

11.2 APPLICATION FOR DEVELOPMENT APPROVAL FOR AN EXTRACTIVE INDUSTRY (LIMESTONE) AND CRUSHING FACILITY AT LOT 3 (130) & LOT 237 LUDLOW PARK ROAD WONNERUP

<b>SUBJECT INDEX:</b>	Development/Planning Applications
<b>STRATEGIC OBJECTIVE:</b>	Development is managed sustainably and our environment valued.
<b>BUSINESS UNIT:</b>	Development Services and Policy
<b>ACTIVITY UNIT:</b>	Statutory Planning
<b>REPORTING OFFICER:</b>	Planning Officer - Stephanie Navarro
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Location Plan
	Attachment B Original Development Plans and Dust Management Plan
	Attachment C Amended Development Plan
	Attachment D Summary of Submissions
	Attachment E Agency Submissions
	Attachment F Figure 6 - Land Systems and Soil Types from Busselton Wetlands Conservation Strategy
	Attachment G Hydrogeological Assessment Report

## PRÉCIS

The Council is asked to consider a development (planning) application seeking approval for an Extractive Industry (Limestone) and Crushing Facility at Lot 3 (130) and Lot 237 (130) Ludlow Park Road Wonnerup (the site).

The proposal has been placed before the Council due to a number of issues raised during consultation and the level of community interest.

It is considered that the proposed development is consistent with the relevant planning framework and it is recommended for approval subject to conditions.

## BACKGROUND

The City has received a development application seeking approval for an Extractive Industry (Limestone) and Crushing Facility at the site. A location plan is provided at Attachment A.

The site is bound by state forest to the south-east and the Vasse-Wonnerup System Ramsar wetland to the north-west. The Vasse-Wonnerup System Ramsar wetland is subject to the Ramsar Convention which is an international treaty on the conservation of important wetlands. Australia is a signatory of the Ramsar Convention and as such Australia has an undertaking to ensure our internationally important wetlands are conserved.

There is an existing sand extraction operating on the site that was approved by the City under Delegated Authority on 29 October 2014. This application was approved for 50,000m<sup>3</sup> with a maximum 10,000m<sup>3</sup> per annum of sand to be extracted. The proposed limestone extraction subject to this application will include the same area that was approved as part of this earlier extraction. The extraction of the sand will cease to allow for the extraction on the limestone and therefore the two approvals will not be able to operate co-currently.

The current application was advertised for public comment and was also referred to relevant agencies. Both public and agency referral submissions raised various issues and concerns with the proposal and these concerns were subsequently presented to the applicant for consideration and response prior to the City determining the application.

The area to be extracted mostly contains two existing pivot irrigation systems. The initial application was for a total of 500,000m<sup>3</sup> of limestone to be removed from 63 hectares over 5 years. The applicant originally proposed extractive activities with a minimum separation distance of 150 metres to the north-western lot boundary. The original development application submission, including plans, are provided at Attachment B. Following comments from DPAW regarding concerns of the proposed extractive activities on the wetlands, including the Black Swan Breeding grounds within the wetlands, the applicant amended the proposal to increase the setback to this lot boundary to 300m.

The amount of material to be extracted is likely to be less than that proposed by the applicant to ensure that a minimum separation to the water table is maintained. The exact volume of material to be removed will depend on maintaining the separation to the water table and therefore is not possible to be quantified at this time. Revised development application plans are provided at Attachment C. Further discussions regarding this are within the Officer Comment section of this report.

## **STATUTORY ENVIRONMENT**

The key statutory environment is set out in the City of Busselton *Local Planning Scheme No. 21* ('the Scheme'), as modified by the *Deemed provisions for local planning schemes* set out in Schedule 2 of the Planning and Development Regulations 2015. The site is zoned "Agriculture" under the Scheme and within this zone "Extractive Industry" is an "A" land use and therefore the use is not permitted unless the local government has exercised its discretion by granting planning approval after giving public notice in accordance with clause 10.4 (clause 64 of Part 8 of the regulations).

## **RELEVANT PLANS AND POLICIES**

The assessment of the proposed extractive industry is guided by a number of policies which relate to the zoning and proposed use of the land. The key policy implications are outlined below.

### ***Local Rural Planning Strategy***

Under the Local Rural Planning Strategy the site is located within the 'primary rural' precinct. Within this precinct basic raw material and mineral sand mining is a conditional land use. It is an economic objective of the precinct to retain the majority of area, especially low lying areas, for dairy/grazing. It is noted that the site is currently used for dairy cattle, and it is proposed that the site be returned to pasture upon the completion of the extractive activities.

