



# SHIRE OF YORK

**MINUTES OF THE SPECIAL  
MEETING OF THE COUNCIL  
HELD ON 10 AUGUST 2015  
COMMENCING AT 5.02pm  
IN THE YORK TOWN HALL, YORK**



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## SHIRE OF YORK

THE SPECIAL MEETING OF THE COUNCIL  
HELD ON MONDAY, 10<sup>TH</sup> AUGUST, 2015, COMMENCING  
AT 5.02PM IN THE YORK TOWN HALL, YORK

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

### 1. OPENING

*I would like to acknowledge the Ballardong People, the Traditional Owners of the land on which we are gathered and pay my respects to their Elders both past and present.*

#### 1.1 Declaration of Opening

*Cr Matthew Reid, Shire President, declared the meeting open at 5.02pm.*

#### 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

Clause 3.2 – Order of Business

Motion not put

#### 1.4 Announcement of Visitors

*Nil*

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

##### **Financial Interests**

*Nil*

## **Disclosure of Interest that May Affect Impartiality**

*Nil*

## **2. ATTENDANCE**

### 2.1 Members

*Cr Matthew Reid, Shire President; Cr Denese Smythe, Deputy Shire President;  
Cr Pat Hooper; Cr David Wallace;*

### 2.2 Mentoring/Monitoring Panel

*Andrew Borrett, Department of Local Government & Communities; Cr Karen Chappel,  
Shire President, Shire of Morawa*

### 2.3 Staff

*Graeme Simpson, Acting Chief Executive Officer; Allan Rourke, Manager Works &  
Services, Gail Maziuk, Compliance/Human Resources; Colleen Thompson, Planning  
Consultant - GHD; Helen D'Arcy-Walker, Executive Support Officer*

### 2.4 Apologies

*Adelphie & Walter King; Yva Kane*

### 2.5 Leave of Absence Previously Approved

*Nil*

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

*There were 22 people in the Gallery at the commencement of the meeting*

## **3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

*Nil*

## **4. PUBLIC QUESTION TIME**

*The Presiding Member to read the following statement in full at the commencement of  
Pubic Question Time:*

### **Statement by the Presiding Member at the Opening of Public Question Time at Ordinary and Special Council Meetings**

"Public Question Time is provided for under the provisions of Section 5.24 of the Local Government Act and the Local Government (Administration) Regulations 1996.

To provide equal opportunity for people to ask questions a limit of two (2) questions per person per time will be applied. If there is time available in Public Question Time people may be given the opportunity to ask a further two (2) questions at a time.

### **Procedures**

- Questions submitted in writing prior to the meeting will be dealt with initially.
- Questions from the floor will be taken in the order recorded in a register.
- Statements, opinions and attachments will not be recorded in the minutes.
- Questions requiring research will be taken on notice and a response will be prepared in a reasonable timeframe. The original questions and the response will be included in the Agenda and Minutes of the next Ordinary Council meeting.
- Questions may be deemed inappropriate because they contain defamatory remarks or offensive language, they question the competency of elected members or staff, they relate to the personal affairs of elected members or staff, they relate to legal processes

and confidential matters or they have been responded to previously and these will not be accepted or recorded in the Minutes.

- The minutes may only record a summary of the question asked and the response given.
- Where possible questions asked should be submitted in writing at the completion of question time or at the end of the meeting.
- At Special Council Meetings questions must relate to the items on the Agenda.
- Shire of York guidelines for Public Question Time are included on the meeting agenda.”

## **PRESIDING OFFICER**

21 October 2013

### 4.1 Written Questions – Current Agenda *Nil*

*Public Question Time commenced at 5.03pm*

#### **Mr Denis Hill**

##### **Question 1:**

Should the unthinkable happen, will the conditions as detailed in the Alternative Recommendation be forwarded to JDAP?

##### **Response:**

The Shire President replied – yes they will be.

##### **Question 2:**

Will the community have an opportunity to ask for an amendment?

##### **Response:**

The Acting CEO stated as the RAR has been prepared by a Consultant they can take onboard any additional questions.

##### **Question 3:**

I would like to amend Condition 7 to include the following:

That the Shire of York engage an independent consultant, at the applicant's expense, to monitor all bores west of the tip site and the results to be made publically available.

