



Form 2 - Responsible Authority Report

(Regulation 17)

Property Location:	Lots 4869 (2256), 5931, 9926 (2948) & 26934 Great Southern Highway, St Ronans
Development Description:	Construction and use of Allawuna Farm for the purposes of a Class II Landfill
Proposed Amendments:	Amend condition 9 which requires the development approved to be substantially commenced within two years of the date of approval, and amend this period for development to be substantially commenced by 8 March 2020
DAP Name:	Mid-West Wheatbelt Joint Development Assessment Panel
Applicant:	Julius Skinner, AMI Enterprises Pty Ltd
Owner:	Robert Henry Chester
LG Reference:	P1125
Responsible Authority:	Shire of York
Authorising Officer:	Paul Martin, CEO, Shire of York
DAP File No:	DP/14/00039
Report Date:	25 January 2018
Application Received Date:	Completed application received 28 November 2017
Application Process Days:	90 days permitted
Attachment(s):	1: Original Determination Notice 2: SAT Orders 3: Applicant's Submission 4a: Location Plan 4b: Site Plan 5: Schedule of public submissions 5a: Copies of public submissions received. 6: Copies of submissions received from statutory or public authorities

Officer Recommendation:

That the Mid West Wheatbelt JDAP resolves to:

1. **Refuse** DAP Application reference DP/14/00039 as detailed on the DAP Form 2 dated 24 November 2017 on the grounds that the application is not appropriate for consideration in accordance with terms of regulation 17(1)(a) of the *Planning and Development (Development Assessment Panels) Regulations 2011*, and should more appropriately be a new application for development approval, because of the following reasons:
 - (a) The applicant has indicated that it does not propose to carry out development approved by the SAT on review but will vary aspects of the proposal including the number of waste storage cells and the proposed duration of operation.
 - (b) The applicant has not demonstrated compliance with Objective (b) of the General Agriculture zone of TPS2.

- (c) Considering the application to extend the time for substantial commencement was not made until after the expiration of the previous substantial commencement date of 4 September 2015, and considering that the proposed extension of time would expand the period for substantial commencement to four years and six months, the proposed extension of time is inconsistent with the principle of orderly and proper planning.
- (d) Approval or extension of the period for substantial commencement as proposed would further be inconsistent with orderly and proper planning having regard specifically to Scheme Amendment No. 50 which does not contemplate or permit extension of the period for substantial commencement.
- (e) The application has not been demonstrated to be in compliance with State Planning Policy 3.7 – Planning in Bushfire Prone Areas, which would consequently identify the use as ‘high risk’ and require consideration in terms of the policy prior to approval being issued.
- (f) There is insufficient information to assess the impact from the likely amount of traffic to be generated by the development in relation to the capacity of the road system in the locality and the effect on traffic flow and safety, having regard to the operating conditions and equipment the applicant would employ in carrying out the development.
- (g) The holder of the development approval has not actively and relatively conscientiously pursued the implementation of the development approval (Georgiou Property 2 Pty Ltd and Presiding Member of the Metro-West Joint Development Assessment Panel [2017] WASAT 138).
- (h) In contrast with the development considered by the SAT in its determination of 8 March 2016, there is no current indication that a works approval will be issued by the relevant environmental agency.
- (i) The application when advertised for public submissions received 472 individual submissions of which 470 were in opposition to the proposal and a petition like submission where an additional 138 persons objected to the proposal. Given the community opposition against the proposal, and attitudes towards waste reform, it is reasonable that the application which has not been acted on should expire, and a new application be required.

Details: outline of development application

Insert Zoning	MRS:	N/A
	TPS:	General Agriculture
Insert Use Class:		Use Not Listed – Waste Disposal Facility
Insert Strategy Policy:		Shire of York Local Planning Strategy
Insert Development Scheme:		Shire of York Town Planning Scheme No. 2
Insert Lot Size:		1,512.7 hectares (total area of lots combined)
Insert Existing Land Use:		Farming – grazing and cropping

Allawuna Farm is located approximately 18 kilometres from the York Town Centre in the locality of St Ronans and has a combined area of 1,512.7ha. The property is used for grazing and cropping and contains a single house and associated outbuildings. The property is zoned ‘General Agriculture’ under the provisions of the Shire of York Town Planning Scheme No. 2 (Scheme) and adjoins the Mount Observation National Park to the west and privately owned broad hectare agriculture

properties on all other boundaries. Access to the property is via Great Southern Highway.

An application was originally submitted 17 December 2013 by SITA Australia Pty Ltd to construct and use a portion of Allawuna Farm as a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronan's.

The application was refused by the Mid-West/Wheatbelt Joint Development Assessment Panel (JDAP). The applicant at that time, SITA (now known as SUEZ), subsequently submitted an appeal against this decision to the State Administrative Tribunal (SAT).

As part of tribunal proceedings an amended application, including amended plans and supplementary report, was submitted by the applicant which proposed:

- An area of landfill footprint of approximately 36ha;
- A maximum height of waste of 350.5m Australian Height Datum;
- A nominal life span of approximately 20 years, based on forecast annual tonnages of between 150,000 to 250,000 tonnes of waste per annum;
- Overall volume of waste to be placed on site of 5.1 million cubic metres (4.6 million tonnes).
- Development of three (3) borrow areas comprising a total of approximately 20ha commencing from approximately year 10 onwards.
- Associated leachate ponds, stormwater dam and infrastructure.

The amended application was submitted with supporting information including:

- A summary report outlining key changes and reporting on discussions with local businesses regarding local contracts and employment opportunities;
- Line of Sight drawings from Mount Observation; and
- A Fire Management Plan.

The summary report submitted in support of the amended application, provided that the amendments did not influence other initial information submitted in support of the original application which included a supplementary Traffic Impact Assessment and some environmental reports.

The RAR for the amended application noted that environmental investigations were not submitted as part of the amended development application, although were publicly available through a Works Approval application made to the Department of Environmental Regulation, published on the Department of Environmental Regulation website, and these documents informed part of the assessment of the development application.

On receipt of the amended application, the SAT invited the JDAP to reconsider its decision to refuse the application under section 31 of the *State Administrative Tribunal Act 2014* by no later than 31 August 2015.

The JDAP resolved on 31 August 2015 to reaffirm its decision dated 14 April 2014 and refuse DAP Application reference DP14/00039 and amended plans D001 to D012. A determination notice of the refusal was issued dated 4 September 2015.

The State Administrative Tribunal considered the matter at a hearing on 18 and 19 November 2015 and delivered a decision on appeal DR127 on 24 March 2016 to

uphold the review and grant conditional planning approval for the Allawuna Farm Landfill site on the amended plans filed in the Tribunal (and considered by respondent at its meeting on 31 August 2015) 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.”

In accordance with section 29(5)(b) of the *State Administrative Tribunal Act 2004* (WA) a decision of the tribunal substitutes for the decision-maker's decision, and unless the enabling Act states otherwise or the Tribunal orders otherwise, is to be regarded as having effect from the time when the decision reviewed would have had effect.

The date of the JDAP meeting which resolved to refuse the application was the 31 August 2015. In accordance with section 70 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the determination has effect on the day on which the notice of determination is given to the applicant, which for this application occurred 4 September 2015. The decision of the JDAP had effect from 4 September 2015, and the two-year period to substantially commence the development ended on 4 September 2017, where the approval lapsed.

The applicant has now submitted a complete Form 2 application on 28 November 2017 that proposes to amend condition 9 which requires the development approved to be substantially commenced within two years of the date of approval and amend this period for development to be substantially commenced by 8 March 2020. Assessment of the proposed amendment is outlined below.

