

### **3.1 EXTRACTIVE INDUSTRY (CLAY AND GRAVEL) - LOTS 8, 9 AND 10 TOODYAY ROAD, RED HILL**

(Gidgegannup) (Development Services)

#### **KEY ISSUES**

- The last planning approval for the use of Extractive Industry (Clay) was issued on 7 December 2000 by the WA Planning Commission. The approval is valid for ten years (until 7 December 2010).
- An extractive industry licence contingent on this planning approval was never applied for.
- The last extractive industry licence, granted under the City's Extractive Industry Local Law, by the City expired on 27 April 1999.
- The applicant is seeking a new planning approval and extractive industry licence for the area indicated on the submitted plans (east side of the site). The final contours of this proposal are different to the previous approval and the material is now described as 'clay and gravel' as opposed to just 'clay' which was the subject of the previous approval.
- Determination for the Extractive Industry would be by the WA Planning Commission and the City is required to provide a recommendation. A ten year approval period for the extractive industry, consistent with the local law, is recommended.
- The proposal was advertised to adjoining property owners, consistent with the advertising requirements of the Scheme and the Extractive Industry Local Law. Several objections were received. However, it should be noted that this site has a thirty year history of excavation.
- Given the history of the excavations on this site, and the minor nature of the change from the current approval, City staff have no objection to the proposal.

It is recommended that the Council resolve to advise the WA Planning Commission that it supports the proposal for clay and gravel excavation on the subject lot; defer consideration of the Extractive Industry Licence application until such time as the WAPC grants its planning approval. Grant delegated authority to the CEO to issue an Extractive Industry Licence upon receipt of the WAPC approval.

#### **AUTHORITY/DISCRETION**

All applications for extractive industries are determined by the Western Australian Planning Commission in accordance with Notice of Resolution Clause 32 (No. 55) of the Metropolitan Region Scheme. Council is required to provide a recommendation with proposed conditions. An extractive industry licence is required to be issued by

the City prior to the commencement of work under its local law pursuant to the Local Government Act.

## **BACKGROUND**

Applicant:	Midland Brick Company P/L (Directors: Peter Hogan, Keith Mitchelhill & Ros Ng)
Owner:	Midland Brick Company P/L
Zoning:	TPS - Resource MRS - Rural
Strategy/Policy:	Gidgegannup Rural Strategy Policy City's Extractive Industry Local Law.
Development Scheme:	Town Planning Scheme No. 9
Existing Land Use:	Extractive industry
Lot Size:	37.22ha (combined total)
Area:	
Use Class:	Extractive Industry ('SA' use)

## **DETAILS OF THE PROPOSAL**

The application seeks development approval and an excavation licence to excavate clay and gravel from Lots 8, 9 and 10 Toodyay Road, Red Hill, a site which has been intermittently excavated for over thirty years.

Excavation depths will be up to ten metres and the site of excavation is set back from Toodyay Road 175 metres behind existing native vegetation and an earth bund. The actual excavation is on Lot 10 to the areas labelled 'stage 1' and 'stage 2' on the eastern side of the site, although Lots 8 and 9 are necessary in this proposal to facilitate access, stockpiling and overburden storage.

## **DESCRIPTION OF SITE**

The site is located approximately 12km north-east of Midland, on the southern side of Toodyay Road. The southern boundary of the lots is also the municipal boundary between the City of Swan and the Shire of Mundaring.

Access is from Toodyay Road. However, the excavation area is screened from Toodyay Road due to its setback of 175m, existing native vegetation and existing earth bund (also vegetated).

## **SITE HISTORY/PREVIOUS APPROVALS**

The site has been intermittently excavated for approximately thirty years. The most recent approvals are listed below:

27 April 1999: Expiry of last extractive industry licence (clay)

7 December 2000: Planning approval granted for ten years for clay extraction.

## **OTHER RELEVANT PREVIOUS DECISIONS OF COUNCIL**

16 August 2006: Item 3.1, Ordinary Council Meeting recommended approval to extractive industry on Lots 1, 2, 11 and 12 Toodyay Road, Red Hill (the adjacent lots to the east). In October 2006, the WAPC also granted approval.

## **APPLICANT'S SUBMISSION**

The applicant has submitted a management plan which amongst other important matters also specifies that this site is a Priority Resource Location. A principle which the Statement of Planning Policy 2.4 'Basic Raw Materials' supports is that materials should be extracted before the land becomes sterilised by conflicting land uses.

## **PUBLIC CONSULTATION**

Adjoining property owners were given a 28 day consultation period via notification letter (to owners in Swan and Mundaring within a 500m radius as per the Local Law), a sign on site, and newspaper notice.

Four objections were received; all raised the same issues with the exception of one submitter who added other comments to the proforma objection letter.

