

10.1.1 - Proposed 'Transport Depot' - Lot 597 Walker Road, and Lots 598 and 599 Karnup Road, Serpentine (PA19/764)	
Responsible Officer:	Manager Statutory Planning and Compliance
Senior Officer/s:	Director Development Services
Disclosure of Officers Interest:	No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Authority / Discretion

Quasi-Judicial	When Council determines an application/matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include local planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
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Proponent: Harley Dykstra
 Owner: S and J Johnson
 Date of Receipt: 31 July 2019
 Lot Area: Lot 597 – 20.2ha
 Lot 598 – 16ha
 Lot 599 – 16.4ha
 Town Planning Scheme No 2 Zoning: 'Rural'
 Metropolitan Region Scheme Zoning: 'Rural'

Report Purpose

The purpose of this report is for Council to consider a development application for a 'Transport Depot' at Lot 597 Walker Road and Lots 598 and 599 Karnup Road, Serpentine. The proposed transport depot involves the distribution of explosive detonators, for use in the mining industry. This is noted to be outside the locality of the Shire.

The application is presented to Council as objections have been received during the advertising period. Officers do not have delegated authority to determine development applications where objections cannot be satisfied by way of amendments or conditions in accordance with Delegated Authority 12.1.1 – Determination of Development Applications.

For the reasons outlined in the report, Officers recommend that the application be refused.

Relevant Previous Decisions of Council

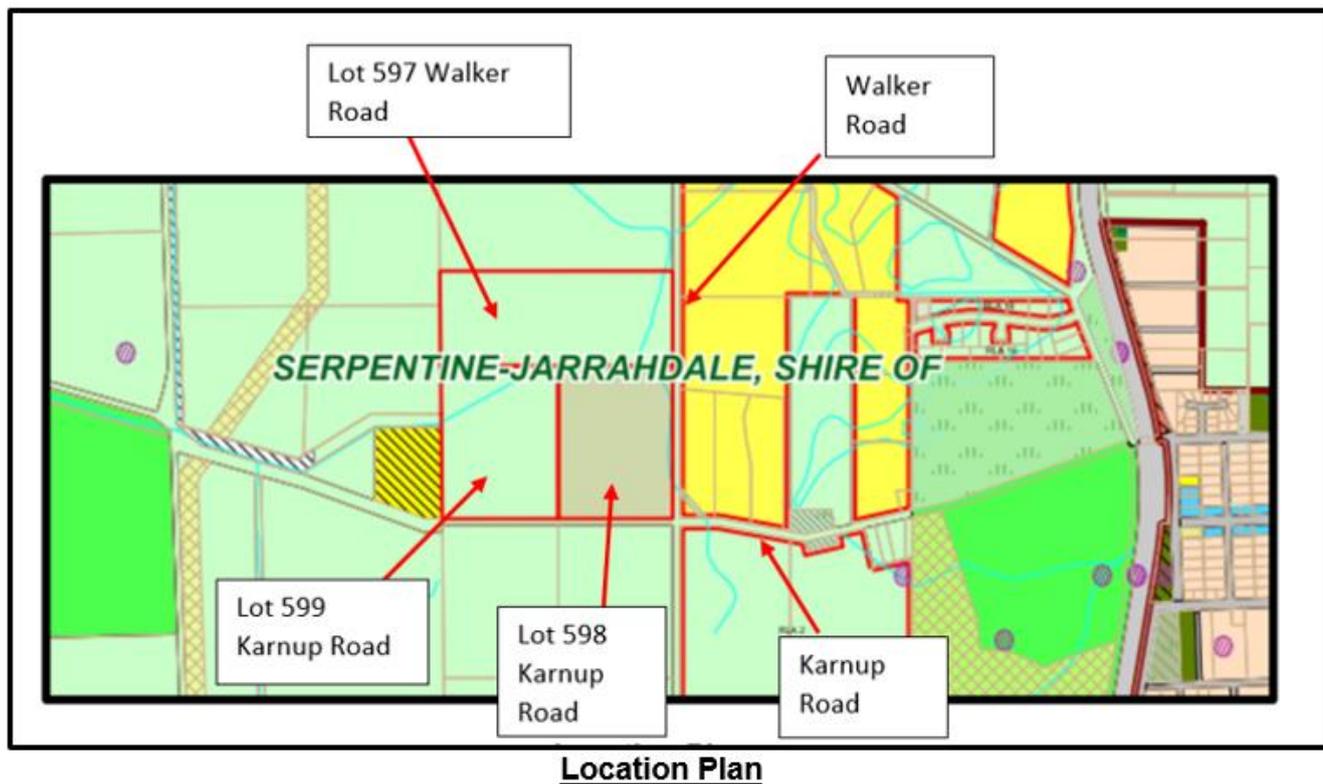
P02856/02 – Approval was granted for a Transport Depot at Lot 599 Karnup Road, Serpentine on 15 March 2016 under delegated authority. This application however is for a new specified use, and seeks to include additional land in it. Accordingly a new application is required.