Background:

- 17 December 2013, Development application was originally submitted by SITA Australia Ltd to construct and use a portion of Allawuna Farm as a Class II Landfill.
- Application proposed a 52-hectare landfill with a nominal life of 37 years based on between 150,000 and 250,000 tonnes of waste per annum, accommodating 11.1 million cubic metres (or 7.4 million tonnes based on 200,000 tonnes per annum) of waste.
- A total of 211 submissions were received on this proposal, with 210 objecting to the proposal. The supporting submission was from the landowner. A petition containing 1,372 signatures were received, and 18 submissions from government and service agencies.
- 14 April 2014, the Shire of York recommended the application be refused and the Wheatbelt JDAP resolved to refuse the application.
- 24 April 2014, the then applicants SITA Pty Ltd lodged an appeal against the decision with the State Administrative Tribunal (DR 127 of 2014).
- An amended application was submitted as part of mediation and directions hearings. The amended application involved a reduction of the site area to 36ha, a reduction of the total volume of waste to 5.1 million cubic metres, a reduction in the nominal life space to 20 years on forecast annual tonnages of 150,000 to 250,000 tonnes of waste per annum and a reduction in the number of cells from 11 to 7. Amendments also involved increasing the floor level of the

landfill to achieve at least a 2m clearance from the estimated maximum winter groundwater level, a reduction in the maximum height of the waste deposited by 4.5m to 350.5m, development of three borrow areas (or pits) of a total of 20ha as a source of cover material and a reduction in the size and extent of leachate ponds and stormwater dam.

- The State Administrative Tribunal invited the JDAP to reconsider its decision under section 31 of the *State Administrative Tribunal Act 2014* by no later than 31 August 2015.
- 31 August 2015, the JDAP resolved to reaffirm its decision dated 14 April 2014 and refuse DAP Application reference DP14/00039 and amended plans D001 to D012. A Determination Notice was issued 4 September 2015, which in accordance with section 70 of the *Planning and Development (Local Planning Schemes) Regulations 2015* is the date the approval had effect. The reasons for refusal were listed as:
 - (a) *The proposed landfill is not permitted in the General Agriculture zone given that the proposal is not consistent with the objectives and purpose of the zone in accordance with cl 3.2.4(c) of the Shire of York Town Planning Scheme No. 2.*
 - (b) *The proposed landfill presents potential for incremental, permanent loss of agricultural land, as a result of a temporary land use in a district where expansion of agricultural land is already constrained by salinity and vegetation protection and is not consistent with cl 4.15.1(a) of TPS2.*
 - (c) *The applicant has failed to demonstrate that the proposed landfill will be of benefit to the district, which is inconsistent with cl 4.15.1 of TPS2.*
 - (d) *The application does not include sufficient information to demonstrate that visual impacts will not affect the amenity of the locality and residents, as required by Objective (b) (cl 1.7) and cl 8.5 (i), (j) and (n) of TPS2.*
- 8 March 2016, the State Administrative Tribunal delivered a decision on DR127 of 2014 upholding the review and issued an order that conditional approval is given for the amended application.
- Key reasons behind the Tribunals decision referred to:
 - That the DER is the principal regulator with regards to environmental matters in the State, and DER had indicated that it would give approval for the proposed development upon extensive conditions.
 - That in regard to orderly and proper planning and strategic planning for landfill sites, a moratorium on new landfill sites could not be justified in the circumstances, given there was already in the planning framework sufficient justification of the need for such a facility and in a location such as that under consideration.
 - That the Tribunal did not see rise to any prejudice to the continued strategic planning for the wider regional area (including the site) which was required to address the need for suitable waste disposal facilities.
- 17 March 2016, works approval issued by the Department of Environment and Regulation (W5830/2015/1). An appeal period of 21 days is available from the date of decision. An application for appeal was lodged by the Avon Valley Residents Association 6 April 2016 on a number of grounds. Seven appeals were received in total.
- 5 April 2016, the Shire received notification that the Minister for Planning had issued approval for Scheme Amendment No. 50 subject to modifications.
- 29 April 2016, the Shire received notification that an appeal against the decision to grant a clearing permit for 0.7 ha of native vegetation (CPS 6618/1) had been received and invited comments until 9 June 2016.

- 6 July 2016 - A press release was issued by SUEZ (previously SITA) advising they would no longer be proceeding with development on the site.
- 11 August 2016, at the works approval holder's request, the Works Approval was cancelled. Appellants referred above were subsequently notified that there was no longer a need for appeals to be determined.
- Works Approval Application by AMI/Alkina was submitted to DWER 21 July 2017.
- 1 August 2017, the Shire received notification that a new applicant, Alkina Holdings Pty Ltd would be seeking the relevant approvals to develop a smaller version of the previously approved SUEZ proposal and that a works approval application was due to be publicly advertised.
- The Works Approval application public advertising period commenced 21 August 2017, ending on 28 September 2017.
- 4 September 2017, the period for the development to be substantially commenced by condition 9 ended, and the development approval lapsed.
- 28 November 2017, a completed Form 2 application was submitted to the Shire to extend the period for substantial commencement to 8 March 2020.

Legislation & policy:

Legislation

- *State Administrative Tribunals Act 2004*: The current approval was by an order of the State Administrative Tribunal (SAT) on appeal of decision by the JDAP and notice of determination issued 4 September 2015.

The *State Administrative Tribunals Act 2004* (SAT Act), *Planning and Development Act 2005*, *Planning and Development (Local Planning Scheme) Regulations 2015* and *Planning and Development (Development Assessment Panels) Regulations 2011* give ability for an affected person to apply to the SAT for review of a reviewable decision in accordance with these instruments.

Section 29 of this SAT Act 'Tribunals powers in review jurisdiction' provides:

- s.29(5): The decision-maker's decision as affirmed or varied by the Tribunal or a decision that the Tribunal substitutes for the decision-maker's decision —*
- (a) is to be regarded as, and given effect as, a decision of the decision-maker; and*
 - (b) unless the enabling Act states otherwise or the Tribunal orders otherwise, is to be regarded as having effect, or having had effect, from the time when the decision reviewed would have, or would have had, effect.*

The SAT orders allowed the review and set aside the JDAP decision and in lieu thereof will be a grant of planning approval. In accordance with Section 29(5)(b) the date of approval is to be the date of the JDAP determination on the amended proposal which was issued on 4 September 2015.

- *Planning and Development Act 2005*: Part 5 of the Act provides a statutory head of power for the Shire of York to prepare, adopt and implement a local

planning scheme, as well as providing a guiding framework for the development and application of subsidiary Regulations.

- *Planning and Development (Local Planning Schemes) Regulations 2015:*
The Regulations were gazetted 25 August 2015 and had effect 19 October 2015. The Regulations had effect after the application was considered by the JDAP, although were in place prior to the SAT hearing. The Regulations introduce deemed provisions which over-ride local planning schemes to the extent of inconsistency which includes provisions for receiving, processing and determination of applications, as well as introducing matters to give due regard to over-riding local planning schemes. The matters to be given due regard in the Regulations are generally consistent with those existing in the Scheme.
- *Planning and Development (Development Assessment Panels) Regulations 2011:*
The application was submitted and determined by the JDAP as a 'mandatory' application. Regulation 17(1)(a) provides the ability for an applicant to submit an application to the DAP to amend an approval so as to extend the period within which any development approved must be substantially commenced, or to amend or delete any condition to which the approval is subject. An application made under sub regulation 17(1) may be made during or after the period within which the development approved must be substantially commenced.
- *Environmental Protection Act 1986:* defines Class II or III putrescible landfill sites in Category 64 of Schedule 1 as:

"Premises on which waste (as determined by reference to the waste type set out in the document entitled Landfill Waste Classification and Waste Definitions 1996) is accepted for burial with a production or design capacity of greater than 20 tonnes or more per year."

