



**ORDINARY COUNCIL  
MEETING – MAY 2018**

**LATE REPORT**



***SY061-05/18 – Application to Amend Planning Approval: One Aircraft Hangar and Farm Stay Style Accommodation: Lots 2308 and 8038 Cameron Road, Malebelling***

**FILE REFERENCE:** CA1.60838 & CA1.2131  
**APPLICANT OR PROPONENT(S):** Andrew Cotterell  
**AUTHORS NAME & POSITION:** Carly Rundle  
**RESPONSIBLE OFFICER:** Paul Martin, Chief Executive Officer  
**PREVIOUSLY BEFORE COUNCIL:** SY18-03/16  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** A – Planning Approval  
B – Site Plan  
C – Applicant’s Submission  
D – Proposed Easement Plan

**Nature of Council’s Role in the Matter:**

- Quasi-judicial

**Purpose of the Report:**

An application has been received, pursuant to clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend planning approval issued for One Aircraft Hangar and Farm Stay Style Accommodation at Lots 2308 and 8038 Cameron Road, Malebelling issued 29 March 2016.

The application requests deletion of condition 7.3 of the above planning approval. Council is requested to consider the application.

**Background:**

Planning approval, subject to conditions was issued for One Aircraft Hangar and Farm Stay Style Accommodation at Lots 2308 and 8038 Cameron Road, Malebelling 29 March 2016.

The approval involves the construction and use of one building which includes an aircraft hangar and short stay accommodation.

Approval for an amended site plan and floor plan was issued 23 November 2016 which involved minor modifications to the internal layout of the building, an increase in the wall height from 3.6m to 4.25m, a change in the roof pitch from 20 degrees to 15 degrees and subsequent reduction in ridge height from 6.221 to 6.179m. A copy of the planning approval (as amended) is attached in **Appendix A**.

Condition 7 and 7.3 of the planning approval requires:

*“7. The development hereby approval, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the Shire’s planning department and have been approved in writing:*

.....

*7.3 constructed access for the development hereby approved being provided to the property through either:*

- (i) *a right of carriage-way easement, at the full cost of the applicant, being placed over a constructed access way on Lot 8308 for the benefit of Lot 2308 in accordance with the provisions of the Transfer of Land Act 1893 and the crossing to Needling Hills Road between Lots 2308 and 8038 being constructed to the satisfaction of the Shire. The easement shall be for the purposes of commercial access for the use hereby approved. A copy of the approved easement on the Deposited Plan shall be provided to the Shire; or*
- (ii) *Needling Hill Road being constructed at the full cost of the applicant to the satisfaction of the Shire.”*

A certified building permit was submitted and issued for short term accommodation, hangar and water tank, 25 November 2016 and construction has recently been completed.

Condition 7.3 which is listed as a 'prior to commencement of works condition' has not been met and is currently outstanding. The applicant did submit an easement document to the Shire (attached at **Appendix C**, which is missing pages 2 – 8) with the intent of meeting condition 7.3(i), although it is understood that not all landowners of Lots 2308 and 8038 were willing to consent to the easement and as such the condition requiring a right of carriageway easement over a constructed track on Lot 8038 has not been met. Condition 7.3 (ii) relating to the construction of Needling Hills Road has also not been met.

An application has been received from the landowners (referred to as applicant's) of Lot 2308 to amend planning approval to delete condition 7.3 for the following reasons:

- Condition 7.3 has been unachievable;
- The hangar/accommodation construction has been completed and remains unoccupied due to the refusal of an occupancy certificate;
- Restriction on occupancy and financial issues;
- That they are aware alternate access will be required for future hangars. A viable alternative solution for access is currently being pursued, which will take time to plan, implement and complete. No further details of this solution have been provided.

A copy of the applicant's submission is provided in **Appendix C**.

The applicant has requested the deletion of condition 7.3 which would then allow occupancy of the building and has also suggested that condition 7.3 could be amended to reflect access to the accommodation unit be from Taylor Road through an existing easement or issue a temporary occupancy certificate. The application notes that an agreement will be in place through a Hangar Lease document and Management Plan and also Memorandum of Understanding with White Gum Farm (Lot 8038) that the tenants of the hangar/accommodation will access Lot 2308 via Lot 8038.

As a result of discussion between officers and the applicant regarding access via the easement to Taylor Road, further information was submitted by the applicant which is discussed below.

## Comments and details:

The construction of the hangar prior to meeting condition 7 of the planning condition which is listed as a condition to be met 'prior to commencement of works' is currently in breach of the planning approval.

Condition 8 of the planning approval also requires that:

*"the development hereby approved shall not be occupied or used until all plans, details or works required by Condition(s) 2 and 7 have been implemented."*

Occupation or use of the hangar would be in further breach of the planning approval, as condition 7 has not been met. The application has made reference to refusal of an occupancy certificate, which is assumed to be in reference to the occupancy being restricted due to non-compliance with condition 7.3, as the Shire's Building Surveyor has advised no occupancy permit is required for the building under section 41 of the *Building Act 2011*.

The application to amend planning approval relates to condition 7.3, which requires constructed access being provided to the development. The adequacy of the proposed means of access and egress from the site is a relevant consideration of Clause 67 of the Regulations which specifies matters to be given due regard in considering an application for development approval.

Lot 2308 abuts an unconstructed road reserve to the south and does not currently have direct access to a constructed public road. Clause 5.4 of the Scheme 'development of lots abutting unconstructed roads' applies and specifies the following:

*'Notwithstanding anything elsewhere appearing in the Scheme where an application for planning consent is made in respect of land abutting an unconstructed road or a lot which does not have frontage to a constructed road the local government shall either:*

- a) Refuse the application until the road has been constructed or access by means of constructed road is provided as the case may be;*
- b) Grant the application subject to a condition requiring the applicant to pay a sum of money in or towards payment of the cost or estimated cost of construction of the road or part thereof and any other conditions it thinks fit to impose; or*
- c) Require such other arrangements are made for permanent access as shall be to the satisfaction of the local government.'*

The Scheme defines a constructed road as *'means a track which has been graded and stabilised within a dedicated road reserve'*. Construction of the unconstructed road to the south of Lot 2308 would provide access via a constructed road.

The applicant has provided that constructed access to the property is available via a 'formalised system' where tenants will be required from Cameron Road to pass through the adjoining White Gum Farm (Lot 8038) to access Lot 2308.

Lot 2308 has a reciprocal rights of access easement across various lots connecting to Taylor Road. The easement is approximately 3.5km long and the sketch plan identifies the right of carriageway as having a width of 20.12m off the boundary. The existing track used to access Lot 2308 from Taylor Road is located within this easement alignment, although deviates in one corner of Lot 19924, where approximately 100m of the track is outside of the easement area.

Access via the easement to Taylor Road was considered unsuitable because the access track to the property is not fully within the easement providing a right to use this access to Lot 2308. For the track to be located within an easement would require upgrading and there was uncertainty as to whether works to provide a constructed track within the easement area would be feasible, and whether works on a property not subject of this development application could be conditioned on approval. In this regard it was considered that the easement did not adequately provide 'permanent' constructed access to the development

A submission was made on the original development application by one of the landowners of Lot 19924, objecting to use of the easement for the development and the overall development.

Responsibility for maintenance of the track within the easement and uncertainty regarding liability from use by 'tourists' as the unit is 'short term accommodation' was also raised as a concern, as well as use of the easement for 'commercial purposes' which may be above the level of use originally intended by the easement. Although given that the development is limited to one hangar/accommodation it is considered that these matters are minor.

The applicant provided that access to the development would be through adjoining lot 8038, and with the consent of that landowner, Lot 8038 was included as part of the development application, and an easement was conditioned over the access track to ensure that use of the constructed track through lot 8038 for the development could be maintained in perpetuity and be 'permanent'. A right of carriageway easement was not implemented, as it is understood that not all landowners to be party to the easement consented to it being registered to have effect.

