



# **CONFIRMED MINUTES**

## **Special Council Meeting Tuesday, 9 June 2020**

**Date: Tuesday, 9 June 2020**

**Time: 5.00pm**

**Location: York Town Hall, York**

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**MINUTES OF SHIRE OF YORK  
SPECIAL COUNCIL MEETING  
HELD AT THE YORK TOWN HALL, YORK  
ON TUESDAY, 9 JUNE 2020 AT 5.00PM**

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

**1 OPENING**

**1.1 Declaration of Opening**

*Cr Denese Smythe, Shire President, declared the meeting open at 5.01pm and thanked everyone for their attendance.*

**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**

*No Change*

**1.4 Announcement of Visitors**

*Nil*

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

*Nil*

**1.6 Declaration of Financial Interests**

*Nil*

**1.7 Disclosure of Interests that May Affect Impartiality**

*Nil*

**2 ATTENDANCE**

**2.1 Members**

*Cr Denese Smythe, Shire President; Cr Denis Warnick, Deputy Shire President;  
Cr Ashley Garratt; Cr Pam Heaton; Cr Stephen Muhleisen; Cr Kevin Trent*

*Cr Smythe stated that Cr David Wallace had resigned effective 8 June 2020.*

## 2.2 Staff

*Chris Linnell, Chief Executive Officer; Darren Wallace, Executive Manager, Infrastructure & Development Services; Helen D'Arcy-Walker, Council & Executive Support Officer*

## 2.3 Apologies

*Nil*

## 2.4 Leave of Absence Previously Approved

*Nil*

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

There were 57 people in the Gallery at the commencement of the meeting.

# 3 PUBLIC QUESTION TIME

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

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

- (1) A member of the public who wishes to ask a question during question time must identify themselves and register with a Council Officer immediately prior to the meeting.
- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that—
  - (a) a response is given to the member of the public in writing; and
  - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—
  - (a) declare that he or she has an interest in the matter; and
  - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where—
  - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
  - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
  - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.

- (8) A member of the public shall have 2 minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where any questions remain unasked at the end of public question time they may be submitted to the CEO who will reply in writing and include the questions and answers in the agenda for the next ordinary Council meeting.
- (11) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

Public Question Time Commenced at 5.04pm.

### 3.1 Written Questions – Current Agenda

*Nil*

### 3.2 Public Question Time

**Mr Chris Pullin**

**Question 1:**

I request that the Responsible Authority Report be strengthened in the paragraph above the conclusion to make it clear that the applicants have not made a conscientious effort to progress the application.

**Response provided by the Chief Executive Officer:**

I will ask the Council to consider a Part 2 to the current Officers Recommendation directing the Chief Executive Officer to go back to the Consultants to see if the current wording should be adjusted before the RAR is submitted to JDAP.

**Mrs Kay Davies**

**Question 1:**

How many more times can Alkina Holdings legally go through this same process of asking for extensions?

**Response provided by the Chief Executive Officer:**

The question is taken on notice.

**Response provided by the Senior Planner following the Conclusion of the Meeting:**

The *Planning and Development (Local Planning Schemes) Regulations 2015* and *Planning and Development (Development Assessment Panels) Regulations 2011* do not place a limit on the number of applications that can be made to modify or extend a planning approval.

**Question 2:**

Is there anything the Council or the public can do that would facilitate an end to the landfill proposal?

**Response provided by the Chief Executive Officer:**

The community can lobby the relevant Ministers and the local Members of Parliament.

**Question 3:**

Is there nothing the Council can do?

**Response provided by the Chief Executive Officer:**

The Councils current role is to provide a Responsibility Authority Report (RAR) to the Joint Development Assessment Plan (JDAP) who will make the decision on an application to extend the period for substantial commencement of the Development Approval.

**Ms Jane Ferro****Question 1:**

Could the Consultants be asked to consider if Alkina's delay in submitting whatever information or documents that are required by the EPA to enable the EPA to analyse Alkina's proposal, adds weight to stating the current applicant has NOT made effort to progress the approval? (cf: the dot point on page 15 of the RAR, just above the Conclusion statement.)

Since January 2020, the EPA has been unable to invite public comment and submissions before reaching their decision because Alkina have not provided what is required.

**Response provided by the Chief Executive Officer:**

The question is taken on notice.

**Response provided by the Chief Executive Officer following the Conclusion of the Meeting:**

The Shire of York, through its Consultant, has asked this question of the Environment Protection Authority/Department of Water and Environmental Regulation (EPA/DWER) and they have confirmed that the applicant has been actively meeting requests of the EPA.

As there were no further questions – Public Question Time concluded at: 5.28pm.