Background

Existing Development

The application site comprises of three lots under the same ownership, Lot 597 Walker Road and Lots 598 and 599 Karnup Road in Serpentine. The area is typically rural with Walker Road running along the eastern boundary and Karnup Road to the south.

Lots 598 and 599 Karnup Road are approximately 16ha in area and Lot 597 Walker Road is 20ha. This lot is currently developed with a shed and development approval was granted on 7 February 2017 for a 'Transport Depot' subject to a number of conditions.



Proposed Development

The application seeks approval for a 'Transport Depot' with occasional onsite storage. The site would be utilised by Blast Tech Australia Pty Ltd who supply Class 1 explosive material to mining and construction industries. Full details of the proposal are contained within **attachment 1**.

The application includes a 140m² shed with security fencing and an area of hardstand. The shed would be located within Lot 597 Walker Road, setback approximately 222m from the northern boundary and approximately 240m from the western boundary. Access to the 'Transport Depot' would be from Karnup Road, through Lot 599 Karnup Road, via an existing access driveway.

Class 1 explosive materials would be transported, via shipping containers, into the Fremantle port where they are collected by Blast Tech and delivered to the subject site for compliance checking

and unloading and reloading. Four employees and a truck driver would attend the site to unload the container which would take place between three and four hours. This transfer of goods would occur between the hours of 7:00am and 6:00pm Monday to Sunday.

Initially, the application stated that explosives would be stored in the proposed shed for a period of no more than 4 weeks until being collected for delivery to Kalgoorlie. Based on this, the proposal constituted the land use of 'Warehouse' due to the storage element. As the land use of 'warehouse' is prohibited in the 'Rural' zone, Officers advised the applicant that the proposal could not be considered – it would have to be refused as a prohibited use within the zone. Subsequently, the applicant provided additional information, contained in **attachment 2**, detailing that the explosives would only be stored at the site on occasion, overnight.

The applicant has stated that the storage shed is required by the Department of Mines, Industry Regulation and Safety (DMIRS) to ensure products are safely stored in the event of a delay in transport (i.e. scheduling, vehicle maintenance). Where possible, the product would be transported to the site, loaded into the purpose built rigid vehicle and driven to the final destination within the same day. If approval was being contemplated, it would potentially be possible to impose a condition to restrict the storage time to ensure that the transport depot involves the transfer of goods from one vehicle to another, and that no permanent storage occurs (as that would render the use to that of a warehouse – which is prohibited).

Due however to what Officers consider to be an inconsistent relationship with the objectives of the Rural zone, the proposal is not recommended for approval. Given its lack of connection to a rural pursuit and associated activities conducted in the Scheme area, the proposal is not considered to be a characteristic of the locality, and is deemed to be inconsistent with the objectives of the zone and not appropriate for approval in a rural zoned location.

In terms of the proposal, approximately once a month a container would be delivered to the site containing approximately 30kgs – 60kgs of Class 1.4s detonators. There are two main types of detonator product which are imported by Blast-Tech, as pictured below.



FIGURE 1 - DETONATOR
110mg – Net Explosive Quantity
Used to sequence blasts



FIGURE 2 - DETONATOR
720mg – Net Explosive Quantity
Used to initiate other high explosive products (Not
distributed by Blast-Tech)

The applicant has advised that these detonators are packaged in such a way that they are deemed safe by regulations to be transported on passenger aircraft. Class 1.4s detonators will not sympathetically detonate which means that if one explodes, it will not set off any others and therefore it is highly unlikely to result in a mass detonation.