The applicant has advised they have a memorandum of understanding in place with the owner of Lot 8038 regarding access and will confirm this with the tenant of the hangar through a lease agreement, but this is insufficient to provide a permanent, formal access solution for the property.

In summary, permanent constructed access is a requirement of the Scheme. Should condition 7.3 be deleted, whilst an informal constructed track may be available through adjoining lots as long as both parties consent to its use, the arrangements previously put forward by the applicant do not provide certainty to the Shire that this will be available for the lifetime of the development, and as such are not considered sufficient as 'permanent'.

The applicants have since submitted a plan dated 22 May 2018 (**Appendix D**) which proposes a new or modified easement in the corner of Lot 19924 which would, if implemented result in the track to access Lot 2308 from Taylor Road being fully within the easement area and provide permanent access for the one hangar/accommodation. The easement plan has been signed by both landowners listed on the certificate of title of Lot 19924 indicating consent for its implementation.

To ensure that the easement as shown in **Appendix D** be implemented as a condition of development approval, requires Lot 19924 to form part of the development application, which requires the landowners consent to include their property as part of the development. The easement document submitted in Appendix D is not sufficient to indicate that the landowners have consented to inclusion of their property within the development application, which is a requirement of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Should the consent of the landowners of Lot 19924 to include their property within the development be received it would be recommended to Council that the application to amend planning approval (as amended by submitting a plan proposing the new easement) be approved and require a condition be inserted at 7.3 (iii) to read as follows:

*'a right of carriage-way easement, at the full cost of the applicants, being placed over constructed access way on Lot 19924 for the benefit of Lot 2308 in accordance with the provisions of the Transfer of Land Act 1893. A copy of the approved easement on the Deposited Plan shall be provided to the Shire.'*

Should condition 7.3 (iii) be inserted, it is considered condition 6 will no longer be required and should also be deleted.

In absence of consent being received by the landowners of Lot 19924 to include their property within the development application, Council is not able to issue approval to amend the application as per the above. However, it is recommended that Council delegates authority to the CEO to approve the application for amendment as listed above if this consent is subsequently received. Should the consent of the landowners of Lot 19924 not be received, the application will need to be referred back to Council for determination.

#### **Options:**

Council could:

1. Approve the application for amendment as originally proposed.
2. Refuse the application to amend planning approval and list reasons why.
3. Refuse to delegate authority to the CEO and defer the application to allow additional time to the applicant to provide consent of the landowners of Lot 19924 to form part of the development application.
4. Modify the delegations to be given to the CEO.

#### **Implications to consider:**

- **Consultative**  
The application to amend the planning approval does not require further referrals to be undertaken.

- **Policy Implication**  
Council Policy 1.5 - Compliance

CP 1.5 outlines principles for compliance, which includes that enforcement actions should be proportional to the seriousness of a breach, there should be consistency and similar approaches taken in similar cases, and transparency in why actions are taken.

Section 3 of the policy outlines that where non-compliance is identified, the options available include explaining legal requirements and, where appropriate the means to achieve compliance, providing an opportunity to discuss points of issue where appropriate, allowing reasonable timeframes to achieve

compliance, facilitating mediation between parties, issuing a verbal or written warning; or enforcement actions such as issuing an infringement, a notice or prosecution.

At this stage, whilst there is a clear breach of the planning approval and it is the applicant's responsibility to ensure compliance with conditions of planning approval, the applicant did make attempt originally to meet condition 7.3(i) around the same time the building permit was issued. Whilst no further action to meet conditions of approval or resolve the non-compliance was undertaken for a substantial time, it is considered that occupancy of the unit has not commenced, and informal action in accordance with section 5 of CP 1.5 is most appropriate to resolve the compliance issue. This approach is suited particularly as works to meet condition 7 such as construction of the road is likely to take a few months to resolve and may be weather dependent, preparation and lodgement of an easement document may also take a month or more to finalise and requires a flexible approach. Should the non-compliance further or in the opinion of officers, sufficient action is not being taken by the applicants to resolve compliance, it is anticipated the matter will be presented back to Council.

- **Strategic Implications**

The proposal, subject to appropriate conditions being implemented was not considered to have an adverse impact on the amenity of the locality and is consistent with the broad objectives of the Shire of York's 2018-2028 Strategic Community Plan.

- **Financial Implications:**

Council could choose to contribute to the road construction, which may enable its construction occurring and would have a wider benefit as there are a number of properties which are 'landlocked' not having frontage to a constructed road. Construction of a portion of Needling Hills Road would result in the constructed road being brought closer to other properties. However, there are numerous situations within the Shire of similar circumstances which if reviewed as a whole may result in other priorities for road construction being established. It is difficult to quantify the cost of construction required by condition 7.3 (ii) in absence of site specific details for the road construction being available, although is roughly estimated at approximately \$160,000.

Should Needling Hills Road be constructed, the Shire will assume maintenance responsibilities, which will have financial implications.

- **Risk related**

The applicant will have the ability to appeal the determination to the State Administrative Tribunal. Whilst this is a risk that would also have associated workforce implications, Council needs to make orderly and proper planning decisions, and this should not influence decision making.

- **Workforce Implications**

The Shire will need to actively ensure compliance of operations and development which could impact on existing resources.



Voting Requirements:

Absolute Majority Required: Yes

**OFFICER RECOMMENDATION:**

*"That Council;*

**1. Delegates authority to the Chief Executive Officer to, pursuant to clause 77 of the Planning and Development (Local Planning Schemes) Regulations 2015, approve the application to amend planning approval issued 29 March 2016 for one Aircraft Hangar and Farm Stay Style Accommodation: Lots 2308 and 8038 Cameron Road, Malebelling by:**

**(a) Inserting a new condition be inserted at 7.3 (iii) to read as follows:**

*'a right of carriage-way easement, at the full cost of the applicants, being placed over constructed access way on Lot 19924 for the benefit of Lot 2308 in accordance with the provisions of the Transfer of Land Act 1893. A copy of the approved easement on the Deposited Plan shall be provided to the Shire.'*

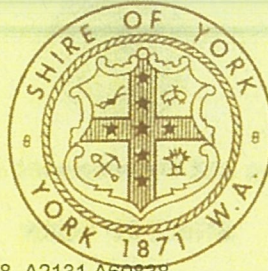
**(b) Deleting condition 6.**

**2. Prescribes that the exercise of delegation referred to in (1) above, shall only be exercised upon receipt of the consent of landowners for inclusion of Lot 19924 as part of the development application."**



# SHIRE OF YORK

1 JOAQUINA STREET, YORK WA 6302  
TELEPHONE (08) 9641 2233  
FACSIMILIE (08) 9641 2202  
WEBSITE [www.york.wa.gov.au](http://www.york.wa.gov.au)  
EMAIL: [records@york.wa.gov.au](mailto:records@york.wa.gov.au)



P.O. Box 22, York  
Western Australia, 6302



Our Ref: O125007 / CA1, A60838, A2131.A60838

Enquiries: Carly Rundle

29 March 2016

Andrew Cotterell  
Po Box 315  
KALAMUNDA WA 6926

Dear Andrew Cotterell,

**PLANNING CONSENT: ONE AIRCRAFT HANGAR AND FARM STAY STYLE  
ACCOMMODATION: LOT 2308 & 8038 CAMERON ROAD, MALEBELLING**

With reference to the above application, please be advised that the Shire of York has approved your application at Ordinary Council Meeting 21 March 2016 (Resolution No. 030316).

Attached is the Notice of Determination issued under Schedule 12 of the Shire of York Town Planning Scheme and Clause 70 of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

It is the applicant's responsibility to read and understand the Notice of Determination attached to this letter and to ensure compliance with the conditions of consent.

If you are dissatisfied with this decision or the conditions of consent, refer to Note 2 of the Notice of Determination.

If you have any further queries regarding this matter please do not hesitate to contact Carly Rundle at the Council Office on 9641 2233 or by email at [records@york.wa.gov.au](mailto:records@york.wa.gov.au).

