased by the Saunders family since January 22, 1951 the home on it was built by George’s dad as the family home. If we are able to purchase the land the house sits in with a freehold title that would be great, if we can’t, we just need to know...”

Letter dated 1 May 2008 from DPI.

“In July 2006 our valuation of a 5000 square metre block contains the Saunders buildings was \$75,000 on an unimproved basis. The price since then would increased significantly, and if a sale proceeds in the future, a sale price will be determined after seeking the advice of Landgate’s valuers as to the unimproved land only.

The block created should comfortably contain all of the building belonging to the Saunders, and the frontage must coincide with the road boundary. It appears from measurements

provided that about 5000 square metres will be sufficient. I attach a dimensioned sketch previously provided by the Shire of York.

In the first instance the Saunders surveyor should only produce a plan or sketch adequate for the purposes of rezoning. If sale to Saunders occurs in the future, a deposited plan will need to be lodged at Landgate at that time, and State Lands will issue instructions to the licensed surveyor concerned. State Lands has no objection to a plan or sketch being drawn to enable and application to be lodged for rezoning.”

Consultation:

Applicants.

Department for Planning and Infrastructure.

State Land Services.

Statutory Environment:

Planning and Development Act 2005.

Policy Implications:

Nil.

Financial Implications:

No costs are anticipated for the excision of part of the reserve. The applicants will meet all costs and there will be no financial implications to Council.

If no lease arrangements are in place there will be a reduction in the fees Council receives of \$55.00 per annum.

Strategic Implications:

Nil.

Voting Requirements:

Absolute Majority Required: **Yes**

Site Inspection:

Site Inspection Undertaken: **Not applicable**

Triple bottom Line Assessment:

Economic Implications:

Nil implications to Council.

The applicants have put a considerable amount of infrastructure on this Reserve at their own costs and with all the appropriate licences in place.

Social Implications:

The excision of land out of Reserve 121 would not appear to impact on future developments within this area.

The dwelling has been sited near the Airfield and within 370 metres of a transfer station and it has not resulted in complaints from the applicants, the location would not appear to be a barrier.

Environmental Implications:

Nil at this stage.

Comment:

There is no lease agreement in place at the moment and it is a good opportunity to make a decision on this issue.

Council previously looked at using a portion of the Reserve to increase waste disposal options however at this time it is highly unlikely that there will be any expansion of this facility. The entrance of the Transfer Station to the area that the applicant wishes to purchase is approximately 370 metres. If for some reason Council wishes to pursue activities in relation to waste disposal in this area it would be fair to say that it would most likely be developed around the car disposal site and the Drummuster compound and that an adequate buffer will be possible.

**OFFICER RECOMMENDATION
RESOLUTION 090508**

Moved: Cr Lawrance

Seconded: Cr Boyle

“That Council:

- 1. Initiate a Scheme Amendment for the purpose of rezoning a portion of Reserve 121 from Recreation and Open Space to Rural Residential.***

CARRIED (5/1)

Advice Note:

All costs relating to the Scheme Amendment will be recovered from the applicants.

This action is being taken in accordance with correspondence received on the 19th March 2008 from the Department for Planning and Infrastructure – State Land Services.

All appropriate mapping will be inserted prior to the Amendment being advertised and once a sketch is provided by the applicants.

Advertising to be for the statutory period of 42 days.”

SHIRE OF YORK

TOWN PLANNING SCHEME
NO 2

AMENDMENT NO 37

(Version 19 May 2008)

PLANNING AND DEVELOPMENT ACT 2005
RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME
SHIRE OF YORK
TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 37

Resolved that the Council, in pursuance of the Planning and Development Act 2005 amend the above Town Planning Scheme by:

- a) Rezoning a portion of Reserve 121 (Part York Lot 606) in accordance with the sketch from Public Purpose Reserve to Rural Residential Zone.

Dated this _____ day of _____ 2008

CHIEF EXECUTIVE OFFICER

SCHEME AMENDMENT REPORT

1. **LOCAL AUTHORITY** : SHIRE OF YORK
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Land Tenure:

The current vesting order for a portion of the reserve are required to be surrendered to the Crown for the conversion to a freehold title and made available for sale.

The details of the Vesting Order are York Part Lot 606 being set apart as Reserve No 121.

Background:

Council has had ongoing discussions with various departments and the applicants regarding selling a portion of Reserve 121 and is now acting on correspondence received on the 19th March 2008 from the Department for Planning and Infrastructure – State Land Services (DPI – SLS), which states as follows:

“In February 2007, because of a recent case involving this Department regarding sale of inappropriately zoned land, the Minister for lands re-confirmed the requirement for suitable zoning prior to sale, particularly where the land would end up in private ownership. Therefore in this case sale to the Saunders can’t occur until the land is re-zoned from “public purpose” to “residential”.

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The dwelling has been sited near the Airfield and within 370 metres of a transfer station and it has not resulted in complaints from the applicants, the location would not appear to be a barrier.

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 37

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- a) Rezoning a portion of Reserve 121 (Part York Lot 606) in accordance with the sketch from Public Purpose Reserve to Rural Residential Zone.

RESOLUTION TO AMEND SCHEME

Adopted by resolution of the Council of the Shire of York at the Ordinary Meeting of the Council held on theday of.....2008

CHIEF EXECUTIVE OFFICER

SHIRE PRESIDENT

RESOLUTION TO ADOPT AMENDMENT TO SCHEME

Adopted by resolution of the Council of the Shire of York at the Ordinary Meeting of the Council held on the day of2008

- (a) that the amendment to the Scheme be adopted with or without modification;
- (b) that it does not wish to proceed with the amendment to the Scheme,
(delete whichever is not applicable)

The Common Seal of the Shire of York was hereunto affixed
by authority of a resolution of the Council in the presence of:

CHIEF EXECUTIVE OFFICER

SHIRE PRESIDENT

Recommended/Submitted for Final Approval

DELEGATED UNDER s. 16
OF THE PD ACT 2005

Date: _____

Final Approval Granted

MINISTER FOR PLANNING &
INFRASTRUCTURE

Date: _____