

OCM196/05/13	PROPOSED OVERSIZED OUTBUILDING AND RETROSPECTIVE APPLICATION FOR MACHINERY ASSEMBLY PLANT – LOT 800 (228) KING ROAD, OLDBURY (P02118/04)
Author:	Tom Hockley – Senior Planner
Senior Officers:	Louise Hughes – Manager Statutory Planning Brad Gleeson – Director Development Services
Date of Report:	3 April 2013
Disclosure of Officers Interest:	No officer involved in the preparation of this report is required to declare an interest in accordance with the provisions of the <i>Local Government Act</i>

Proponent: Dykstra Planning
Owner: Paul Steele and Elaine Deborah Greeves
Date of Receipt: 21 January 2013
Lot Area: 11.09ha
Town Planning Scheme No. 2 Zoning: Rural Groundwater Protection, Rural
Metropolitan Region Scheme Zoning: Rural – Water Protection, Rural

EXECUTIVE SUMMARY

Council is requested to consider the development application for an oversized outbuilding which exceeds the maximum allowable floor area under Local Planning Policy 36 *Non-Urban Outbuildings* (LPP 35) and also to consider whether a retrospective application for a machinery assembly plant can be approved in a 'Rural' zone. The application has been made in connection with an existing business known as 888 Crushing & Screening Pty Ltd. The application is retrospective in terms of the use of the site which is understood to have been operating since 2010. The primary issues to be addressed are:

- The regularisation of the existing use;
- The proposed new buildings, landscaping and stormwater retention;
- Whether a time limited approval of 10 years is appropriate;
- The provisions of the Shire's draft LPP 36; and
- The zoning under the Shire's Town Planning Scheme No. 2 (TPS 2).

The northern portion of the lot is zoned 'Rural Groundwater Protection', while the southern portion is zoned 'Rural'. The application relates to the southern portion only.

The application was advertised in accordance with the relevant provisions of TPS 2 and Local Planning Policy 27 - Stakeholder Engagement (LPP 27). A number of submissions have been received and these are discussed in further detail in the body of the report. It is recommended that the application be refused.

RELEVANT PREVIOUS DECISIONS OF COUNCIL

- SD055/12/08 – Refusal of an oversized shed
- SD004/07/09 – Approval of an oversized shed

COMMUNITY / STAKEHOLDER CONSULTATION

The application has been advertised in accordance with the requirements of Clause 6.2.1 of TPS 2 and LPP 27 - Stakeholder Engagement. At the end of the advertising period a total of two submissions had been received. The key issues which were identified are as follows:

- The proposed use in relation to the Rural zoning of the land;
- The proposal represents an industrial development;
- The visual impact of the proposal; and
- Amenity impacts.

REPORT

Background

Activities associated with the unauthorised storage of machinery and equipment on the site have been occurring for approximately eight years. The Shire understands that throughout this period the land has been held in the same ownership and leased out to different tenants.

A notice was issued by the Shire in September 2005 advising the landowner to remove the machinery and equipment from site until such a time that Council had issued an approval. The landowner subsequently removed all machinery from the site.

In August 2008 a development application was submitted to Council for an oversized storage shed. The shed was initially refused in December 2008, as it was considered that the size and height of the shed would have a deleterious effect on the visual amenity of the streetscape by virtue of it not being in keeping with the rural character of the locality and because it was inconsistent with Council's policy.

A development application for a further shed was submitted in March 2009. The application was considered by Council in August 2009 and subsequently approved. It is understood that the shed was intended to be used for the storage of machinery and equipment but was never constructed. A request for extension for the shed approval was submitted to the Shire in July 2011, however the extension was not granted.

It is understood that the current tenants, 888 Crushing and Screening Pty Ltd, first occupied the site in 2010. In January 2011, a Shire officer observed a number of green agricultural machines and plant stored on the hardstand area on the south end of the property. No further action was taken at that time. Since then, the extent of storage at the site has increased, with the inclusion of a white dome tarp shelter and additional machinery.

In August 2012, the Shire proceeded to issue a Section 218 Direction for unauthorised land use related to storage of industrial equipment. Notwithstanding the site's history, officers have found no record of any neighbour complaints relating to the use of the site.

