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- NOTE:**
- a) The Council Committee Minutes Item numbers may be out of sequence. Please refer to Section 10 of the Agenda – Information Report - Committee Decisions Under Delegated Authority for these items.
  - b) Declaration of Councillors and Officers Interest is made at the time the item is discussed.

MINUTES OF THE SPECIAL COUNCIL MEETING HELD IN THE COUNCIL CHAMBERS,  
6 PATERSON STREET, MUNDIJONG ON FRIDAY, 7<sup>th</sup> MAY 2010. THE PRESIDING  
MEMBER DECLARED THE MEETING OPEN AT 9.03AM AND WELCOMED  
COUNCILLORS, STAFF AND THE MEMBERS OF THE GALLERY.

**1. ATTENDANCE & APOLOGIES:**

IN ATTENDANCE:

**COUNCILLORS:** S Twine .....Presiding Member  
M Harris  
E Brown  
C Randall  
A Lowry  
T Hoyer

**OFFICERS:** Ms J Abbiss .....Chief Executive Officer  
Mr A Hart ..... Director Corporate Services  
Mrs C McKee ..... Acting Director Strategic Community Planning  
Mr B Gleeson ..... Director Development Services  
Mr R Gorbunow ..... Director Engineering  
Mr S Wilkes .....Executive Manager Planning  
Ms C Murphy ..... Senior Planner  
Mr T Turner .....Manager Health and Ranger Services  
Ms L Howell ..... Senior Planner Projects (from 9.14am)  
Mrs L Fletcher .....Minute Secretary

**APOLOGIES:** C Buttfeld  
MJ Geurds

**OSBERVER :** PA to the CEO

**GALLERY:** 5

**2. PUBLIC QUESTION TIME:**

Nil

**3. PUBLIC STATEMENT TIME:**

SCM034/05/10 - Kathy Elliott (556 Atkins Road, North Dandalup)

The Department of Minerals and Petroleum states that there will be economic benefits to the local community and State. As there are no royalties paid – how do we benefit?

The Chief Executive Officer advised that the analysis that has been done has drawn into question some of the economic benefits that have been proposed or espoused by the proponent.

Senior Planner advised through engaging specialist consultants to deal with social impact, including community and economic benefits, it was determined that conclusions made within the application were unsubstantiated. Any economic benefits of the proposal cannot be determined with the information provided by the applicant.

Manager Health and Ranger Services left the meeting at 9.06am.

**4. PETITIONS & DEPUTATIONS:**

Nil

**5. PRESIDENT'S REPORT:**

The Shire President advised that she has been involved in the 'walk to school' with some children from Jarrahdale.

The Shire President also advised that a community meeting will be held at 7.30pm on Tuesday, 1 June 2010 at the refurbished Mundijong Pavilion.

**6. DECLARATION OF COUNCILLORS AND OFFICERS INTEREST:**

The Chief Executive Officer declared an interest in common in item SCM034/05/10 as she is a resident of the locality of Keysbrook.

**7. RECEIPTS OF MINUTES OR REPORTS AND CONSIDERATION FOR RECOMMENDATIONS:**

Nil

**8. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN:**

SCM034/05/10 APPLICATION FOR INDUSTRY EXTRACTIVE – PROPOSED KEYSBROOK MINERAL SANDS MINE – LOT 1 ELLIOTT ROAD, LOT 52 ATKINS ROAD, LOT 63 HOPELAND ROAD AND LOTS 6, 111, 112 AND 113 WESTCOTT ROAD, KEYSBROOK (P02893/01)		
Proponent:	Planning Solutions on behalf of Matilda Zircon Pty Ltd	<p>In Brief</p> <p>An application for a mineral sands mining operation in the locality of Keysbrook has been received. The Shire of Murray has received a similar application for mining activities south of the Serpentine Jarrahdale Shire boundary.</p> <p>It is recommended the application be refused as the application fails to demonstrate that impacts can be managed and that the proposal is also considered to be inconsistent with provisions of Town Planning Scheme No. 2, the Shire of Serpentine Jarrahdale Rural Strategy and Local Planning Policy No 30 – Mineral Sands Extraction.</p>
Owner:	Various	
Author:	C Murphy - Senior Planner	
Senior Officer:	B Gleeson - Director Development Services	
Date of Report:	7 May 2010	
Previously:	Nil	
Disclosure of Interest:	The Chief Executive Officer declares an interest in common as a resident of the locality of Keysbrook.	
<b>Delegation</b>	<b>Council</b>	

Date of Receipt: 8 February 2010  
 Advertised: 24 February 2010  
 Submissions: 57  
 Lot Area: 941.7 hectares  
 L.A Zoning: Rural  
 MRS Zoning: Rural  
 Rural Strategy Policy Area: Rural

**Background**

An application for development approval was lodged with the Shire on 8 February 2010. The application covered a total of 6 lots, including Lots 1, 6, 52, 63, and 111-113. A similar development application was concurrently lodged with the Shire of Murray for land within their jurisdiction.

The application was advertised for public comment, with submissions closing on 26 March 2010. Concurrently, comment was invited from a range of State Government Agencies. In total 43 submissions were received from members of the public and 14 submissions were received from government agencies.

This report provides Council with the opportunity to determine the development application under the provisions of Town Planning Scheme No. 2 (TPS 2) and also forms a recommendation to the Western Australian Planning Commission, to assist in a determination of the application under the provisions of the Metropolitan Region Scheme (MRS).

***A copy of the application is with electronic attachments marked SCM034.1/05/10.***

## **Sustainability Statement**

**Effect on Environment:** The proposal has been through an extensive environmental impact assessment by the Environmental Protection Authority (EPA) in accordance with the *Environmental Protection Act 1986*. On 19 October 2009, the Minister for Environment issued Statement No. 810 (Ministerial Approval) which approved the proposal under the *Environmental Protection Act 1986* (EP Act). The Ministerial Approval contains conditions requiring a range of management plans and reporting on native vegetation, watercourses, wetlands, rehabilitation, weed and dieback, water, acid sulphate soils, noise, air quality and dust.

