

SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 25th May, 2009
COMMENCING AT 3.00PM IN THE
LESSER HALL, YORK**

MISSION STATEMENT

"To build on our history to create our future"

SHIRE OF YORK

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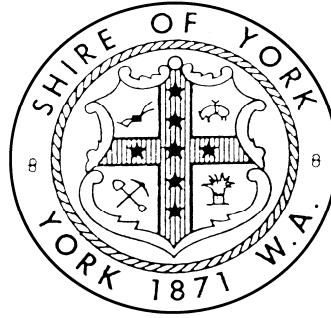
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The Shire of York notifies that anyone who has any application lodged with the Shire of York must obtain and should only rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attaching to the decision made by the Shire of York in respect of the application.

RAY HOOPER
CHIEF EXECUTIVE OFFICER

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SHIRE OF YORK

MINUTES OF THE SPECIAL MEETING OF THE COUNCIL HELD ON MONDAY, 25 MAY 2009, COMMENCING AT 3.00PM IN THE LESSER HALL, YORK.

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

1. OPENING

- 1.1 Declaration of Opening
The Shire President, Cr Pat Hooper, welcomed those in attendance and declared the meeting open at 3.00pm.
- 1.2 Chief Executive Officer to read the disclaimer
Acting CEO, G 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 Hooper, Cr Lawrance, Cr Boyle, Cr Fisher, Cr Randell
- 2.2 Staff
Acting CEO G Stanley, Planner P Ruettjes, EHO P Stevens, ESO J Treloar
- 2.3 Apologies
Nil
- 2.4 Leave of Absence Previously Approved
Nil
- 2.5 Number of People in Gallery at Commencement of Meeting
Three (3)

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

- 3.1 Previous Public Questions Taken on Notice
Not applicable
- 3.2 Written Questions – Current Agenda
Nil

4. PUBLIC QUESTION TIME

No questions asked.

5. APPLICATIONS FOR LEAVE OF ABSENCE

**RESOLUTION
220509**

Moved Cr Randell Seconded Cr Lawrance

**That Council:
Grant Cr Fisher a Leave of Absence for the period June 15, 2009 to June 22, 2009.**

Carried (5/0)

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Not applicable.

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

9. OFFICER'S REPORTS

9.1 Development Services

9. OFFICER'S REPORTS

9.1 DEVELOPMENT REPORTS

9.1.1 Scheme Amendment 42 – Initial Report to Council

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:	PS.TPS.37
COUNCIL DATE:	25 May 2009
REPORT DATE:	20 May 2009
LOCATION/ADDRESS:	Lot 573 (2) Eighth Road, York
APPLICANT:	N/A
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Patrick Ruettjes, Shire Planner
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	A - Scheme Amendment 42 documentation
DOCUMENTS TABLED:	Nil

Summary:

Council is asked to initiate a Scheme Amendment to the Shire of York Town Planning Scheme No. 2 (the 'Scheme') by rezoning Lot 573 (2) Eighth Road (York Caravan Park) from 'Public Purposes' to 'Special Use Zone'.

Background:

This Amendment No. 42 to the Shire of York Town Planning Scheme No. 2 (the 'Scheme') seeks to rezone Lot 573 (No. 2) Eighth Road, York, from the current 'Public Purposes' zoning to 'Special Use Zone' and add an appropriate list of uses and conditions to Schedule 3 of the Scheme. The subject property is located in the northern part of the York townsite, adjacent to the Northam railway line and adjoining the racecourse. It is subject to Strata Plan 18228 and accommodates the York Caravan Park and 11 'chalets' (also referred to as 'Mount Bakewell Resort'). The total area of Lot 573 comprises 49,726 m².

Lot 573 Eighth Road has been part of the previous Scheme Amendment 21 and the conjoint Equine Precinct Outline Development Plan. The previous amendment aimed at rezoning the subject land to 'Residential R10' with the Caravan Park as an 'Additional Use'. The Minister for Planning directed the Shire of York in a Schedule of Modifications to delete Lot 573 Eighth Road from Scheme Amendment 21 and dismissed the amendment proposal of 'Residential R10' plus the 'Additional Use' of 'Caravan Park'. Subsequent discussions with officers from the Department for Planning and Infrastructure ('DPI') have identified a 'Special Use Zone' as the most appropriate zoning for the property.

The purpose of this Scheme Amendment 42 is therefore to follow the Minister's direction and DPI's advice and rezone Lot 573 Eighth Road to a 'Special Use Zone' accommodating the existing uses.