### ***Agricultural Zone - Objectives and Policies***

The objectives and policies of the Agriculture zone relevant to this application are provided below:

#### Objectives

- (a) To conserve the productive potential of rural land.
- (b) To provide for new forms of agricultural development (including agro-forestry), and changing patterns of existing agricultural development.
- (d) To enable the development of land for other purposes where it can be demonstrated by the applicant that suitable land or buildings for the proposed purposes are not available elsewhere and that such purposes will not detrimentally affect the amenity of any existing or proposed nearby development.
- (i) To encourage the development of cluster or communal farming.

- (j) To encourage sustainable farming practices.
- (k) To control the clearing of trees and encourage generally the retention of vegetation and vegetation corridors concomitant with the agricultural use of the land.

#### Policies

- (a) To permit land included within the zone and shown by close investigation in consultation with the Department of Agriculture and Food not to be prime agricultural land to be utilised for other purposes not incompatible with adjacent uses.
- (f) To implement and adhere to the adopted recommendations and outcomes of the Local Rural Planning Strategy adopted by the local government and endorsed by the Commission.

Within the Agriculture zone “Extractive Industry” is a discretionary land use which requires advertising (“A”). The City is unable to control the location of the resource however it is considered that due to the temporary nature of sand extraction and the fact that the land is to be returned to pasture that the proposal is consistent with the policy and objectives of the zone.

#### **Local Planning Policy 5A: Extractive Industries (LPP5A)**

LPP 5A recognises that extractive industries have the potential for incompatibility with other land uses. Under this Policy the sites are located within Policy Area 3. In relation to this area the Policy states:

*“Extractive industry proposals will need to comply with the same criteria, requirements and conditions as Policy Area 2. However, as Policy Area 3 is recognised as primarily an agricultural area, it is important to ensure the long-term protection of prime agricultural land. Extractive industry will be expected to be approved within Policy Area 3, where such operations can meet the requirements of these provisions and the Scheme.”*

LPP 5A requires the advertising of all extractive industry proposals to involve advising to all landowners within a 1 km of the site. Further assessment against the requirements of this Policy are provided within the Officer Comment section of this report.

#### **FINANCIAL IMPLICATIONS**

There are no significant financial implications to the City arising from the staff recommendation in this report.

#### **STRATEGIC COMMUNITY OBJECTIVES**

The recommendation of this report reflects Community Objective 5.2 of the Strategic Community Plan 2013, which is; *“Growth is managed sustainably and our environment is protected and enhanced as we develop.”*

#### **RISK ASSESSMENT**

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City’s risk assessment framework. The assessment identifies ‘downside’ risks only, rather than ‘upside’ risks as well. Risks are only identified where the individual risk, once controls are identified, is medium or greater. No such risks have been identified.

## CONSULTATION

Under Clause 10.4 of the Scheme (Clause 64 of Part 8 of the regulations) the local government is not to grant approval for an “A” land use unless notice is given in accordance with clause 10.4.3. In accordance with clause 10.4.3, as well as the requirements of Local Planning Policy 5A, the application was advertised to all surrounding landowners within a 1km radius of the sites. In addition a notice was placed in the local newspaper on 19 October 2016 as well as a notice being placed on the City’s website. The closing date for submissions was 21 days after the notice was printed in the local newspaper with referral sent to surrounding landowners a week prior to the notice being published.

Seven submissions from neighbouring or nearby residents were received on the proposal. A summary of the concerns raised in these submissions is provided below:

- Concerns regarding proximity and impact of extractive activities to the Vasse-Wonnerup Ramsar Wetland system, including nesting water birds;
- Concerns regarding proximity to water table both during extraction and final levels after extraction;
- Concerns regarding noise and dust;
- Concerns regarding vehicle movements along Ludlow Park Road;

A schedule of submissions is provided at Attachment D.

### ***Agency comment***

Submissions were received from five referral agencies. A summary of these submissions is provided within Attachment D. Key issues were identified by Department of Water and Department of Parks and Wildlife (DPAW) and includes:

- Proximity of the extractive activities to the water table;
- Proximity to the Vasse-Wonnerup Ramsar Wetland System and potential impact of the activities on nesting water birds.

A complete copy of these agencies submissions is provided at Attachment E and further discussion regarding these matters are within the officer comment section of this report.

## OFFICER COMMENT

The City has assessed the application having regard to the objectives and policies of the “Agriculture” Zone, Local Planning Policy 5A - Extractive Industry and Clause 11.2 - Matters to be Considered of the Scheme (clause 67 of Part 8 of the regulations).