Yours sincerely,

CARLY RUNDLE  
SENIOR PLANNER

cc: Gary Sargeant  
PO Box 717  
YORK WA 6302



**Planning and Development Act 2005**

**SHIRE OF YORK**

**TOWN PLANNING SCHEME NO. 2**

**NOTICE OF DETERMINATION ON APPLICATION FOR PLANNING CONSENT**

**LOCATION:** Lot 2308 & 8038 Cameron Road, Malebelling

**PLAN/DIAGRAM:** 255532 & 122494

**VOL NO:** 1718/1373      **FOLIO NO:** 506/794

**Application Received:** 4 December 2015

**Application Number:** P1018

**Description of Proposed Development:** One Aircraft Hangar and Farm Stay Style Accommodation

**The Application for Planning Consent is:**

granted subject to the following conditions:

refused for the following reason(s):

**Council resolved (Resolution No. 030316) at Ordinary Council Meeting 21 March 2016:**

**That Council APPROVE the planning application for 'One Aircraft Hangar and Farm Stay Style Accommodation' at Lots 2308 & 8038 Cameron Road, Malebelling, subject to the following conditions:**

**CONDITIONS:**

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed in red by the Shire and except as may be modified by the following conditions.
3. Hours of operation/use of the runway strip on Lot 2308 shall be restricted to occur between 6:30am and 6:30pm.
4. The use of the runway strip on Lot 2308 shall be restricted to aircraft use associated with the Aircraft Hangar & Farm Stay Style accommodation subject of this approval, permissible agricultural uses and non-commercial recreational flights on the property.

5. The development hereby approved is to be made available for short stay accommodation with guests temporarily occupying either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12 month period.
6. Vehicular access to the property, associated with the development hereby approved, shall be restricted to use of the access created in accordance with condition 7.3 only.
7. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the Shire's planning department and have been approved in writing:
  - 7.1 A Landscape Plan.
  - 7.2 Details of a potable water supply.
  - 7.3 Constructed access for the development hereby approved being provided to the property through either:
    - (i) A right of carriage-way easement, at the full cost of the applicant, being placed over a constructed access way on Lot 8308 for the benefit of Lot 2308 in accordance with the provisions of the Transfer of Land Act 1893 and the crossing over Needling Hill Road between Lots 2308 and 8038 being constructed to the satisfaction of the Shire. The easement shall be for the purpose of commercial access for the use hereby approved. A copy of the approved easement on the Deposited Plan shall be provided to the Shire; or
    - (ii) Needling Hill Road being constructed at the full cost of the applicant and to the satisfaction of the Shire.
  - 7.4 A Bush Fire Management Plan.
  - 7.5 Details of two car parking bays for the unit (inclusive of one disabled bay). The parking area, driveway and point of ingress and egress [including crossover(s)] shall be designed and constructed to the satisfaction of the Shire.
8. The development hereby approved shall not be occupied or used until all plans, details or works required by Condition(s) 2 and 7 have been implemented.

**ADVICE NOTES:**

Advice Notes are not part of the formal Council decision, but are provided attached to the Resolution for the safe of completeness.

- Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval will lapse and be of no further effect.
- Note 2: If the applicant and/or owner are aggrieved by this decision, there may also be a right of review under the provisions of Part 14 of the Planning and Development Act 2005. A review must be lodged with the State Administrative Tribunal, and must be lodged within 28 days of the decision being made.
- Note 3: This Decision Notice grants planning consent to the development the subject of this application. It cannot be construed as granting planning consent for any other structure shown on the Approved Development Plan(s), which was not specifically included in this application. Future applications such as intensification of the runway use for commercial

purposes, additional short stay units and facilities associated with the use of the runway are will require further planning consent.

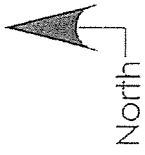
- Note 4: The Landscape Plan should indicate the location of plantings and also include a plant schedule nominating species, planting distances, numbers, planting sizes, together with the anticipated height of each plant at maturity. The Landscaping Plan shall be prepared so that it will not impede compliance with the Shire's Firebreak requirements, and not to create a bushfire hazard in accordance with State Planning Policy 3.7 – Planning in Bushfire Prone Areas, Bushfire Prone Guidelines and AS3959: Construction of Buildings in bush-fire prone areas.
- Note 5: Car Parking is required to be in accordance with Schedule 4 of Town Planning Scheme No. 2 and AS/NZS 2890.1:2004 – Off-street car parking and AS/NZS 2890.6:2009: Off-street parking for people with disabilities. The crossovers are required to comply with the Shire of York's Specifications for Standard Crossover Construction – Rural Residential/General Agriculture.
- Note 6: The Bush Fire Management Plan shall be prepared in accordance with State Planning Policy 3.7 Planning in Bushfire Prone Areas and associated Guidelines for Planning in Bushfire Prone Areas. The plan shall be prepared by an accredited BAL Assessor in accordance with the Guidelines.
- Note 7: In accordance with the provisions of the Building Act 2011, and Building Regulations 2012, an application for a building permit must be submitted to, and approval granted by the Shire, prior to the commencement of the development hereby permitted. The Building Surveyor has provided that the application may involve two separate building classes, and an internal firewall may be required.
- Note 8: An application for any on-site effluent disposal system(s) is to be submitted to the local government and issued by the relevant authority prior to occupation.
- Note 9: A separate development application may be required for all advertising signs. Please contact the Shire's Town Planner to discuss.
- Note 10: The development is required to comply with the Environmental Protection (Noise) Regulations 1997 at all times.



.....  
Carly Rundle  
Senior Planner

29 March 16

.....  
DATE



Extended Runway Centreline

Proposed Hangar Locations

Fuss Retreat Property

A

364 Meter Box (Existing)

355

164

709

Lot 2308

One unit proposed

as part of this application

503

Existing UG Power

Existing Septic System

Existing Building

White Gum Farm

Fuss Retreat Property

Existing Trees On Boundary

15  
Green Screen  
20  
Fire Clearance  
18.5

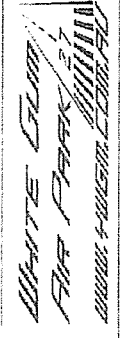
Existing Runway

1 of 4

Shire of York  
**APPROVED PLAN**  
 Appn No P1018  
 This plan relates to the application for planning consent granted ~~refused~~ by Council ~~number~~ 21 MARCH 2016 dated ~~authority~~ 21 MARCH 2016  
 Resolution No 03.03.16  
 Planning Services

