

OCM063/10/13	Proposed Single Dwelling, Outbuilding and Retrospective Application for Light Industry - Machinery Assembly and Distribution Plant – Lot 800 (228) King Road, Oldbury (P02118/05)
Author:	Tom Hockley – Senior Planner
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Date of Report:	16 September 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: Elaine Deborah Greaves
Date of Receipt: 20 August 2013
Lot Area: 11.09ha
Town Planning Scheme No 2 Zoning: Rural Groundwater Protection, Rural
Metropolitan Region Scheme Zoning: Rural – Water Protection, Rural

Introduction

To consider a new development application for a dwelling and an outbuilding which falls within the performance based floor area of Local Planning Policy 36 *Non-Urban Outbuildings* (LPP36) and also a new development application for five years, for retrospective approval for Light Industry (machinery assembly plant and distribution plant). This new application which is a revision of a previous application refused by Council at its Ordinary Council Meeting of 27 May 2013.

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 5 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.

Background:

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.

An application was made on 21 January 2013 seeking Council's approval for an oversized outbuilding which exceeded the maximum allowable floor area under Local Planning Policy 36 Non-Urban Outbuildings (LPP 36) together with a retrospective application for a machinery assembly and distribution plant. At its Ordinary Council Meeting of 27 May 2013, Council resolved to refuse the proposal on the basis that the proposed land use was inconsistent with the objectives of the Rural zone and the Shire's Rural Strategy and because the proposed outbuilding fell within the 'unacceptable development' criteria of LPP 36. As part of this resolution, Council decided to provide the applicant with a period of five years to cease operations in order to allow sufficient time to relocate the business to an appropriately zoned site.

Relevant Previous Decisions of Council:

- OCM196/05/13 – Refusal of application

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 five 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;
- Potential impacts on ground water;
- The visual impact of the proposal; and
- Amenity impacts.

Comment:

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 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 outbuilding, single dwelling, hardstand area and landscaping. The applicant is proposing a time limited approval of 5 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.

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 of the two lots 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.

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 on land 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."

The objective of the Rural zone is to provide for a wide variety of land uses. 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

The applicant is proposing the removal of all existing buildings and structures and the construction of a 600m² outbuilding with a 200m² lean-to. The building will accommodate machinery and equipment. The building will have a wall height of 5.0m and a roof ridge height of 6.0m. The building will be set back 49.0m from the western boundary and 94.53m from King Road at the eastern boundary. The building will be constructed of colorbond 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 6,247m². It is proposed that this area will be constructed of road base and will house the machinery during and following assembly.

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 49.0m 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 may be insufficient to appropriately screen the development from the western boundary, as well as from King Road. Details of the proposed landscaping would be required to be submitted in the form of a Landscaping Plan to enable an appropriate level of assessment of screening function.
- **Materials** – It is proposed that the walls will be constructed in colorbond and the roof will be constructed in zincalume. The collarbone material is consistent with the preferred materials. Zincalume 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.

The proposed building complies with the building height requirements and performance based floor area requirements as outlined in the Shire's draft LPP 36. LPP 36 enables consideration of proposals which fall within the performance based criteria where the applicant can demonstrate that the development will not result in adverse impacts on neighbouring properties.

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>	The submission received from the Department of Water provided information relating to the design of on-site effluent disposal systems and the separation between ground water levels. There was however no indication of objection.
<i>(f) any submissions received in response to giving public notice of the application;</i>	Five submissions were received from the community during the community consultation

	<p>period. The concerns outlined in these submissions related to the industrial nature of the proposed use of land.</p> <p>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.</p>
<i>(g) the orderly and proper planning of the locality; and</i>	<p>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.</p>
<i>(h) the preservation of the amenity of the locality.</i>	<p>The proposal would be result in an adverse impact on the amenity of the locality.</p>

Overall it is considered that the proposal would be detrimental to the preferred character and land use outcomes for the locality.

Consideration of Submissions

As response to the key issues identified as a result of the public consultation process are considered in the following section.

The proposed use in relation to the Rural zoning of the land

Consideration of the statutory and strategic planning framework applicable to this proposal has been provided within this report. While a 'Light Industrial' land use can be considered by Council as a discretionary use within the Rural zone, the proposed activities do not accord with the purpose and intent of the Rural zone. In addition, a 'Light Industrial' use falls within the 'undesirable' uses in the Rural Policy Area indicating that a land use of the intensity and scale of the current proposal would be more suited to a light industrial or commercial locality.