### ***Proximity to Vasse-Wonnerup Ramsar Wetland System***

DPAW have advised that a 300m buffer from the proposed extractive area to the water bird nesting sites is to be provided to ensure that the extractive activities do not disturb their breeding activities. It is noted that this portion of the wetland provides a significant breeding ground for *Cygnus atratus* (Black Swan). DPAW have advised that the 300m buffer should be measured from the high water level and not the edge of the water body that forms the estuary. They have advised that the most appropriate way of measuring the high water level mark is to use the change in soil type as identified in the mapping from the Department of Agriculture, Western Australia’s Land Resources Series, report No 5 titled “Busselton, Margaret River, Augusta Land Capability Study.” This soil mapping is reflected in Figure 6 – Land Systems and Soil types of the Busselton Wetland Conservation Strategy. DPAW have therefore advised that the buffer should be taken from the Quindalup Coast land system soils as depicted on this mapping as these soils types correspond closely to the mapped wetland areas. A copy of this mapping is provided at Attachment F.

Following comments from DPAW, the applicant subsequently amended the proposed extractive area to achieve a 300m buffer to the north-western lot boundary and advised that the extractive area will need to follow the edge of the existing pivot irrigation systems to allow for these systems to be operational at the end of the extractive industry. Only extracting from half of the pivot area will result in a level difference between the mined and not mined area and therefore the pivots will not be able to function.

The main concern with the proximity to the wetland is the impact on nesting water birds, including Black Swans. The applicant has agreed that any extractive activities within 300m of the wetland boundaries, as defined by the Quindalup Coast land system soils, are to occur outside the breeding times of the water birds. The resource will then be stockpiled elsewhere on site to be crushed and transported as required. DPAW has advised that the breeding times for black swans within the area are the winter and spring months. Therefore it is recommended that a condition be placed on the approval limiting extractive activities within 300m of the Quindalup Coast land system soils as depicted in the mapping from the Department of Agriculture, Western Australia's Land Resources Series, report No 5 titled "Busselton, Margaret River, Augusta Land Capability Study" and Figure 6 - Land Systems and Soil Types from Busselton Wetlands are to occur only during summer and autumn (1 December through until 31 May).

### ***Ground Water***

The applicant has submitted a Hydrogeological Assessment, provided at Attachment G, which has been reviewed by the Department of Water. The Department of Water is satisfied that the proposed extractive could be undertaken without intercepting the ground water table however it is recommended that as per a condition of approval if the ground water table it intercepted that the City of Busselton and Department of Water be contacted within 48 hours. A copy of the Department of Water's submission is provided at Attachment E.

The Department of Water has also advised that the finished ground level post the extractive activities will be required to be a minimum of 1 metre above the maximum seasonal groundwater. This is in accordance with Department of Water's South West Region Guideline: 'Water resource considerations for extractive industries, June 2014' which recommends (for horticulture) that pits are backfilled with clean free draining material to a minimum of 1.0m above the maximum seasonal groundwater level. To ensure the development complies with this requirement it has been recommended as a conditioned of approval.

### ***Haulage Route***

The extractive is proposed to enter and exit the site using Ludlow Park Road. As part of the applicant for the existing extractive on site the applicant advised that there would be 10 truck movements per day. It is noted that since this approval, in 2016, a high rope adventure course was issued a lease with DPAW to operate in the state forest in close proximity to Ludlow Park Road. The nature of the operations means that the car parking area for the business is located on the north of Ludlow Park Road and patrons are required to cross the road to the high rope course. As this was considered to be "public works by a public authority" by DPAW the City did not issue an approval for this business.

The operator of this high rope business has expressed concerns regarding the volume of trucks that will be utilising Ludlow Park Road. Signage has already been installed along Ludlow Park Road in close proximity to the high ropes course to warn trucks of pedestrians crossing ahead.

The applicant has advised as part of the original development application that it is anticipated that there will be nine truck movements per day. This is similar to what is already approved on the site and therefore will not have a significant impact in terms of additional vehicle movements along Ludlow Park Road than what is already permitted.

It is noted that the current operations have experienced periods of peak demand which has result in additional vehicle movements above those that were advised as part of the application. The applicant has indicated that this may also be the case for this proposal and there may be times when a large volume of the material is required to be extracted in a short period of time. It is recommended that during the times of higher than normal vehicle movements (i.e. more than 10 vehicle movements per day) that additional traffic management measures be undertaken by the applicant and that a traffic management plan be submitted to the City for these period.