Consultation:

The Scheme Amendment will be forwarded to the Environmental Protection Authority and – upon receipt of the consent to advertise – will be advertised for 42 days in accordance with the Town Planning Regulations 1967.

Statutory Environment:

Planning and Development Act 2005
Shire of York Town Planning Scheme No. 2
Town Planning Regulations 1967

The following provisions apply for 'Special Use Zones' in the Scheme:

"3.4 Special Use Zones

Special Use Zones are set out in Schedule 3 and are in addition to the zones in the Zoning Table. No persons shall use any land or any structure or buildings thereon, in a Special Use Zone except for the purpose set out against that land in Schedule 3 and subject to the conditions set out in Schedule 3 with respect to that land."

Policy Implications:

Nil.

Financial Implications:

Nil, as Scheme Amendment 42 is simply a follow on from Scheme Amendment 21.

Strategic Implications:

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.

Triple bottom Line Assessment:

Economic and Social Implications:

The proposed rezoning will provide for more certainty for the landowners at the Caravan Park and the 'Chalets' and reflects the existing uses on the property.

Environmental Implications:

There are no direct environmental implications expected as simply the existing uses will be recognised. The watercourse to the north of the lot will restrict any development in this portion of the property, but the property is not located in the Avon River floodplain.

Comment:

This Scheme Amendment No. 42 recognizes the existing uses on Lot 573 (2) Eighth Road, York (i.e. Caravan Park, Residential and Short Term Accommodation) and follows the ministerial direction to delete the subject lot from previous Scheme Amendment No. 21. The most appropriate zoning has been identified as a 'Special Use Zone' and appropriate conditions have been included in an addition to Schedule 3 of the Scheme. The conditions simply recognise the existing strata pattern which effectively means that only one additional 'chalet' can be constructed on the only vacant strata lot. No residential density code has been included in the schedule for the reason that any further subdivision or strata creating additional lots will not be supported. The last vacant strata lot comprises 1,000 m² and can only accommodate one dwelling as no reticulated sewer is available in this part of town.

The additional conditions of notifications on the titles relating to the issue that residential amenity may be affected by noise and vibration from the adjacent railway line and adequate noise

abatement measures follow a ministerial direction from Scheme Amendment No. 10 and have been applied to amendments and subdivisions in proximity of the railway line.

It is therefore recommended to initiate Scheme Amendment No. 42 by rezoning Lot 573 (2) Eighth Road from 'Public Purposes' to 'Special Use Zone'.

OFFICER RECOMMENDATION

**RESOLUTION
230509**

Moved: Cr Boyle Seconded: Cr Lawrance

“That Council resolves to -

1. ***Amend in accordance with Section 75 of the Planning and Development Act 2005 the Shire of York Town Planning Scheme No. 2, in respect of Amendment No. 42 by rezoning Lot 573 (No. 2) Eighth Road, York, from ‘Public Purposes’ to ‘Special Use Zone’;***
2. ***Inserting into ‘Schedule 3 – Special Use Zones’ the following with regard to ‘Special Use Zone 5’:***

	No	Particulars of Land	Special Use	Conditions
SU5	5	Lot 573 Eighth Road	Caravan Park, Residential, Short Term Accommodation	<ol style="list-style-type: none">1. Residential development shall be restricted to the existing Strata Lots 2 - 13. No further subdivision/strata will be supported.2. All development shall be subject to application for the local government's planning consent.3. Any development for residential uses or short term accommodation or any tourism purposes shall-<ul style="list-style-type: none">• Incorporate a Notification pursuant to section 70A of the Transfer of Land Act 1893 (as amended), or a similar legal instrument, to be placed on title of the land indicating that residential amenity may be affected by noise and vibration from the rail line, with all costs related to the Notification being borne by the owner/applicant; and• Incorporate noise abatement measures to the satisfaction of the Council.