Issues mentioned can be summarised as impact on tourism to the Swan Valley and John Forrest National Park, traffic concerns and amenity impacts through noise. The notions of developer responsibility and the ability of the City to ensure control via conditions was questioned.

Additional comments were made to the effect that the City does not listen to ratepayers; consultation therefore is a 'waste of time'. The submitter appears to believe the City issues approvals as some form of revenue raising activity. It is unfortunate that this view may exist, however, the truth is quite the contrary. The application fee to consider such an application is \$500. Consideration of the application itself would probably absorb the entire application fee. Then it must be remembered that the City is charged with ensuring the compliance of that approval for its length of duration (in this case 10 years is proposed).

This is a responsibility which the City takes seriously, as it does its responsibility to assess proposals on the basis of the applicable legislation. In this case, the City does not make the determination (it is the WA Planning Commission) and there is an applicable Statement of Planning Policy to which the City's Town Planning Scheme is subservient.

The site itself has a long history of this use, which surrounding property owners should be well aware of. Notably, Midland Brick owns the properties 900m west of these lots. John Forrest National Park is directly south, the East Metropolitan Regional Council's landfill and excavation site is to the east. On the northern side of Toodyay Road,

Midland Brick also owns these lots. The nearest private landholding is northeast (just over 800m away) from which no objection was received. To the northwest, another operator, Hansons Constructions owns property.

All submitters live more than 4 kilometres from the actual excavation site at the base of Red Hill. It is highly likely that they experience traffic noise from a variety of vehicles as they descend and ascend the hill. Toodyay Road is a Primary Regional Road which not only facilitates access for the excavation site but is a major transport link into the wheatbelt (Avon Region). Traffic noise for properties located close to a Primary Regional Road is a simple fact. It would be unreasonable of the City to try and limit the amount of trucks to this site.

## **CONSULTATION WITH OTHER AGENCIES AND/OR CONSULTANTS**

Department of Water:

Recommend maintaining the existing buffer and that any road bridge designs be designed in accordance with their standards. Clearing of native vegetation is not permitted without a permit.

Several other agencies were contacted, however they have failed to provide any response.

## **REPORT**

### **WAPC Statement of Planning Policy 2.4 - Basic Raw Materials:**

The intent of the Policy is to facilitate extraction of basic raw materials which are used for such works as construction and road building. The difficulties in obtaining basic raw materials in the Eastern Metropolitan Region were highlighted in the 1998 State Gravel Supply Strategy.

The Statement of Planning Policy 2.4 nominates the Red Hill site as a 'Priority Resource Location', the objective of which is to protect development of other incompatible land uses which may limit future exploitation of the resource.

SPP 2.4 requires a management plan and report. This has been submitted and is considered satisfactory.

SPP 2.4 identifies that conditions relating to, but not limited to the following matters may be applied:

- Minimisation air, water, noise and visual pollution;
- Stabilise excavations, stock piles and over-burden dumps;
- Protect the amenity of adjacent land uses in the local community;
- Ensure rehabilitation of the land is consistent with its long term future use.

### **WAPC Planning Bulletin No. 64 'Acid Sulphate Soils':**

The bulletin requires an applicant self assessment checklist to be undertaken to determine if detailed investigation into Acid Sulphate Soils (ASS) is required. Supplementary mapping is also provided which indicates the subject lots as 'low to no risk' to depths of 3m. Beyond this depth, regard needs to be given to whether risk is presented based on site characteristics and the proposal.

The management plan has examined the issue of ASS through on site preliminary testing (which indicate low risk). An important point to be aware of is the relationship between clay processing and brick making. If acidic conditions are detected, this can impact on brick quality and therefore it is in the interests of Midland Brick to avoid such a situation.

Excavation is proposed to a maximum depth of 10m. Excavation stays well above the water table (which could be an indicator of ASS risk increase) and therefore the proposal is not considered to warrant further ASS investigation. However, Midland Brick has established management plans and practices in place should ASS become an issue. Notably, this activity has been carried out at the property for a number of years without incident.

### **City of Swan Town Planning Scheme No. 9:**

The proposed use is an 'SA' use on these lots, which means it is not permitted without the approval of Council following advertising. All applications for extractive industries are determined by the Western Australian Planning Commission (WAPC) in accordance with Notice of Resolution Clause 32 (No. 55) of the Metropolitan Region Scheme (MRS). Council is required to provide a recommendation with proposed conditions.

### **Gidgegannup Rural Strategy:**

The lots are part of the 'Resource Precinct' of the area incorporated in the Gidgegannup Rural Strategy. The objectives of this precinct are:

- a) To maintain the viability of priority resource and key resource extraction (as defined in the Statement of Planning Policy "Basic Raw Materials") and waste management sites.
- b) To minimise conflicts between resource and waste management areas and nearby sensitive land uses.
- c) To ensure proper consideration of environmental (natural and human) and landscape amenity in accordance with statutory requirements.