***The Ministerial Approval Statement is with attachments marked SCM034.2/05/10.***

The applicant suggests that all environmental matters that are relevant planning considerations for the proposal formed part of the assessment undertaken by the EPA that culminated in the Ministerial Approval, and therefore has not submitted any management plans with the development application. Some draft management plans submitted to the EPA as part of the environmental impact assessment leading to the Ministerial Approval were obtained by the Shire, and provided to independent consultants engaged to undertake specialist reviews related to hydrology and biodiversity.

### **Biodiversity:**

Review of biodiversity management (***included with attachments marked SCM034.3/05/10***) suggests that impacts to flora and fauna can be managed in accordance with relevant EPA guidelines, however notes that this is dependent on management plans being compliant with various government positions and guidelines and industry best practice. The review recommends that the Shire, as an important stakeholder, could stipulate directly or request the Chief Executive Officer of the Department of Environment and Conservation that it has early and ongoing input into the preparation of all environmental management plans required under the Ministerial Approval. The review also sets out standard expectations and recommendations to be addressed in each management plan, in addition to requirements of the Ministerial Approval.

The review specifically notes that the proponent is yet to publish final Vegetation Protection and Rehabilitation Plans for the proposal, and therefore there is insufficient information to demonstrate compliance with the State and Shire's policy requirements regarding rehabilitation.

### **Hydrogeology:**

Review of hydrogeology elements and documentation suggests that, in general, the proponent has addressed many issues associated with the hydrogeology of the project.

However, some key issues were identified regarding groundwater management, including:

- Groundwater modelling undertaken does not consider the cumulative effect of impacts on the Superficial Aquifer through abstraction from the Leederville Aquifer, dewatering of the Superficial Aquifer for ore extraction, and other groundwater users in the area.
- Underestimation of likely groundwater decline from abstraction from the Leederville Aquifer.
- Insufficient measurement of water quality of the Leederville and Superficial Aquifers in the mine area and an assessment of the cumulative quality impacts of mixing of both water resources during production and subsequent disposal in mine pits.
- Possible impacts of post closure landforms with regard to increasing evaporation from the Superficial Aquifer.

- Potential for offsite disturbance of acid sulphate soils due to groundwater decline. It is not known whether the Acid Sulphate Soils Management Plan considers potential offsite disturbance, monitoring, or rehabilitation.

The above issues are of concern, as underestimation of groundwater decline brings the potential to reduce the availability of other water users in the area, including domestic and drinking water for residents. Also, the potential for increased evaporation from the superficial aquifer due to post closure landform, i.e. less clearance to groundwater with potential for groundwater to break the surface resulting in greater evaporation, can lead to significant, permanent decline in groundwater.

**A copy of the hydrogeology impact assessment is with the attachments marked SCM034.4/05/10.**

**Resource Implications:** The application includes limited information on resource efficiency, particularly related to waste, water, and greenhouse emissions. The applicant suggests issues surrounding water and greenhouse are dealt with through other legislated processes, including the *Environmental Protection Act 1986* and the *Commonwealth National Greenhouse and Energy Reporting Act 2007*.

**Use of Local, Renewable or Recycled Resources:** The application includes limited information on the use of local, renewable, or recycled products. Statements in the documentation prepared as part of the environmental impact assessment suggested commitments to local procurement opportunities and programs, however no detail or commitment has been provided to the Shire in this regard.

**Economic Viability:** The application does not include any information regarding the economic viability of the project. The applicant suggests that financial viability is not a planning consideration.

Potential costs to the community, should the proposal not be viable, could arise in the form of undertaking rehabilitation of the land on behalf of the proponent, and funding the costs of rehabilitation of local roads. It is noted that the Ministerial Approval includes the payment of bonds by the applicant prior to commencement of works and on an annual basis to cover rehabilitation costs should the project or company experience unforeseen circumstances that prevent completion.

**Economic Benefits:** The proponent suggests that the proposal will not impact on tourism or rural businesses in the locality. However, there is limited information provided to support this suggestion.

#### **Tourism:**

The site is visible from key vantage points along the Darling Scarp and could be expected to present visual impacts, which may have an effect on tourism. Visual impact is discussed further in relation to amenity.

#### **Rural Business:**

Current agricultural pursuits in the locality can be impacted by dust and noise affecting nearby livestock and cropping. Whilst no management plans or details were submitted as part of the development application to enable consideration of these issues, impact assessments and management plans submitted to the EPA as part of the environmental assessment were obtained by the Shire and independently reviewed by specialist noise and health impact consultants. **The health and noise impact reviews are with the attachments marked SCM034.5/05/10 and SCM034.6/05/10.**

With respect to noise, the review of the Noise Impact Assessment and Noise Management Plan submitted to the EPA as part of the environmental assessment, considers “that the

work undertaken is of sufficient rigour to suggest that the issue of noise has been adequately investigated and addressed”, however note shortcomings that the Noise Management Plan does not respond to:

- Cumulative impacts of noise generated from operations and traffic.
- Consideration of the prevailing local meteorological conditions that might have an influence on the noise levels measured at any of the sensory receptors (e.g. katabatic winds from the Darling Scarp).
- Potential impacts of noise emissions on native fauna populations.
- Consideration of the potential impacts on the surrounding agricultural land-uses, particularly in terms of the potential for impacts to livestock.
- A newly constructed shed which has been adapted as a residence within 250 metres of the excavation area; it is unclear whether this has been considered as a “sensitive premises” for the purpose of any noise assessment.
- Only the closest residences were included in the noise assessment report – there are residences 400 metres from the mine area that were not included in the assessment and at least 19 residences within 1 kilometre of excavation activities. The existence of residences may impact on the ability of the proponent to progress night-time mining.

With regard to the influence of dust on food production, the specialist review of dust management elements suggests that the statement within the application that the proposal would not “adversely affect end food production” is not accompanied by any justification.

The above suggests that insufficient information has been provided regarding dust and noise management. The impact on rural businesses in the area cannot be properly considered without further information from the applicant.

Future rural use of the land is dependent on successful rehabilitation. It is recognized that, due to the local conditions with summer extreme wind and high groundwater in winter, the window to undertake rehabilitation activities could be reduced. No rehabilitation plan has been submitted to the Shire to demonstrate rehabilitation can be undertaken to support future rural enterprises on the subject land.

