



Proposed Transport Depot

Lot 1 (No. 543) King Road, Oldbury

August 2020

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Prepared for:

Maxim Nield

Prepared by:

Altus Planning
68 Canning Highway
SOUTH PERTH WA 6151
Phone: (08) 9474 1449
contact@altusplan.com.au
www.altusplan.com.au

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1.0 Background

1.1 Purpose

1. This submission should be considered as an updated and consolidated application for a transport depot ('the proposed development' or 'proposal') at Lot 1 (No. 543) King Road, Oldbury ('the subject land' or 'land'). It has been prepared for the reconsideration of the Shire of Serpentine Jarrahdale ('the Shire' or 'the Respondent') following the last mediation session conducted by the State Administration Tribunal ('Tribunal') on 3 July 2020.
2. This report and its attachments (inclusive of those from various sub-consultants) is to wholly replace the updated application that was provided for the purposes of mediation on 11 May 2020.

1.2 Application History

3. Mr Maxim Nield ('the Applicant') operates his business 'Exit Waste' from the subject land. Prior to 2015, activities on the land were conducted by the Applicant's father who, in 1996, sought approval for a workshop for his engineering business that supplied, repaired and/or resold earthmoving and agricultural spare parts for customers throughout the state. It is therefore clear that the site has a history of commercial use.
4. On 30 July 2019, a planning application was made which sought Council's discretion for the approval of a proposed 'Transport Depot' pursuant to the Shire's Town Planning Scheme No. 2 ('TPS2' or 'the Scheme').
5. On 10 February 2020, the Shire's assessing officer considered the application and refused it, citing the following three (3) reasons:
 1. *The proposed development is neither a rural pursuit nor associated with a rural pursuit and is inconsistent with the objective for the 'Rural' zone in accordance with Clause 5.10.1 of the Shire of Serpentine-Jarrahdale Town Planning Scheme No. 2.*
 2. *The proposed development is inconsistent with the established rural character of the area and is likely to adversely impact on the rural lifestyle of surrounding residents, which is contradictory to the objectives for the Rural Policy Area under the Rural Strategy Review.*
 3. *Insufficient information has been submitted to determine the noise, and odour impacts of the proposed development.*

6. On 9 March 2020, an application for review was lodged against the above decision at the Tribunal and the matter was programmed to a mediation.
7. To address various matters and concerns raised by the Shire in mediation, a number of sub-consultants were engaged to assist with the updated application which are referenced and summarised later in this report. Specifically, they are:
 - Bioscience – An environmental report on the Stormwater, Spill and Wash Down Management Plan
 - Herring Storer – An acoustic assessment
 - Strategen JBS&G – An odour assessment

1.3 Property description

8. The subject land measures approximately 4.23ha and exists on the south-eastern corner of the King Road and Boomerang Road intersection in Oldbury. The southern boundary of the land abuts a railway reserve that has the daily operation of Alcoa trains. The land currently comprises of a residential dwelling, workshop, office, as well as separate truck and car parking spaces.
9. See aerial site plan at **Attachment 1**.

1.4 Locality

10. The surrounding properties in the broader locality are also characterised by a mix of rural business uses, rural pursuits and rural living purposes. This is most evident opposite the subject land at No. 215 Boomerang Road where a wholesale plant nursery is located. Further to the west at No. 31 Boomerang Road is a paintball and laser tag (amusement park).
11. To the east there is a Rent-A-Plant nursery at No. 163 Boomerang Road, Oldbury which is of a considerable scale and includes a 30 x 52 metre (1,560m²) warehouse/shed. The nearest adjoining residence is at No. 185 Boomerang Road, in excess of 150 metres from the transport depot.
12. Further afield there is the King Road Brewing Company to the south near the intersection of King and Mundijong Roads. To the north, in November 2019, the Council granted an extension to a time limited approval for an 'industry-light' proposal at Lot 813 (No. 244) King Road, Oldbury.
13. See aerial locality plan at **Attachment 2**.

2.0 Proposal

14. The principal aspects of the proposal remain as follows:

- The parking of six (6) licensed and operational trucks, four (4) of which are licenced controlled waste trucks. These are rigid single or multi-axle (non-articulated) vehicles. See trucks in site photos at **Attachment 3**.
- There are generally only two (2) trucks that are operational during any one day. A truck will generally go out for the day and will only return to the site once or twice during the day, as required.
- No waste is processed or disposed on-site. 3-4 times a week there is need for truck to truck transfer of liquid waste. Trucks parked onsite are generally otherwise empty. Supervisor and driver spill management plans have been provided.
- Operating six (6) days a week during normal working hours.
- The Applicant is the owner/manager and there is another full-time driver and one (1) casual driver, as required.