SY018-03/16  
**APPENDIX C**

DETAIL A  
 SCALE 1:1500

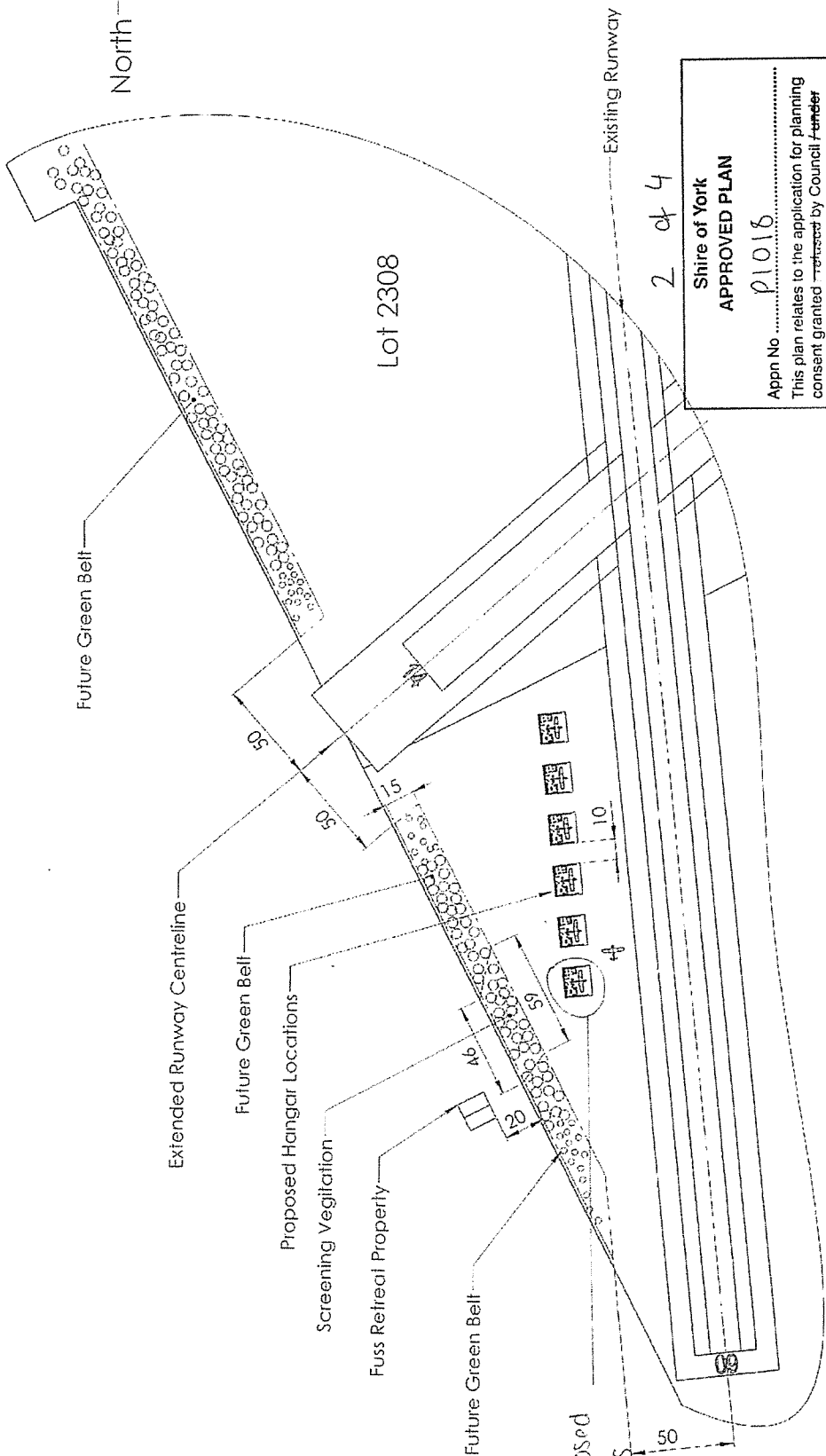


Note:  
 Legal access through easement Sketch Vol 1718 Fol 506  
 Shared access through White Gum Farm  
 All dimensions to nearest Metre

PROJECT NAME	White Gum Air Park
PROJECT ADDRESS	Lot 2308, 245-246 Sts
PROJECT TYPE	NONE
PROJECT STATUS	Proposed
PROJECT REFERENCE	P2015-03000
PROJECT DATE	2015-03-16
PROJECT DRAWN BY	...
PROJECT CHECKED BY	...
PROJECT SCALE	1:1500



North



Lot 2308

One unit proposed as part of this application.

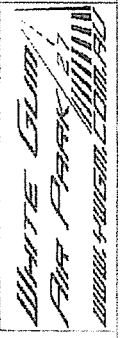
2 of 4

Shire of York  
**APPROVED PLAN**  
 Appn No. **P1018**  
 This plan relates to the application for planning consent granted ~~refused~~ by Council ~~refender~~ **delegated authority dated**  
**21 MAY 2016**  
**RESOLUTION NO. 030216**  
 Planning Services

Landscape Plan  
 White Gum Air Park - YWGM  
 Tel: 0433 246605 Fax: 0433 272 723  
 Hangar/Accommodation Proposal  
 B2015-0300 Site Plan  
 2

Subject to approval of Condition 7.1

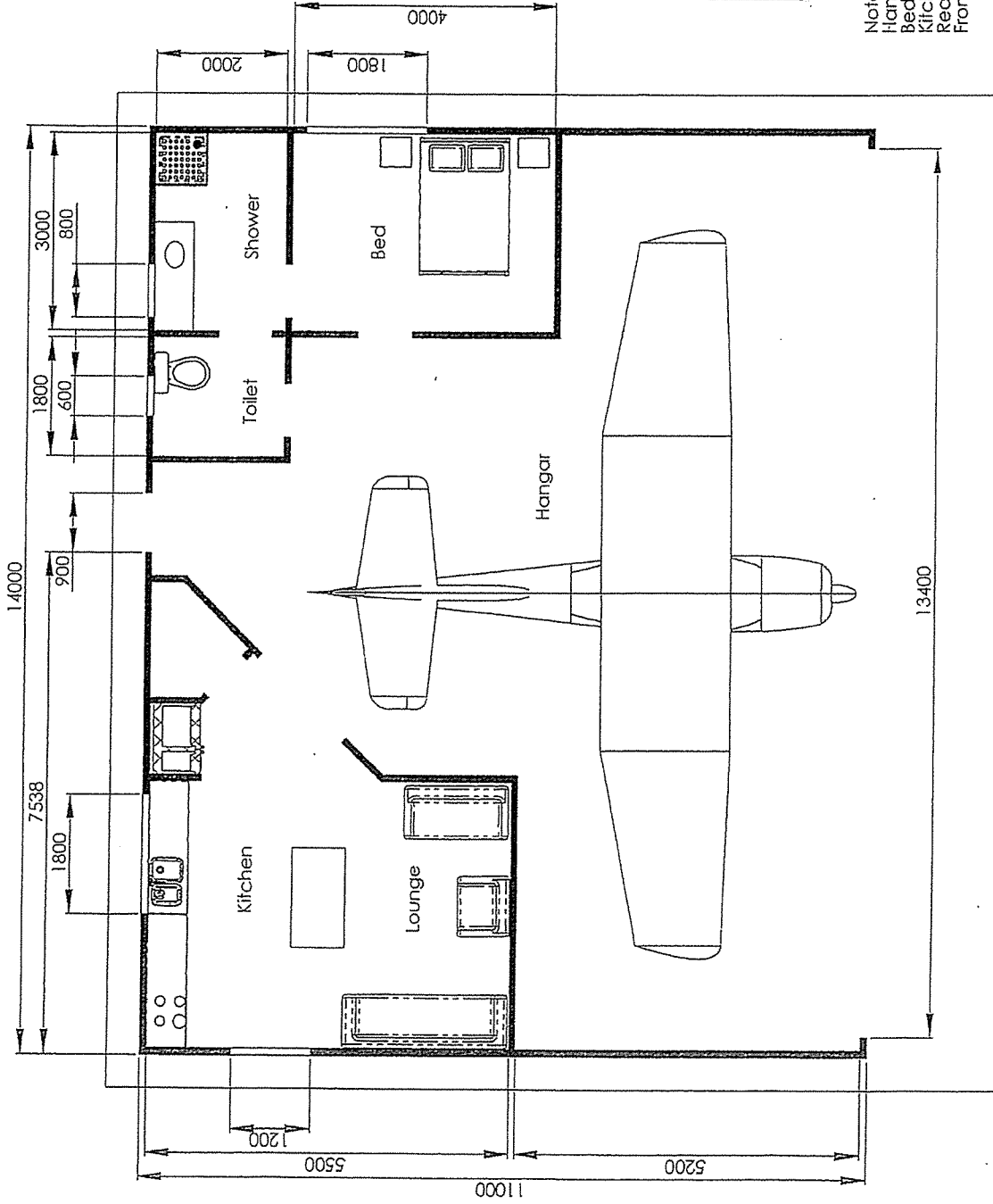
Notes:  
 o Plants to 5m  
 e Plants to 3m  
 Future Green Belt is Subject to Wheatbelt-NRM-Funding.  
 All dimensions to nearest Metre



PROJECT	White Gum Air Park - YWGM
DATE	21 May 2016
SCALE	1:1000
PROJECT NO.	B2015-0300
PROJECT NAME	Hangar/Accommodation Proposal
PROJECT LOCATION	White Gum Air Park, YWGM
PROJECT OWNER	Shire of York
PROJECT CONTACT	Planning Services
PROJECT STATUS	Approved
PROJECT DATE	21 May 2016
PROJECT TIME	10:00 AM
PROJECT PLACE	White Gum Air Park, YWGM
PROJECT DRAWN BY	[Signature]
PROJECT CHECKED BY	[Signature]
PROJECT APPROVED BY	[Signature]
PROJECT DATE	21 May 2016
PROJECT TIME	10:00 AM
PROJECT PLACE	White Gum Air Park, YWGM



21/2/2015



3 of 4.