#### **Local Employment:**

The application suggests an increase in local employment opportunities, however details on specific employment opportunities are generalist and the potential for these to be sourced locally with existing skills or the actual diversity of employment opportunities presented by the application is not discussed. Additional information is required to qualify the likelihood of employment outlined in the application being met with existing local skill sets.

#### ***Social – Quality of Life:***

#### **Human Health:**

Based on the information available at this time, dust emissions have the potential to be a significant issue requiring careful consideration. The applicant suggests that no physical or mental health issues would be presented by the proposal, with issues surrounding noise and dust considered as part of the environmental impact assessment. The application received by the Shire does not include management plans that specifically consider and discuss amenity or visual impact assessment in accordance with State guidelines. However, those management plans submitted to the EPA as part of the environmental assessment were obtained to consider key issues.

The Environmental Protection Authority, in Bulletin 1269 of October 2007, identified the need to revise the draft Air Quality and Dust Management Plan to address a number of matters, including both predictive and reactive management measures and measures to minimise open areas, among other matters. The EPA noted that modelling completed by the proponent indicated that airborne particulate concentrations at some residences would

exceed the National Environmental Protection Measure (NEPM) standard. No updated dust management plan, addressing the matters identified by the EPA, has been made available to the community and/or the Shire.

Written advice from the Department of Health has suggested that the proponent does not fully understand the issues associated with potential health and amenity, and it is not appropriate to assume that there will be no adverse impacts. Noting the previous environmental assessment and conditions applied under the *Environmental Protection Act 1986*, the Department of Health also notes that environmental protection does not always cover health concerns. There is no statutory framework in Western Australia for health impact assessments. In the absence of a separate framework for health impacts, it is considered necessary for health impacts to be assessed as part of planning assessments. This is considered to be consistent with the Shire's TPS 2, which states that the general objectives and purposes of the Scheme are: '*...(a) to secure the amenity, health, safety and convenience of the inhabitants to the District*'.

Given the information provided, comments and conclusions related to public health are unsubstantiated and unsupported, and as such are not considered acceptable to the Department of Health.

The specialist review of health impact considered dust and radiation impacts, and suggests that, although the application states that "*There will be no health or mental health impacts (e.g. respiratory disease, depression and lowered immunity) on local residents, visitors to the subject site or surrounding area, or those involved in undertaking the proposal, including exposure to airborne contaminants, radiation and dust*", there is limited evidence supporting the statement. The review concludes that the application does not provide complete justification for predicting no health or mental health impacts or impacts on food production from the proposal, and a more comprehensive summary on the justification for statements in the application would better inform decisions made on the proposal.

#### **Amenity:**

The application suggests that the potential impacts on the amenity and lifestyle opportunities for existing and future residents and visitors to the Shire are limited and that amenity concerns as they relate to environmental issues were addressed in the Ministerial Approval. However, the EPA and Ministerial Approval does not consider issues as they relate to amenity, public health, and potential nuisance, and did not consider impact on amenity from visual impact or the amenity of people's lifestyles due to conflicts with existing surrounding land uses, e.g. keeping of horses or rural pursuits affected by proposed mining operations (see previous discussion regarding economic benefits). As outlined earlier in this report, such matters are considered relevant planning considerations and in accordance with the provisions of the Shire's TPS 2 and associated policy framework have to be properly considered when determining applications.

A visual impact assessment formed part of the development application, and was subject to independent review from a specialist landscape consultant. ***The visual impact assessment review is with the attachments marked SCM034.7/05/10.*** The review identified that the visual impact assessment (VIA) stated many assessment outcomes, however lacked evidence or justification to quantify outcomes, specifically, the VIA did not:

- Relate the project site at a scale or format that would enable the reader to sufficiently interpret the visual elements of the proposal.
- Adequately describe the visual landscape character with supporting text, images, or maps.
- Adequately describe the view experience of the landscape.
- List or illustrate visual management objectives.
- Adequately justify statements to convince the reader that there would be minimal impact on landscape character.



The review suggests that it is difficult to demonstrate if the visual mitigation recommendations included within the application are appropriate for managing the impact on the landscape character as the impacts have not been adequately documented nor justified. The review recommends the VIA is repeated to include sufficient supporting information, or undertaken by a suitably qualified consultant with a strong understanding of landscape.

Potential impact on groundwater levels, discussed previously, can also impact on amenity or contribute to nuisance factors where domestic water supplies are affected and alternative water sources required. Whilst the application commits to monitoring groundwater levels within 500 metres of the subject land, and providing alternative water to residents affected by decline. However, the application does not suggest any contingency for properties beyond that 500 metres, nor is there commitment for long term monitoring and management of offsite groundwater levels or contingency should operations cease in the interim.

Overall, the application does not appear to provide sufficient justification to support statements that amenity and health impacts would be minimal with the implementation of proposed dust and noise mitigation and landscaping.

***Social and Environmental Responsibility:*** The application was subject to independent review from a specialist consultant to consider social impacts. The review concludes that, while the proponent has suggested that the nature of the proposal may not have significant impact due to its location, duration, and proposed rehabilitation, the application does not provide a complete discussion nor detail specific plans or mitigation to qualify or justify statements of no impact. Therefore, any significance of impact cannot be determined. The review specifically notes that the EPA project assessment report that led to the Ministerial Approval identified a lack of detail in the application relating to community consultation and community development programs. The EPA report recommended that measures for ongoing community consultation and community development be identified.

***The social impact assessment review is with the attachments marked SCM034.8/05/10.***

The review also suggests that:

- The application does not include any information on community development programs.
- Commitment to local south west sourcing for construction purposes and a local procurement policy is lacking from the application, although was referenced as part of documentation leading to the Ministerial Approval.
- Details on specific employment opportunities are generalist and the potential for these to be sourced locally with existing skills or the actual diversity of employment opportunities is not discussed.
- The application does not include a specific discussion on amenity and lifestyle impacts.
- The application does not consider potential for any additional mine power requests to impact on local or regional supply.