15. The broad parameters of the site plan for proposal remains as lodged with the original application, see **Attachment 4**. However, the hardstand area of the transport depot will now be considerably upgraded because of the proposed stormwater, spill and wash down management plan that is discussed further in Section 4.4 of this report.

16. Whilst the original application correctly advised that the trucks associated with the transport depot operate throughout the Perth metropolitan area, a significant portion of the controlled waste trucks service the adjoining localities within the Shire. In amongst the numerous individual residents who are serviced on an as needs basis within the Shire, there are also regular corporate clients such as the Keysbrook mine and Karnet Prison.

17. On any given month, the proportion of clients that are located within the Shire fluctuates but is generally at least 50%.

3.0 Planning Framework

3.1 Town Planning Scheme No.2 (TPS2)

18. The subject land is zoned 'Rural' pursuant to the Shire's TPS2. Specifically, the relevant objective for the Rural zone is stated at clause 5.10.1:

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.

19. In accordance with TPS2, 'Transport Depot' is an 'SA' use in the Rural zone. This means that the Shire may permit the use, after notice of the application has been given in accordance with Clause 64 of the Deemed Provisions. 'Transport Depot' is also defined in TPS2 under Appendix 1 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 good (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.*

20. The proposal remains consistent with the classification of 'Transport Depot'.

3.2 Draft Local Planning Scheme No.3 (LPS3)

21. The land is proposed to be similarly zoned 'Rural' in the Shire's draft Local Planning Scheme No. 3 ('LPS3'), which has been granted final approval by the Shire. The Rural zone objectives in LPS3 are proposed to be far more expansive and are provided in Table 2 as follows:

- *To provide for the maintenance or enhancement of specific local rural character.*
- *To protect and accommodate broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use.*
- *To maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies including groundwater, to protect sensitive areas especially the natural valley and watercourse systems from damage.*
- *To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the Rural zone.*
- *To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.*

22. At the Special Council Meeting of 22 June 2020, the Shire granted final approval to LPS3 such to a number of modifications. The last dot point of the objectives of the Rural zone was changed as follows:

*'To provide for a **limited** range of non-rural land uses, **only** where they have demonstrated **a direct benefit to the local community** and are compatible with surrounding rural uses.'*

23. The justification provided for the above change was as that *"The objectives for the Rural zone do not discourage non-rural land uses. The objectives are likely to result in an influx of non-rural industrial type land uses occurring within the Rural zone. This may seriously detriment the success of planned industrial estates and incrementally impact the character of our rural areas"*.

24. LPS3, in its advertised form, also defines a 'Transport Depot' as:

means premises used primarily for the parking or garaging of three (3) ¹ or more commercial vehicles including -

- (a) any ancillary maintenance or refuelling of those vehicles; and*
- (b) any ancillary storage of goods brought to the premises by those vehicles; and*
- (c) the transfer of goods or persons from one vehicle to another.*

25. A 'Transport Depot' is an 'A' use in draft LPS3 which means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the Deemed Provisions.

4.0 Consideration of Issues

26. To assist with the Shire's reconsideration of the application, matters for consideration have been itemised into the following issues.

4.1 Traffic

27. The proposal will have limited vehicle movements and will therefore not have any detrimental impact on traffic flows or the safety of road users in the locality.
28. As noted in the original application, there are generally only two (2) trucks that are operational during any one day. A truck will generally go out for the day and will only

¹ At its meeting on 22 June 2020, when the Shire granted final approval to LPS3, the minimum number of vehicles associated with a transport depot change from 3 to 2, although this has no bearing on the consideration of the subject application.

return to the site once or twice during the day, as required. Therefore, there will be no more than ten (10) daily vehicle movements (in and out) in any one day.