### **Dust and Noise Management**

The applicant submitted a Dust Management Plan with the development application. The Dust Management Plan details measured proposed to prevent dust impact on adjoining properties and includes, but is not limited to the following:

- Use of water carts, sprinkler systems on stockpiles;
- All trucks will be tarped (covered) when leaving the site laden; and
- Use of hydro seeding to stabilize areas that would otherwise be left bare for extended periods of time and pose a dust hazard.

The proposed provisions for the suppression of dust are in keeping with practices undertaken at other sand extraction sites and it is considered that these are adequate to minimise the impact of dust from the extractive activities on nearby residences. Further to this, under LPP5A, and imposed by a condition of approval, a maximum of 2 ha is permitted to be open at any one time with rehabilitation to restore the sites back to pasture to be completed as new areas are extracted. The purpose of this requirement is to ensure that timely rehabilitation is completed which minimises the amount of area exposed and therefore reduces the risk of dust affecting nearby residences. An annual report is required to be submitted by way of condition to ensure that the applicant complies with this requirement.

A noise management plan has not been submitted as part of the development. It is recommend that a noise management plan be submitted to the City prior to the commencement of crushing on site to demonstrate that the proposal can comply with the *Environmental Protection (Noise) Regulations 1997* and demonstrate the noise mitigation measures in place.

### **Referral to Federal Department**

Due to the proximity of the extractive activities to a Ramsar wetland the City and the Department of Parks and Wildlife have advised the applicant that the application should be referred to the Department of Environment and Energy under the *Environment Protection and Biodiversity Conservation Act 1999*. Under the EPBC Act 1999 "A person proposing to take an action must refer a proposed action if it has, will have, or is likely to have a significant impact on the world heritage values of a declared World Heritage property." A significant impact includes matters of national environmental significance protected under national environment law including Ramsar wetlands of international importance. The responsibility for referring an action lies with the person proposing to take the action. Therefore, a local government is responsible for referring actions that the local government proposes to take itself. It is not responsible for referring the actions of other developers.

The City has advised the applicant that the City is of the opinion that the application should be referred to the Department of Environment and Energy. The applicant has advised that their client (the owner) does not intend to refer the application under the EPBC Act 199. No further justification from the application in support of their decision as to why referral was not required was provided.

## **CONCLUSION**

The proposed development is considered to be consistent with the Policy and Objectives of the "Agriculture" zone, as well as the requirements of Local Planning Policy 5A - Extractive Industries, and therefore it is recommended that the application be approved.

## **OPTIONS**

The Council could:

1. Refuse the proposal, setting out reasons for doing so.
2. Apply additional or different conditions.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The proponent will be advised of the Council decision within two weeks of the Council meeting.

## **OFFICER RECOMMENDATION**

### **General Conditions**

1. The development hereby approved is permitted to operate for five years from the date of this Decision Notice or until 500,000 cubic metres volume of material or in accordance with condition 5.8, whichever is the lesser. The site shall be rehabilitated in accordance with an approved Rehabilitation Plan by the expiry date of this development approval.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plans and Approved Management Plans and except as may be modified by the following conditions.

### **Prior to Commencement of Any Works Conditions:**

3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and have been approved in writing:
  - 3.1 The northern fork of Ludlow Park Road, indicated in red on the approval plans, to be upgraded for 27 metres as measured from its intersection with Ludlow Road North;
  - 3.2 Staging plan dividing the approved extractive area into 2 hectare cells and indicating the timeframe each individual cell is to be extracted and rehabilitated;
  - 3.3 A Noise Management Plan submitted to the City.
4. The development hereby approved, or any works required to implement the development, are subject to the following bonds (accompanied by an executed legal agreement with the City at the full cost of the owner) which shall be paid to the City within 2 months of the date of this development approval:
  - 4.1 A dust bond to the value of \$5,000, which shall be held against satisfactory compliance with Condition 5.11 of this approval.
  - 4.2 A rehabilitation bond to the value of \$20,000, which shall be held against satisfactory compliance with Condition 5.9 of this approval.

- 4.3 A road maintenance bond of \$10,000.00 in the form of an unconditional bank guarantee to ensure that the surrounding road network is maintained to the satisfaction of the City for the term of the extractive industry. Those portions of public roads affected by the activities related to the approval shall be maintained to a standard acceptable to the City at cost to the applicant; such bond may be utilised for road maintenance purposes where necessary as a result of the operation. The bond shall be accompanied by an executed legal agreement with the City at the full cost of the owner.
- 4.4 Further to conditions 4.1 - 4.3, the bonds are to be accompanied by an executed legal agreement with the City at the full cost of the owner. The legal agreement shall include:
- (i) The ability for the City to be able to use the bond, or part of the bond as appropriate, and any costs to the City including administrative costs of completing or rectifying any outstanding works on site in accordance with the conditions of this development approval and any further costs.
  - (ii) Written authorisation from the owner of the land that the City may enter the site at any time and permit the City to complete or rectify any outstanding work to the satisfaction of the City.

