



SHIRE OF YORK

## NOTICE OF MEETING

Dear Councillors

I respectfully advise that a SPECIAL COUNCIL MEETING will be held in the Lesser Hall, York Town Hall, York, on Wednesday, 14 March 2018, commencing at 5.00pm.

MEETING AGENDA ATTACHED

*Suzie Haslehurst*

SUZIE HASLEHURST  
ACTNG CHIEF EXECUTIVE OFFICER  
Date: 9 March 2018

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



## **Local Government Act 1995 (as amended)**

### **Part 1 Introductory Matters**

#### 1.3. Content and intent

- (1) This Act provides for a system of local government by —
  - (a) providing for the constitution of elected local governments in the State;
  - (b) describing the functions of local governments;
  - (c) providing for the conduct of elections and other polls; and
  - (d) providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.
- (2) This Act is intended to result in —
  - (a) better decision-making by local governments;
  - (b) greater community participation in the decisions and affairs of local governments;
  - (c) greater accountability of local governments to their communities; and
  - (d) more efficient and effective local government.
- (3) In carrying out its functions a local government is to use its best endeavours to meet the needs of the current and future generations through an integration of environmental protection, social advancement and economic prosperity.

### **Part 2 Constitution of Local Government**

#### **Division 2 Local Governments and Councils of Local Governments**

#### 2.7 The Role of Council

- (1) The Council —
  - (a) directs and controls the Local Government's affairs; and
  - (b) is responsible for the performance of the Local Government's functions.
- (2) Without limiting subsection (1), the Council is to —
  - (a) oversee the allocation of the Local Government's finances and resources;and
  - (b) determine the Local Government's policies.

#### **Meetings generally open to the public**

- 5.1.** (1) Subject to subsection (2), the following are to be open to members of the public —
- (a) all council meetings; and
  - (b) all meetings of any committee to which a local government power or duty has been delegated.
- (2) If a meeting is being held by a council or by a committee referred to in subsection (1) (b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —
- (a) a matter affecting an employee or employees;
  - (b) the personal affairs of any person;
  - (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;
  - (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
  - (e) a matter that if disclosed, would reveal —
    - (i) a trade secret;
    - (ii) information that has a commercial value to a person; or
    - (iii) information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government;

- (f) a matter that if disclosed, could be reasonably expected to —
    - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
    - (ii) endanger the security of the local government's property; or
    - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety;
  - (g) information which is the subject of a direction given under section 23 (1a) of the *Parliamentary Commissioner Act 1971*; and
  - (h) such other matters as may be prescribed.
- (3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.



Shire of York

## **G 2.6 PUBLIC QUESTION TIME**

### **Policy Statement**

- 1.0 “Public Question Time” will be limited to 15 minutes\*. The Council may exercise a discretion to extend the time by resolution if required. If there are questions remaining unasked at the expiration of the time allotted members of the public will be asked to submit their questions in writing to the Chief Executive Officer who will provide a written reply with the response placed in the Agenda of the next Ordinary Meeting of the Council.  
  
*\* A minimum of 15 minutes is provided by Regulation 6(1) of the Local Government (Administration) Regulations 1996 (S.5.24 of the Local Government Act 1995)*
- 2.0 Questions may be asked at the Ordinary Council Meeting and any Committee meeting on any matter affecting the Council and the Shire’s operations. Questions submitted to Special Meetings of the Council will be restricted to the subject matter of the meeting.
- 3.0 Each questioner will be limited to two (2) questions. Statements or long preamble are not permitted.
- 4.0 People wishing to ask questions will be encouraged to put their questions in writing or in a prescribed form and submit them to the Chief Executive Officer prior to 10 am on the day of the meeting. This allows for an informed response to be given at the meeting. Oral questions are permitted.
- 5.0 Priority will be given to questions about matters on the agenda for the meeting and which are submitted in accordance with 4.0 above.
- 6.0 Every person who wishes to ask a question must identify themselves and register with a Council Officer immediately prior to the meeting. Subject to 5.0 above questions will be taken in the order in which people register.
- 7.0 Questions containing offensive remarks, reference to the personal affairs or actions of Elected Members or staff, or which relate to confidential matters or legal action will not be accepted. Questions that the Presiding Member considers have been answered by earlier questions at the meeting or earlier meetings may not be accepted.
- 8.0 On receipt of a question the Presiding Member may answer the question or direct it to the Chief Executive Officer to answer. If the question is of a technical nature the Chief Executive Officer may direct the question to a senior technical officer present. If the question requires research it will be taken on notice.
- 9.0 There will be no debate on the answers to questions.