The monitoring is to be for water quality and presence of contaminants that may be expected from a major waste facility of this type and scale.

##### **Response:**

The Shire President stated that Council will consider this during the item.

#### **Ms Tricia Walters**

##### **Question 1:**

Did anyone from the Shire of York administration attend the Wheatbelt State Highway Review held in Merredin on the 7<sup>th</sup> August, 2015?

##### **Response:**

The Shire President stated that the Works Manager attended the Forum.

**Question 2:**

Did he raise the question about the possibility of extra traffic on The Lakes road?

**Response:**

The Acting CEO stated he was also in attendance plus York community members.

The Forum was more regarding the gathering of information rather than giving information. The question of extra traffic on The Lakes road was raised at the Forum along with other issues, for example, passing lanes and truck traffic.

**Mrs Robyn Davies**

**Question:**

Have the new Planners been out to the site?

**Response:**

The Acting CEO replied that Ms Thompson had been out there last week on Friday.

**Mr Colin Cable**

**Question 1:**

Does the Shire of York have any on ground experience as far as surveys in the upper reaches of 13 Mile Creek, also the Helena Catchment.

**Response:**

The Consultant Planner replied that she does not have any personal experience, information has been based on advice from the Department of Water.

**Question 2:**

Has the Shire of York had any consultation with Land Management Groups or Catchment groups who have done large re-vegetation projects in upper reaches of the Catchment.

**Response:**

The Consultant Planner replied that submissions received from various groups had been considered.

As there were no further questions - Public Question Time concluded at 5.13pm

**5. APPLICATIONS FOR LEAVE OF ABSENCE**

*Nil*

**6. PETITIONS / PRESENTATIONS / DEPUTATIONS**

*Nil*



**7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS & NOTES OF THE AGENDA SETTLEMENT BRIEFING**

*Nil*

**8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

*Nil*

**9. OFFICER'S REPORTS**



# Development Reports

## 9. OFFICER'S REPORTS 9.1 DEVELOPMENT REPORTS 9.1.1 SITA S.31 Amended Application

*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:** Gr2.290  
**COUNCIL DATE:** 10 August 2015  
**REPORT DATE:** 10 August 2015  
**LOCATION/ADDRESS:** Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, St Ronans  
**APPLICANT:** SITA Australia Pty Ltd  
**SENIOR OFFICER:** G Simpson, A/CEO  
**REPORTING OFFICER:** C Thompson (Consultant Planner)  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** 1 – SAT Order & Timeline  
2 – Responsible Authority Report  
**DOCUMENTS TABLED:** Nil  
**REPORT APPROVED BY THE A/CEO:** Graeme Simpson

### Summary:

The Wheatbelt Joint Development Assessment Panel has been invited to reconsider its decision under Section 31 of the State Administrative Tribunal Act 2004 to refuse an application for a landfill at Allawuna Farm, based on an amended application.

The Shire of York has repeated its advertising processes for the amended application and has prepared a further Responsible Authority Report to be submitted to the Wheatbelt Joint Development Assessment Panel (JDAP) for its consideration.

The purpose of this Report is for the Council to receive, authorise and endorse the Responsible Authority Report for the amended application for the proposed Allawuna Landfill at 2948 Great Southern Highway, Saint Ronans.

### Background:

Allawuna Farm is located approximately 18 kilometres from the York town centre in the locality of Saint Ronans and has an area of 1,512.7 hectares. The property has been historically used for cropping and grazing.

The Wheatbelt Joint Development Assessment Panel (JDAP) voted to refuse the planning application to use Allawuna Farm for the purposes of a landfill on 17 March 2014. SITA Australia Pty Ltd lodged an appeal against the decision with the State Administrative Tribunal on 24 April 2014.

The JDAP Secretariat advised the Shire of York by email on 30 April 2014 of the appeal lodgement and the date of the first Directions Hearing held on 2 May 2014. McLeods Barristers and Solicitors were appointed to represent the Shire of York on this matter.

Numerous Directions Hearings and Mediation Sessions have been held over the past 12 months. The Applicant proposed at a mediation session on 24 February 2015 to amend the development application. The JDAP did not oppose the amendment, but the Shire, and various residents groups (including the Avon Valley Residents Association, and Ms Kay and Ms Robyn Davies), opposed the amendment.