The application does not discuss partnerships or consultation with the community, and only discussed community benefit or otherwise in terms of economic activity, employment, and access to services and facilities. Proponent commitments to ongoing community consultation and funding for community development projects were included within recommended conditions in EPA Bulletin 1269; the conditions and relevant commitments do not form part of the final Ministerial Approval. The development application does not include measures for community consultation or contribution to community development programs.

The application does not provide justification that social impacts will be minimal or managed, that impact on amenity and lifestyle will not arise, or that the proposal will present community benefit through investment in community development programs.

The social impact review also discussed community interest, and notes that noise and dust were issues that received a high degree of community concern and comment through the Ministerial Approval process. The review suggests that *“due to the high level of community interest in noise and dust items, general good practice consultation should consider reporting and feedback mechanisms to community relating to noise and dust, and overall project information and progress, as well as complaints management and investigation. Issues resolution and responsiveness may impact the community’s perception of amenity values in the future”*. Whilst specific community submissions received on the application are discussed later, it is noted that the nature of submissions highlighted such amenity issues and minimal consultation by the proponent as areas of key concern. Dust and noise have the potential to impact on human health, which needs to be carefully considered by decision-making authorities. The concerns identified by the community in respect of these matters will likely continue unless adequate processes are put in place for effective community engagement, including reporting and feedback processes.

### **Statutory Environment:**

The proposal requires development approval by the Shire in accordance with Town Planning Scheme No. 2 (TPS2), and separate development approval by the Western Australian Planning Commission in accordance with the Metropolitan Region Scheme. A licence is required under the Shire's Extractive Industries Local Law. A licence application was lodged concurrently with the application for development approval and also advertised concurrently for public/government agency comment. This report does not, however, provide Council with the opportunity to determine the licence application and that will be required at a future date.

***A detailed assessment of the proposal against relevant provisions of TPS2 is included with the attachments marked SCM034.9/05/10.***

In summary, the development application is for a proposed “Industry Extractive” which is an “AA” use in the “Rural” zone, and is therefore not permitted unless Council exercises discretion to approve the use.

The significant scale of the application, and the function of the proposed extractive industry as an open cut mining operation, is such that it is unlikely the proposal could be accommodated within the rural zone under TPS2 without justification that any potential impact on current and future rural pursuits and associated activities, including dwellings and rural lifestyle, can be mitigated. The application is not supported by a rehabilitation plan that demonstrates, in consideration of local conditions and based on geotechnical expertise, that the subject land, once mined, can be successfully rehabilitated to a condition that can support rural pursuits in the future.

On the basis of the previous discussion regarding dust and noise, there is currently no information available to demonstrate that the proposal will not have an adverse impact on either human health or stock health. The proposal is therefore considered to be inconsistent with the general objectives and purposes of the Scheme, which include: **(a) to secure the amenity, health, safety and convenience of the inhabitants of the District.**

Insufficient information or justification has been provided to demonstrate that issues surrounding dust, noise, decline of groundwater quality and levels, and visual impact can be adequately managed in accordance with the objectives of the rural zone, with respect to amenity, nuisance, and objectives for environmental protection. Therefore, the conformance of the proposal with TPS2 provisions cannot be determined at this time, and any approval would be premature.

### **Policy/Work Procedure Implications:**

***A detailed assessment of the proposal against the relevant State and local planning policy is included with attachment marked SCM034.9/05/10.*** The alignment of the proposal with key policies is summarised below.

***State Planning Policy 2.5: Agricultural and Rural Land Use Planning***

State policy states that mineral extraction should be regarded as generally acceptable, subject to assessment on their individual merits in rural areas. In order to assess the individual merits of a proposal, an application must be accompanied by sufficient information to demonstrate potential impacts on amenity, the potential for land use conflict and the potential to threaten the viability of agricultural pursuits on adjacent and nearby properties.

Limited information is provided regarding management of erosion and rehabilitation to ensure the land is returned to a productive capacity to support future agriculture. Significant wind in the local area and associated potential for wind erosion, coupled with the significant size of proposed mining pits raises concern with the ability to control land degradation to ensure future agricultural potential is not lost.

***State Planning Policy 2.9: Water Resources***

State policy requires that applications properly identify and protect water resources. Groundwater modelling that has been undertaken is not considered sufficient to properly assess the potential effects of the proposal and there are indications that some inaccuracies may be present in the modelling. The scale of abstraction and dewatering, which has not been supported by adequate modelling, does not rule out the potential risk of groundwater decline, in an identified groundwater protection area.

***Shire of Serpentine-Jarrahdale Rural Strategy***

The subject land is affected by the Rural Policy Area and the Agricultural Protection Policy Area of the Rural Strategy.

Policy objectives for the Rural Policy Area place focus on the retention of agricultural enterprises. Policy objectives for the Agricultural Protection Policy Area place priority on the retention and maintenance of the capacity of land for agricultural production. Consistent with these objectives, the Rural Strategy lists a range of desirable, conditional, and undesirable land uses that may be considered within the relevant policy areas.

Mining or Industry Extractive are not included within the list of land uses that may be considered within either policy area, and is not a land use that can be considered consistent with policy objectives as the mining of land is not associated with an agricultural enterprise and risks the capacity of land to support agricultural production. Whilst the proposal is temporary in nature, insufficient information or justification regarding rehabilitation and prevention of land degradation is provided to demonstrate the ongoing capacity of the land for agricultural production and the long term use of the subject land for agricultural and associated pursuits is possible.

***Local Planning Policy 30: Mineral Sands Extraction***

The policy includes the objective *“To maintain a general presumption against the extraction of mineral sands within the Serpentine-Jarrahdale Shire, unless the proponent has demonstrated that net social, economic and environmental benefits will be delivered in the short, medium and long term.”*

Generally, insufficient information or commitment is provided within the application to demonstrate any social, economic, or environmental benefits will be delivered. Current gaps in information suggest a risk of degradation of social, economic, and environmental factors.