Schedule 1 refers to prescribed premises and Part V of the Act provides for the licencing and registration of prescribed premises. The Department of Water and Environmental Regulation (DWER) has received an application for Works Approval under Part V of the Act. The application has been publicly advertised, inviting submissions to be made until 28 September 2017. A total of 158 submissions were received, with some submissions signed by more than one person and one signed by 98 individuals.

A determination has not been issued and the DWER has not provided a submission indicating that the application will be supported and if so what conditions it would be subject to. A works approval was previously issued on the site 17 March 2016, allowing commencement on 21 March 2016, and expiring on the 20 March 2023, and was then cancelled at the works approval holder's request as they would not be proceeding with the development. An appeal had been lodged on issuing of the permit, which at the time it was cancelled and had not been determined.

The *Environmental Protection Act 1986* (EP Act) is the primary legislation to regulate waste in WA to prevent, control and abate pollution and environmental harm, although is required to be given due regard in

consideration of applications as required by the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.

- *Waste Avoidance & Recovery Act 2007*: provides a framework to establish the Waste Authority, levies on waste, provide for waste avoidance and resource recovery and other matters. Part 4 of the Act makes provision for the preparation, application and reporting of a Waste Strategy with the purpose of to set out for the whole of the state:
 - a) A long-term strategy for continuous improvement of waste services, waste avoidance and resource recovery, benchmarked against best practice; and
 - b) Targets for waste reduction, resource recovery and the diversion of waste from landfill disposal.
- *Main Roads Act 1930*: Great Southern Highway is under the control of Main Roads. Any works within a road reserve under the control of Main Roads, requires Main Roads approval.
- *York Town Planning Scheme No. 2*: The property is zoned 'General Agriculture' by the Scheme. The use of a Class II Landfill was approved as a 'use not listed' in accordance with Clause 3.2.4 of the Scheme. The application would still be treated as a 'use not listed'.

State Government Policies and Strategies

- *State Planning Strategy 2050 (WAPC 2012)*: identifies waste disposal, treatment and recycling facilities as essential infrastructure related to Western Australia's growth. The Strategy identifies that a network of strategically located waste management facilities and infrastructure sites are required to cater for this growth. Figure 32 of the Strategy includes a high-level plan titled planning for waste, which identifies a landfill within the Shire of York boundaries. SAT previously considered this map referring to an underlying reason for upholding the appeal and issuing approval of the application as that the strategy identifies a demand for the landfill and identifies a landfill within the Shire boundaries.
- *Wheatbelt Regional Planning and Infrastructure Framework (WAPC December 2015)*: is a regional strategic planning document that provides an overview of regional planning issues and a basis for ongoing planning and development. The initiatives in the framework are in response to the strategic directions of the State Planning Strategy.

The Framework identifies that there was an existing proposal in York, although notes that sites adjacent to major transport routes (identified as strategic routes) such as the Great Eastern Highway, Great Northern Highway and Brand Highway are considered most suitable for regional landfills. A strategic waste project identified as a goal within the document is to establish regional waste facilities to service all communities in the Wheatbelt. The draft framework was advertised for comment from May to June 2014 and adopted in December 2015.

- *Waste Strategy 2012 (Waste Authority)*: aims to reduce the environmental impact of waste and maximise conservation of natural resources through reduced overall material use and increased materials and energy recovery. Its success is measured against its effectiveness in reducing the amount of waste generated, increasing the proportion of material recovered from the waste stream and reducing the proportion of waste destined for landfill.

An audit carried out in 2016 reporting on the performance of the strategy identified waste management in Western Australian had improved, but none of the four waste strategy targets to divert waste from landfill were met in 2015 and data to inform the progress of waste management is incomplete and unreliable.

In the Waste Strategy, among other major initiatives, the Waste Authority committed to developing a Waste and Recycling Infrastructure Plan for the Perth Metropolitan and Peel Region. A Strategic Waste Infrastructure Plan for the Perth Metropolitan and Peel Regions Investigation Report was released in June 2014 by the Waste Authority as a precursor to developing a Waste and Recycling Infrastructure Plan as identified in the Waste Strategy 2012. This focuses on the Perth and Peel regions, with investigation on regional areas not proposed until later phases. The investigation report generally notes that there will be a demand for further landfill sites to support the Perth and Peel region in the future, discusses means to secure locations for its provision and discusses opportunity for co-location of waste disposal and recovery sites as a supported option. There is no document underpinning the Strategy which identifies preferred landfill locations.

The Waste Authority is currently conducting a review of the Waste Strategy and is currently seeking submissions to be considered in the review closing March 2018. A consultation paper providing broad information on the strategy and review was released in the support of the advertising period seeking submissions. The consultation paper notes that the right waste management infrastructure enables improved effectiveness and efficiency. The Waste Authority advises that a draft Strategy should be prepared by June 2018.

- *Avon Arc Sub-Regional Strategy (2001)*: provides a regional framework for long term land use within the Avon Arc that forms part of the western portion of the Wheatbelt region, including York. The subject property is located in the Darling Range Eastern Slope Land Planning Unit area. The vision for the area is “Open rolling rural landscape with an array of agriculture activities intertwined with pockets of remnant vegetation and woodlands”, which is also consistent with the objective of the area in the York Local Planning Strategy.

The Preferred Land Use and Management Guidelines for the area aim to maintain the rural agriculture landscape and that any proposed changes in land use must complement the natural environment.

Section 5.9 of the Strategy discusses Infrastructure needs and opportunities. In relation to Waste Management, the Strategy identifies the longer-term scenario should be for total re-use of wastes and not for larger disposal sites, which is particularly relevant where waste disposal sites are close to townsites, within water catchment areas or near water bodies (ground and surface).

The Strategy also identifies the strategic regional importance of the Avon Arc area as a source for waste recycling, which should be investigated further and could become a local employment industry.

- *State Sustainability Strategy (2003)*: establishes a sustainability framework containing principles, visions, and goals. It seeks to ensure that sustainability is considered and incorporated into decisions and actions for the future of Western Australia at all levels.
- *SPP1 – State Planning Framework (2017)*: sets out the general principles for land use planning and development in the State and aims to provide a framework to provide for the sustainable use and development of land. The framework is supported by six principles:
 1. Community – enable diverse, affordable, accessible and safe communities.
 2. Economy – facilitate trade, investment, innovation, employment and community betterment.
 3. Environment – conserve the State's natural assets through sustainable development.
 4. Infrastructure – ensure infrastructure supports development
 5. Regional Development – build the competitive and collaborative advantages of the regions
 6. Governance – to build community confidence in development processes and practices.
- *SPP2.5 – Rural Planning (2016)*: The policy intends to protect and preserve rural land for rural purposes including primary production, basic raw materials, regional facilities and protection of biodiversity and landscape. The policy recommends that sites for regional facilities be subject to scheme amendment processes to allow for early environmental referral and public advertising.