3. ***Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation;***
4. ***Forward the Town Planning Scheme Amendment to the Environmental Protection Authority requesting consent to advertise; and***
5. ***Upon receipt of consent to advertise from the Environmental Protection Authority, advertise the amendment for a period of 42 days in accordance with the Town Planning Regulations 1967.”***

CARRIED (5/0)

**Item 9.1.1
Appendix A**



SHIRE OF YORK
TOWN PLANNING SCHEME NO. 2
AMENDMENT NO. 42

**PLANNING AND DEVELOPMENT ACT 2005
RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME**

SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 42

Resolved that the Council, in pursuance of the Planning and Development Act 2005 amend the above local planning scheme by:

1. Rezoning Lot 573 Eighth Road, York, from 'Public Purposes' to 'Special Use Zone'.
2. Inserting the following 'Special Use Zone 5' to Schedule 3:

	No	Particulars of Land	Special Use	Conditions
SU5	5	Lot 573 Eighth Road	Caravan Park, Residential, Short Term Accommodation	<ol style="list-style-type: none"> 1. Residential development shall be restricted to the existing Strata Lots 2 - 13. No further subdivision/strata will be supported. 2. All development shall be subject to application for the local government's planning consent. 3. Any development for residential uses or short term accommodation or any tourism purposes shall- <ul style="list-style-type: none"> • Incorporate a Notification pursuant to section 70A of the Transfer of Land Act 1893 (as amended), or a similar legal instrument, to be placed on title of the land indicating that residential amenity may be affected by noise and vibration from the rail line, with all costs related to the Notification being borne by the owner/applicant; and • Incorporate noise abatement measures to the satisfaction of the Council.

Dated this 25th day of May 2009

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 : 42

REPORT

Background

This Amendment No. 42 to the Shire of York Town Planning Scheme No. 2 (the 'Scheme') seeks to rezone Lot 573 (No. 2) Eighth Road, York, from the current 'Public Purposes' zoning to 'Special Use Zone' and add an appropriate list of uses and conditions to Schedule 3 of the Scheme. The subject property is located in the northern part of the York townsite, adjacent to the Northam railway line and adjoining the racecourse. It is subject to Strata Plan 18228 and accommodates the York Caravan Park and 11 'chalets' (also referred to as 'Mount Bakewell Resort'). The total area of Lot 573 comprises 49,726 m².

Lot 573 Eighth Road has been part of the previous Scheme Amendment 21 and the conjoint Equine Precinct Outline Development Plan. The previous amendment aimed at rezoning the subject land to 'Residential R10' with the Caravan Park as an 'Additional Use'. The Minister for Planning directed the Shire of York in a Schedule of Modifications to delete Lot 573 Eighth Road from Scheme Amendment 21 and dismissed the amendment proposal of 'Residential R10' plus the 'Additional Use' of 'Caravan Park'. Subsequent discussions with officers from the Department for Planning and Infrastructure ('DPI') have identified a 'Special Use Zone' as the most appropriate zoning for the property.

The purpose of this Scheme Amendment 42 is therefore to follow the Minister's direction and DPI's advice and rezone Lot 573 Eighth Road to a 'Special Use Zone' accommodating the existing uses.

The Scheme includes the following provisions relating to 'Special Use Zones':

"3.4 Special Use Zones

Special Use Zones are set out in Schedule 3 and are in addition to the zones in the Zoning Table. No persons shall use any land or any structure or buildings thereon, in a Special Use Zone except for the purpose set out against that land in Schedule 3 and subject to the conditions set out in Schedule 3 with respect to that land."

Location Plan and Current Land Uses



Map 1 – Location Plan and Current Land Uses (Aerial Photography ca. 2005)

The aerial photography shows the location of the caravan park in the western part of Lot 573 and the 'chalets' in the eastern portion of the subject lot. The location plan also indicates the approximate location of a 'chalet' built in 2007 which was erected after the aerial photo was taken.

Water Management and Flood Issues

The following map shows that Lot 573 (2) is not directly affected by flood issues from the Avon River.



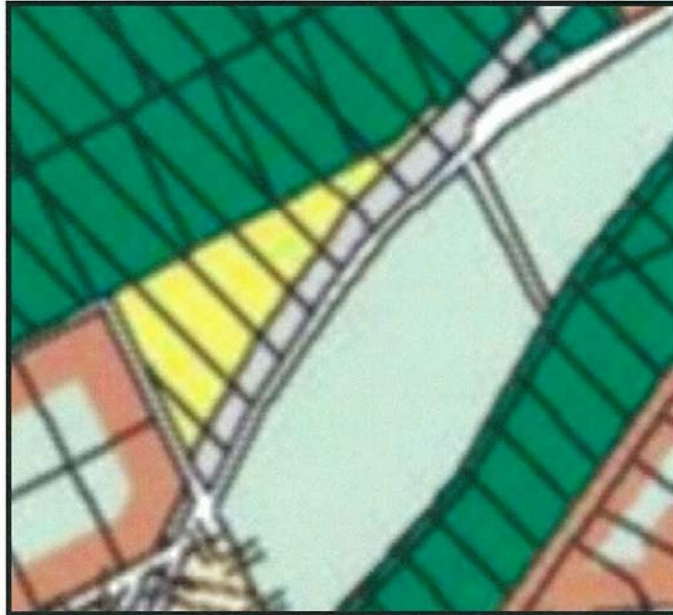
Map 2 – Flood Information: Flood way/flood fringe (yellow), 100 year ARI flood level (blue).