29. Having regard to the 2016 WAPC *Transport Impact Assessment Guidelines*, the transport depot represents a 'Low Impact' development. Accordingly, there is no requirement under these Guidelines for any formalised assessment as, consistent amongst various uses, there ordinarily would need to be a least 10 vehicle movements in a "peak hour" before a formal Transport Impact Statement would need to be prepared in support of the application.
30. The site has two (2) vehicle crossovers to King Road with the northern most crossover principally used for everyday access. Both crossovers have existed on the site for decades and have clear sightlines owing to flat topography and the straight alignment of the road. This section of Kind Road is sign posted with a maximum speed of 80km/h.
31. King Road is defined as a 'Local Road' by the Shire and a 'Regional Distributor' by Main Roads WA. No traffic counts are available but it is one of the main thoroughfares between:
 - Thomas Road to the north (16,542 average vehicles per day in 2019/20 with 84.6% cars and 15.4% trucks); and,
 - Mundijong Road to the south (5,167 average vehicles per day in 2017/18 with 86.3% cars and 13.7% trucks).²
32. All trucks associated with the transport depot are 2, 3 and 4 axle rigid vehicles, with a gross vehicle mass of between 15.5 and 27.5 tonnes. These vehicles are unrestricted on all rural and local roads. However, it is noted that as a Regional Distributor, King Road is classified by Main Roads as also being suitable for the following larger, restricted vehicle categories:
 - TD1.1 TriDrive 1.1
 - N2.1 Tandem Drive 2.1
 - N4.1 Tandem Drive 4.1
 - N2-N4 Tandem Drives 2-4
33. Having regard to all the above, it is considered that a transport depot is appropriate for the location, particularly with the limited number of vehicle movements to and from the site.
34. It is understood that based on this information, the Shire's officers no longer have any concerns in respect to the traffic implications of the proposal when regard is given to the minimal number of vehicle movements and the context of the site.

² Figures take from Main Roads WA Trafficmap, <https://trafficmap.mainroads.wa.gov.au/map>

4.2 Noise

35. Given that no more than one (1) vehicle will generally be operational on-site at any one time, it is submitted that there will not be any unacceptable noise impacts as a result of the transport depot.
36. Environmental noise in Western Australia is governed by the *Environmental Protection Act 1986*, through the *Environmental Protection (Noise) Regulations 1997* ('the Noise Regulations').
37. The Noise Regulations limit noise emitted from any premises or public place when received at other sensitive premises. As previously noted, the nearest adjoining noise sensitive receptor (residence) is over 150 metres from the transport depot.
38. Herring Storer were engaged to undertake an acoustic assessment of noise emissions associated with the transport depot (see **Attachment 5**). This included noise level monitoring that was undertaken between 3 and 7 August 2020, with the levels monitored within the transport depot location itself.
39. The results indicated that monitored noise levels aligned with the calculated noise levels. Utilising a conservative assessment of the influencing factor for the surrounding noise sensitive premises (i.e. underestimation of the allowable noise level), noise levels associated with the transport depot have been found to be compliant with the applicable Assigned Noise Levels at all pertinent times.
40. It is noted that the assessment is premised on the proposal operating between 7am and 7pm, Monday to Saturday. The Applicant has advised that there are the occasional after hours emergency call-outs which generally only occur no more than once or twice a year. In these instances, the trucks will exit via the secondary, southern crossover, away from the noise sensitive receptors.
41. Notwithstanding technical compliance under the Noise Regulations, it is accepted that noise can still be considered an amenity consideration in certain locations. As a general premise, a 'Rural' zone should not be equated with a residential area that has amenity standards akin to those in Rural Living and other similar special or semi-rural environments which are focused only on residential development and amenity. In a true rural environment, even many rural pursuits can be noisy and, in this instance, the Applicant wishes to reiterate that by way of background noise there are two (2) principal influencing factors at the site:
 - i) Anecdotally, King Road has a large number of trucks movement given it is one of the main thoroughfares between Thomas Road to the north and

King Road to the south. Whilst no traffic counts are available, this should be given some credence given the Main Roads 'Regional Distributor' classification.

- ii) As noted, the southern boundary of the land abuts a railway reserve that has the daily operation of Alcoa freight trains.
42. Having regard to all the above, it is considered that noise from the transport depot will be acceptable given the context of the site and the low number of vehicle movements, as confirmed by the Herring Storer assessment.