Where amendments or a development application are lodged the following requirements apply:

- Facilities should be located on a main road or on a road that is of a suitable standard and treatment, to accommodate a significant increase in traffic volumes and freight tasks which may be generated by the proposal;
 - Facilities should contain or satisfactorily manage potential environmental (including water resources), noise, amenity and air quality impacts on the landholding without affecting nearby rural land uses;
 - Facilities should not be visually dominant within key viewsheds, and should be visually compatible with surrounding land uses and development; and
 - Facilities should be provided with essential services commensurate with the intended land use.
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- *SPP2 – Environment and Natural Resources (2003)*: identifies the key to sustainability in the planning sector is to integrate ecological, economic and social considerations into decision-making, including resolution of conflicts between land use and protection of natural resources, giving consideration to potential impacts on the environment, community lifestyle preferences, and

economic values. Decision making should aim to avoid development that may result in unacceptable environmental damage.

- *EPA Guideline Statement No.3 – Separation Distances between Industrial and Sensitive Land Uses and Draft Environmental Assessment Guideline for Separation Distances between Industrial and Sensitive Land Uses (2015)*: recommends a buffer distance of 150 metres between a Class II or Class III landfill and a single residence. It also recommends a buffer distance of 35 metres between a Class II or III landfill and the boundary on which it is located. The proposal is located 600 metres from the property boundary.

The draft Environmental Assessment Guideline No. X – Separation distances between industrial and sensitive land uses (EAG) was released 6 October 2015 for public comment. This recommends a minimum separation distance from a putrescible landfill site (Class II & III) of 1,000 metres from sensitive land uses. Sensitive land uses are places where people live or regularly spend time and may be sensitive to emissions and includes residences. Separation distances do not take account of property boundaries.

The distance between the site of the landfill and the nearest single residence is 1,900 metres.

Of note is that the EAG scope does not include assessment of applications made under Part V of the *Environmental Protection Act 1986* (for works approvals or licences) for premises that may make emissions. The DWER will make a decision relating to its regulatory functions based on its assessment of the risks in these cases.

Local Policies and Strategies

- *York Local Planning Strategy*: The Strategy has not been amended since the previous application and identifies the site in the Darling Plateau (1a) and Western Slopes (2b Conservation) Precincts, predominantly in the latter.

The objectives of the Darling Plateau (1a) Precinct are to protect sustainable agricultural production and to preserve and enhance the environment and natural resources. The objectives of the Western Slopes (2b Conservation) Precinct are to preserve and enhance the environment and natural resources; support continued sustainable agricultural production; promote farm diversification; and to recognise the likelihood that existing lots may be redeveloped.

Supporting strategies in both Precincts include; the general presumption against subdivision; preservation and enhancement of the environment and natural resources; supporting continuation of sustainable agricultural production; not to support development requiring large scale clearing; requiring development to be set back from waterways; promotion of farm diversification; and to actively promote and encourage eco-tourism and agricultural tourism.

- *York Strategic Community Plan 2016 – 2026*: The Strategic Community Plan is a long-term planning document that sets out the community's visions and

aspirations for the future, and the key strategies to focus on to achieve these aspirations. Five community aspirations are identified including, the place to live, a leader in cultural heritage and environment, driving the York economy forward, built for resilience and strong leadership and governance. The strategy focuses on being responsive to community needs.

Consultation:

Public Consultation

The application to amend condition 9 to extend the period to substantially commence the development was advertised for a period of 42 days ending on 19 January 2018. An extended consultation period was permitted given the consultation period fell over the Christmas period, and the full period of 42 days permitted for statutory authorities to respond would likely be required before the application could be processed.

The application was advertised in the Avon Valley Gazette, a notice placed in the York Community Matters Paper, letters sent to adjoining landowners and persons who previously made submissions, and a notice placed on the Shire's website.

- 472 individual public submissions were received.
- Of these 2 submissions were in support, and 470 in objection to the proposal.
- 5 of the submissions received in objection to the proposal were received after the period for submissions closed and are 'late submissions'.
- 'Pro-forma' used for some submissions;
- An additional 'petition' like submission using the pro-forma was submitted containing an additional 138 persons objecting to the proposal, in addition to the individual submissions above.

A Schedule of Submissions is provided in Attachment 5 to this Report and contains a summary of the main points of submissions. Copies of the submissions (in their entirety) are attached at Appendix 5a.

Submissions in support of the application were on the basis that the applicant was unreasonably held up in implementation of the proposal from delays in assessment by the DWER due to State elections and reconfiguration of government departments, that the application meets environmental and social measures and the applicant is experienced in operation of similar landfills.

Objections received generally related to concerns regarding:

- That the landfill development and subsequently application to extend period to substantially commence is inconsistent with the Shire of York Town Planning Scheme No.2 and the objectives of the General Agriculture zone.
- That the landfill development is inconsistent with State or regional strategic plans or policies.
- That there is no strategic basis for the landfill's proposed location.
- Use of productive agricultural land, in a reliable rainfall area for a landfill.
- That the proposal has not demonstrated a benefit to the community and locality.
- Impacts on amenity, history, heritage (including Aboriginal heritage) and lifestyle.

- Detrimental impact on economy from perceived opinion of York as area for a landfill, and additional heavy vehicles and traffic on Great Southern Highway deterring tourists from travelling to York.
- Traffic impacts of additional heavy vehicles and increased traffic on Great Southern Highway and concern for the adequacy and capacity of Great Southern Highway to accommodate.
- Impact on adjoining farms in regard to stock, stock water supplies, bio-security and organic status.
- Concerns of contamination and pollution of land, water, air and surrounding farms, nature reserves and National Parks.
- Concerns regarding location of landfill within seismic zone, and impact on liners with risk of rupture or failure.
- Location of site in proximity to National Park and water catchment area, and potential for pollution and contamination.
- Impacts of natural disasters such as flash flooding, inundation and high winds on landfill and contamination.
- Bushfire risk, and capacity of emergency services to respond.
- That there are other suitable sites for landfills
- Objectives of the State Government to reduce waste not being met, and landfill levees not being used for purposes to encourage waste being directed from landfills.
- Landfill not required.
- Community opposition against proposal.

Submissions received were in essence similar to those submitted on the original and amended application refused by the JDAP and approved by SAT, indicating that these concerns have not been addressed to satisfy community concerns, or perhaps have been renewed by the presence of a new applicant. As part of the SAT 'Reasons for Decision of the Tribunal' and associated orders, SAT determined that in regard to environmental concerns of matters of the application, that the DWER is the principle regulator of environmental matters in the State. As DWER had indicated it would give approval upon extensive conditions, it was considered appropriate by the SAT to approve and consideration was given to conditions of both approvals so as to avoid duplication. Submissions regarding environmental matters are noted, although have been determined by SAT as appropriate for consideration by DWER at the works approval application stage.

However, officers note that impacts on the natural environment, water and human health is a matter required to be given due regard under the Scheme, and objective b) of the General Agriculture zone. The submission of a new works application which involves a new applicant, amendments, that two years have passed, and DWER having indicated a decision has not been made on the proposal or conditions formulated, do not give certainty that the submissions have been adequately addressed, that the proposal will not have an adverse impact on the natural environment or health and there is uncertainty as to the appropriateness of conditions.

Consultation with other Agencies or Authorities

Referrals were to State government agencies and other authorities previously invited to comment on the property (as amended by government reforms).

Ten submissions were received from Western Power, State Heritage Office, Department of Planning, Lands and Heritage – Aboriginal Heritage Directorate, Department of Biodiversity, Conservation and Attractions, Department of Water and Environmental Regulation (DWER), Main Roads Western Australia (MRWA); Department of Mines, Industry, Regulation and Safety, Department of Primary Industries & Regional Development, Department of Health and Department of Fire and Emergency Services (DFES).

The submissions did not raise any specific objections to the proposal, although DFES, Main Roads and DWER provided comments relevant to assessment of the application, which are discussed during the planning assessment section of this report below.

