

# SHIRE OF YORK

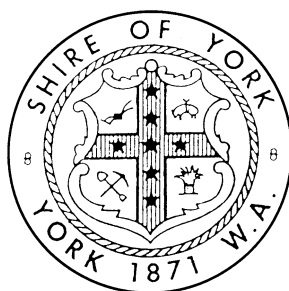
**MINUTES OF THE SPECIAL  
MEETING OF THE COUNCIL  
HELD ON 14 MARCH 2018  
COMMENCING AT 5.00PM  
IN THE LESSER HALL  
YORK TOWN HALL, YORK**



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## SHIRE OF YORK

### THE SPECIAL MEETING OF THE COUNCIL 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

*Cr Kevin Trent, Acting Shire President, declared the meeting open at 5.00pm.*

##### 1.2 Disclaimer

The Acting 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

*Nil*

##### 1.4 Announcement of Visitors

*Nil*

##### 1.5 Declarations of Interest that Might Cause a Conflict

*Nil*

##### 1.6 Declarations of Financial Interest

*Nil*

##### 1.7 Declarations of Interest that May Affect Impartiality

*Nil*

## 2. ATTENDANCE

### 2.1 Members

*Cr Kevin Trent, Acting Shire President; Cr Denese Smythe; Cr Heather Saint;  
Cr Pam Heaton; Cr Jane Ferro; Cr Denis Warnick*

### 2.2 Staff

*Paul Martin, Chief Executive Officer; Suzie Haslehurst, Executive Manager Corporate & Community Services; Carly Rundle, Senior Planner; Helen D'Arcy-Walker, Council and Executive Support Officer*

### 2.3 Apologies

*Nil*

### 2.4 Leave of Absence Previously Approved

*Shire President, Cr David Wallace*

### 2.5 Number of People in Gallery at Commencement of Meeting

*There were 17 people in the Gallery at the 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.*

*Public Question Time Commenced at: 5.05pm*

3.1 Written Questions – Current Agenda  
*Nil*

3.2 Public Question Time

**Mr Denis Hill**

The community has two elected candidates representing them on the JDAP, making up 40% of the panel. The Shire of York has 100% oversight of this development should it succeed. In light of this, it is not unreasonable to expect that the Shire of York and community, as part of the JDAP, will be adequately represented at the SAT should this matter end up there.

**Question 1:**

Is there a mechanism or avenue available to the JDAP and Shire of York to engage more expert representation than that available from the SSO?

**Response by the Chief Executive Officer:**

To give a detailed answer to this question I will need to take the question on Notice.

However, I can advise that the first SAT directions hearing will take place tomorrow and Dennis McLeod, the Shire Lawyer and our Senior Planner will be in attendance. Going forward the Council will consider this matter.

**Question 2:**

Is the JDAP going to sit to hear this matter?

**Response by the Acting Shire President:**

That will depend upon SAT. SAT may wish JDAP to have a meeting.

*As there were no further questions from the Gallery Public Question Time Concluded at 5.09pm*

4. **APPLICATIONS FOR LEAVE OF ABSENCE**  
*Nil*

## **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**

*The Acting Shire President advised:*

- *Scheme Amendment No. 50 has been approved by the Minister and sent to the government gazette to be published. We expect this to be published and have effect on Friday.*
- *The Shire's solicitor and the Senior Planner will be attending the SAT directions hearing tomorrow.*

## **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**

**RESOLUTION  
010318**

**Moved: Cr Smythe**

**Seconded: Cr Ferro**

***“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.”***

**CARRIED: 6/0**

**8. QUESTIONS FROM MEMBERS WITHOUT NOTICE**

*Nil*

**9. MEETING CLOSED TO THE PUBLIC**

*Nil*

**10. CLOSURE**

*The Acting Shire President thanked everyone for their attendance and closed the meeting at 5.14pm*