As a long established land use, which may be permitted under the scheme, it is considered that this proposal continues to meet these objectives. Ongoing issues can be controlled through compliance monitoring of approval conditions.

### **Extractive Industry Local Law:**

It is worth noting that the applicant has also submitted an application for an Extractive Industry Licence under the City's Local Law. These can be issued on a 10 yearly basis following development approval being granted by the WA Planning Commission.

The application has been advertised, mindful of the requirements of the City's Local Law and therefore will not require further advertising at a later date. Once planning approval is granted by the WAPC, it is suggested the licence be issued under delegated authority. Until this time, the application for the licence should be deferred.

### **Operating Times:**

The applicant has requested operating times to be 5.30am to 5.00pm, Monday to Saturday. The planning approval issued for this site in 2000 restricted operating times to 6.00am to 5.00pm, Monday to Saturday. This is considered more appropriate and a condition to this effect is recommended.

## **OPTIONS AND IMPLICATIONS**

Option 1: Council may resolve to advise the WA Planning Commission that it supports the extractive industry at Red Hill. This is the recommended option.

Implications: The WA Planning Commission will determine the application after taking Council's recommendation into account.

Option 2: Council may resolve to advise the WA Planning Commission that it does not support the proposed extractive industry (reasons would need to be specified).

Implications: The WA Planning Commission will determine the application after taking Council's recommendation into account. If the WA Planning Commission resolves to refuse the application, the applicant will have appeal rights in accordance with the Planning and Development Act 2005.

## **CONCLUSION**

The proposal is essentially the continuation of a historical use, albeit with an updated management plan. A recommendation for approval of the development application should be forwarded to the WA Planning Commission. A ten year approval period would be consistent with the length of time a licence could be issued under the Local Law.

Pending the determination of the development application, consideration of the extractive industry licence should be deferred.

Conditions similar to those recommended for the adjacent Red Hill (EMRC) site are considered appropriate.

## **ATTACHMENTS**

Location Plan

Site Plan

## **STRATEGIC IMPLICATIONS**

City of Swan Gidgegannup Rural Strategy Policy

## **STATUTORY ENVIRONMENT**

- WAPC Statement of Planning Policy 2.4 'Basic Raw Materials'
- City of Swan Town Planning Scheme No. 9
- City's Extractive Industry Local Law

## **FINANCIAL IMPLICATIONS**

Nil

## **RECOMMENDATION**

That the Council resolve to:

- 1) Defer consideration of the application lodged under the City of Swan Local Law relating to Extractive Industries for an extractive industry licence for Lots 8, 9 & 10 Toodyay Road, Red Hill, pending consideration of the related development application by the Western Australian Planning Commission.
- 2) Grant delegated authority to the Chief Executive Officer to consider the extractive industry licence application when determination of the development application has been received from the Western Australian Planning Commission.
- 3) Recommend to the Western Australian Planning Commission that development approval be granted for the extractive industry at Lots 8, 9 & 10 Toodyay Road, Red Hill as per the Excavation-Rehabilitation Management Plan dated July 2006, subject to:
  - a) This approval is valid for ten years from the date of approval. Following this period, the development shall not be continued unless further development approval is granted.
  - b) The premises shall be kept in a neat and tidy condition at all times to the satisfaction of the Western Australian Planning Commission.
  - c) The carrying on of the development must not cause a dust nuisance to neighbours. Where appropriate such measures as installation of sprinklers, use of water tanks, mulching or other land management systems should be

installed or implemented to prevent or control dust nuisance, and such measures shall be installed or implemented within the time and in the manner directed by the City's Principal Environmental Health Officer if it is considered that a dust nuisance exists.

- d) The noise generated by activities on-site, including machinery motors or vehicles is not to exceed the levels as set out under the Environmental Protection (Noise) Regulations 1997.

All development works are to be carried out in accordance with control of noise practices set out in Section 6 of AS 2436-1981 or the equivalent current Australian Standard.

Operating times are to be limited to 6.00am till 5.00pm, Monday to Saturday.

- e) All earthworks and/or associated drainage details shall be in accordance with plans and specifications submitted to and approved by the City of Swan
  - f) Access onto the site shall be restricted to that shown on the approved plan.
  - g) Earthworks over the site and batters must be stabilised to prevent sand blowing, and appropriate measures must be implemented within the time and in the manner directed by the City in the event that sand is blown or drifts from the site.
- 4) Advise those who lodged a submission of Council's decision accordingly.

**CARRIED**