A copy of agency submissions is provided in Attachment 6.

Planning assessment:

The application proposes to, under application of Regulation 17(1)(a) of Regulations, to amend condition 9 of the approval, which requires development to be substantially commenced within 2 years from the date of approval, and the approval will lapse if the development is not substantially commenced before the expiration of that period.

The application lapsed on the 4 September 2017, as no commencement of works had occurred. The applicant seeks to amend condition 9 to delete 'within two years after the date of approval' and extend the period for substantial commencement by inserting 8 March 2020.

As outlined in the applicant's submission, there are a number of considerations set out by the recent decision of the State Administrative Tribunal in Georgiou Property 2 Pty Ltd and Presiding Member of the Metro West Joint Development Assessment Panel [2017] WASAT 138 regarding extension of the term of a development approval, which includes:

- Whether the planning framework has changed substantially since the development approval was granted;
- Whether the development would likely receive approval now;
- Whether the proponent had actively and relatively conscientiously pursued the implementation of the development approval.

It is also necessary to review whether the application for amendment is appropriate for assessment under Regulation 17(1)(a).

Planning Framework and whether the development would likely receive approval now

The Form 2 application proposes to amend the development approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill and extend the period permitted for substantial commencement.

The use was previously considered as a 'use not listed' in accordance with cl 3.2.4 of the Scheme. Discussion occurred within the SAT 'Reasons for Tribunal' as to whether the use was more appropriately classified as 'Industry – Noxious', although a definitive decision was not made as the land use classification was immaterial to the outcome. Regardless of whether it would be 'Industry-Noxious' or 'Use Not Listed'

the land use definitions, objectives and development standards of the Scheme have not been amended since the time of the previous application (noting Scheme Amendment No. 50 discussed further below).

Whilst scheme provisions relevant to this application have not since been substantially altered, the SAT in determining that the application was consistent with Scheme provisions:

- gave due regard to the applicant's submission in support of the application;
- considered DWER as the principal regulator for environmental matters under the jurisdiction of the *Environmental Protection Act 1986*;
- gave due regard to the Works Approval Application by SITA;
- gave due regard to the applicant's submission and status of the DWER works approval application who at that time advised an intention to issue approval and anticipated conditions.
- Formulated conditions of the development approval in conjunction with review of DWER conditions to avoid duplication.

The current proposal involves an entirely new application and new works application approval. AMI has indicated that it does not propose to carry out development of the SAT approval or previous works application approval but will vary aspects of the proposal to suit the intended operations such as the cell configuration amended from 6 to 7 cells. Other alterations within the current works approval application from that considered by SAT include the addition of a sediment basin, increase in nominal life span from 20 to 28 years, and reducing the standard of internal road construction in the works application. Whilst these were considerations outlined in the applicant's submission, these aspects were not specifically conditioned or shown on development plans. The alteration of applicant and associated alteration in the intended manner of operation affects matters given regard by the SAT in determining whether the proposal was consistent with objectives of the Scheme. Such matters were considered based on a supplementary report by SAT outlining the development and commitments to operating which are not applicable to a new applicant, as they are not 'secured' by condition of approval.

For example, considering deemed clause 67(a) in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, requires a decision maker to have due regard to the aims and provisions of the relevant local government scheme. The objectives of the General Agriculture zone, set out in clause 4.15.1 of TPS 2 are relevant and particularly objective b) as follows:

- b) *To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.*

Objective b) is clearly linked to the way a landfill is proposed to operate. Consequently, the details of the AMI proposal (which differ from that of the previous applicant) are demonstrably relevant to any planning determination which may facilitate the undertaking of the AMI proposal, including an application to extend the period to substantially comment. In this regard, the applicant has not demonstrated the benefit of the proposal to the district.

An underlying reason for issuance of the approval by SAT, was on the basis that DWER is the principle regulator for environmental matters, and that DWER had advised an intention to grant the works approval, and indicated conditions, providing

a basis for the SAT conditions to be formulated avoiding areas of duplication with DWER. On this basis, compliance with objective b) was also satisfied. The current applicant has submitted a slightly altered works application to DWER. DWER has also advised that it is currently within the assessment phase and not in a position to advise whether a works approval will be issued, and what conditions this will be subject to. Whilst the Works Approval Application is similar to that previously submitted, it involves alterations, a new applicant, and there have been a number of regulatory amendments being progressed regarding landfills. There is no certainty that approval will be issued, or the approval will mimic conditions previously intended to be imposed. In absence of this, an underlying reason for issuance of the approval does not currently exist, and consistency with objective b) cannot be demonstrated. This is particularly important as many conditions requested by the Shire were not imposed to avoid duplication with DWER. Certainty of conditions between the two approvals is required to ensure aspects of the application are adequately regulated and managed.

In this regard, submissions have been received querying regulation of the borrow pits. Borrow pits are currently identified within the development approval plans. The DWER has advised that emissions associated with the borrow pits will be considered as part of the risk assessment for the works approval application where they are sited within the prescribed premises boundary. DWER has advised that borrow pits outside the prescribed premises area do not appear to meet the description of a prescribed premises in Schedule 1 of the Environmental Protection Regulations 1987, as crushing and/or screening activities are not proposed. If so, only Borrow Area 1 is partly located within the Works Approval Application area. In absence of borrow pits being regulated by the DWER, these should be appropriately managed through the development approval process and regulated through conditions of approval similar to an extractive industry approval. Whilst the borrow pits are not being modified from the previous application or works approval from this application, it appears as though there may be a gap in regard to the planning approval/DWER previous works approval with borrow pits not being adequately covered, creating uncertainty as to their regulation. In regards to this application, clarification from DWER, being the principle regulator in regards to environmental matters is required, and if they are not regulated, additional information on their operation is required to support the development approval such as dust management, rehabilitation, vehicular movements, proposed method of extraction and surface water/drainage, which would not be appropriately dealt with through an amendment.

Compliance with objective b) cannot be met if the borrow pits are not regulated by DWER, and as such there is insufficient information to demonstrate that their operation will not have an adverse impact on the environment or adjoining landowners.

Clause 8.5 and clause 67 of the deemed provisions (*Planning and Development (Local Planning Schemes) Regulations 2015*) set out matters to be given due regard by the local government in consideration of an application for planning consent. Since the date of the previous determination, the deemed regulations of the Planning and Development (Local Planning Schemes) came into effect, which override local planning schemes to the extent of inconsistency. Clause 67 of the deemed provisions contains matters to be given due regard, to the extent that, in the opinion of the local government, those matters are relevant to the development, subject of the application.

In regard to the application for extension, the following are those which have been amended, or involved a change in planning frameworks since approval of the previous application.

- b) *The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving.*

Scheme Amendment No. 50 is an omnibus amendment containing a number of administrative changes to the Scheme adopted by Council for the purposes of advertising 19 November 2012. The advertised version initially proposed to introduce the land use of 'Waste Disposal Facility' as an 'SA' use (meaning that the issuing of planning approval is at the discretion of council, after public notice has been given) in the General Agriculture zone and prohibited in all other zones. Following public advertising being undertaken and submissions received objecting to this, reference to the land use of 'Waste Disposal Facility' and 'Waste or Resource Transfer Station' was removed, and the amendment was adopted for final approval by Council 15 April 2013 and forwarded to the Western Australian Planning Commission (WAPC) and Minister for Planning.

A reasonable position of the WAPC in assessment and response to the submissions would have been to make waste disposal facilities a prohibited use in all zones.