Insufficient information has been provided to demonstrate the proposal will not impact on a number of relevant matters defined by the policy, particularly:

- Groundwater levels
- Visual impact

- Community
- Employment opportunities
- Health impacts
- Amenity
- Economic impacts
- Climate change
- Mine closure
- Fire management

### **Financial Implications:**

The Shire has engaged various consultants to provide specialist advice in relation to the assessment of the application. All costs in relation to this assessment that can be recovered under the Planning and Development Regulations 2009 will be paid for by the applicant.

Should an application for review be lodged with the State Administrative Tribunal, against a decision of Council on this planning application, there will be costs incurred by Council.

### **Strategic Implications:**

This proposal has implications for all strategies within the People and Community, Environment, and Economic key sustainability result areas.

### **Community Consultation:**

The proposal was advertised from 24 February to 26 March 2010 by way of:

- Newspaper advertisement
- Written advice to all residents in the Keysbrook locality
- Written advice to all relevant state agencies
- Notification on the Shire's website

Fifty seven submissions were received.

***A full schedule of submissions with responses from the applicant is with the attachments marked SCM034.10/05/10.***

Generally, submissions suggest community opposition to the proposal, on the grounds that mining operations would affect lifestyle, agricultural pursuits, and the local environment. A summary of the specific issues and concerns raised follows. ***The applicant's response to the summary issues is with the attachments marked SCM034.11/05/10.***

### ***Dust Generation***

Local wind conditions and fragile soils already generate dust. The scale of the proposal, combined with local wind conditions, would mean that controlling dust will be a challenge.

There was concern that the proposal doesn't sufficiently consider the health implications, including rainwater contamination and respiratory issues.

There was concern dust would impact on livestock, with a resultant loss in income.

### ***Groundwater Abstraction and Dewatering***

There was significant concern that the volume of groundwater to be abstracted, and the scale of dewatering required, would threaten the availability of groundwater for domestic and rural uses, particularly in the context of a drying climate.

There was concern for potential loss of income from poorer quality pasture, and insufficient water availability for agricultural uses.

Several submissions were also concerned about the potential environmental impact of proposed abstraction.

### ***Heavy Vehicles***

Submissions were concerned with the use of local roads by heavy vehicles, suggesting that the planned haulage route includes unsuitable roads, school bus routes, and would pass through North Dandalup townsite with potential impacts on schools.

Several submissions were also concerned with dust generation from trucks using unsealed roads, and potential decline in the condition of local roads.

### ***Lifestyle***

Submissions specifically identified that their choice to live in the local area was for a quiet, rural lifestyle and a mining operation would affect that.

Submissions were also concerned that the character and beauty of the local area would be compromised by a mining operation.

### ***Noise***

Submissions were concerned that noise would impact on residents and livestock. A number specifically noted that sensitive land uses, which had time restrictions, did not include stables although horses would be affected.

Submissions noted that noise carries great distances due to local conditions and concerns were raised with respect to 24 hour operations.

Several submissions also questioned the efficacy of noise monitoring and the process of responding to complaints.

### ***Property Values***

A number of submissions were concerned that proposed mining would result in declining property values, and questioned whether compensation would be provided.

Some submissions specifically noted that any loss in property value would impact on their imminent retirement.

### ***Future development***

A number of submissions suggested that the proposed mining would inhibit future development or subdivision potential of the area.

### ***Community benefit***

Several submissions suggested that the proposal presented no benefit to the local community, and would only present impacts without sufficient contribution to community infrastructure or programs.

### ***Visual impact***

Several submissions were concerned with the visual impact of the proposed mining operations, particularly noting the prominence of the area from vantage points on the scarp, and the impact on local tourism.

### ***Ability to meet obligations***

Several submissions were not confident in the proponent's ability to meet rehabilitation and management obligations. Submitters were concerned that financial or other reasons would result in costs or long term impact to ratepayers and local residents.

### ***Groundwater contamination***

Several submissions were concerned that proposed mining would result in contamination of groundwater resources, which is an important source of domestic and rural water.

### ***Rehabilitation***

A number of submissions were concerned that successful rehabilitation would be a challenge, due to local conditions including summer extreme winds and winter high groundwater levels, which would limit the time when works could take place. This would be exacerbated by the large areas requiring rehabilitation.

Submissions also suggest that the revegetation proposed cannot be achieved as the project area has decreased since the environmental assessment, therefore land available for revegetation is reduced and the ratios presented cannot be achieved.

### ***Vegetation***

Several submissions state that all existing remnant vegetation should be retained, due to potential impacts on salinity, biodiversity, and threatened cockatoos.

### ***Buffer to nearby properties***

Several submissions are concerned that the proposal provides insufficient buffer between the proposed excavation area and adjacent property boundaries. Submissions suggest increasing the distance between the proposed excavation area and dwellings and agricultural activities.

Several submissions are concerned that internal haul roads are placed adjacent to property boundaries.

### ***Land degradation***

Several submissions are concerned with erosion and potential land degradation, as a result of extreme wind conditions and fragile soil.

Submissions suggest the proposal presents significant risk to important farming land in proximity to Perth.

### ***Community consultation***

Several submissions are concerned that community consultation by the proponent has been insufficient.

### ***Other issues***

Other concerns raised in submissions include:

- Hydrological impacts
- The low grade of the ore and limited financial viability of the project
- Acid sulphate soils
- Setting a precedent and encouraging further mining in the area
- The presence of alternative sources of mineral sands, therefore no need to mine the subject land
- Potential that the proposed 10 year timeframe could be extended
- Potential that operations could be interrupted and the land left in a disturbed state
- Compliance with staging and conditions may not be monitored
- Mosquitoes
- Lacking provision of management plans to enable full consideration

### **Comment:**

#### *Community Consultation*

It is evident from the submissions received and the sentiments expressed at the public information evenings that there is a common concern and perception among many residents that the proposal will adversely impact on their health and environment. As identified by the specialist consultant reviews, noise impacts need to be carefully considered and properly managed. In the absence of management plans developed and reviewed by the Shire and

accessible to the community, the prospect for concerns regarding noise to be realized is compounded by the lack of consultation with the community. Hence, if the proposal had been subject to greater levels of meaningful consultation and the collaborative development of monitoring, reporting, and feedback protocols, some of these concerns may have been better addressed by the applicant.