It should be noted, however, that a recognised watercourse runs through the northern portion of the subject land which will restrict development in this area (see Map 1 further above).

Proposal/Conclusion

This Scheme Amendment No. 42 recognizes the existing uses on Lot 573 (2) Eighth Road, York (i.e. Caravan Park, Residential and Short Term Accommodation) and follows the ministerial direction to delete the subject lot from previous Scheme Amendment No. 21. The most appropriate zoning has been identified as a 'Special Use Zone' and appropriate conditions have been included in an addition to Schedule 3 of the Scheme. The conditions simply recognise the existing strata pattern which effectively means that only one additional 'chalet' can be constructed on the only vacant strata lot. No residential density code has been included in the schedule for the reason that any further subdivision or strata creating additional lots will not be supported. The last vacant strata lot comprises 1,000 m² and can only accommodate one dwelling as no reticulated sewer is available in this part of town.

The additional conditions of notifications on the titles relating to the issue that residential amenity may be affected by noise and vibration from the adjacent railway line and adequate noise abatement measures follow a ministerial direction from Scheme Amendment No. 10 and have been applied to amendments and subdivisions in proximity of the railway line.



EXISTING ZONING

LEGEND

York Z 2

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



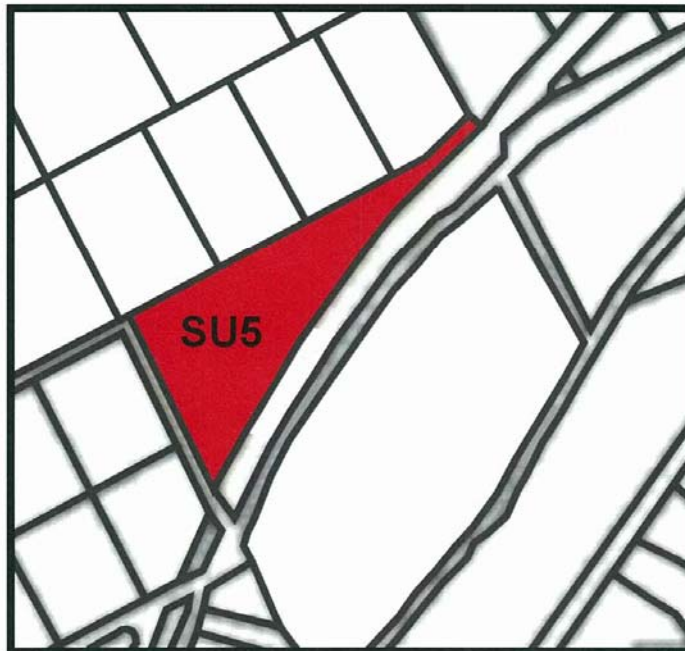
Department for
Planning and Infrastructure



SHIRE OF YORK
TOWN PLANNING SCHEME NO. 2
AMENDMENT NO. 42





Scale 1:5000
0 ——— 100 m



SCHEME AMENDMENT MAP

LEGEND

-  LPS Cadastral - Capture data
- York Z 2
-  SPECIAL USE



Department for
Planning and Infrastructure



SHIRE OF YORK
TOWN PLANNING SCHEME NO. 2
AMENDMENT NO. 42



Scale 1:5000



PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2 - AMENDMENT NO. 42

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 local planning scheme by:

1. Rezoning Lot 573 Eighth Road, York, from 'Public Purposes' to 'Special Use Zone'.
2. Inserting the following 'Special Use Zone 5' to Schedule 3:

	No	Particulars of Land	Special Use	Conditions
SU5	5	Lot 573 Eighth Road	Caravan Park, Residential, Short Term Accommodation	<ol style="list-style-type: none"> 1. Residential development shall be restricted to the existing Strata Lots 2 - 13. No further subdivision/strata will be supported. 2. All development shall be subject to application for the local government's planning consent. 3. Any development for residential uses or short term accommodation or any tourism purposes shall- <ul style="list-style-type: none"> • Incorporate a Notification pursuant to section 70A of the Transfer of Land Act 1893 (as amended), or a similar legal instrument, to be placed on title of the land indicating that residential amenity may be affected by noise and vibration from the rail line, with all costs related to the Notification being borne by the owner/applicant; and • Incorporate noise abatement measures to the satisfaction of the Council.