Council then resolved at the Ordinary Council Meeting 14 April 2014 to request the Minister for Planning to make 'waste management facilities' a prohibited use in the Shire of York Town Planning Scheme No. 2. To consider the land use of a 'Waste Disposal Facility' would then firstly require a scheme amendment to be pursued to allow the ability to apply for such a use on the property, such as through the creation of a 'special use zone'.

The Minister for Planning issued approval for the amendment on 5 April 2016, subject to modifications. The modifications in part reflected the 14 April 2014 resolution by requiring a modification to the advertised version of the amendment to make the land use of 'Waste Disposal Facility' prohibited in all zones (although required 'Waste Storage Facilities' to be listed as an 'SA' use in the General Agriculture and Industrial zones).

However, in recognising the Allawuna Landfill development approval issued by the State Administrative Tribunal 8 March 2016, and to avoid the creation of a non-conforming use by making Waste Disposal Facilities prohibited in all zones, the ministerial modifications required the insertion of Special Use Zone No. 8 (SU8) over the broader Allawuna farm property into Schedule 3 as follows:

No.	Particulars of Land	Special Use	Conditions
8	Lots 9926, 26934, 4869 and 5931 Great Southern Highway, St. Ronans	1. Waste Disposal Facility and associated infrastructure on Lot 4869 (AA) 2. Caretaker's dwelling on Lot 4869 (AA)	1. The waste disposal facility shall only accept waste types permitted for disposal at a Class I and Class II landfill (DER, <i>Landfill Waste Classification and Waste Definitions</i> 1996 (as amended)). 2. The development is to be undertaken generally in accordance with the 8 March

		3. Single House on Lot 9926 (P) 4. Agriculture – extensive (P)	2016 decision of the State Administrative Tribunal ([2016]WASAT22) and a development approval issued by the local government.
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The prohibition of 'Waste Disposal Facilities' in all zones was in response to comments received on the modifications and inclusion of the SU8 zone as a new addition to the amendment. In accordance with Section 46 and/or 56 of the Regulations, the Minister or Authorised person may direct the local government to advertise modifications to a scheme amendment if the Minister or authorised person is of the opinion that the modification is significant.

The inclusion of the SU8 zone was considered 'not significant', and it is understood that this was on the basis that the SU8 zone was reflecting the existing development approval.

The Shire responded to the Minister objecting to the inclusion of the Special Use zone on the following basis:

- The introduction of the SU8 zone is a completely new addition to Scheme Amendment No. 50; it was not part of the advertised or finally adopted version. The Minister has not directed the Shire to advertise this modification under Clause 46 and/or 56 of the Regulations as the Minister considers that the modification is not significant. It is the Shire's opinion that the modification is significant and requires advertising and consideration by Council to comply with the Regulations.
- The proposed rezoning is a completely new addition to the advertised and finally adopted version by Council, was not advertised and was not contemplated by the submission of the development application/SAT proceedings;
- The amendment relates to the overall lot areas and permissibility of land uses, whereas the development approval relates to the development site only and specific landfill use class.
- In the absence of the rezoning being included within the initial Scheme Amendment, the rezoning is effectively bypassing the requirements of the *Environmental Protection Act 1986* which requires schemes and scheme amendments to be referred to the Environmental Protection Authority, a process which would consider the broader implications of the land use change of the overall site, whereas current approvals relate only to a portion of the property; and
- The rezoning relates to a development that received significant community concern and objection which would warrant appropriate consultation being undertaken. On this note, an objection has already been received regarding the content of the SU8 zone, which cannot be considered in a manner consistent with orderly and proper planning.
- The wording of Condition No. 2 is considered unclear as to whether it is restricting development to the 8 March 2016 SAT decision and incidental uses, and anything outside of this would require a further scheme amendment; or if it facilitates any future, additional approvals issued by the local government.
- The rezoning reflects a land use change that, in of itself, reflects a 'complex' amendment and therefore cannot be considered insignificant.

- It was also advised that the introduction of a Special Use zone into the scheme for the site is also considered premature when there is no guarantee that the development will commence, and it is potentially limited to the current approval.
- Should the development not commence, depending on how Condition 2 is interpreted, any development on the site may require a further, unnecessary scheme amendment to revert the area to the General Agriculture zone. The development approval would have been appropriately treated as a non-conforming use, should it have commenced.

The Shire considers that Scheme Amendment No. 50 and the modification to include the SU8 zone, is not an insignificant modification and the Shire's opinion is that its inclusion, which permits above that of the development approval, and modifications were not carried out in accordance with Clause 46 or 56 of the Regulations. In the absence of this, the permissibility should be considered as an 'X' or prohibited use which was the intent of the Shire to require a scheme amendment for all waste disposal facilities prior to a development approval to allow for strategic consideration of the site. The existing development approval should have been treated as a non-conforming use, with rights to implement the existing development approval.

Based on this, the Shire's position is that the use should have been treated as a lawful non-conforming use with rights to implement the development approval (and any other provisions afforded to non-conforming use rights), and that an extension is not permissible as the broader scheme objectives of Amendment 50 leading to waste disposal facilities being prohibited was pursued prior to receiving of the original development application. The Shire has undertaken the directed modifications, with the inclusion of an additional condition 3 and 4:

3. If the development of the waste disposal facility is not substantially commenced prior to the expiration of 2 years from the date the SAT approval is taken to have had effect, the SU8 provisions other than this condition and condition 4 will cease to have effect and use and development of the site shall be only in accordance with the 'General Agriculture' zone and use permissibility's for the General Agriculture zone in the Zoning Table.
4. If a development approval is sought following expiry of the approval mentioned in point 2, the application is to be assessed under the requirements applicable to the 'General Agriculture' zone.

The proposed Shire amendments are yet to receive final approval by the Minister.

Regardless of this, officers do not consider that an extension is consistent with the provisions of the Special Use No. 8 zone condition 2, which requires the development to be undertaken in accordance with the SAT orders, which includes condition 9, imposing the two-year period for substantial commencement. Amendment of the condition to increase the period for substantial commencement is not consistent with the SAT orders.

c) Any approved State Planning Policy

State Planning Policy 2.5 – Rural Planning and 3.7 Planning in Bushfire Prone Areas have been amended since the date of the previous approval.

SPP2.5 does not introduce considerations which were not previously considered as part of the previous development approval. SPP3.7 introduces new provisions for planning in bushfire prone areas and assessment criteria for development in bushfire prone areas. The provisions of SPP3.7 apply to strategic and development applications where the area has or will on completion have a moderate bushfire hazard level or BAL12.5 to BAL-29 applies, and where an area is not yet designated as bushfire prone outlined in the guidelines.

The landfill site is not identified within a mapped bushfire prone area (100m within classifiable vegetation of over 1ha in area). However, it is considered that the use is likely to create a hazard, with the area of open landfill likely to be over 1ha in area containing 'fuel' for fire, in proximity to grassland which is classifiable, and also the use of flares to manage gas emissions, which in officers' opinion would be likely to be considered a hazard requiring assessment against SPP3.7.

Importantly, the policy introduces a new category for 'high risk' land uses, which is 'a land use which may lead to the potential ignition, prolonged duration and/or increased intensity of a bushfire. Such uses may also expose the community, fire fighters and the surrounding environment to dangerous, uncontrolled substances during a bushfire event. Landfill sites are referred within the supporting guidelines as an example of a potential high risk land use. A bushfire hazard assessment/bushfire attack level assessment is required and potentially a revised bushfire management plan addressing high risk land use requirements by a qualified consultant. This would be required prior to an approval being issued as siting and fuel loads could be relevant considerations of an application which affect the built form.

