



Form 1 - Responsible Authority Report (Regulation 12)

Property Location:	Lots 7,10,12,30,50,53,101 Kiln Road and Lot 802 South Western Highway, Byford
Development Description:	Factory Expansion and Ancillary Development
DAP Name:	Metro Outer Joint Development Assessment Panel
Applicant:	Austral Bricks
Owner:	Bristile Holdings Pty Ltd
Value of Development:	\$55,000,000
LG Reference:	PA19/1121
Responsible Authority:	Shire of Serpentine Jarrahdale
Authorising Officer:	Ashwin Nair - Manager Statutory Planning and Compliance
DAP File No:	DAP/19/01712
Report Due Date:	20 November 2020
Application Received Date:	29 November 2019
Application Process Days:	90 days
Attachment(s):	1. Previous RAR 2. Additional information 3. Council Minutes (extract)

Officer Recommendation:

That the Metro Outer JDAP resolves to:

1. Defer DAP Application reference DAP/19/01712 and accompanying plans for a period of 30 days in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of Shire of Serpentine Jarrahdale Town Planning Scheme No. 2, and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme for the following reasons:

Reasons

1. To enable the Shire to give 'proper, genuine and thorough consideration' to all mandatory considerations relevant to its statutory function, and specifically the additional information provided by the applicant in response to the 1 September 2020 decision of MODAP.

Details: outline of development application

Insert Zoning	MRS:	'Rural' and 'Urban Deferred'
	TPS:	'Special Use'
Insert Use Class:		<i>"Extraction and storage of Shale and Clay and manufacture, storage and distribution of Masonry and related products"</i> .
Insert Strategy Policy:		Shire of Serpentine Jarrahdale Rural Strategy Review 2013
Insert Development Scheme:		Shire of Serpentine Jarrahdale Town Planning Scheme No. 2
Insert Lot Size:		Lot 7 Kiln Road - 2.95ha Lot 10 Kiln Road - 2.6ha Lot 12 Kiln Road - 3.8ha Lot 30 Kiln Road - 1.7ha Lot 50 Kiln Road - 37.7ha Lot 53 Kiln Road - 0.68ha Lot 101 Kiln Road - 16.6ha Lot 802 South Western Highway - 6.16ha
Insert Existing Land Use:		<i>"Extraction and storage of Shale and Clay and manufacture, storage and distribution of Masonry and related products"</i> .

The Shire's first RAR (**attachment 1**) was considered by Council at the August 2020 Ordinary Meeting. The RAR was endorsed by Council, which recommended that the MODAP REFUSE the application for the proposed brickworks expansion at Lots 7,10,12,30,50,53,101 Kiln Road and Lot 802 South Western Highway, Byford for the following reasons:

- a. *Insufficient information has been provided to adequately demonstrate that the proposal will not adversely impact the current and intended future amenity of the locality, specifically in respect of amenity impacts associated with dust and air emissions.*
- b. *Insufficient information has been provided to adequately demonstrate that the proposal will not adversely impact the environment, specifically being Cardup Brook, the associated riparian vegetation and the quality of groundwater.*
- c. *The subject land is designated to be zoned 'Rural' under the Council adopted proposed Local Planning Scheme No. 3. This represents a serious document likely to be adopted, to which regard must be given. The proposal represents a non-conforming use under the 'Rural' zone of the land in the new Scheme. While the new Scheme contains a provision at Clause 23(1)(a) that enables a merits based assessment to be performed to consider an extension of a non-conforming use, there is no precise manner of use intensity or extension prescribed in the new Scheme. Therefore, taking into account Reasons 1 and 2, an extension of a non-conforming use which this proposal would represent under the new Scheme, is not consistent with orderly and proper planning.*

MODAP Meeting

In considering the RAR at the MODAP meeting held on 1 September 2020, the Panel resolved to defer further consideration of the application until 1 December 2020. The decision read:

“To allow the applicant the opportunity to address the concerns raised by the Shire in the RAR on the information/reporting provided on the impacts of the proposal regarding :-

- *dust and emissions*
- *Vegetation / groundwater*

And concerns raised by Main Roads WA regarding:

- *traffic and intersection treatment at Kiln Road and South West Highway.”*

This opportunity for the applicant was intended to enable additional information to be submitted to the Shire, so that the Shire could assess the proposal and recommend a position in respect of sufficient information being submitted.

Following MODAP’s decision of deferral for 90 days, Shire Officers sought from the applicant this additional information as early as possible. The following summarises the timeline of engagement between Shire officers and the applicant:

1 September 2020 – Shire officers contacted the applicant, offering to meet to discuss the additional information that will assist the Shire in the assessment of the application.