The proposal represents an industrial development

The Shire has determined that the proposal would fit within the 'Light Industrial' use class as defined within TPS 2. It is considered that the amenity impacts associated with the proposed use have the potential to disrupt the character of the rural character of the locality.

Potential impacts on ground water

While contamination of ground water as a result of the activities occurring on-site is a valid concern, the Shire has investigated the operations and has concluded that the activities are acceptable with regard to environmental impacts.

The visual impact of the proposal

The visual impacts associated with the proposal have been a key consideration with regard to the application due to the intensive nature of the operations. Established landscaping exists at the site's interface with King Road and additional landscaping around the development area has been proposed as indicated on the site plan. However, new landscaping for screening will take time to establish to provide for a suitable screening function. The visual presence of the land use and associated machinery from King Road is intensified by its proximity to this road which functions as a main arterial connecting Mundijong Road to the south and Thomas Road to the north. From a visual perspective, the operations do not maintain the preferred rural character of the locality. The site is also highly visible from surrounding properties, being set back approximately 49.0m from the western boundary.

Amenity impacts

Other amenity impacts associated with the proposal including noise, dust, odour and vibrations would be managed in part by the proposed outbuilding and hardstand. It is noted that the proposed activities undertaken on-site involve the distribution and assembly of crushing and screening machinery and the provision of parts. It is therefore proposed that the assembly of machinery as well as loading and unloading of machinery will occur on the hardstand which would limit dust generation, while the storage of parts will take place within the outbuilding. Noise associated with vehicle movements and machinery assembly would be limited to normal business hours and it is understood that no heavy equipment is used in the assembly of machinery. The operations are not known to emit odours of any sort.

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. It is noted that in the Council resolution of 27 May 2013, a five year period was offered for the applicant to cease operations to find an alternative site within the Shire. It is therefore considered that Council may uphold its previous resolution to not pursue further compliance action and allow the ongoing operation of the business for a five year period to facilitate relocation of the business to a future planned industrial area in the Shire.

Options and Implications

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

1. Approve the application, subject to conditions.
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 in TPS 2 and the Shire's Rural Strategy and found to be inconsistent with the objectives and intent of these provisions.

Attachments:

- [OCM063.1/10/13](#) – Location Plan and Aerial Photograph (E13/3908)
- [OCM063.2/10/13](#) – Application Documents (IN13/14658)
- [OCM063.3/10/13](#) – Site Plan (E13/3914)
- [OCM063.4/10/13](#) – Outbuilding Development Plan (IN13/18389)
- [OCM063.5/10/13](#) – Dwelling Development Plan (E13/3912)
- [OCM063.6/10/13](#) – Schedule of Submissions (E13/3907)

Alignment with our Strategic Community Plan:

This proposal aligns with the specific objectives outlined in the Strategic Community Plan:

Objective 4.1	Sustainable Industries
Key Action 4.1.1	Target and engage sustainable, environmentally and socially responsible industries and businesses

Statutory Environment:

- TPS 2
- Rural Strategy
- LPP 36 – Non-Urban Outbuildings

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.

Voting Requirements: Simple Majority

Officer Recommendation:

That Council refuse the application for the proposed single dwelling, outbuilding and retrospective application for Light Industry - Machinery Assembly and Distribution 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 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.

OCM063/10/13 COUNCIL DECISION:

Moved Cr Wilson, seconded Cr Kirkpatrick

That Council grant planning consent for a temporary approval (five years maximum) for the proposed Light Industry/Machinery Assembly and Distribution Plant at Lot 800 (No 228) King Road, Oldbury, subject to:

1. **Standard conditions of planning approval as determined appropriate by Council's Director Planning.**
2. **All proposed outbuildings shall comply with the provisions of Council's Local Planning Policy 36 in relation to the maximum wall height, maximum ridge height and maximum area of the outbuilding.**

CARRIED 9/0

Council Note: Council changed the Officer Recommendation in Item OCM063/10/13 for the following reasons:

- a) **Council has already formally agreed to allow the use of the land to remain for a period of five years.**
- b) **Council has the discretion under the Town Planning Scheme within the current Rural zoning to grant a temporary approval for such land use.**
- c) **The issue of a planning approval provides Council with greater opportunity to ensure appropriate management and controls are in place in relation to the land use.**
- d) **the issue of a 5 year planning approval provides all parties with certainty for the future, and provides certainty for the eventual decommissioning and relocation of the land use to another site.**