The Department of Fire and Emergency Services (DFES) advises that the proposed development is located within an area designated as 'bushfire prone', and as such is to be accompanied by documents identifying compliance with SPP3.7. It was advised that the proposed land use needs to demonstrate compliance with Policy Measure 6.6 relating to high risk land uses. DFES advises that the Fire Management Plan submitted prior to the introduction of SPP3.7 and guidelines does not address a number of policy measures, and the current bushfire risk assessment methodology has not been applied. DFES recommended that the application be deferred until required information is submitted.

Officers agree with this approach, and that a precautionary approach is required due to the close proximity of the site downhill of the National Park which is an extreme risk area, and potential creation of hazards from revegetation requirements. The extension of the application requires bushfire management and risk to be addressed for compliance with SPP3.7 prior to issuance of any approval.

- e) *(of the Scheme) any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State.*

The SAT reasons for decision of the Tribunal document in the section, summary of reasons for decision, outline that a moratorium could not be justified in the circumstances, given that there was already in the planning framework sufficient indication of the need for such a facility and in a location such as that under consideration. The Tribunal did not see the approval giving rise to any prejudice to the continued strategic planning for the wider regional area (including the site) which was required to address the need for suitable waste disposal facilities.

Figure 32 of the State Planning Strategy 2050 identifies a landfill within the Shire of York local government boundaries. A landfill is identified in almost every local government in figure 32, and it is considered that the rationale behind identification of the landfill sites was likely to reflect that municipal needs or regional waste strategies between local governments would likely require a waste disposal site to service community needs. In the absence of such rationale for this application, the strategic basis for this landfill in terms of relationship to existing waste facilities such as resource recovery facilities and strategic sites and infrastructure corridors has not been demonstrated. It is the Shire's opinion that approval of landfills to service Peel and Perth waste requires a detailed strategic framework in regard to their location, such as outlined in the Wheatbelt Regional Planning and Infrastructure Framework that they be located on strategic transport corridors. In the absence of this it is considered that adhoc approval of landfills which are not efficient or promoting resource recovery would be inconsistent with the goals of the Waste Strategy and principles of proper and orderly planning. However, it is noted that the strategic framework has had minimal alteration (adoption of the draft WRPIF 2015), and that the SAT has issued a decision in regards to this matter.

- t) The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety*

A Traffic Impact Statement (TIS) was submitted with the original development application 17 December 2013, indicating that a maximum of 24 heavy vehicle trips would be generated (total of 48 daily movements) and 13 light vehicle trips (26 daily movements) resulting in a total of 37 vehicular movements from the site (or 78 daily movements). The impact of traffic generated in relation to capacity of the road system was assessed using traffic volume data from June 2012. The amended application submitted and subject of the SAT orders, identified that the amended application would not affect traffic volumes.

Condition 4 of the SAT orders required the access road junction onto Great Southern Highway to be upgraded in accordance with plans approved by Main Roads Western Australia (MRWA) to the satisfaction of the local government with advice from MRWA.

Main Roads provided comments on this application based on the previous TIS submitted by SITA, which identified an additional 48 road train movements and 30-40 light vehicular movements per day on the Chidlow York Road, representing an overall increase of 2.8-5.7% over the existing traffic volumes and equating to one to two years normal traffic growth. Main Roads advised that the previous TIS proposed an upgrade of the existing intersection to a channelized intersection at this location, and that the designs for these improvements were being developed and will be approved by Main Roads once complete to ensure they meet the required standard.

Main Roads also provided that the Traffic Impact Statement submitted in the support of the original application, relies on traffic volumes from 2012 which are outdated. Main Roads recommends a TIS be updated to reflect recent traffic volumes to inform traffic requirements.

An amended TIS was submitted with the current works approval application as attachment 8C, revising the project vehicular volumes to 20 heavy vehicle trips and 10 light vehicle trips (60 daily movements in total) and included updated crash statistics. The traffic volume data used to inform the TIS was not updated with the

applicant advising that this was a rural road and increases would have been minimal from this time.

Main Roads has advised that the use of 2012 traffic volumes which are over 5 years old are outdated and insufficient. Recent traffic volumes are required to be updated as part of a review of the TIS. The irrelevance of this data will be further accentuated should an extension to the period to substantially commencement to March 2020 be approved. There is currently insufficient information to determine that the surrounding road capacity is sufficient for traffic generated by the development.

In the application's current format, it would not likely receive development approval.

y) submissions received on the application.

A total of 472 individual submissions and a petition like submission with 138 signatures were received on the application and are responded to within the assessment of the RAR report and schedule of submissions in Attachment 5.

The application when advertised for public submissions received 472 individual submissions of which 470 and an additional 138 signatures submitted in the format of a petition objected to the proposed extension of the period to substantially commence the development.

The purpose of a period to substantially commence within a prescribed time, as set out in the applicant's submission referring to *Fazio v City of Fremantle Ors (unreported) CIV 2314* at 14 is because 'it is undesirable that a developer should have available for an indefinite time an approval in respect of a development which changing patterns of use or changing community attitudes might, over time render inappropriate. It is in the interests of orderly planning that an approval for building or for use, once obtained, should be acted upon or should expire, within a reasonable time.'

Given the amount of community opposition against the proposal, and attitudes towards waste reform, it is reasonable that the application which has not been acted on should expire, and a new application be required.

Whether the holder of the development approval has actively and relatively conscientiously pursued the implementation of the development approval.

The SAT orders and Works Application approval were in place by 8 and 22 March 2016 respectively. The applicant issued a press statement 6 July 2016 that it would no longer be proceeding with the development, and based on this, the DWER issued a cancellation of the works approval, which is personal to an applicant.

The development approval lapsed on 4 September 2017. A new applicant then submitted a new works application in August 2017, which involved a peer review of the previous applicant's works application as these were public documents. A completed Form 2 application seeking an extension of the period to substantially commence was not received until 28 November 2017.

The applicant is of the opinion the period for substantial commencement is valid until the 8 March 2018 (2 years from the date of the SAT orders). The applicant's submission advises that the current applicants have been actively seeking

implementation of the approval from July 2017, and prior to this were held up by legislative matters regarding agreements on the land (refer Attachment 3).

It is the Shire's opinion that the holder of the development approval has not actively and relatively conscientiously pursued implementation of the development approval. This is demonstrated by the public statement that the original applicant would not be proceeding with the development and cancellation of the works approval. There is also no indication of correspondence indicating effort has been made to clear any 'prior to commencement' conditions since the date of the SAT orders.

The delay in commencement is due to a change of applicant, and the application most likely could have been implemented had the applicant had actively sought its implementation.

A submission was received advising that substantial commencement of the development was delayed by matters outside of the applicant's control, advising that the application to DWER was delayed by State Elections and reconfiguration of government departments. The State elections occurred in March 2016, and the works application was received 21 July 2017. There is a period of 'caretaking' before and after elections where no significant decisions are made until new Ministers appointed. Government department departments are still functional during reconfigurations.