**On-Going Conditions:**

5. The works undertaken to satisfy Conditions 1 - 4 (inclusive) shall be subsequently maintained for the life of the development including, and in addition to, the following conditions:
- 5.1 The development hereby approved shall be limited to: the extraction of limestone from the site; screening of material; crushing; associated drainage works; and rehabilitation works.
- 5.2 Notwithstanding Condition 5.1 above, working hours within the pit area, including crushing and transportation of materials shall be restricted to the hours between: 7.00am and 5.00pm Mondays to Fridays; 7.00am and 1.00pm Saturdays for rehabilitation works only; and at no time on Sundays or public holidays.
- 5.3 The designated haulage route is to be along the northern fork of Ludlow Park Road turning only south along Ludlow Road North and then in either a westerly or easterly direction along Tuart Drive.
- 5.4 Trucks are not to operate on Monday to Friday between the hours of 7.30am and 9.00am and between 3.00pm and 4.30pm on any given school day on a school bus route (Ludlow Road North and Tuart Drive), or between other times as agreed in writing between the applicant and the local government.
- 5.5 A maximum number of 10 truck movements (i.e. 10 trucks entering and 10 trucks exiting the site) shall be permitted on the operating days and times as permitted per Condition 5.2 and 5.4 above.
- 5.6 Further to condition 5.5 above, should more than 10 truck movements per day be proposed in any 24 hour period a Traffic Management Plan is to be submitted to, and approved by the City, at least 7 working days prior.
- 5.7 No more than 2 hectares shall be worked at any one time; this area shall then be rehabilitated in accordance with the approved details pursuant to Condition 3.2



concurrently with the extraction of the following 2 hectare area.

- 5.8 The lowest level of excavation shall always be a minimum of at least 300mm above the maximum water table level and no dewatering works are to be undertaken. The City is to be notified within 24 hours if the water table is intercepted.
- 5.9 Further to condition 5.8, the final land surface (after rehabilitation for horticulture) shall be 1 metre above the maximum seasonal groundwater level. The pit is to be rehabilitated with clean free draining fill overlain by topsoil.
- 5.10 The following minimum setback from extractive activities shall be achieved at all times:
  - > 20 metres to the south-eastern and south-western lot boundaries;
- 5.11 The approved Dust Management Plan shall be implemented and carried out in accordance with the approval details.
- 5.12 The Noise Management Plan required to satisfy condition 3.3 above shall be implemented and carried out in accordance with the approval details.
- 5.13 Extractive within 300m of Quindalup Coast land system soils as depicted in the mapping from the Department of Agriculture, Western Australia's Land Resources Series, report No 5 titled "Busselton, Margaret River, Augusta Land Capability Study" and Figure 6 - Land Systems and Soil Types from Busselton Wetlands shall not occur during Black Swan nesting peak times and shall only occur during Summer and Autumn (1 December through until 31 May).
- 5.14 No hydrocarbons (fuels, oils, lubricants etc) shall be stored within the pit area. All refuelling and maintenance must be carried outside of the pit area in bunded areas.
- 5.15 No vegetation is to be removed as part of the extractive activities hereby approved without first obtaining approval from the City.
- 5.16 No dewatering of the extraction area shall be permitted without prior approval from the City and Department of Water.
- 5.17 The applicant must submit to the City, annually and within 3 (three) months of the anniversary of this approval a report detailing the following:
  - a) Survey conducted by a licensed surveyor certifying;
    - The extent/size and location of the area which has been extracted;
    - The extent/size and location of the areas which has been rehabilitated;
    - The extent/size and location of the area which is currently under operation;
  - b) Details as to which conditions of this development approval have been complied with and how this has been achieved; and
  - c) Details as to which conditions of this development approval have not been complied with and the reasons for such non-compliance ("Compliance Report").
- 5.18 In addition to the above, prior to the applicant commencing construction on a new cell a report is to be submitted to the City detailing the following:
  - a) Finished ground level in AHD of the cell post extractive activities (Refer to condition 5.8);
  - b) Finished ground level in AHD of the cell post rehabilitation (Refer to condition 5.9).