By omitting any reference or commitment to ongoing community consultation and support, the application does not meet the expectations of the local community.

#### *Relationship between Ministerial (Environmental Approval) and Determination under TPS 2*

Through the technical assessment of the application and concurrent community consultation, a key discussion point was the relationship between the Ministerial Statement and the determination of the application for development approval. This section outlines the relationship between the relevant statutory processes.

Schedule 7 of the Planning and Development Act sets the matters which may be dealt with by a local planning scheme. Those matters include:

- i) the conservation of the natural environment of the scheme area, including the protection of natural resources, the preservation of trees, vegetation and other flora and fauna, and the maintenance of ecological process and genetic diversity;
- ii) the conservation of water; and
- iii) any matter necessary or incidental to the sustainable development or the use of land.

The notion of “planning” as defined by the Planning and Development Act is therefore wide enough to include environmental issues.

Section 10.3 of the Model Scheme Text sets out matters which are potentially relevant to the determination of an application for development approval, several of which are relevant to the current application. Relevant matters may include, in no particular order:

- Any approved environmental protection policy under the Environmental Protection Act 1986;
- Any social issues that have an effect on the amenity of the locality;
- The likely effect of the proposal on the natural environment and any means that are proposed to protect or mitigate impacts on the natural environment;
- The preservation of the amenity of the locality;
- Whether any trees or other vegetation on the land should be preserved;
- Whether the proposal is likely to cause soil erosion or land degradation; and
- Any other planning consideration a local government considers relevant.

There is likely to be a degree of overlap between the issues dealt with by the Ministerial Approval and those which must be considered in assessing the planning merits of the application.

The Minister for Environment has issued a statement pursuant to section 52 of the Environmental Protection Act, which sets out the conditions and procedures pursuant to which the proposal may be implemented for the purposes of that Act. The statement of conditions requires the preparation of various management plans. It may be that the information already prepared by the proponent for the purpose of obtaining Ministerial approval will be sufficient to satisfy the Shire of Serpentine-Jarrahdale in relation to some or all of the planning issues the proposal gives rise to. However, final management plans have not been provided and the Shire needs to independently assess the adequacy of the information provided by the proponent and any measures proposed to address potential impacts.

In relation to the required management plans, the State Administrative Tribunal has in the past has accepted that incidental aspects of a development may properly be the subject of a condition which requires the preparation and implementation of a plan, detail or specification

for approval at a later time by the decision-maker. However, a condition cannot lawfully defer for later consideration a non-incidental aspect of a development and cannot leave open the possibility that development carried out in accordance with the consent and condition will be significantly different from the development for which the application was made. The Shire needs to be satisfied at the time it grants development approval that the non-incidental matters can be adequately managed. It is not possible to simply approve the proposal on the basis that management plans will address planning concerns, as they deal with 'non-incidental' matters. The content of the management plans may determine whether the proposal is capable of being approved for planning purposes, and may generate the need for a range of planning conditions.

#### *Determination by the Shire of Murray*

As noted earlier in this report, a separate application for development approval was concurrently lodged with the Shire of Murray. It is understood that this application will require a determination under the provisions of both the Shire of Murray's Town Planning Scheme and also under the Peel Region Scheme.

Although officers from the two local governments have worked cooperatively together in progressing the technical assessment of the applications and in engaging with the community, the formal determination by the two local governments are required to be completely independent.

#### *Determination by the Western Australian Planning Commission*

As noted earlier in this report, the proposal requires separate planning approvals under the Metropolitan Region Scheme and Town Planning Scheme No. 2. Therefore a determination on the application is also required by the Western Australian Planning Commission under the provisions of the Metropolitan Region Scheme (MRS). A relevant extract from the Metropolitan Region Scheme Text is provided below:

*"30. (1) The Commission or a local authority exercising the powers of the Commission so delegated to it under the Planning and Development Act 2005 may consult with any authority that in the circumstances it thinks appropriate; and having regard to the purpose for which the land is zoned or reserved under the Scheme, the orderly and proper planning of the locality and the preservation of the amenities of the locality may, in respect of any application for approval to commence development, refuse its approval or may grant its approval subject to such conditions if any as it may deem fit."*

On the basis of the above, it is understood that the Commission's review of the application will need to take into account not only matters of broader significance, such as to the Perth Metropolitan Region, but also matters of local significance.

This report provides Council with the opportunity to provide a recommendation to the Commission, to assist in their determination of the application; refusal of the application is recommended.

#### *Conclusion*

Whilst issues surrounding dust and noise in relation to environmental protection have been considered by EPA Bulletin 1269 and subsequent Ministerial Approval, the application does not adequately justify statements that relevant issues of dust, visual amenity and potential impact on human health and existing and future rural uses can be managed in accordance with TPS2, the Rural Strategy, and relevant planning policy.

The potential groundwater issues identified by the hydrogeology specialist review are a key concern. Whilst most issues and impacts on hydrogeological factors were effectively addressed through the state environmental impact assessment and subsequent ministerial approval, the accuracy of groundwater modelling appears to have not been appropriately considered. Without reliable, robust groundwater modelling demonstrating otherwise, there



is a risk of significant, permanent decline in groundwater, and associated environmental and social impacts.

In general terms, insufficient information or commitment is provided within the application to demonstrate any social, economic, or environmental benefits will be delivered; instead the proposal as it stands could be considered to present social, environment and economic impact by detracting from existing rural pursuits, affecting tourism, presenting risk of significant groundwater decline, and impacting on the amenity and health of residents in the locality. This does not satisfy the requirements of TPS2 or LPP30, which maintains a general presumption against mineral sands extraction unless social, economic, or environmental benefits can be demonstrated.

**Options:**

There are primarily two options available to Council in considering the proposal:

- (1) to approve the application, with or without conditions; and
- (2) to refuse the application.

Should the applicant be aggrieved by a determination by Council, including a refusal determination or approval conditions, the applicant could lodge an application for review with the State Administrative Tribunal.

**Voting Requirements:** Simple Majority

Acting Director Strategic Community Planning left the meeting at 9.09am and returned at 9.12am.