Community / Stakeholder Consultation

The application was initially advertised for a period of 21 days from 5 August 2019 – 26 August 2019 to landowners within a 500m radius of the subject site. Following several requests from the community, this advertising period was extended to 4 September 2019 and letters were sent to landowners for a further 500m radius (1km in total), in accordance with the Deemed Provisions and the Local Planning Policy 1.4 – Public Consultation for Planning Matters.

During the advertising period, a total of 19 submissions were received raising concerns in relation to the proposal. A full summary of the submissions with the applicants response are contained within **attachment 3**. The issues raised are discussed further in the relevant sections of the assessment and relate to:

- Nature of land use inappropriate in a rural area;
- Safety;
- Noise from trucks;
- Security/criminal behaviour;
- Bushfire;

- Inconsistent with rural lifestyle; and
- Increased traffic/road safety.

Department of Mines, Industry and Regulation and Safety (DMIRS)

DMIRS advised that an explosive storage licence would be required and this would be reviewed against the relevant Australian Standards and regulations.

Department of Water and Environment Regulation (DWER)

DWER provided a submission advising it has no comment.

Water Corporation

The Water Corporation advised that reticulated water and sewerage services are not available to the lot and the proposal does not appear to impact on its infrastructure of services.

Department of Transport

The Department of Transport advised it has not comment.

Statutory Environment

Legislation

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015*

State Government Policies

- South Metropolitan Peel Sub-Regional Framework Towards Perth and Peel 3.5 Million
- Metropolitan Region Scheme
- State Planning Policy 2.5 – Rural Planning
- State Planning Policy 3.7 – Planning in Bushfire Prone Areas
- Environmental Protection Authority Environmental Assessment Guideline for Separation Distances Between Industrial and Sensitive Land Uses

Local Planning Framework

- Shire of Serpentine Jarrahdale Town Planning Scheme No.2
- Rural Strategy Review 2013
- Draft Shire of Serpentine Jarrahdale Local Planning Scheme No.3
- Draft Local Planning Strategy

Planning Assessment

A comprehensive assessment was undertaken in accordance with section 67 of the *Planning and Development Regulations 2015*, the assessment is contained within **attachment 4**. For the purposes of this report, matters resulting in objection, or where Council is required to exercise discretion are discussed.

Land use and Permissibility

The proposal (as modified) is considered to fall within the land use of 'Transport Depot' defined under TPS2 as:

"land or buildings designed or used for one or more of the following purposes:

- (a) The parking or garaging of more than one commercial vehicle used or intended for use for the carriage of goods (including livestock) or persons.*
- (b) The transfer of goods (including livestock) or passengers from one vehicle to another vehicle*
- (c) The maintenance, repair or refuelling of vehicles referred to in (a) or (b) above.*

The above use (a) to (c) inclusive, singularly or collectively may, with Council's planning consent, include as an incidental use overnight accommodation of patrons of the facilities"

The proposal involves the transferring of explosives from one vehicle to another within the outbuilding structure. It is considered that the proposal meets (b) in the above definition. A 'Transport Depot' is an 'SA' use in the 'Rural' zone in accordance with TPS2 and may only be permitted subject to development approval and advertising.

Town Planning Scheme No. 2 (TPS2)

TPS2 states that the purpose and intent of the rural zone is to "*allocate land to accommodate a full range of rural pursuits and associated activities conducted in the Scheme area*". It is noted that concerns were raised in relation to the proposal not being consistent with 'rural lifestyle', which is an important point of objection given TPS2 sets out a zone based objective that narrows land uses to only those full ranges of rural pursuits and associated activities conducted in the Scheme area.

While TPS2 does not define a 'rural pursuit', the general definition as determined by SAT relates to 'characteristics of the country' (Attwell and City of Albany). As described in the Proposed Development section of the report, Officers are not satisfied that the proposal, involving the transport of explosive materials for mine sites in Kalgoorlie, has a relationship with the characteristics of the country of the Scheme area.

The explosives are designed to be used in mining industries in Kalgoorlie. This is not connected to the Shire's Scheme area, in that rural pursuits and associated activities in the rural zone have not employed mining activities requiring the use of explosives. The transfer of the explosives is therefore not considered an activity associated with this characteristic of the country, carried out within the Scheme area and therefore is not consistent with the objective of the rural zone.