- 10.0 A summary of the question and the answer will be recorded in the minutes of the Council meeting at which the question was asked.
- 11.0 Public Question Time guidelines incorporating this policy are being prepared and will include information on the other methods of enquiry that are available to members of the public to obtain information from the Shire.

Adopted 21 October 2013  
Amended 17 September 2015  
Amended 23 November 2015







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SHIRE OF YORK

A SPECIAL MEETING OF THE COUNCIL WILL BE HELD ON WEDNESDAY, 14 MARCH 2018, COMMENCING AT 5.00PM IN THE LESSER HALL, YORK TOWN 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

1.2 Disclaimer

The Shire President advised the following:

*"I wish to draw attention to the Disclaimer Notice contained within the agenda document and advise members of the public that any decisions made at the meeting today, can be revoked, pursuant to the Local Government Act 1995.*

*Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received. Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material."*

1.3 Standing Orders

1.4 Announcement of Visitors

1.5 Declarations of Interest that Might Cause a Conflict

*Councillors/Staff are reminded of the requirements of s5.65 of the Local Government Act 1995, to disclose any interest during the meeting when the matter is discussed and also of the requirement to disclose an interest affecting impartiality under the Shire of York's Code of Conduct.*

Name	Item No & title	Nature of Interest (and extent, where appropriate)

## 1.6 Declarations of Financial Interests

*A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration*

*Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.*

<b>Name</b>	<b>Item No &amp; title</b>	<b>Nature of Interest (and extent, where appropriate)</b>

## 1.7 Disclosure of Interest that May Affect Impartiality

*Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member/employee is also encouraged to disclose the nature of the interest. The member/employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member/employee declares that their impartiality will not be affected then they may participate in the decision making process.*

<b>Name</b>	<b>Item No &amp; Title</b>

## 2 ATTENDANCE

- 2.1 Members
- 2.2 Staff
- 2.3 Apologies
- 2.4 Leave of Absence Previously Approved
- 2.5 Number of People in the Gallery at Commencement of the Meeting

## 3 PUBLIC QUESTION TIME

Public Question Time is conducted in accordance with the Act and Regulations. In addition to this the Shire's Council Meetings Local Law 2016 states –

### **6.7 Other procedures for question time for the public**

*(1) A member of the public who wishes to ask a question during question time must identify themselves and register with a Council Officer immediately prior to the meeting.*

*(2) A question may be taken on notice by the Council for later response.*

*(3) When a question is taken on notice the CEO is to ensure that—*

*(a) a response is given to the member of the public in writing; and*

*(b) a summary of the response is included in the agenda of the next meeting of the Council.*

*(4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—*

*(a) declare that he or she has an interest in the matter; and*

*(b) allow another person to respond to the question.*

*(5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.*

*(6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.*

*(7) The Presiding Member may decide that a public question shall not be responded to where—*

*(a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;*

*(b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or*

*(c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.*

*(8) A member of the public shall have 2 minutes to submit a question.*

*(9) The Council, by resolution, may agree to extend public question time.*

*(10) Where any questions remain unasked at the end of public question time they may be submitted to the CEO who will reply in writing and include the questions and answers in the agenda for the next ordinary Council meeting.*