Background of Proposal

The application currently being considered outlines the proposed land use and development in the context of the 'Rural' zone under TPS 2. The applicant has submitted that the proposed use is consistent with this zone given that it serves to provide for rural based industries.

The services undertaken on site include the distribution of crushing and screening machinery, which are generally used in the mining and extractive industries, the provision of parts for the machinery they distribute and the assembly of such machinery. The operation generates 3 to 4 vehicular trips to and from the site per day and the assembling of approximately 1 to 2 machines per month. The business employs 9 staff and operates between the hours of 7am to 5pm Monday to Friday.

The subject site contains the infrastructure utilised by 888 Crushing and Screening Pty Ltd, as well as a residential dwelling to the north and a pasture and grazing area within the southern portion of the lot. The applicant advises that the machinery is currently assembled and stored on the existing hardstand areas surrounding the shed and office buildings, the business operations do not include the on-site servicing of machinery. The business has chosen this site for its operations as it is nearby many of their current and prospective clients, with most of their existing client base situated within a 10km radius of the subject land.

The groundwater protection zone affects the northern half of the site only. The existing infrastructure, including storage shed, external storage and hardstand areas and demountable office, are located adjacent to the southern boundary of the groundwater protection zone. It is proposed that the shed and hardstand areas will be moved further south, thereby increasing the separation distance to the sensitive groundwater protection area to the north.

The applicant is seeking retrospective planning approval for a machinery assembly plant, as well as approval for the construction of an oversized outbuilding, hardstand area and landscaping. The applicant is proposing a time limited approval of 10 years to enable Council to reconsider the land use at a time when future planning for the locality has progressed. As the current activities and structures on site do not have planning approval; the planning development application is, in part, seeking to 'regularise' the existing use and seeking approval for the new development. The matter is presented to Council for determination as there are a number of submissions and the proposal is not consistent with the provisions of LPP 36.

Subdivision

On 29 March 2012 the Western Australian Planning Commission (WAPC) issued approval to subdivide the subject site into three lots. The subdivision separates the northern portion of the site within the groundwater protection zone from the remaining southern portion of the lot. The southern portion of the lot is divided into two lots, the northern lot being the site in which 888 Crushing and Screening Pty Ltd currently operate from. The applicant has advised that 888 Crushing and Screening Pty Ltd intend to purchase the lot on which the existing operations are located.

In consideration of the future subdivision of the subject site, Council must have regard to the intensive nature of the proposed land use. Currently, the operations are buffered to the south by a large paddock. With the newly created lot to the south, there may be higher risk of land use conflict and amenity issues, especially once a dwelling is built on the new lot.

Current Zoning of Land

The proposed development is located within the southern portion of the subject site which is zoned 'Rural' under the Shire's TPS 2. The proposed use would most appropriately fit within the 'Light Industry' use class under TPS 2. Appendix 1 of TPS 2 provides the interpretations for terms used throughout the Scheme. The 'Light Industry' use class is classified as an 'SA' use and is defined as follows:

Industry Light - means an industry:

(i) in which the processes carried on, the machinery used, and the goods and commodities carried to and from the premises will not cause any injury to, or will not adversely affect the amenity of the locality by reason of the emission of light, noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water or other waste products; and

(ii) the establishment of which will not or the conduct of which does not impose an undue load on any existing or projected service for the supply or provision of water, gas, electricity, sewerage facilities, or any like services.

The proposed operations are considered capable of fitting within the use given that the predominant impact arising from the site is the visual appearance of the machinery and plant from King Road and neighbouring properties. Current noise impacts associated with machinery assembly and vehicle movements are considered to be acceptable in the context of the 'Rural' zone.

Clause 5.10.1 of the TPS 2 outlines the objectives for the Rural Zone, as follows:

"The purpose and intent of the Rural Zone is to allocate land to accommodate the full range of rural pursuits and associated activities conducted in the Scheme Area."

It is clear that the objective the Rural zone is to provide for a wide variety of land uses. It is also considered that the land uses anticipated within the Rural zone may potentially result in greater amenity impacts when compared to land within Rural Living and Special Rural zones. However, the industrial nature of the operations in this instance, as defined by the amount and size of machinery assembled and stored on site, would have the potential to visually dominate the locality. While site layout and landscaping treatments could assist in reducing the amenity impacts on surrounding landowners, the operation in its current form is considered to be inconsistent with the purpose and intent of the Rural zone.