On 27 March 2015, submissions against the amendment were made on behalf of the Shire, AVRA, and Ms Kay and Ms Robyn Davies. On 10 April 2015, Senior Member McNab sitting as the SAT delivered his determination allowing SITA to amend its planning application. In simple terms, he did not consider that the changes involved any application to amend would be substantial enough to result in essentially a different application. This test is normally applied to applications of this kind. Following that decision, and with the consent of SITA and the JDAP, the SAT issued an invitation (under section 31 of the State Administrative Tribunal Act 2004) to the JDAP to reconsider its decision in the context of the amended application.

There was further dispute before the Tribunal as to the amount of time that should be allowed for advertising and the development of the Responsible Authority Report (RAR) to the JDAP. Ultimately, the Tribunal accepted the submission made on behalf of the Shire which was to allow an extra seven days to organise advertising and a further seven days following advertising to consider relevant submissions and responses. The State Administrative Tribunal's Orders require the JDAP to make a determination by 21 August 2015.

The amended application responds to significant additional environmental investigations undertaken through the SAT appeal process to meet the requirements of the Department of Environmental Regulation (which will separately consider applications for Works Approval and a License to operate under the Environmental Protection Act 1986). The amended application proposes:

- Reduction in the area of the landfill footprint by approximately 31% from 52ha to 36ha;
- Reduction in the maximum height of waste deposited from 355m to 350.5m;
- Reduction in the overall volume of waste placed by approximately 46% from approximately 11.1 million cubic metres of waste (10.1 million tonnes) to 5.1 million cubic metres (4.6 million tonnes);
- Reduction in the nominal life of the landfill from 37 years to approximately 20 years, based on forecast annual tonnages of between 150,000 and 250,000 tonnes of waste per annum;
- Raises the floor of the landfill to ensure a minimum clearance of at least 2m between the base of the landfill and the maximum estimated winter groundwater level;
- Development of three (3) borrow areas comprising a total of approximately 20ha commencing from approximately year 10 onwards; and
- Reduction in the size and extent of the leachate ponds and stormwater dam required.

The amended application, which is included in the RAR, is supported by the following:

- A Fire Management Plan;
- Line of Sight drawings from Mount Observation;
- Summary report of discussions with local businesses regarding local contracts.

### **Consultation:**

As part of its reconsideration process, the amended application was re-advertised in accordance with the provisions of the York Town Planning Scheme No. 2. The application was advertised for a period of 28 days by placing advertisements in locally circulating newspapers (i.e. Avon Valley Gazette and York Community Matters) and on Council's website. Letters were also set directly to nearby affected landowners and to persons who previously made submissions. Submissions closed on 25 May 2015.

Referrals were sent to the State government agencies who were previously invited to comment on the original application inviting them to comment on the amended application.

A total of 287 public submissions were received. 3 submissions were in support (one from the landowner, one from the applicant, and one member of the public). 284 submissions were in objection.

An additional 10 submissions were received from government agencies. The Responsible Authority Report presents and discusses relevant matters presented in all submissions received, and attaches copies of all submissions.

**Statutory Environment:**

State Administrative Tribunals Act 2004 (WA)

Section 31 of the Act allows the SAT to invite decision-makers to reconsider their decision as part of the appeal proceedings.

Planning and Development Act 2005 (WA)

The Act provides appeal provisions for Applicants who are dissatisfied with the decision of a responsible authority. In this case, the Applicant was dissatisfied with the decision to refuse the application and lodged an appeal in accordance with the provisions of the Act.

Planning and Development (Development Assessment Panel) Regulations 2011

The Wheatbelt JDAP is the decision-maker for the subject planning application under the provisions of the Regulations.

York Town Planning Scheme No. 2

The Responsible Authority Report to consider the amended application must be assessed taking into consideration the provisions of TPS2.

Shire of York Delegations

The adopted delegations to the Chief Executive Officer and the Planning Officer do not specifically provide delegated authority to comply with the State Administrative Tribunal Orders or to submit the Responsible Authority Report directly to the JDAP. Therefore, Council resolution is required for both matters.

