



Minutes of the Mid-West/Wheatbelt Joint Development Assessment Panel

Meeting Date and Time: 10 April 2018; 5:00pm
Meeting Number: MWWJDAP/24
Meeting Venue: Shire of York
Recreation and Convention Centre
Barker Street (via Forrest Street)
York

Attendance

DAP Members

Mr Paul Kotsoglo (Presiding Member)
Mr Clayton Higham (A/Deputy Presiding Member)
Mr Jason Hick (Specialist Member)
Cr Denese Smythe (Local Government Member, Shire of York)
Cr Kevin Trent (Local Government Member, Shire of York)

Officers in attendance

Ms Carly Rundle (Shire of York)
Ms Suzie Haslehurst (Shire of York)
Mr Paul Martin (Shire of York)
Ms Catherine Ide (State Solicitors Office)

Minute Secretary

Ms Helen D'Arcy-Walker (Shire of York)

Applicants and Submitters

Ms Kay Davies
Mr Denis McLeod (McLeods, Barristers & Solicitors on behalf of the Shire of York)
Mr Jake Hickey (Alkina Holdings Pty Ltd)
Ms Liza du Preez (Golder Associates Pty Ltd) – *arrived at 5.14pm*
Mr Julius Skinner (LSV Borrello Lawyers)

Members of the Public / Media

There were approximately 175 members of the public in attendance.

1. Declaration of Opening

The Presiding Member, Mr Paul Kotsoglo declared the meeting open at 5.04pm on 10 April 2018 and acknowledged the past and present traditional owners and custodians of the land on which the meeting was being held.

Mr Paul Kotsoglo
Presiding Member, Mid-West/Wheatbelt JDAP



The Presiding Member announced the meeting would be run in accordance with the *Development Assessment Panel Standing Orders 2017* under the *Planning and Development (Development Assessment Panels) Regulations 2011*.

The Presiding Member advised that the meeting is being audio recorded in accordance with Section 5.16 of the Standing Orders 2017; No Recording of Meeting, which states: 'A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of the DAP meeting unless the Presiding Member has given permission to do so.' The Presiding Member granted permission for the minute taker to record proceedings for the purpose of the minutes only.

2. Apologies

Mr Vernon Butterly (Deputy Presiding Member)
Cr Jane Ferro (Local Government Member, Shire of York)

3. Members on Leave of Absence

Nil

4. Noting of Minutes

Minutes of the Mid-West/Wheatbelt JDAP meeting No. 23 held on 18 January 2018 were noted by DAP members.

5. Declaration of Due Consideration

All members declared that they had duly considered the documents.

6. Disclosure of Interests

Panel member, Mr Vernon Butterly, declared an impartiality interest in item 9.1. During the advertisement of the original proposal in 2014, Mr Butterly (via Whelans Town Planning) lodged a submission against the development on behalf of a client with land in the York townsite.

In accordance with section 4.6.1 and 4.6.2 of the Standing Orders 2017, the Presiding Member determined that the member listed above, who had disclosed an impartiality interest, was not permitted to participate in the discussion or voting on the items.

Panel member, Cr Kevin Trent, declared an impartiality interest in item 9.1. Cr Trent contacted the owner, Mr Robert Chester and arranged to meet with him on the property to inspect the site of the proposed landfill development.

In accordance with section 4.6.1 and 4.6.2 of the Standing Orders 2017, the Presiding Member determined that the member listed above, who had disclosed an impartiality interest, was permitted to participate in discussion and voting on the items.

Mr Paul Kotsoglo
Presiding Member, Mid-West/Wheatbelt JDAP



7. Deputations and Presentations

- 7.1 Ms Kay Davies addressed the DAP against the application at Item 10.1.
- 7.2 Mr Denis McLeod (McLeods, Barristers & Solicitors on behalf of the Shire of York) addressed the DAP against the application at Item 10.1.
- 7.3 Mr Jake Hickey (Alkina Holdings Pty Ltd) addressed the DAP in support of the application at Item 10.1. Mr Hickey answered questions from the panel.
- 7.4 Ms Liza du Preez (Golder Associates Pty Ltd) addressed the DAP in support of the application at Item 10.1.
- 7.5 Mr Julius Skinner (LSV Borrello Lawyers) addressed the DAP in support of the application at Item 10.1. Mr Skinner answered questions from the panel.
- 7.6 Ms Carly Rundle (Shire of York) answered questions from the panel.