*(11) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.*

3.1 Written Questions – Current Agenda

3.2 Public Question Time

#### **4 APPLICATIONS FOR LEAVE OF ABSENCE**

#### **5 PRESENTATIONS**

5.1 Petitions

*Nil*

5.2 Presentations

*Nil*

5.3 Deputations

*Nil*

5.4 Delegates reports

*Nil*

**6 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

**7 OFFICER'S REPORTS**

***SY025-03/18 – Responsible Authority Report: Form 2 Application to Mid-West Wheatbelt Joint Development Assessment Panel to extend period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronans***

**FILE REFERENCE:** GR2.290  
**APPLICANT OR PROPONENT(S):** LSV Borello, AMI Enterprises Pty Ltd  
**AUTHORS NAME & POSITION:** Carly Rundle, Senior Planner  
**RESPONSIBLE OFFICER:** Paul Martin, Chief Executive Officer  
**PREVIOUSLY BEFORE COUNCIL:** 12 February 2018 – SY001-02/18  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** Nil

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

- Advocacy

**Purpose of the Report:**

To update Council on the current status of the Form 2 application submitted to the Mid-West/Wheatbelt Joint Development Assessment Panel (JDAP) to extend period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronan's.

**Background:**

A development application for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway was refused by the JDAP 31 August 2015. The determination notice (which gives effect to the decision) was issued on the 4 September 2015. The decision was overturned on appeal to SAT, which issued orders 8 March 2016 to approve the development subject to conditions.

Condition 9 of the approval required:

*"the development approved is to be substantially commenced within two years after the date of the approval, and the approval will lapse if the development is not substantially commenced before the expiration of that period."*

As detailed in the previous Responsible Authority Report endorsed by Council on 12 February 2018 the period to substantially commence the development ended on the 4 September 2017, although the applicant considers this period ends on 8 March 2018.

No substantial commencement of the proposal has occurred to date.

A Form 2 application to the JDAP was received 28 November 2017 (and considered completed on the 28 November 2017 following submission of additional information) proposing to amend condition 9 of the approval to extend the period for substantial commencement. The application proposes to amend condition 9 by:

- Deleting: 'within two years after the date of approval; and*
- Extend the period for substantial commencement by inserting '8 March 2020'.*

Council previously resolved at Special Council Meeting 12 February 2018 that it:

1. *Endorses the Shire's Responsible Authority Report (as provided in Attachment A) to the Mid-West Wheatbelt Joint Development Assessment Panel in relation to the Form 2 Application to extend period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronans.*
2. *Authorises the Chief Executive Officer to make any minor typographical changes to the report."*

The Responsible Authority Report was submitted to the Department of Planning, Lands and Heritage on 15 February and a JDAP meeting was scheduled on 27 February 2018 to determine the application.

The Shire then received correspondence 20 February 2018 from the Western Australian Planning Commission advising that the Minister for Planning had considered Scheme Amendment No.50 and required modification to delete the Special Use No.8 site relating to Allawuna Farm (Lots 9926, 26934, 4869 and 5931 Great Southern Highway, St Ronans). In the absence of the Special Use Zone No. 8, Scheme Amendment No. 50 proposes that the Allawuna Farm remain zoned 'General Agriculture' where a 'Waste Disposal Facility' is then proposed to be a prohibited use in this zone. The Shire has undertaken the modifications as directed. Amendment No. 50 when it receives the approval of the Minister in the form which the Minister has required and is published in the government gazette, will have the effect that TPS 2 will prohibit the land use of 'Waste Disposal Facility' in the General Agriculture zone. The modification affects assessment of the application and Responsible Authority Report endorsed by the Shire at Special Council Meeting 12 February 2018. The JDAP was notified of the correspondence on the 23 February 2018.