Shire of York  
**APPROVED PLAN**  
 Appn No. P1018  
 This plan relates to the application for planning consent granted ~~refused~~ by Council ~~under~~ delegated authority dated: 21 March 2016  
CHA  
 Resolution No. 03.0316  
 Planning Services

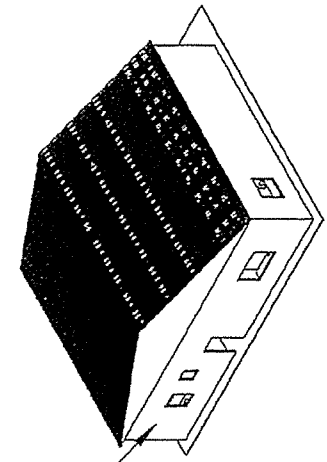
Notes:  
 Hangar Floor Area : 154m<sup>2</sup>  
 Bedroom, Shower and Toilet Doors Not Shown  
 Kitchen Sliding Door Not Shown  
 Rear exit Door not Shown  
 Front Double Sliding Doors Not Shown

**White Gum Air Park**  
 Tel: 0100 246 906 Tel: 0101 279 773  
 Hangar/Accommodation Unit  
 Proposal  
 Tel: 0100 246 906  
 Fax: 0100 246 906  
 Scale 1:100

DATE	12-03-2015
DESIGNED BY	None
CHECKED BY	None
APPROVED BY	None
DATE	12-03-2015
SCALE	1:100

DO NOT SCALE DRAWING

Plan View



Internal Walls :  
Gyprock on Steel Stud,  
Plate & Noggling 4 of 4  
R2.0 Insulation Batts

Concrete Pad and Footing  
To Engineers Specification

**Shire of York  
APPROVED PLAN**

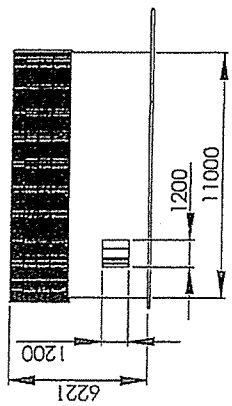
Appn No ..... 01018

This plan relates to the application for planning consent granted /refused by Council /under delegated-authority dated: 21 March 16

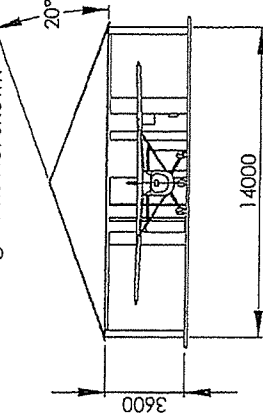
RESOLVION No. 030316

Planning Services

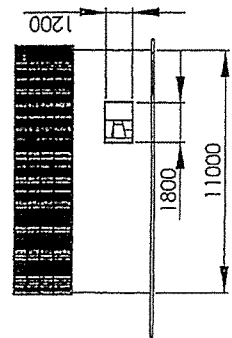
Side Elevation



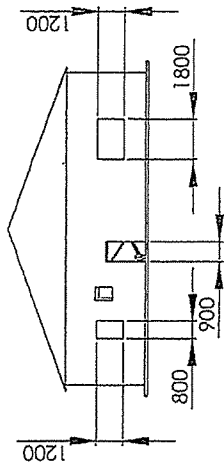
Front Elevation  
Sliding Doors Not Shown



Side Elevation



Rear Elevation



**WHITE GUM  
AIR PARK**

2/12/2015

RELEASED	DATE	BY	PROJECT	SCALE	NO.
01/04/2015	15-00-2015	AJC	White Gum Air Park Hangar/Accommodation Unit Proposal	SCALE 1:200 (ARCHITECT)	1000
DESIGNED	DATE	BY	PROJECT	SCALE	NO.
01/04/2015	15-00-2015	None	White Gum Air Park Hangar/Accommodation Unit Proposal	SCALE 1:200 (ARCHITECT)	1000
DRAWN BY: J. HARRIS CHECKED BY: J. HARRIS DATE: 21/03/16 PROJECT: White Gum Air Park Hangar/Accommodation Unit Proposal SCALE: 1:200 (ARCHITECT) SHEET NO: 1000					

# SHIRE OF YORK

1 JOAQUINA STREET, YORK WA 6302

TELEPHONE (08) 9641 2233

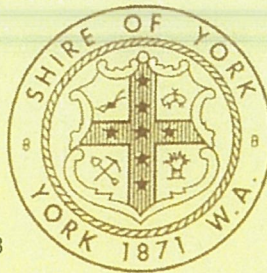
FACSIMILIE (08) 9641 2202

WEBSITE [www.york.wa.gov.au](http://www.york.wa.gov.au)

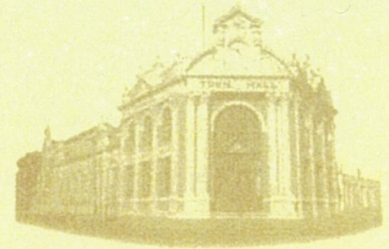
EMAIL: [records@york.wa.gov.au](mailto:records@york.wa.gov.au)

Our Ref: O126820 / CA1.A60838

Enquiries: Carly Rundle



P.O. Box 22, York  
Western Australia, 6302



23 November 2016

Andrew Cotterell  
Po Box 315  
KALAMUNDA WA 6926

Dear Andrew Cotterell,

**AMENDED PLANS TO PLANNING CONSENT (P1018) : ONE AIRCRAFT  
HANGAR AND FARM STAY STYLE ACCOMMODATION: LOT 2308 & 8308  
CAMERON ROAD, MALEBELLING**

The following refers to the application received 2 November 2015 requesting a modification to Planning Consent issued 29 March 2016, for the abovementioned approval.


The proposed modification is as follows:

1. Submission of an amended floor plan and site plan which involves:
  - a. Minor modifications to internal layout;
  - b. Increase in wall height from 3.6m to 4.25m;
  - c. Change of roof pitch from 20 degrees to 15 degrees and subsequent reduction in ridge height from 6.221 to 6.179m.

Please be advised that the Shire of York is prepared to approve the modifications under delegated authority and a copy of the revised plan floor plan and elevations (replacing approved plan 3 and 4 of the original planning consent) has been enclosed herewith. The revised plans are to be read in conjunction with the conditions and advice notes and approved plans 1 & 2 of the original planning consent dated 29 March 2016.