**Policy Implications:**

The Responsible Authority Report concludes that the proposed use of rural land for the purposes of a landfill is inconsistent with the objectives of the General Agriculture zone and the York Town Planning Scheme No. 2. Therefore, the RAR recommends that the JDAP refuse the amended application.

**Financial Implications:**

There have been ongoing financial implications for the Shire and community associated with the costs of employing legal representation and a planning consultant throughout the appeal process.

A claim for the costs associated with advertising has been submitted to the Applicant's legal representation.

Should the JDAP agree with the Shire's recommendation to refuse, it is likely that the current appeal will continue and is likely to be directed to a hearing for determination. This will present ongoing legal costs for representation.

Should the amended application be approved against the recommendation of the Responsible Authority Report, there may be financial costs to Council for ongoing monitoring of compliance with conditions. This may include further cost of consultants for the peer-review of management plans if required.

Whilst the RAR recommends refusal, an alternative recommendation is presented in the form of conditions should the JDAP approve the application against the officers recommendation. Recommended conditions include financial obligations for the applicant to pay a performance guarantee for rehabilitation, and infrastructure upgrade requirements so these costs are not borne by the community.

**Strategic Implications:**

The Responsible Authority Report concludes that the development proposal is not consistent with the goals of the Shire of York Community Strategic Plan, as it relates primarily to management of waste from outside the region and Shire.

**Voting Requirements:**

**Absolute Majority Required:** No

**Site Inspection:**

**Site Inspection Undertaken:** Yes (previously)

**Triple bottom Line Assessment:****Economic Implications:**

The original planning assessment concluded that there were no quantified economic benefits for the community associated with this proposal. There have, however, been considerable economic implications associated with the appeal process to date.

**Social Implications:**

The Responsible Authority Report acknowledges that additional information presented through the mediation processes addresses many concerns related to health, nuisance, and traffic. However, social impacts related to visual impact are not sufficiently demonstrated by the amended application.

It is noted that there is a great deal of community opposition to the proposal; the Responsible Authority Report focusses on assessing the planning issues that form the basis of that opposition.

**Environmental Implications:**

The amended application responds to significant additional environmental investigations undertaken through the SAT appeal process to meet the requirements of the Department of Environmental Regulation (which will separately consider applications for Works Approval and a License to operate under the Environmental Protection Act 1986).

The additional environmental investigations were not submitted as part of the amended development application, however are publically available through a Works Approval application made to the Department of Environmental Regulation, published on the Department of Environmental Regulation website. Being publically available, these documents have formed part of the assessment of the development application. The technical documents have not been peer reviewed in the preparation of the Responsible Authority Report. However, they have been reviewed by the Department of Water in their submission on the amended application, and the advice of the Department of Water has been used as the basis for the assessment of issues related to contamination. The documents will also be subject to detailed review by the Department of Environmental Regulation in the consideration of a Works Approval and Licence under Part V of the Environmental Protection Act 1986.

**Officer Comment:**

The Responsible Authority Report includes an assessment of the amended application, based on the key planning issues presented. These planning issues have been identified based on the local and regional planning framework, and submissions received from community members and stakeholders. Relevant planning issues include:

- Land use permissibility in the General Agriculture Zone
- Orderly and proper planning
- Visual impact and rural character
- Nuisance, health and amenity
- Access, egress, and traffic
- Environmental risk
- Fire and natural hazards

In summary, the application is not considered to demonstrate compliance with the scheme and planning framework in relation to:

- Land use permissibility
- Orderly and proper planning
- Visual impact and rural character

Therefore, the Responsible Authority Report recommends refusal of the application. The Responsible Authority Report includes conditions for approval, should JDAP overturn Council's recommendation.