Rural Strategy

The subject site is identified as being part of the Rural Policy Area under the Rural Strategy, with a relevant extract provided below:

It provides for a mosaic of agricultural uses but does not offer the protection for agriculture embodied in the Agriculture Protection Policy Area. The Rural Policy Area essentially maintains the current standards and practice of agricultural use and development.

The protection of rural lifestyle, of agricultural production, and rural character are very significant, but not necessarily over-riding, objectives in the use and development of land.

While the locality is currently occupied by variety of land uses, the area is dominated by agricultural uses and production which function to retain the rural character of the area. Land uses and associated structures are generally low in scale and has limited visual impacts from main transport routes and property boundaries.

Light Industrial land uses fall within the 'undesirable' uses in the Rural Policy Area and therefore must be assessed in light of the surrounding land uses and potential amenity impacts. The subject land is bordered to the west by rural lifestyle properties, with the closest dwelling located approximately 100m to the north-west of the site operations. It is also anticipated that the existing dwelling on the subject site will be retained for residential purposes once the site is subdivided. Therefore, the proximity of the light industrial operations to existing and future residences should be a key consideration in the determination of this application.

Site Plans

On 10 April 2013, the Shire received updated plans from the applicant. The updated plans represent an overall reduction in floor area of the proposed outbuilding and lean-to.

The applicant is proposing the removal of all existing buildings and structures and the construction of an 800m² building with a 200m² lean-to. The building will accommodate

the office and amenities which will comprise of 160m² of the overall internal area. The remaining 640m² will house machinery and equipment. The building will have a wall height of 6.0m and a roof ridge height of 7.5m. The building will be set back 29.1m from the western boundary and 94.5m from King Road at the eastern boundary. The building will be constructed of colourbond walls and zincalume roof with a grey and green colour scheme.

There is an element of screening from existing vegetation along the east of the property boundary adjacent to King Road. This vegetation will be retained and enhanced as part of the development. The proposed building will be constructed of colours to minimise the visual impact from the east and west. It is noted that the proposed shed will be closer to the western boundary and adjoining properties and is considered to be significant in terms of mass and bulk due to its overall size.

Adjacent to the north of the building is a hardstand area of approximately 7400m². It is proposed that this area will be constructed of road base and will house the machinery during and following assembly.

The proposed building exceeds the building height and area requirements as outlined in the Shire's draft LPP 36 *Non-Urban Outbuildings*. LPP 36 enables consideration of proposals which do not meet the acceptable development or performance based criteria where the applicant can demonstrate that the development will not result in adverse impacts on neighbouring properties.

The Shire has previously approved oversized shed structures at the scale proposed in this application. Most recently, these structures have been constructed to cover existing horse riding arenas. The intent of the arena cover structures has been to accommodate a low impact, low scale private use in a rural setting and have generally not been constructed for commercial purposes. The arena covers have generally been open on at least one side and only be permitted where appropriate landscaping and screening treatments can be implemented. It is considered that as the proposed outbuilding is intended for industrial purposes, the impacts arising from the use and scale of the building would be significant.

LPP 36 is discussed in greater detail below.

Draft LPP 36 – Non-Urban Outbuildings

LPP 36 provides a framework for acceptable development, performance based and unacceptable criteria which can be applied to any assessment of an outbuilding. The following assessment of the proposed development has been made against LPP 36.

- **Overall Siting** – Table 1 requires a minimum rear setback of 20m for outbuildings in the Rural zone. The proposal meets the acceptable development criteria for setbacks as it is sited 29.12m from the rear (west) boundary.
- **Vegetation** – No clearing of natural vegetation has been proposed.
- **Landscaping/Screening** – Landscaping at the north, east and west interfaces has been proposed. This landscaping is considered to be insufficient to appropriately screen the development from the western boundary, as well as from King Road.
- **Proposed Use** – The use of outbuildings for Light Industrial purposes is an unacceptable use under the provisions of the policy.
- **Materials** – It is proposed that the walls will be constructed in colourbond and the roof will be constructed in zincalume. The colourbond material is consistent with the

preferred materials. Zinalume falls under the performance based criteria and therefore may result in visual impacts to surrounding properties.