**4 APPLICATIONS FOR LEAVE OF ABSENCE**

*Nil*

**5 PRESENTATIONS****5.1 Petitions**

*Nil*

**5.2 Presentations**

*Nil*

**5.3 Deputations**

*Nil*

**5.4 Delegations' Reports**

*Nil*

**6 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

*Cr David Wallace has recently been on three months Leave of Absence. Cr Wallace has as of Monday, 8 June 2020 tendered his resignation from Council.*

## 7 OFFICER'S REPORTS

### SY081-06/20 ALLAWUNA FARM LANDFILL FORM 2 RESPONSIBLE AUTHORITY REPORT

**File Number:** GR2

**Author:** Darren Wallace, Executive Manager, Infrastructure & Development Services

**Authoriser:** Darren Wallace, Executive Manager, Infrastructure & Development Services

**Previously before Council:** 12 February 2018 – SY001-02/18  
14 March 2018 - SY025-03/18

**Appendices:**

1. Responsible Authority Report - Form 2
2. RAR Attachment 1
3. RAR Attachment 2
4. RAR Attachment 3
5. RAR Attachment 4
6. RAR Attachment 5
7. RAR Attachment 6
8. RAR Attachment 7
9. RAR Attachment 8 - Confidential
10. RAR Attachment 9 - Confidential
11. Addendum to Attachment 8 - Confidential

### NATURE OF COUNCIL'S ROLE IN THE MATTER

Advocacy

### PURPOSE OF REPORT

To seek the endorsement of Council on the Responsible Authority Report (RAR) prepared by officers and consultant planners in response to a Form 2 application submitted to the Mid-West Wheatbelt Joint Development Assessment Panel (JDAP) to extend the period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronan's.

### BACKGROUND

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

Condition 9 of the approval required:

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

A Form 2 application to the JDAP was received on the 28 November 2017 proposing to amend Condition 9 of the approval to extend the period of substantial development to 8 March 2020. The Shire prepared a RAR assessing the application and providing a recommendation for refusal to the JDAP. The JDAP refused the application on 10 April 2018. The decision was subsequently overturned on appeal to SAT, which issued an order that:

*“Condition 9 of the development approval granted by the State Administrative Tribunal on 8 March 2016 is amended by deleting the words ‘within two years after the date of the approval’ and substituting ‘by 8 March 2020’”*

An additional Form 2 application to the JDAP was received on 29 January 2020 to amend condition 9 to extend the period of development to be substantially commenced to 8 March 2022.

The Shire placed a stop the clock on the application pending an outcome decision on the assessment of a works approval by the Environmental Protection Authority, however, was directed to recommence the clock by the Development Assessment Panel on 31 March 2020.

The Shire is therefore required to prepare a ‘Responsible Authority Report’ assessing the application and providing a recommendation to the JDAP for its consideration by 15 June 2020.

This report is attached for Council’s consideration.

## **COMMENTS AND DETAILS**

The attached Responsible Authority Report contains a detailed background of the proposal and an assessment and recommendation for the recent request to extend the period for substantial commencement.

## **OPTIONS**

Practice notes released by the Development Assessment Panel provide the following:

- It was the original intention of the DAP Regulations that the report be provided by a local government planning officer giving a technical opinion on the application, not necessarily by Council. Although in the absence of any delegation arrangements, Councils may or shall endorse a RAR prepared by the planning officer.
- Given the original intent, the DAP suggests that if the local government or Council wishes to make a statement regarding an application, it should do so by making a submission on the RAR.

Based on the above, should Council not support the recommendation of the Responsible Authority Report in it’s current format it could:

- Resolve not to endorse the submission, which would create uncertainty in terms of what could be submitted to the JDAP for consideration; or
- Resolve to make a submission to the Mid-West Wheatbelt JDAP including statements for consideration.

## **IMPLICATIONS TO CONSIDER**

### **Consultative**

Consultation undertaken is discussed within the RAR.

### **Strategic**

Strategic implications are discussed within the RAR.

### **Policy Related**

Policy implications are discussed within the RAR.

### **Financial**

There are no direct financial implications as a result of the RAR recommendations. Although if the application results in an appeal to SAT, Council may incur costs if it decides to be represented in the SAT process.

**Legal and Statutory**

The Planning and Development (Development Assessment Panels) Regulations 2011 make provisions for the operation, constitution and administration of Development Assessment Panels. The application to amend the proposal is made in accordance with section 17(1)(a) of this Regulation.

Other relevant legal and statutory documents applicable to assessment of the application are outlined in the attached RAR.

The proposal is subject to a formal environmental assessment under the Environmental Protection Act 1986 (EP Act). Pursuant to section 41(3) of the EP Act the decision maker is precluded from making a decision that would effectively implement the proposal.

**Risk Related**

Risks associated with the proposal, i.e environmental risks etc are discussed within the RAR.

**Workforce**

The recommendation of the RAR has no implications on workforce.

**VOTING REQUIREMENTS**

**Absolute Majority: No**

**RESOLUTION  
010620**

**Moved: Cr Denis Warnick**

**Seconded: Cr Kevin Trent**

**That Council:**

- 1. Endorses the Shire's Responsible Authority Report (as provided in Attachment A) to the Mid-West Wheatbelt Joint Development Assessment Panel in relation to the Form 2 Application to extend period for substantial commencement of Development Approval for the construction and use of Allawuna Farm for the purposes of a Class II Landfill at Lots 4869, 5931, 9926 and 26934 (2948) Great Southern Highway, St Ronans.**
- 2. That the Chief Executive Officer be given delegation to gain further clarification on the Responsible Authority Report (RAR) and make any appropriate changes before the RAR is submitted to the Mid-West Wheatbelt Joint Development Assessment Panel.**

***CARRIED: 6/0***

## **8 CLOSURE**

*The Shire President thanked everyone for their attendance and closed the meeting at 5.30pm.*

*The minutes were confirmed by the Council as a true and accurate record at the Council Meeting held on 30 June 2020.*

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SHIRE PRESIDENT