The Shire received correspondence from the JDAP on 26 February 2018 advising that the Mid-West/Wheatbelt JDAP meeting had been cancelled and will be rescheduled at a later date for the following reasons:

1. *Two recently appointed JDAP members (due to conflicts of interest of other members).*
2. *The Responsible Authority Report has a total of 1423 pages.*
3. *Presentation requests which incorporate detailed submissions from various parties including specialists and lawyers.*
4. *A presentation from the CEO of the Local Authority.*
5. *Information from the local authority in regard to the local scheme amendment, which is detailed and complex, and which all parties have not had the time to consider.*
6. *The timeframe required for any possible R.13 Request For Further Information to be prepared, lodged and responded to.*
7. *The requirement for the JDAP to seek and receive any information in respect to all of the above.*

A Special Council Meeting was subsequently organised with the intent of presenting an updated 'Responsible Authority Report' reflecting the correspondence received 20 February 2018, for Council's consideration and endorsement prior to submission to the JDAP to be considered at the rescheduled meeting.



The cancellation of the meeting by the JDAP ( without agreement of the landowner for an extension) meant that the application would not be determined within the 90 day period required by Clause 75 of Schedule 2 – Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. If a determination is not made within the 90 day period, or agreed time, it can be taken that the application is refused, and provides appeal rights to the applicant. If no appeal is made, the decision maker can still make a determination on the application after this time.

The Shire has since received correspondence 8 March 2018 advising that AMI Enterprises Pty Ltd & Anor had submitted an application for appeal against the 'refusal' of the Presiding Member of the Mid/West Wheatbelt Joint Development Assessment Panel to the State Administrative Tribunal (SAT) 1 March 2018. A directions hearing has been scheduled to occur 15 March 2018. As such, the Shire has been advised by the JDAP that as the appeal is being considered by SAT, no meeting will be scheduled unless an order to so is received from the SAT.

**Comments and details:**

As the time to determine the application by the JDAP has exceeded the 90 day time period permitted by the Regulations and can be considered as though the JDAP has refused the application, the applicant has submitted an appeal to the SAT, who will direct the next process for the application.

**Options:**

Not Applicable

**Implications to consider:**

- **Consultative**

The purpose of this report is to provide an update to Councillors and the community on the status of the Form 2 application submitted to the Mid-West Wheatbelt Joint Development Assessment Panel (JDAP) to extend period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronan's

- **Strategic**

No known strategic implications.

- **Policy related**

Should legal assistance be required on matters relating to the appeal, this will be sought in accordance with Shire of York Corporate Policy 1.3 Commissioning of Legal Advice and Delegation DE 2-8 Commissioning of Legal Advice.

- **Financial**

There may be financial implications associated should the Shire seek legal assistance or advice as part of SAT proceedings.

- **Legal and Statutory**

*Planning and Development Act (2005)*  
*Planning and Development (Development Assessment Panels) Regulations 2011*  
*Planning and Development (Local Planning Schemes) Regulations 2015*  
*State Administrative Tribunal Act 2004*

- **Risk related**

Not applicable. The officer's recommendation is to note the current status of the application only

- **Workforce Implications**

Nil

**Voting Requirements:**  
**Absolute Majority Required:           No**

**OFFICER RECOMMENDATION:**

*“That Council in relation to the Form 2 application submitted to the Mid-West Wheatbelt Joint Development Assessment Panel (JDAP) to extend period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronan’s, notes that:*

- 1. The applicant has submitted an appeal to the State Administrative Tribunal against the deemed refusal by the Mid-West/Wheatbelt Joint Development Assessment Panel; and*
- 2. As a consequent, no Mid-West/Wheatbelt Joint Development Assessment Panel will take place to consider the matter unless an order to do so is received from the State Administrative Tribunal.”*

**8 QUESTIONS FROM MEMBERS WITHOUT NOTICE**

**9 MEETING CLOSED TO THE PUBLIC**

9.1 Matters for which the meeting may be closed

9.2 Public reading of resolutions to be made public

**10 CLOSURE**