8. Form 1 – Responsible Authority Reports – DAP Applications

Nil

9. Form 2 – Responsible Authority Reports – Amending or cancelling DAP development approval

Nil

10. Appeals to the State Administrative Tribunal

- 10.1 Property Location: Lots 4869 (2256), 5931, 9926 (2948) and 26934
Great Southern Highway, St Ronans
- Application Details: Construction and use of Allawuna Farm for the purposes of a Class II Landfill
- Applicant: Julius Skinner, AMI Enterprises Pty Ltd
- Owner: Robert Henry Chester
- Responsible Authority: Shire of York
- DAP File No: DP/14/00039

REPORT RECOMMENDATION

Moved by: Nil

Seconded by: Nil

That the Mid-West/Wheatbelt Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 34 of 2018, resolves to:

Reconsider its decision to **refuse** DAP Application reference DP/14/00039 in accordance with Clause 68 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the Shire of York's Town Planning Scheme No. 2, for the following reasons:

Mr Paul Kotsoglo
Presiding Member, Mid-West/Wheatbelt JDAP



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 2017, 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 of extension of the period for substantial commencement as proposed would be further be inconsistent with orderly and proper planning, and Shire of York Town Planning Scheme No. 2, where a 'Waste Disposal Facility' is an 'X' (prohibited) use in the General Agriculture zone.
- (e) The Planning Framework has changed in that a 'Waste Disposal Facility' is an 'X' use (not permitted by the Scheme) in the General Agriculture zone, and means an extension to permit such a land use being developed is not capable of approval by Shire of York Town Planning Scheme No. 2.
- (f) 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.
- (g) 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.
- (h) 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).
- (i) 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.
- (j) The application when advertised for public submissions received 473 individual submissions of which 471 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.

The Report Recommendation LAPSED for want of a mover and a seconder.

Mr Paul Kotsoglo
Presiding Member, Mid-West/Wheatbelt JDAP



ALTERNATE MOTION

Moved by: Mr Clayton Higham

Seconded by: Cr Denese Smythe

That the Mid-West/Wheatbelt Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 34 of 2018, resolves to **refuse** DAP Application reference DP/14/00039 made pursuant to regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011* having regard to the following factors, taken together:

1. There has been a substantial change to the planning framework since development approval was granted in that:
 - (a) Amendment 50 to Shire of York Local Planning Scheme No. 2 (LPS 2) was gazetted on 16 March 2018, which relevantly provides that 'waste disposal facility' is an X use within the General Agricultural zone.
2. The development would not likely receive approval now as:
 - (a) The development is a "waste disposal facility" use under LPS 2, which is a prohibited use and cannot be approved.
 - (b) It cannot be sufficiently demonstrated that the development is not detrimental to the environment, as:
 - (i) there is no longer a works approval for a Class II landfill in place or at the very least, an indication from the Department of Water and Environmental Regulation (DWER) that it is willing to grant a works approval; and
 - (ii) it cannot be presumed a work approval is forthcoming as the works approval sought by the Applicant differs from the works approval granted by the Department of Environmental Regulation (DER) previously for the site.
3. The holders of the development approval have not actively and relatively conscientiously pursued the implementation of the development approval in that:
 - (a) SITA/SUEZ publicly announced on 6 July 2016 it would no longer proceed with the development;
 - (b) SITA/SUEZ sought for its work approval to be cancelled by DER on 11 August 2016;
 - (c) AMI Enterprises has not sufficiently pursued the approval to warrant the extension of the approval.
4. The extension of time in which to commence substantial development to 8 March 2020 (effectively two additional years) is excessive in the circumstances.

Mr Paul Kotsoglou
Presiding Member, Mid-West/Wheatbelt JDAP



REASON: Not all the reasons contained in the report recommendation were considered by the JDAP to be relevant to the determination of the matter given the changes to the Planning Framework, the relevant legal considerations in the relevant cases dealing with extension of approvals.

It was considered that the planning framework had changed so substantially as a result of the definition of 'waste disposal facility' being inserted into the Shire of York Local Planning Scheme No. 2 (LPS 2) as an 'X' prohibited use in the General Agriculture Zone that the application would not receive approval now.

The JDAP did not consider the applicant had sufficiently demonstrated that the landowner and applicant had sufficiently actively and conscientiously pursued the implementation of the development approval.

The Alternate Motion was put and **CARRIED UNANIMOUSLY**.

11. General Business / Meeting Close

The Presiding Member reminded the meeting that in accordance with Section 7.3 of DAP Standing Order 2017 only the Presiding Member may publicly comment on the operations or determinations of a DAP and other DAP members should not be approached to make comment.

There being no further business, the Presiding Member declared the meeting closed at 6.12pm.

Mr Paul Kotsoglo
Presiding Member, Mid-West/Wheatbelt JDAP