## OFFICER RECOMMENDATION

*“That Council:*

- 1. Receive the Responsible Authority Report for the proposed Allawuna Landfill at Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, Saint Ronans.*
- 2. Authorise the submission of the Responsible Authority Report for the proposed Allawuna Landfill at Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, Saint Ronans to the Development Assessment Panel’s Secretariat.*
- 3. Adopt the Officer’s Recommendation to REFUSE the development application for the proposed Allawuna Landfill at Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, Saint Ronans.”*

**The Council Moved the Officer Recommendation:**

**Motion to Amend:**

**Include an additional point in Appendix 9.1.1 – Responsible Authority Report (RAR) – Item 7, additional part (d) as per point 4 below.**

## RESOLUTION

**010815**

**Moved: Cr Smythe**

**Seconded: Cr Wallace**

*“That Council:*

- 1. Receive the Responsible Authority Report for the proposed Allawuna Landfill at Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, Saint Ronans.*
- 2. Authorise the submission of the Responsible Authority Report for the proposed Allawuna Landfill at Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, Saint Ronans to the Development Assessment Panel’s Secretariat.*
- 3. Adopt the Officer’s Recommendation to REFUSE the development application for the proposed Allawuna Landfill at Lots 4869, 5931, 9926 & 26932 (2948) Great Southern Highway, Saint Ronans.*
- 4. That the Shire of York engage an independent Consultant, at the applicant’s expense, to monitor all bores West of the tip site and the results to be made publically available.*

*The monitoring is to be for water quality and presence of contaminants that may be expected from a major waste facility of this type and scale.”*

**CARRIED: 4/0**



# Administration Reports

## 9. OFFICER'S REPORTS

### 9.2 ADMINISTRATION REPORTS

#### 9.2.1 JDAP Nomination of Preferred Members

**FILE NO:**  
**COUNCIL DATE:** 10 August 2015  
**REPORT DATE:** 5 August 2015  
**LOCATION/ADDRESS:** N/A  
**APPLICANT:** Shire of York  
**SENIOR OFFICER:** G K Simpson, A/CEO  
**REPORTING OFFICER:** G K Simpson, A/CEO  
**DISCLOSURE OF INTEREST:** Nil  
**APPENDICES:** Nil  
**DOCUMENTS TABLED:** Nil

**REPORT APPROVED BY THE A/CEO:** *Graeme Simpson*

#### **Summary: Council**

The Department of Planning Officers in the Development Assessment Panels section has invited the Shire to nominate four (4) local government Councillors to fill the vacancies on the Joint Development Assessment Panel (JDAP).

Community representatives cannot be nominated now that Councillors are back in office.

#### **Background:**

It is the role of the Minister for Planning to appoint members to the Mid-West/Wheatbelt JDAP. The Departmental email requested the nominations form for DAP nominations for DAP Member 1 and DAP Member 2 together with alternate member nomination for positions 1 and 2 be listed on the nomination form by return email.

#### **Consultation:**

Senior Policy and Project Officer of the Development Assessment Panel  
Shire President Cr Reid

#### **Statutory Environment:**

Planning and Development (DAP) Regulations 2011

#### **Policy Implications:**

Nil

#### **Financial Implications:**

Nil

#### **Strategic Implications:**

It is important that Council representatives participate in major issues affecting the Shire and the Community.

#### **Voting Requirements:**

**Absolute Majority Required:** No

#### **Site Inspection:**

**Site Inspection Undertaken:** N/A

**Triple bottom Line Assessment:**  
**Economic Implications:** N/A

**Social Implications:**

Elected member participation is important for the community to feel that they have a voice at the decision making forum.

**Environmental Implications:**

JDAP members will be able to influence the decision making in respect to local environmental implications.

**Officer Comment:**

The procedure for nominating local government members became confused because Planning Department Officers misunderstood the transition of change from the Commissioner to Council. The request for a fourth nominee was as late as 3.00pm on Thursday, 5<sup>th</sup> August, 2015.

**ASB Comment**

N/A

**RESOLUTION  
020815**

**Moved: Cr Hooper**

**Seconded: Cr Wallace**

***“That Council:***

***Adopt the following nominations of members for consideration to the appointment by the Minister for Planning to the Mid West/Wheatbelt Joint Development Assessment Panel:***

***DAP Member No. 1***

***Cr Matthew Reid***

***DAP Member No. 2***

***Cr Denese Smythe***

***Alternate DAP Member No. 1***

***Cr David Wallace***

***Alternate DAP Member No. 2***

***Cr Pat Hooper.”***

***CARRIED: 4/0***

## **10. CLOSURE**

*The Shire President thanked everyone for their attendance and closed the meeting at 5.22pm*