It is worth noting that the State Administrative Tribunal in the case of Castle and Shire of Serpentine Jarrahdale (2019) WASAT 122 held that "*it is not necessary for a development to be a rural pursuit for it to satisfy the intent and purpose of the Rural Zone. This is because cl 5.10.1 of TPS2 refer to the full range of rural pursuits and associated activities*". As officers however do not

consider the rural zone to be characterised by rural pursuits and associated activities that would involve the need for this proposed use, it is not considered consistent with the zone objective.

Rural Strategy 2013 Review:

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

“The purpose of this Policy Area is to maintain the integrity of the Shire’s rural and agricultural character. While it is recognised that the agricultural productivity and economic returns for some forms of agriculture are diminishing, it is important to also consider the longer term rural landscape, features and amenity of the Shire along with the application of appropriate planning principals.”

It is considered that the proposal would not reflect the rural character of the area, in that it proposes a transport depot use that is not reflective of a rural pursuit or associated activity for the rural zone within the Scheme area. While the development would be set back from lot boundaries and would not result in a significant increase in traffic, it is not considered sufficiently associated with the current and expected levels of rural amenity and nature of land uses in the rural areas of the Shire.

State Planning Policy 2.5 Rural Planning

The purpose of this policy is to, *“protect and preserve rural land assets due to the importance of their economic, natural resource, food production, environmental and landscape values”*. The policy provides a planning framework that comprehensively considers rural land and compatibility between land uses. As previously stated, it is considered that the proposal is not sufficiently connected with a rural pursuit, rural uses and associated activities occurring on rural land in the Scheme area.

State Planning Policy 3.7 – Planning in Bushfire Prone Areas

The intent of SPP3.7 is to *“implement effective, risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure”*.

The proposal is considered a ‘high risk’ land use under SPP3.7. High-risk land uses have the potential to lead to the ignition, prolonged duration and/or increased intensity of a bushfire. Development applications for this type of land use are required to be accompanied by a Bushfire Management Plan (BMP).

SPP3.7 states that development achieving a Bushfire Attack Level (BAL) of BAL-40 or above will generally not be supported. The BMP includes an assessment against the Guidelines for Planning in Bushfire Prone Areas and has demonstrated acceptability by way of location, siting and design, vehicular access and water.

The BMP demonstrates that the shed would have a BAL rating of BAL-29 or lower with an area of hardstand acting as asset protection zone (APZ). Two 25,000 litre water tanks are located to the south of the site and would provide water supply in the case of a bushfire event. One tank is fed by rainwater and the other is pump-fed allowing for two different water resources.

Traffic

Concerns raised by residents relate to the potential amenity impact as a result of an increase in traffic movements, the impact the increased traffic would have on the safety of road users and the capacity of the roads to cater for increased traffic volumes.

The proposal would result in four employees (private vehicles) and a truck driver visiting the site twice a month. Access would be via the existing driveway on Karnup Road. It is considered that this number of vehicle movements to and from the site are relatively low. Traffic movements fall below the amount required for a Traffic Impact Statement to be provided, in accordance with the Department of Planning, Lands and Heritage Transport Impact Assessment Guidelines.

Safety and Security

The subject operations are governed by the Department of Mines, Industry Regulation and Safety (DMIRS). The *Dangerous Goods Safety (Explosives) Regulations 2007* and *Australian Standard 2187.1* set out the amount of product able to be safely stored on site depending on the distance to the nearest uncontrolled boundary (i.e. adjoining properties not owned by the applicant). The separation distances are calculated based on a worst-case emergency event, which is scientifically calculated to ensure that no land outside of the ownership of the applicant would be impacted. The closest uncontrolled boundary, as illustrated below, is 222.6m to the north from the edge of the proposed storage unit.



The application states the explosive material as being a 'Class 1' product, individually packaged 720mg parcels that are non-sympathetic. The application uses Table 3.2.3.2 of AS2187.1-1998 to show separation distances for different quantities of Class 1 demolition material. With a separation distance of approximately 200m, up to 2000kg could be stored at the site. This amount is significantly more than is proposed and would be restricted under the DMIRS licence.

Each stage of the transportation process requires a license (i.e. License to import, License to sell, License to Store and License to Transport). Furthermore, each of the storage vessels (incoming sea container, storage facility and rigid truck) are required to be constructed to the standard set out in *Australian Standard 2187.1*.