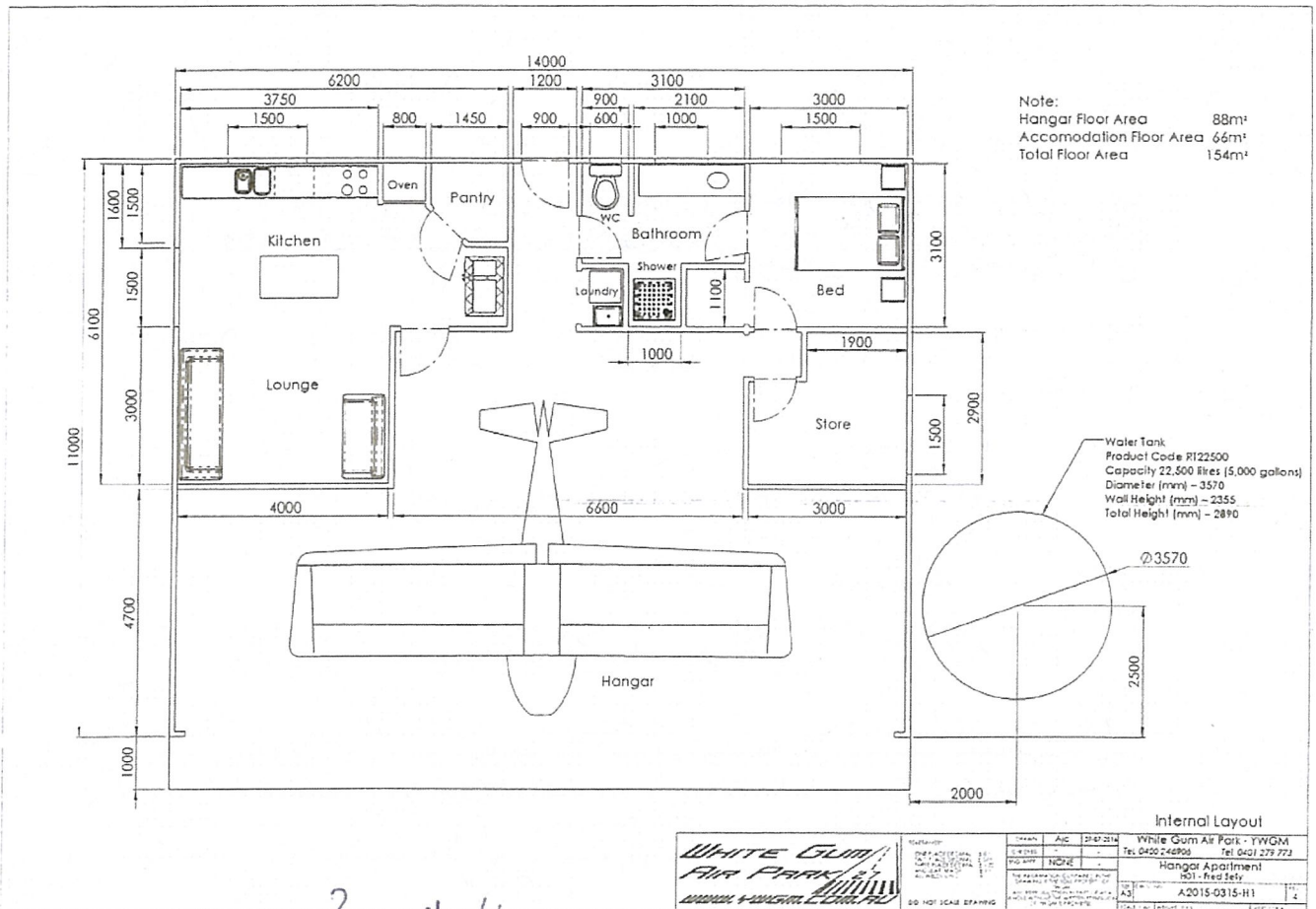
If you have any further queries regarding this matter please do not hesitate to contact Carly Rundle, Senior Planner at the Council Office on 9641 2233 or by email at [records@york.wa.gov.au](mailto:records@york.wa.gov.au).

Yours sincerely,



PAUL CREWE  
EMIDS

# P1018 Amended Plan Application



3 of 4

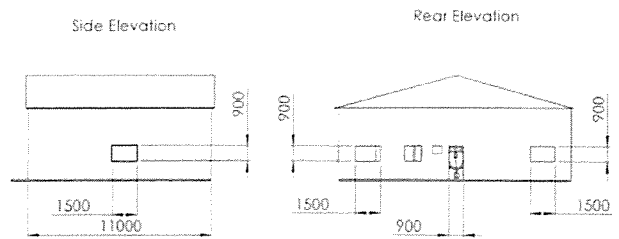
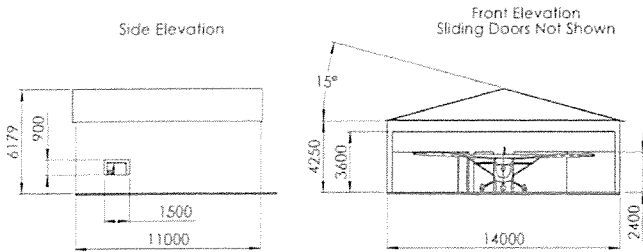
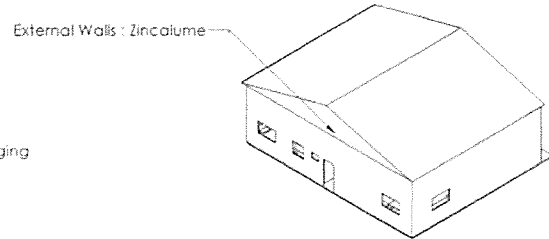
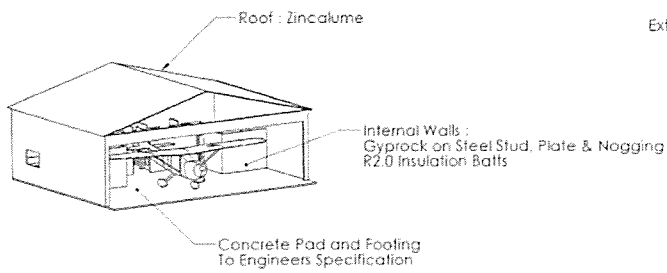
**Shire of York**  
**APPROVED PLAN**

Appn No ..... P1018 .....

This plan relates to the application for planning consent granted ~~refused~~ by Council ~~under~~ delegated authority dated:  
23 November 2016

.....  
 Planning Services

P1018 - Amended  
Plan Application



4 of 4

**Shire of York  
APPROVED PLAN**

Appn No P1018

This plan relates to the application for planning consent granted / ~~refused by Council~~ / under delegated authority dated:  
23 November 2016

*[Signature]*  
Planning Services

<b>WHITE CLIFF AIR PARK</b>		White Gum Air Park - YWGM Tel: 0430 248906 Tel: 0421 279 979	
PROJECT: HANGAR APARTMENT		101 - Red Selby	
DRAWN: [Name]		A2015-0315-H1	





Right of  
Carriageway  
Easement  
through to  
Taylor Road

Development Site

Needling Hill Road  
Constructed to this point  
from Cameron Road

Lot 19919

Lot 2308

Lot 8033

Needling Hill Road

Cameron Rd

Taylor Road





## Planning Consent: One Aircraft Hangar and Farm Stay Style Accommodation Lot 2308 Cameron Road Malebelling

### Application To Amend Condition: 7.3

#### Situation:

The completed Hangar/Accommodation Unit at White Gum Air Park remains unoccupied due to the refusal of an occupancy certificate.

#### Cause:

Condition 7.3 has been unachievable.

#### Condition 7.3:

Constructed access for the development hereby approved being provided to the property through either:

- (i) A right of carriage-way easement, at the full cost of the applicant, being placed over a constructed access way on Lot 8308 for the benefit of Lot 2308 in accordance with the provisions of the Transfer of Land Act 1893 and the crossing over Needling Hill Road between Lots 2308 and 8038 being constructed to the satisfaction of the Shire. The easement shall be for the purpose of commercial access for the use hereby approved. A copy of the approved easement on the deposited Plan shall be provided to the Shire.
- (ii) Needling Hill Road being constructed at the full cost of the applicant and to the satisfaction of the Shire.

#### Intention:

An easement was drawn up and approved by Landgate (Appendix 1 DP408075). A Grant of Easement Deed was drafted by McLeods Barristers & Solicitors (Appendix 2). The documents were inspected by Formbys Lawyers on behalf of White Gum Farm at Lot 8308.