- **Colours** – It is proposed that a green and grey colour scheme will be implemented. It is considered that this colour scheme would be generally consistent with the acceptable development to ensure that the building will be visually recessive and blend into the landscape.

TPS 2

Clause 6.4.2 of TPS 2 must also be considered when determining applications for development. These matters include:

Scheme Provisions:	Response:
<i>(a) the purpose for which the subject land is reserved, zoned or approved for use under the Scheme;</i>	The purpose and intent of the Rural zone is to allocate land to accommodate the full range of rural pursuits and associated activities conducted in the Scheme Area. The proposed Light Industry use is not considered to be consistent with the purpose of the Rural zone.
<i>(b) the purpose for which land in the locality is reserved, zoned or approved for use under the Scheme;</i>	The subject site is located in an area predominately zoned Rural under TPS 2. The development is not considered to be consistent with the zoning of the locality.
<i>(c) the size, shape and characteristics of the land, and whether it is subject to inundation by floodwaters;</i>	Due to the narrow shape of the subject site, the location of the proposed building has the potential to adversely impact the amenity of surrounding properties. All stormwater runoff could be addressed by a planning condition.
<i>(d) the provisions of the Scheme and any Council policy affecting the land;</i>	Assessment of the proposal against the provisions of draft LPP36 has been provided.
<i>(e) any comments received from any authority consulted by the Council;</i>	Not Applicable
<i>(f) any submissions received in response to giving public notice of the application;</i>	Two submissions were received from the community during the community consultation period. The concerns outlined in these submissions related to the industrial nature of the proposed use of land. The Shire notes the concerns of the submitters as it is considered that the nature of the proposed use combined with the scale of the proposed shed would be consistent with an industrial scale operation.
<i>(g) the orderly and proper planning of the locality; and</i>	The proposed building will provide for an upgraded facility which would support the continued operation of the site for its current purpose. In considering this proposal, any upgrades may result in increase impacts to neighbours and the locality in general. It is considered that the continued operation of the businesses would be inconsistent with the preferred character of the area.
<i>(h) the preservation of the amenity of the</i>	The proposal would be result in an

<i>locality.</i>	adverse impact on the amenity of the locality.
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Overall it is considered that the proposal would be detrimental to the preferred character and land use outcomes for the locality.

Existing Land Use Activity

The existing land use provides a service to local industry and provides employment within the Shire, both of which are considered to be significant in terms of the local economy. In the event that Council resolves to refuse the application consideration will need to be given as to whether compliance action is appropriate to cease the use of the land and if so what the timing of the action should be. Whilst the proposed development and existing land use are not consistent with TPS 2, the Rural Strategy or LPP 36, the provision of local services and local employment are both matters which the Shire is keen to support. Furthermore the relocation of a business, including finding alternative premises is something which will take time to resolve. It is therefore considered that Council may consider not pursuing further compliance action and allowing the ongoing operation of the business for a period of two years to facilitate relocation of the business. This will ensure that the viability of the business is less likely to be in jeopardy and may also provide the opportunity for the applicant to find premises within the Shire.

Options Available to Council:

There are essentially two options available to Council in considering the development application:

- Option 1: Approve the application, subject to conditions.
- Option 2: Refuse to grant development approval.

Option 2 is recommended at this time.

Conclusion

The proposal involves the formalisation of the existing machinery assembly and distribution plant and site improvements in order to enable the ongoing operations to occur. The proposed use has been assessed in accordance with the provisions of the Rural zone and LPP 36 and found to be inconsistent with the objectives and intent of these provisions.

ATTACHMENTS

- [OCM196.1/05/13](#) - Location Plan and Aerial Photograph (E13/1349)
- [OCM196.2/05/13](#) - Application Documents (IN13/1162)
- [OCM196.3/05/13](#) - Updated Site Plan (IN13/5770)
- [OCM196.4/05/13](#) - Updated Development Plans (IN13/5771)
- [OCM196.5/05/13](#) - Schedule of Submissions (E13/980)

ALIGNMENT WITH OUR PLAN FOR THE FUTURE

The proposed development can be seen to comply with the Shire's Plan for the Future as it is an opportunity to provide ongoing employment in the area and continue to support the local economy.