4.3 Odour

43. There is no direct odour associated with the transport depot and it is reiterated that there is no disposal of controlled waste on site. In addition, any harmful micro-organisms associated with the sewage form of liquid waste are only potentially harmful through direct human contact, they are not easily transmitted via airborne vapour.
44. As noted in the original application, "controlled waste trucks" are licensed through the Department of Water and Environmental Regulation ('DWER'). This licensing regime is simply a means for the state government to monitor waste disposal and volumes produced in WA. The Applicant as "Exit Waste" has a Controlled Waste Licence which simply gives it the right to transport waste on WA roads. There are no conditions of approval relating to the management of odour on the DWER Licence.
45. Under the licence the waste may be retained onsite in a controlled waste tank for up to 7 days. However, retention of waste on site is not usual practice; usual operation is to pick up and dispose of wastes on the same day with empty tankers returning to the site. Transfer of liquids is limited to decanting between trucks or the controlled waste tank via closed couplings within the truck laydown area
46. The vacuum trucks have a sealed fixed tank, i.e. it is fully enclosed. It has a vent valve fitted to it to allow for expansion and contraction of the contained product contained due to temperature changes so that an additional gaseous material can vent. Even in extreme circumstances, any odour would not be perceptible beyond a 5-metre radius of any truck.
47. Strategen JBS&G were engaged to undertake an assessment of the odour impacts of the development. In addition to a site visit to observe operations, a screening assessment under the odour emission guideline (DWER 2019) was also conducted (see **Attachment 6**). The findings from this screening assessment (of a low odour risk at nearby sensitive receptors) did not support the need for a detailed odour impact assessment as described in 2019 odour guidelines.

48. Strategen have concluded that there is a low likelihood of odour emissions occurring and the separation distance to nearby residences indicates that odour causing impacts to amenity at those residences is unlikely to eventuate from parking of liquid waste tankers at the site. A low risk is determined from decanting of waste from tanker to tanker, which is required on occasion to facilitate cleaning of the tanks and management of waste volumes prior to off-site disposal.
49. It is reiterated that the Applicant has produced emergency spill management procedures for both the supervisor and any other driver. A copy of these are located in each waste truck and the office.
50. It is submitted that in a rural context, there is a greater potential for odour emissions through more typical rural pursuits, e.g. horse stables, cattle and sheep yarding pens, parked livestock trucks, etc. Therefore, having regard to the particulars of the proposal, the transport depot is considered appropriate in respect to the management of odour.

4.4 Environmental

51. An environmental scientist from Bioscience was engaged to prepare a stormwater, spill and wash down management plan for the site in accordance with best practice management to ensure that the nearby Resource Enhancement Wetland (UFI 7190) and Bush Forever Site 69 are not subject to adverse impacts from the transport depot.
52. The application now proposes a dedicated area for truck to truck transfer and wash down activities which potentially pose the most risk of an environmental incident. Specifically, a 10 m x 47 m dedicated area will be impervious, consisting of 100 mm of impervious asphalt surface) on top of the existing hardstand.
53. This dedicated area will be graded at 2% and connected to a concrete sump for the unlikely event of a spill and wastewater containment. In such a situation, an updated *Truck Vehicle Parking & Truck Transfer / Wash Out Policy* and *Operator Transfer / Wash Out Procedure* have been prepared for an emergency scenario whereby in the event of a large spill, wastewater contained in the concrete sump and collection pit will be vacuumed into a waste water truck.
54. The Bioscience report concludes that:
 - In the event of a spill (however unlikely) or during wash down, liquid waste will be contained in a concrete sump and isolated from the natural environment prior to be disposed off-site. This is consistent with DWER's Water Quality Protection Notes, particularly WQPN 51- *Industrial wastewater management*.
 - As mentioned in Exit Waste's *Truck Vehicle Parking & Truck Transfer / Wash Out Policy* and *Operator Transfer / Wash Out Procedure* thorough cleaning of the

concrete sump and collection pit will be carried out after any spill event and wash down. Any stormwater going through this system; will therefore not export waste residue into the natural environment. In addition to this thorough cleaning sedimentation traps will act as an added layer of protection should high pressure water cleaning not be sufficient. Such approach is consistent with WQPN 52 – *Stormwater management at industrial sites*.

- The proposed stormwater, spill and wash down management plan is therefore consistent with best practice management and ensures that the nearby Resource Enhancement Wetland UFI 7190 and Bush Forever Site 68 will not be subject to any adverse impacts from the transport depot.

55. Having regard to the above, it is submitted that the proposed infrastructure and updated management regime now adequately makes contingency for a worst-case emergency in the form of uncontained spill or runoff. With these measures in place, it is not considered that there will be any adverse environmental impacts from the operation of the transport depot.

4.5 Character and Amenity

56. The Shire has submitted that the proposed transport depot is not inconsistent with the objective of the 'Rural' zone as stated at clause 5.10.1 of TPS2. Aside from the proposed development being considered an 'SA' use in the Rural zone, the Applicant submits that a transport depot is commonly associated with 'Rural' areas.