#### Result:

The legal agreement failed.

Construction of the road was never a viable option.

- (i) Formbys Lawyers advice was that "There should be no requirement to build a road because there is already a road. Also Lot 2308 has the benefit of an easement over other property on which there is a road already formed". The document then goes on to say "commercial easement is not an expression which has any defined or accepted meaning under the Transfer of Land Act, or in the general law". (Appendix 3).
- (ii) The cost of constructing Needling Hill Road to the satisfaction of the Shire is uneconomical for one hangar.

#### Problem:

Hangar 01 was completed and ready for occupancy more than 7 weeks ago. We have a tenant

waiting to make use of it. We have collected zero return for our investment which began over 2 years ago. This is the flagship hangar being watched by many, delays in occupancy are damaging to our financial situation and our reputation.

Solution:

We are well aware alternative access will be required for the future hangars at White Gum Air Park. A viable solution for this is currently underway. This of course takes some time to plan, implement and complete.

I am seeking your reconsideration/modification to condition 7.3 thereby, permitting the issue of an occupancy certificate by Paul Martin.

I suggest two options.

Option 1 - As suggested by Paul Martin (e-mail of 24-04-2018)  
Change condition 7.3 to use the existing easement

Option 2 – Allow a temporary Occupancy Certificate.  
Allowing one vehicle access to the hangar.

Note: By agreement with the tenant and in agreement with our Hangar Lease Document and Management Plan and also with a Memorandum of Understanding with White Gum Farm, the tenant will access lot 2308 via Lot 8308.

Conclusion:

This is a simple case of one hangar, one vehicle, for a maximum of 90 days in the year. There are no issues for current vehicles using the existing access; it has been used safely for 30 years.

Access for emergency vehicles is suitable and remains unchanged.

Access via White Gum Farm is currently in use.

The lease to a single tenant is long term.

There are no tourists or tourist activities involved.

There is no public access.

There is zero cost to the Shire.

There is no danger to persons or property in making this decision.

We are legal and above board.

There will be no impact or changes to the current operations.

The BAL rating for the property is LOW.

All building certificates are in place.

Thank you for your consideration.

Andrew & Mary Cotterell  
0400 246 906  
03-05-2018

Inc:

Appendix 1 - DP408075 Easement Plan

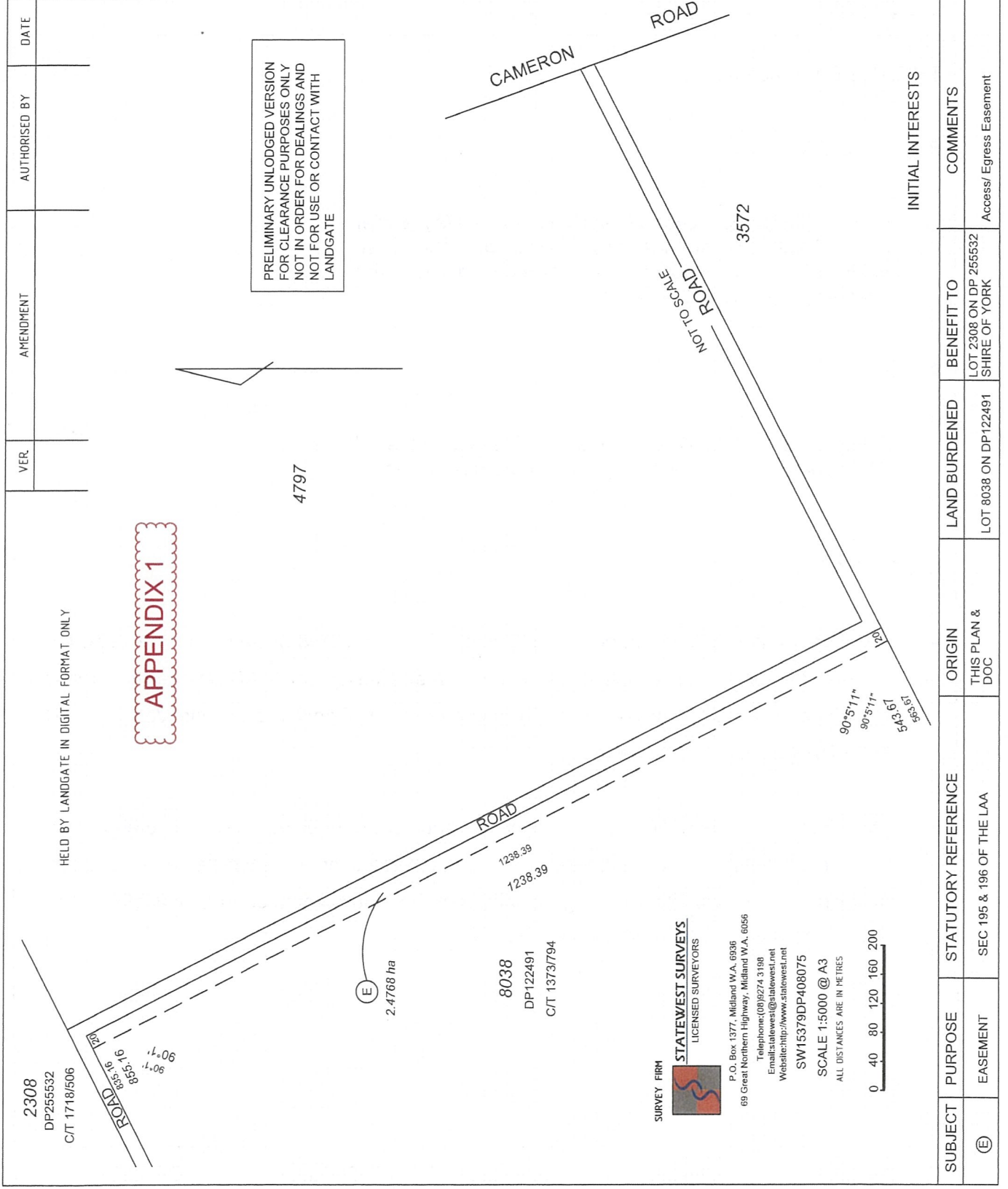
Appendix 2 - Pages From Easement Deed

Appendix 3 – Extract from Formbys Lawyers

TYPE	FREEHOLD	S.S.A.	YES
PURPOSE	INTEREST		
PLAN OF			
EASEMENTS AND / OR INTERESTS	OVER LOT 8038 ON DP 122491.		
FORMER TENURE			
LOCAL AUTHORITY	SHIRE OF YORK		
LOCALITY	MALEBELLING		
D.O.L. FILE			
FIELD RECORD			
SURVEYOR'S CERTIFICATE - REG 54	I, R-J.M. Rogers hereby certify that this plan is accurate and is a correct representation of the - (a) - survey, and/or (b) - calculations from measurements recorded in the field records. [* delete if inapplicable] undertaken for the purposes of this plan and that it complies with the relevant written law(s) in relation to which it is lodged		
LICENSED SURVEYOR	LOGGED	DATE	
DATE	FEE PAID	ASSESS No.	
I.S.C.	EXAMINED	DATE	
WESTERN AUSTRALIAN PLANNING COMMISSION		DATE	
FILE		DATE	
Delegated under S.16 PRD Act 2005		DATE	
SUBJECT TO	IN ORDER FOR DEALINGS		
FOR INSPECTOR OF PLANS AND SURVEYS	APPROVED	DATE	
INSPECTOR OF PLANS AND SURVEYS		DATE	
(S. 18 Licensed Surveyors Act 1999)			



DEPOSITED PLAN  
**408075**  
SHEET 1 OF 1 SHEET  
VERSION 1



INITIAL INTERESTS		INITIAL INTERESTS				
SUBJECT	PURPOSE	STATUTORY REFERENCE	ORIGIN	LAND BURDENED	BENEFIT TO	COMMENTS
(E)	EASEMENT	SEC 195 & 196 OF THE LA	THIS PLAN & DOC	LOT 8038 ON DP122491	LOT 2308 ON DP 255532 SHIRE OF YORK	Access/ Egress Easement