Manager Health and Ranger Services returned to the meeting at 9.12am.

Senior Planner entered the meeting at 9.14am.

**SCM034/05/10 COUNCIL DECISION/Officer Recommended Resolution:**

**Moved Cr Hoyer, seconded Cr Lowry  
That Council:**

1. Notes the submissions from members of the public and state government agencies in respect of the development application for an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook.
2. Notes the findings of the specialist consultant reviews included as *Attachments SCM034.1/05/10, SCM034.2/05/10, SCM034.3/05/10, SCM034.4/05/10, SCM034.5/05/10 and SCM034.6/05/10* with respect to potential biodiversity, hydrogeology, health, noise, visual and social impacts for the development application for an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook.
3. Refuses the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook, under the provisions of Town Planning Scheme No. 2 (TPS2) for the following reasons:
  - a. The application fails to demonstrate that impacts can be managed in accordance with TPS2 provisions and relevant state and local planning policy, with particular regard to:

- i) Human health**
- ii) Visual impact**
- iii) Groundwater and surface water impact**
- iv) Offsite acid sulphate soil disturbance**
- v) Stock health**
- vi) Impact on existing agricultural enterprises**
- vii) Rehabilitation and future land use**

**b. The application fails to justify that it is consistent with TPS2 provisions and the Shire of Serpentine Jarrahdale Rural Strategy, with particular regard to:**

- i) Insufficient information to demonstrate that the scale and function of the proposal can be accommodated within the rural zone as defined by Clause 5.10 of TPS2 and the rural policy area of the Rural Strategy.**
- ii) Insufficient information to demonstrate that the proposal is consistent with the rural and agricultural purpose and character of the land and locality in accordance with Clause 6.4 of TPS2 and the rural policy area of the Rural Strategy.**
- iii) Insufficient information to demonstrate the proposal will not impact on the amenity, particularly visual amenity, of the local area in accordance with Clause 6.4.2 of TPS2.**
- iv) Insufficient information to demonstrate the proposal properly considers the characteristics of the land in accordance with Clause 6.4.2(c) of TPS2, with particular regard to groundwater levels and quality.**
- v) Insufficient information to demonstrate the proposal will not impact on the mental and physical health of the community in accordance with objectives of TPS2.**
- vi) Insufficient information to demonstrate that amenity can be preserved in accordance with Clause 6.4.2(h) of TPS2.**
- vii) Insufficient justification that dust, noise, and groundwater levels can be managed so as to not present any nuisance in accordance with Clause 7.13 of TPS2.**
- viii) Insufficient information to demonstrate the proposal will not lead to a decline in current and future availability and quality of agricultural land in accordance with the rural policy area of the Shire's Rural Strategy.**

**c. The application fails to demonstrate the proposal will present net social, economic or environmental benefit as required by Local Planning Policy No. 30 – Mineral Sands Extraction.**

**4. Authorise the Director Development Services to write to the Chief Executive Officer of the Department of the Environment and Conservation requesting that the Shire has the opportunity to provide input into the preparation of all management plans required by the Minister for Environment; Youth's Statement No. 810 and that such plans be advertised for public comment prior to finalisation.**

**5. Provide recommendation to the Western Australian Planning Commission that the application for approval to commence development under the Metropolitan Region Scheme for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook be refused for the following reasons:**

**a. The application fails to demonstrate that impacts can be managed in accordance with TPS2 provisions and relevant state and local planning policy, with particular regard to:**

- i) Human health**
- ii) Visual impact**
- iii) Groundwater and surface water impact**
- iv) Offsite acid sulphate soil disturbance**
- v) Stock health**
- vi) Impact on existing agricultural enterprises**
- vii) Rehabilitation and future land use**

**b. The application fails to justify that it is consistent with TPS2 provisions and the Shire of Serpentine Jarrahdale Rural Strategy, with particular regard to:**

- i) Insufficient information to demonstrate that the scale and function of the proposal can be accommodated within the rural zone as defined by Clause 5.10 of TPS2 and the rural policy area of the Rural Strategy.**
- ii) Insufficient information to demonstrate that the proposal is consistent with the rural and agricultural purpose and character of the land and locality in accordance with Clause 6.4 of TPS2 and the rural policy area of the Rural Strategy.**
- iii) Insufficient information to demonstrate the proposal will not impact on the amenity, particularly visual amenity, of the local area in accordance with Clause 6.4.2 of TPS2.**
- iv) Insufficient information to demonstrate the proposal properly considers the characteristics of the land in accordance with Clause 6.4.2(c) of TPS2, with particular regard to groundwater levels and quality.**
- v) Insufficient information to demonstrate the proposal will not impact on the mental and physical health of the community in accordance with objectives of TPS2.**
- vi) Insufficient information to demonstrate that amenity can be preserved in accordance with Clause 6.4.2(h) of TPS2.**
- vii) Insufficient justification that dust, noise, and groundwater levels can be managed so as to not present any nuisance in accordance with Clause 7.13 of TPS2.**
- viii) Insufficient information to demonstrate the proposal will not lead to a decline in current and future availability and quality of agricultural land in accordance with the rural policy area of the Shire's Rural Strategy.**

**c. The application fails to demonstrate the proposal will present net social, economic or environmental benefit as required by Local Planning Policy No. 30 – Mineral Sands Extraction.**

**6. Advise all submitters and relevant State Government Agencies of Council's decisions.**

**CARRIED 6/0**

SCM035/05/10 MUNDIJONG WHITBY PROPOSED REALIGNMENT OF FREIGHT RAILWAY (A0858)		
Proponent:	Serpentine Jarrahdale Shire	In Brief  This report is to request that Council endorse a letter to the Western Australian Planning Commission (WAPC) setting out the Council's position and formally requesting the Commission's assistance with a proposal to realign the freight railway.
Owner:	Not applicable	
Officer:	Louise Howells – Senior Projects Planner	
Senior Officer:	Carole McKee – Acting Director Strategic Community planning	
Date of Report	9 April 2010	
Previously	SD069/11/09	
Disclosure of Interest	No officer involved in the preparation of this report is required to declare an interest in accordance with the provisions of the Local Government Act	
Delegation	Council	

**Background:**

As part of progression of the District Structure Plan (DSP) for Mundijong Whitby, the existing alignment of the freight rail has been identified as a major impediment to future urban development of the area. This has raised the need to progress a proposal to see the realignment of the existing freight rail west of Tonkin Highway.