RESOLUTION TO AMEND SCHEME

Adopted by resolution of the Council of the Shire of York at the Ordinary Meeting of the Council held on the25th.....day of.....May.....2009

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 of2009

- (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: _____

9.2 Administration Reports

Nil

9.3 Finance Reports

Nil

9.4 Confidential Reports

9.4.1 Legal Advice – Lot 573 Eighth Road, York

(Note: The meeting will be closed to the public whilst this matter is dealt with in accordance with the advice received from Council’s legal advisors, McLeod’s Barristers and Solicitors.)

**RESOLUTION
240509**

Moved: Cr Randell

Seconded: Cr Fisher

“That Council:

Close the meeting to the public to consider Confidential Report 9.4.1.”

CARRIED (5/0)

The meeting was closed to the public at 3.07pm.

Cr Fisher left the room at 3.57pm.

Cr Fisher returned at 3.59pm

RESOLUTION

250509

Moved: Cr Boyle

Seconded: Cr Fisher

“That the Officer Recommendation be amended to read as follows”:

“That Council resolves-

1. *to receive the legal advice from the Shire’s solicitors with regard to Lot 573 (2) Eighth Road, York;*

2. *to advise the strata lot owners and the strata company of Lot 573 (2) Eighth Road, York, that after having due consideration of the legal advice, the officer recommends:*

‘The Shire of York has obtained legal advice from its solicitors regarding Lot 573 (2) Eighth Road, York. After having due consideration of the legal advice, the officer advises:

a) *The strata lot owners should work out the issues between them within the scope of their strata scheme and the by-laws of the body corporate.*

b) *The currently used ‘informal’ accessway to Strata Lots 2, 4, 6, 8, 10 and 12 is not located on common property but on Strata Lot 1.*

c) *Legal access to Strata Lots 2 – 13 is via a 3 m wide accessway in the middle of the lots. The 1989 Strata Plan 18228 has not been changed in any way since then.*

d) *This accessway can be reopened by removing all inappropriately constructed fences and structures from the common property.*

e) *The control of the erection of internal fences is not a matter for the Shire and therefore it is inappropriate for the strata lot owners to impose on the Shire the burden to regulate the fence construction and the use of the middle accessway. It is, in fact, a matter for the strata company and the strata lot owners.*

f) *The Shire might take action by requesting the chalets owners to remove any structures that have been erected without planning approval. This does not apply to any fence inside the strata scheme.*

g) *There are no green titles on the property and therefore there are no single houses on the property either. Any development requires planning consent from the local planning authority, the Shire of York.*

h) *Adverse possession claims by the chalet owners against the owner of Strata Lot 1 with regard to the ‘informal’ accessway can be ruled out.*

i) *An easement by prescription claim has to be established over a period of 20 years which does not come into effect until at least 1 September 2009, 20 years after the lodgement of Strata Plan 18228 (1 September 1989).*

j) *Common law dedication of a road requires an act of dedication by the owner of the subject land and then the subsequent use by the public which can be ruled out as well.”*

3. *to ask the strata management company to initiate a strata meeting to discuss the strata issues with all strata lot owners and work towards a solution.”*

CARRIED (5/0)

RESOLUTION

260509

The amended Resolution 250509 became the motion and was put. **CARRIED (5/0)**

REASON: Council deemed that the amended wording provided better clarification.

**RESOLUTION
270509**

Moved: Cr Randell

Seconded: Cr Fisher

“That Council:

Open the meeting to the public.”

CARRIED (5/0)

P Stevens invited the public to return at 4.25pm.

Cr Hooper read out Resolution 260509 of Confidential Item 9.4.1.

9.5 Late Reports

Nil

10. NEXT MEETING

The next Ordinary Meeting of the Council is scheduled to be held on June 15, 2009, commencing at 3.00pm in the Lesser Hall, York.

11. CLOSURE

Cr Hooper thanked all for their attendance and declared the meeting closed at 4.29pm.