STATUTORY ENVIRONMENT

- TPS 2
- Rural Strategy
- LPP 36 – Non-Urban Outbuildings
- *Planning and Development Act 2005*

FINANCIAL IMPLICATIONS

In the event that Council resolve to refuse the development application the applicant may have the right to seek a review before the State Administrative Tribunal and there may be costs associated with defending this decision.

VOTING REQUIREMENTS Simple Majority

Officer Recommendation

That Council refuse the application for the proposed oversized outbuilding and retrospective application for machinery assembly plant at Lot 800 (228) King Road, Oldbury for the following reasons:

1. The proposed land use is inconsistent with the objectives of the Rural Zone of the Shire's Town Planning Scheme No 2.
2. The proposed Light Industrial land use falls within the 'undesirable' uses in the Rural Policy Area within the Shire's Rural Strategy.
3. The proposal falls within the 'unacceptable development' criteria of the Shire of Serpentine Jarrahdale's Local Planning Policy No. 36 *Non-Urban Outbuildings* as the total floor area at 800m² exceeds the 600m² maximum floor area for the 'Rural' zone.
4. The proposal falls within the 'unacceptable development' criteria of the Shire of Serpentine Jarrahdale's Local Planning Policy No. 36 *Non-Urban Outbuildings* as the proposed wall height at 6m exceeds the maximum 5m requirement for the 'Rural' zone.
5. The proposal falls within the 'unacceptable development' criteria of the Shire of Serpentine Jarrahdale's Local Planning Policy No. 36 *Non-Urban Outbuildings* as the proposed roof ridge height at 7.5m exceeds the maximum 6m requirement for the 'Rural' zone.
6. The existing land use and proposed development has the potential to establish an undesirable precedent and would be inconsistent with the principles of orderly and proper planning.

Advice Note:

1. The existing machinery assembly plant the subject of this refusal is to cease operations within two years of the date of this decision.

Moved Cr Urban, seconded Cr Piipponen
That Standing Orders 9.5, 9.6, 10.7 and 10.13 be reinstated at 7.38pm.

CARRIED 6/0

OCM196/05/13 COUNCIL DECISION

Moved Cr Urban, seconded Cr Piipponen
That Council refuse the application for the proposed oversized outbuilding and retrospective application for machinery assembly plant at Lot 800 (228) King Road, Oldbury for the following reasons:

- 1. The proposed land use is inconsistent with the objectives of the Rural Zone of the Shire's Town Planning Scheme No 2.**
- 2. The proposed Light Industrial land use falls within the 'undesirable' uses in the Rural Policy Area within the Shire's Rural Strategy.**
- 3. The proposal falls within the 'unacceptable development' criteria of the Shire of Serpentine Jarrahdale's Local Planning Policy No. 36 *Non-Urban Outbuildings* as the total floor area at 800m² exceeds the 600m² maximum floor area for the 'Rural' zone.**
- 4. The proposal falls within the 'unacceptable development' criteria of the Shire of Serpentine Jarrahdale's Local Planning Policy No. 36 *Non-Urban Outbuildings* as the proposed wall height at 6m exceeds the maximum 5m requirement for the 'Rural' zone.**
- 5. The proposal falls within the 'unacceptable development' criteria of the Shire of Serpentine Jarrahdale's Local Planning Policy No. 36 *Non-Urban Outbuildings* as the proposed roof ridge height at 7.5m exceeds the maximum 6m requirement for the 'Rural' zone.**
- 6. The existing land use and proposed development has the potential to establish an undesirable precedent and would be inconsistent with the principles of orderly and proper planning.**

Advice Note:

- 1. The existing machinery assembly plant the subject of this refusal is to cease operations within five years of the date of this decision.**

CARRIED 6/0

Council Note: Council changed the Advice Note in the Officer Recommendation by stating that the operation is to cease within five years of the date of this decision rather than two years, in order to give the applicants sufficient time to relocate the business to an appropriately zoned site.