***A copy of Item SD069/11/09 progressing the Mundijong Whitby DSP is with the attachments at SCM035.1/05/10 (CR09/239).***

**Sustainability Statement**

***Effect on Environment:*** The land that would be required if the freight rail is to be relocated is predominantly cleared with the exception of vegetation along Mundijong Road. Further investigations through the feasibility study will determine what impact the realignment will have on this vegetation.

***Economic Viability:*** The cost of relocating the railway is roughly estimated at \$20 million and will be investigated as part of a further detailed report.

***Economic Benefits:*** Realignment of the freight rail may allow for an intermodal facility to be provided adjacent to the realigned rail corridor which would assist in the provision of employment generating land.

***Social – Quality of Life:*** Quality of life will be improved for landholdings currently impacted by noise and vibration from the existing freight rail. It is, however, recognised that some landholdings will be affected by the new location and this will need to be considered as part of progressing the proposal to realign the freight rail.

**Statutory Environment:**

Local Government Act 1995  
Town Planning Scheme No.2  
Metropolitan Region Scheme  
Planning and Development Act 2005

**Policy/Work Procedure**

**Implications:**

Not applicable

**Financial Implications:** Staff resources will be required for ongoing liaison with relevant authorities.

**Strategic Implications:** Mundijong Whitby District Structure Plan

**Community Consultation:**

No community consultation is required in regard to the relocation of the freight railway at this time as only feasibility investigations are currently proposed to be undertaken. Should the proposal to realign the freight railway progress an amendment would need to be prepared to rezone land to railway reserve. As part of this process, the community will be invited to provide comment.

**Comment:**

The need for the study and the preliminary cost estimate was discussed at a 12 March 2010 meeting which was held with various officers from the Department of Planning, Department of Transport, Main Roads WA, officers from the Serpentine Jarrahdale Shire and the Shire's consultant Laurie Piggott.

The meeting was requested by the Shire of Serpentine Jarrahdale to discuss the results from the DSP process which includes the need to relocate the Cockburn – South West freight line from its current alignment to a new alignment immediately west of the proposed Tonkin Highway extension.

***A copy of the Minutes of the Meeting of 12 March 2010 prepared by Don Challis from the Department of Planning is with attachments at SCM035.2/05/10.***

It was generally agreed at the meeting that a three stage approach would be required to successfully secure a new corridor. This will involve:

- developing the case for a new alignment before proceeding with more detailed planning;
- undertaking more detailed engineering, environmental and economic evaluation to establish the corridor alignment, identify any fatal flaws and establish the cost (and benefit) of the proposal; and
- initiating a formal planning amendment for the new corridor.

A subsequent meeting was held with Chairman of Western Australian Planning Commission Gary Pratley and Director General of Department of Planning Eric Lumsden on 22 March 2010 which brought this matter to their attention.

It was outlined at the meeting that the location of the freight rail through the centre of Mundijong Whitby has significant implications on the design of the DSP and subsequent implementation steps.

The key freight railway issues are:

- a) Splitting the town site into two separate cells with no increase in the limited number of crossing points due to 34 freight train movements per day. This division of urban cells threatens the ability to create a single significant town centre.
- b) Increased road traffic and informal pedestrian crossings of the railway will create a growing and ultimately significant safety and urban amenity problem. The crossings of Bishop Street and Soldiers Road do not have an optimal alignment.
- c) There is now an urgent need to protect land for the new alignment particularly because of existing and potential rural living lots along the eastern boundary of the Tonkin Highway reservation where the possible realignment is proposed.

There are also a number of significant benefits that will arise from relocation of the freight railway particularly if the realignment is progressed at an early stage:

- a) It could provide the opportunity for an intermodal terminal to be developed adjacent to the realigned rail corridor. The Shire's transport consultant has advised that a terminal in this area is supported from a strategic freight perspective and would support the proposed future industrial development currently being investigated by the Department of Planning.
- b) The road standard would be similar to the current intersections of Thomas Road Armadale and Thomas Road Byford with Tonkin Highway.
- c) Lesser cost of land to acquire – currently zoned Rural.
- d) Certainty that the District Centre will be able to be developed and effectively service the catchment.
- e) Avoidance of future conflicts between rail and road users and political pressures as a result of this conflict.
- f) Avoidance of significant safety/emergency access issues due to limited east/west crossings.
- g) Significantly reduced noise impact on urban development.
- h) Assist in avoiding pressure from landowners whose land is constrained from developing in earlier stages due to the location of the freight line.

The cost for the infrastructure associated with the construction of Tonkin Highway has been roughly estimated at \$20 million.

#### **Conclusion:**

There are a vast number of benefits associated with the relocation of the existing freight rail realignment and there is strong support from other government agencies. The Western Australian Planning Commission's assistance will be of vital importance in enabling the proposal to progress.

***A copy of a letter to be sent to the Western Australian Planning Commission and the Freight Rail report mentioned in the letter is with the attachments marked SCM035.3/05/10.***

A copy of this letter will also be sent to the Department of Planning, Department of Transport and Main Roads WA for their information.

**Voting Requirements:** Simple Majority

#### **SCM035/05/10 COUNCIL DECISION/Officer Recommended Resolution:**

**Moved Cr Hoyer, seconded Cr Brown  
Council endorses the letter contained in *Attachment SCM035.3/05/10* to the Chairman of the Western Australian Planning Commission, setting out Serpentine Jarrahdale Shire's position and formally requesting the Commission's assistance with the proposal to realign the freight railway.  
CARRIED 6/0**

#### **9. URGENT BUSINESS:**

Nil

#### **10. COUNCILLOR QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN:**

Nil

**11. CLOSURE:**

There being no further business, the meeting closed at 9.25am.

I certify that these minutes were confirmed at the  
Ordinary Council Meeting held on 24 May 2010.

.....  
Presiding Member

.....  
Date