APPENDIX 2

FORM APPROVED  
NO. B2891

WESTERN AUSTRALIA  
TRANSFER OF LAND ACT 1893 AS AMENDED

BLANK INSTRUMENT FORM

GRANT OF EASEMENT

(Note 1)

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

BETWEEN :

GARY LESLIE SARGEANT of 70 Pembury Way, Butler )  
in the State of Western Australia (**Grantor**) which term )  
shall where the context so admits include the )  
successors in title of the Grantor )

AND

AERO LINE PTY LTD (ACN 606 253 909) (**Grantee**) of )  
24 Sundew Road, Gooseberry Hill, Western Australia )

RECITALS :

- A. The Grantor is registered subject to the encumbrances noted at Item 1 of the Schedule as the proprietor of an estate in fee simple in land being Lot 8038 on Deposited Plan 122491 and being the whole of the land comprised in Certificate of Title Volume 1373 Folio 794 (**Servient Tenement**).
- B. The Grantee is or is entitled to be registered subject to the encumbrances noted at Item 2 of the Schedule as the proprietor of an estate in fee simple in land being Lot 2308 on Deposited Plan 255532 and being the whole of the land comprised in Certificate of Title Volume 1718 Folio 506 (**Dominant Tenement**).

**APPENDIX 2**

EXECUTED by the parties as a Deed

SIGNED by the said GARY LESLIE    )  
SARGEANT in the presence of:        )

WITNESS SIGN:

PRINT FULL NAME:

ADDRESS:

OCCUPATION:

EXECUTED BY AERO LINE PTY LTD    )  
(ACN 606 253 909) pursuant to Section 127    )  
of the Corporations Act:                            )

\_\_\_\_\_  
Full Name of Sole Director & Sole Secretary

\_\_\_\_\_  
Signature of Sole Director & Sole Secretary

# APPENDIX 2

## INSTRUCTIONS

1. This form may be used only when a "Box Type" form is not provided or is unsuitable. It may be completed in narrative style.
2. If insufficient space hereon Additional Sheet Form B1 should be used.
3. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
4. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

## NOTES

1. Insert document type.
2. A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of the witness must be stated.

## OFFICE USE ONLY

LODGED BY                      McLeods  
ADDRESS                        220 - 222 Stirling Highway  
   CLAREMONT WA 6010  
  
PHONE No.                      9383 3133  
FAX No                          9383 4935  
  
REFERENCE No.                FG:COTT:38931 Easement  
  
ISSUING BOX No.              346K

PREPARED BY                 McLeods  
  
ADDRESS                        220 - 222 Stirling Highway  
   CLAREMONT WA 6010  
  
PHONE No.    9383 3133                FAX No.            9383 4935

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY.

## TITLES, LEASES, DECLARATIONS ETC. LODGED HERewith

1. _____	Received Items
2. _____	Nos.
3. _____	
4. _____	
5. _____	
6. _____	Receiving Clerk

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

EXAMINED

To Whom It May Concern.

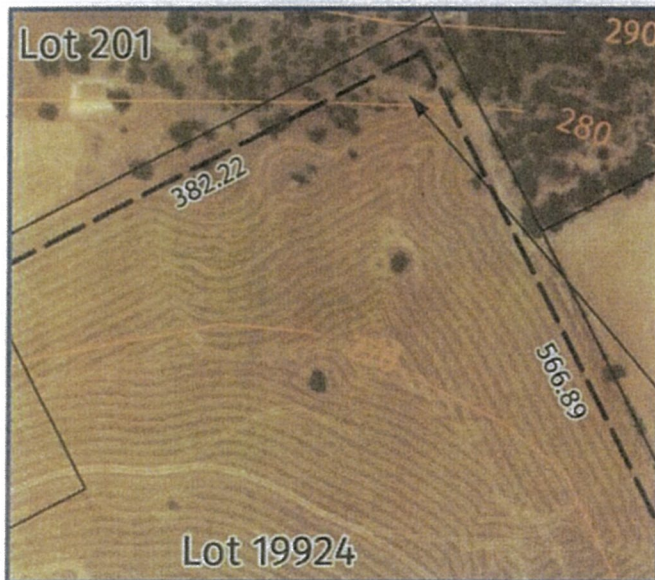
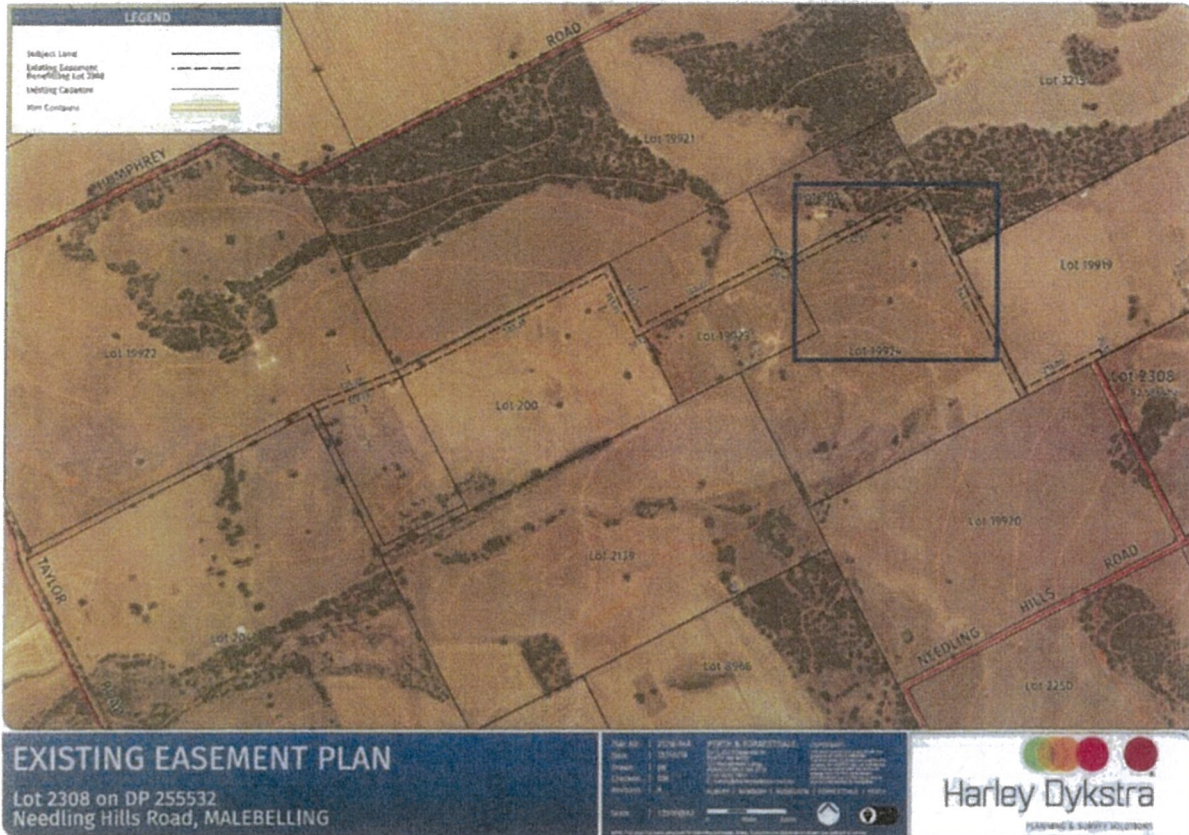
We, Russell Collins and Warwick Collins, being the owners of Lot 19924 as shown on the below plan, hereby agree to the re-alignment of the easement documentation by supplementary documents produced by Landgate. The document will depict the true and accurate position of the current road.

Signed: R Collins

Signed: WB Collins

Date: 22/5/18

Date: 22-05-18



Re-alignment Area