Officer Comments:

In summary, the application to amend condition 9, to extend the period to substantially commence the development from 4 September 2017 to 8 March 2010:

- Is to support commencement of the development by an entirely new applicant, and new works application approval;
- AMI has indicated that it does not propose to carry out the development subject of the SAT determination in March 2016, but will vary aspects of the proposal including the number of waste storage cells, and other aspects which formed part of the assessment of the application, or works approval, but were not specifically confirmed as a requirement by the approval.
- Alters and introduces new considerations which affect underlying reasons for approval of the development by SAT;
- The period for extension being sought is significant and in effect seeks a period of over 4 years for the development to be substantially commenced.
- Has not demonstrated consistency with objective b) of the General Agriculture zone of the Shire of York Town Planning Scheme No. 2
- Has not demonstrated that by way of extension of the period to substantially commence, the proposal will not have an adverse impact on the natural environment, or human health and waterways.
- The Planning Framework has changed in that Scheme Amendment No. 50 has advanced significantly further than was the case at the time of the SAT determination in March 2016.
- The Minister has issued approval subject to modifications for Scheme Amendment No. 50 accepting the land use of 'Waste Disposal Facility' as a prohibited use in all zones, but subject to the terms of the proposed Special Use 8 zone, under condition 2 of which development of the SITA proposal could be undertaken generally in accordance with the 8 March 2016 decision of the State Administration Tribunal, which decision included condition 9

- imposing the two year period for substantial commencement. An extension would be inconsistent with the intent of SU8 and condition 2 of the SU8 zone.
- Since the date of the previous approval, there is an updated State Planning Policy which would designate the use as a ‘high risk’ proposal requiring submission of a bushfire management plan prior to approval of an application.
- The traffic assessment used to support the application is outdated (2012) as of 2017. The irrelevance of this data will be further accentuated by March 2020.
- The holder of the development approval has not actively and relatively conscientiously pursued the implementation of the development approval (Georgiou Property 2 Pty Ltd and Presiding Member of the Metro-West Joint Development Assessment Panel [2017] WASAT 138).
- During the advertising period 472 submissions were received, of which 470 were in objection to the proposal. A petition like submission was also submitted containing an additional 138 persons objecting to the proposal. Given the community opposition against the proposal, and attitudes towards waste reform, it is reasonable that the application which has not been acted on should expire, and a new application be required.

The above considerations are not considered ‘minor’, involve an amendment in the planning frameworks and new considerations for whether the application would be approved and format of approval. The application has not been actively and conscientiously pursued and has lapsed. It is the Shire’s opinion that the application to extend the period for substantial commencement is not appropriate, and a new application should be submitted.

Regardless of the above, if the JDAP is of the opinion that the application can be considered as under Regulation 17(1)(a), officers are of the opinion that an application for extension of the period to substantially commence is inappropriate for the same reasons and would recommend refusal based on those reasons.

Options/Alternatives:

The following options are available to the JDAP:

- Should the JDAP consider the application is appropriate to be treated as an amendment under DAP Regulation 17(1)(a), and the JDAP having had due regard to the provisions of clause 67 in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations), it is recommended that the application be refused for the same reasons set out in the recommendation as reasons the application should not be accepted as a Regulation 17a application, listed as follows:

That the Mid West JDAP resolves to **Refuse** the DAP Application reference DP/14/00039 as detailed on the DAP Form 2 dated 24 November 2017 for the following reasons:

- (a) The applicant has indicated that it does not propose to carry out development approved by the SAT on review but will vary aspects of the proposal including the number of waste storage cells and the proposed duration of operation.

- (b) The applicant has not demonstrated compliance with Objective (b) of the General Agriculture zone of TPS2.
 - (c) Considering the application to extend the time for substantial commencement was not made until after the expiration of the previous substantial commencement date of 4 September 2015, and considering that the proposed extension of time would expand the period for substantial commencement to four years and six months, the proposed extension of time is inconsistent with the principle of orderly and proper planning.
 - (d) Approval or extension of the period for substantial commencement as proposed would further be inconsistent with orderly and proper planning having regard specifically to Scheme Amendment No. 50 which does not contemplate or permit extension of the period for substantial commencement.
 - (e) The application has not been demonstrated to be in compliance with State Planning Policy 3.7 – Planning in Bushfire Prone Areas, which would consequently identify the use as ‘high risk’ and requiring consideration in terms of the policy prior to approval being issued.
 - (f) There is insufficient information to assess the impact from the likely amount of traffic to be generated by the development in relation to the capacity of the road system in the locality and the effect on traffic flow and safety, having regard to the operating conditions and equipment the applicant would employ in carrying out the development.
 - (g) The holder of the development approval has not actively and relatively conscientiously pursued the implementation of the development approval (Georgiou Property 2 Pty Ltd and Presiding Member of the Metro-West Joint Development Assessment Panel [2017] WASAT 138).
 - (h) In contrast with the development considered by the SAT in its determination of 8 March 2016, there is no current indication that a works approval will be issued by the relevant environmental agency.
 - (i) The application when advertised for public submissions received 472 individual submissions of which 470 were in opposition to the proposal, a petition like submission was also received where an additional 138 persons objected to the proposal. Given the community opposition against the proposal, and attitudes towards waste reform, it is reasonable that the application which has not been acted on should expire, and a new application be required.
- Should the JDAP consider that the application to extend the period to substantially commence is ‘minor’, there has not been a change in the planning framework, the development would receive approval now, and the approval holder relatively and conscientiously sought implementation of the approval, it could resolve:
- That the Mid West JDAP approves the application to amend condition 9 of DAP Application reference DP/14/00039 (as amended by SAT([2016]WASAT22) as follows:
- (a) Deleting: ‘within two years after the date of approval; and
 - (b) Extend the period for substantial commencement by inserting ‘8 March 2020’.

Council Recommendation:

That the Mid West Wheatbelt Joint Development Assessment Panel **Refuse** DAP Application reference DP/14/00039 as detailed on the DAP Form 2 dated 24 November 2017 on the grounds that the application is not appropriate for consideration in accordance with terms of regulation 17(1)(a) of the *Planning and Development (Development Assessment Panels) Regulations 2011*, and should more appropriately be a new application for development approval, because of the following reasons:

- (a) The applicant has indicated that it does not propose to carry out development approved by the SAT on review, but will vary aspects of the proposal including the number of waste storage cells and the proposed duration of operation.
- (b) The applicant has not demonstrated compliance with Objective (b) of the General Agriculture zone of TPS2.
- (c) Considering the application to extend the time for substantial commencement was not made until after the expiration of the previous substantial commencement date of 4 September 2015, and considering that the proposed extension of time would expand the period for substantial commencement to four years and six months, the proposed extension of time is inconsistent with the principle of orderly and proper planning.
- (d) Approval or extension of the period for substantial commencement as proposed would further be inconsistent with orderly and proper planning having regard specifically to Scheme Amendment No. 50 which does not contemplate or permit extension of the period for substantial commencement.
- (e) The application has not been demonstrated to be in compliance with State Planning Policy 3.7 – Planning in Bushfire Prone Areas, which would consequently identify the use as ‘high risk’ and requiring consideration in terms of the policy prior to approval being issued.
- (f) There is insufficient information to assess the impact from the likely amount of traffic to be generated by the development in relation to the capacity of the road system in the locality and the effect on traffic flow and safety, having regard to the operating conditions and equipment the applicant would employ in carrying out the development.
- (g) The holder of the development approval has not actively and relatively conscientiously pursued the implementation of the development approval (Georgiou Property 2 Pty Ltd and Presiding Member of the Metro-West Joint Development Assessment Panel [2017] WASAT 138).
- (h) In contrast with the development considered by the SAT in its determination of 8 March 2016, there is no current indication that a works approval will be issued by the relevant environmental agency.
- (i) The application when advertised for public submissions received 472 individual submissions of which 470 were in opposition to the proposal, a petition like submission was also received where an additional 138 persons objected to the proposal. Given the community opposition against the proposal, and attitudes towards waste reform, it is reasonable that the application which has not been acted on should expire, and a new application be required.