57. The Shire has made reference to the decision of the Tribunal in the matter of *Evangel Christian Fellowship Inc. and Shire of Serpentine Jarrahdale* [2017] WASAT 159. It is submitted that this case should be read and understood in its proper context. An extract from paragraph 42 reads:

...The Zoning Table of the Scheme establishes the permissibility of different categories of rural use classes, as well as, assists in identifying other use classes that may be considered as 'associated activities' that support the carrying out of 'rural pursuits' in the Rural zone. For instance, it may be appropriate to approve a 'Consulting Room', which on its face could not be described as a rural activity, but is a land use that may be needed to service the medical needs of the local community, thereby supporting the carrying out of rural pursuits in the Rural zone... [emphasis added]

58. The word 'may' is emphasised as it could have been (but it is not) 'must'. There is no nexus inferred or implied in TPS2 that it must be an activity that must be tied to, or to serve, the local community. In *Evangel Christian Fellowship Inc.* there was no argument raised by the Respondent, or concern by the Tribunal, as to the geographic origin of the parishioners. In any event, the place of worship was ultimately refused because of the amenity impacts the proposal would have on adjoining residents.

59. Paragraph 42 in *Evangel Christian Fellowship Inc.* continues with:

...Interestingly, it would seem that the scale of the 'associated activities' within the Rural zone has been considered in the designation of permissibility of use classes in Table 1, as for example, a 'Consulting Room' is a discretionary use, whereas, a 'Medical Centre' is a use not permitted in the Rural zone.

60. Having regard to the above extract, the scale of the proposed transport depot relevant to the area of the land upon which it is proposed, the distance to adjoining neighbours, a distinct lack of any amenity impacts, etc. should be far more relevant considerations in the assessment of the substantive merits of the particular application when considering its appropriateness in the Rural zone.
61. Even when regard is given to the objectives of the 'Rural' zone proposed in draft LPS3, it is submitted that there is a *"direct benefit to the local community"* in having a transport depot for liquid waste trucks. When a significant portion of the Shire is rural and unsewered, it would be logical that a transport depot for this particular service would exist for the immediate hinterland that it serves.
62. There is no statutory basis to the assertion that *"conducted in the Scheme area"* restricts such uses to those which serve the local rural community. For this to be the case, there would need to be some guidance to determine fact and acceptable degree. In addition, the proposition could be problematic for uses that have a customer or clientele base that is unknown at the time of application/approval and furthermore, that could change over time.
63. It is respectfully submitted that the Respondent is misguided that this proposal (or indeed any proposal of a similar nature) is likely to adversely impact on the rural lifestyle of surrounding residents. The subject land is zoned 'Rural' not 'Rural Living', 'Rural Residential' or any other semi-rural type zone where there is a specific emphasis on the protection of residential amenity.
64. We submit that the focus of any planning assessment should be not on the nature of a proposal but rather, the form, scale and context of a proposal. In addition, the ability to impose conditions of approval to regulate a particular use is likely to have a greater bearing on the protection of amenity and that amenity should be commensurate with the zoning of the land.
65. In this particular instance, the Applicant submits that the surrounding properties are also characterised by a mix of rural business uses, including those that are known to emit both noise and odour. Accordingly, it is submitted that a transport depot will not affect the character and amenity of the locality.

5.0 Conclusion

66. The transport depot has limited vehicle movements during normal working hours and is therefore of a scale that does not have any detrimental impact on traffic flows or the safety of road users in the locality.
67. Beyond the operation of the modern fleet of rigid trucks (which are not all operational at the same time), there will not be any noise emissions in an environment that already has substantial traffic noise from King Road and the daily Aloca freight trains from the abutting railway line. The acceptability of the proposal from a noise perspective has been confirmed by Herring Storer.
68. The parking of the trucks does not produce any odour given that no controlled waste is disposed of on-site. The acceptability of the proposal in this regard has been confirmed by the odour assessment undertaken by Strategen JBS&G.
69. From a broader environmental perspective, the stormwater, spill and wash down management plan (and the infrastructure required as part of it), as prepared by Bioscience, will ensure appropriate contingencies to eliminate any possibility for adverse environmental impact on the site or the local environment.
70. The Applicant would be willing to accept a suite of relevant and reasonable conditions of approval that would regulate the operations of the transport depot which, of itself, is of a minor scale. In these circumstances, it is contended that the proposal would not be an incompatible land use in the locality and should be granted approval.

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