The applicant has advised that their standard practice is to conduct security patrols to monitor the site throughout the day. The site would also be visited by the landowner who is currently keeping horses on site. In addition, security measures are set out within the *Australian Standard 2187.1* and governed by DMIRS through the licencing process.

Storage of the product requires the following methods to ensure complete security:

- Construction of the storage unit ('magazine') to the standard of AS 2187.1 – including solid steel construction and one operational opening only;
- Construction of a security fence around the magazine including lock and key, barbed wire and chain mesh construction; and
- Live monitoring of the site by security cameras.

Accordingly, while officers recommend refusal of the proposal due to a fundamental conflict with the objective of the rural zone, concerns regarding safety and security would be manageable if Council chose to support the proposal. This would see it as compliant with the relevant regulations under licence approved by DMIRS.

Amenity

The Environmental Protection Authority (EPA) Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land uses No.3 (Guidance Statement) sets out generic separation distances between particular land uses and sensitive receptors (dwellings).

The Guidance Statement recommends a separation distance of 200m between transport depots and sensitive receptors. There are no sensitive receptors within 200m of the subject proposal, consistent with the Guidance Statement.

Options and Implications

Option 1

Council may refuse the application subject to reasons.

Option 2

Council may resolve to approve the application subject to conditions.

Option 1 is recommended.

Conclusion

The application seeks approval for a 'Transport Depot' for explosive detonators used in the mining industry in Kalgoorlie, a land use which is not considered to be sufficiently reflective of a rural pursuit and associated activity taking place in the 'Rural' zone of the Scheme area. The proposal

is not consistent with the planning framework for this reason, and while concerns regarding traffic and safety and security could be overcome through conditions, it is due to the inconsistency with the zone objective that the proposal is recommended for refusal.

Attachments (available under separate cover)

- **10.1.1- attachment 1** – Application Details (IN19/16177)
- **10.1.1 - attachment 2** – Additional Information (E20/1896)
- **10.1.1 - attachment 3** – Summary of Submissions (E20/1898)
- **10.1.1 - attachment 4** – Technical Assessment (E20/2702)
- **10.1.1 – attachment 5** – Development Plans (E20/1895)

Alignment with our Strategic Community Plan

Outcome 3.1	A commercially diverse and prosperous economy
Strategy 3.1.1	Actively support new and existing local business within the district.
Outcome 4.2	A strategically focused Council
Strategy 4.2.1	Build and promote strategic relationships in the Shire's interest.

Financial Implications

Nil

Risk Implications

Risk has been assessed on the basis of the Officer's Recommendation.

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Plan (Controls or Treatment proposed)	Action (Controls or Treatment proposed)
Council approving the development application which could result in similar land uses which are not reflective of the rural zone objective being proposed.	Possible (3)	Moderate (3)	Moderate (5-9)	Compliance - 3 Moderate - Non-compliance with significant regulatory requirements imposed	Accept	Officer Recommendation

Risk Matrix

Consequence / Likelihood		Consequence				
		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk rating of **9** has been determined for this item.

Voting Requirements: Simple Majority

OCM046/03/20

COUNCIL RESOLUTION / Officer Recommendation

Moved Cr Byas, seconded Cr Strange

That Council

1. **REFUSES** the development application for 'Transport Depot' at Lot 597 Walker Road and Lots 598 and 599 Karnup Road, Serpentine, as contained within attachment 5 in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, for the following reasons:

- (a) The proposed development is inconsistent with the objective of the 'Rural' zone in accordance with Clause 5.10.1 of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2. The proposed use is not considered to be a rural pursuit or an associated activity that supports the carrying out of rural pursuits in the 'Rural' zone and such is inconsistent with the purpose and intent of the 'Rural' zone.
- (b) The proposal is contrary to Clause 67 (n) of the deemed provision which indicates due regard should be given to the amenity of the locality including the character of the locality and the environmental impacts of the development. The proposed development is not considered an appropriate land use due to its inconsistency with rural uses that combine to form the rural character of the locality.
- (c) The proposal is inconsistent with the objectives of the Rural Strategy Review 2013, and would adversely impact upon the rural character of the area.

CARRIED 7/2

*Councillor Coales, in accordance with Section 5.21(4)(b), Local Government Act 1995
requested the votes be recorded.*

*Councillors Rich, Atwell, Byas, Dagostino, Denholm, McConkey and Strange voted FOR the
motion.*

Councillors Coales and Strautins voted AGAINST the motion.