1 September 2020 – the applicant responded seeking a written outline of additional information by 7 September.

2 September 2020 – as requested by the applicant, a written outline of all the additional information that was required was provided by Shire Officers.

25 September 2020 – Shire Officers contacted the applicant to ascertain how they were proceeding.

1 October 2020 – applicant responded to the Shire seeking to meet when possible after school holidays.

5 October 2020 – arrangements made for a meeting to occur.

8 October 2020 – meeting held at the Shire.

9 October 2020 – Shire Officers sent the record of the meeting, to assist the applicant in clarifying points discussed.

9 October 2020 – applicant responded advising they were seeking to still achieve the November Council meeting and December MODAP meeting.

12 October 2020 – Shire Officers responded advising that more than half the 90 day deferral period had been used with no further information submitted. Shire Officers advised, in accordance with normal process, that it would need to readvertise additional information submitted, including obtaining any updated feedback from DWER, Dept of Health and Main Roads WA.

26 October 2020 – Shire Officers contacted the Chair of the MODAP and the DAP secretariat, advising that the applicant had yet to provide any additional further information and that the Shire would have difficulty in achieving the deadline set by the 1 September 2020 decision. This was due to the Shire not having sufficient time to undertake further referral to submitters and referral authorities, review of the

further information by an independent environmental consultant and undertaking the objective merits based planning assessment.

28 October 2020 – Applicant submitted the further information to the Shire. This is provided at **attachment 2**.

29 October 2020 – Officers organised referral of the additional information to submitters and referral authorities. Any further comments have been requested by 20 November. The additional information was published on the Shire website that day. Shire Officers formally appointed an independent environmental consultant to review the additional information.

9 November 2020 – Officers identified that the environmental consultant had a potential conflict of interest, as they prepared a Clay Pit Wind Erosion Study for the applicant's clay pit in Upper Swan. This Study was then used as part of the updated Dust Management Plan prepared by the applicant for this application. As the consultant was appointed to review this Dust Management Plan and other additional information submitted by the applicant, Officers discontinued the consultant's engagement to remove any potential conflict of interest, and appointed a new environmental consultant to complete the review of the further information. This consultant requires two weeks to complete such review, which is due to be received by the Shire on 24 November 2020.

Community / Stakeholder Consultation

The Shire's practice is that should additional information be submitted by an applicant for a development application which is currently under assessment, and which attracted submissions as part of the initial advertising, any additional information received is referred for further comment. Recent examples of this practice include:

- Neighbourhood Centre - Lot 9504 Briggs Road, Byford;
- Horse Arena - 2738 South Western Highway, Serpentine;
- Transport depot - Lot 598 and Lot 599 Karnup Road and Lot 597 Walker Road, Serpentine;
- Outbuilding - 81 Park Road, Byford;
- Shed extension - 3 Marginata Parade, Jarrahdale.

In accordance with the Deemed Provisions of the Scheme, the further information was provided to submitters, and also listed on the Shire's website. At the date of writing this report, three further submissions have been received. The submission period remains open until 20 November 2020.

Separate to this, in accordance with the decision of the MODAP, the further information has been sent to Main Roads WA who, while having 42 days to provide a response in accordance with the Deemed Provisions, had been requested to respond by 20 November. Given that additional information was also relevant to dust and air emissions per the MODAP decision, the information was also referred for further comment from the Department of Water, Environment and Regulation.

The re-referral of additional information to referral agencies is a commonplace practice to assist in the assessment of a development application. Recent examples of this include:

- Oakford Traders service station, convenience store and liquor store - 1526 Thomas Road, Oakford;
- Caltex Service Station - 1537 Thomas Road, Oakford;
- Proposed Dams - 206 Firns Road, Serpentine;
- Service Station - 11 Shanley Road, Mundijong;
- Keeping of stock - 97 Bournbrook Avenue, Cardup.

Legislation and Policy:

Legislation

- *Planning and Development Act 2005;*
- *Planning and Development (Development Assessment Panels) Regulations 2011;*
- *Planning and Development (Local Planning Schemes) Regulations 2015 ;*
- *Metropolitan Region Scheme (MRS);*
- *Shire of Serpentine-Jarrahdale Town Planning Scheme No. 2 (TPS2);*

- *Draft Shire of Serpentine Jarrahdale Local Planning Scheme No. 3 (LPS3);*
- *Environmental Protection (Noise) Regulations 1997.*

State Government Policies

- State Planning Policy 3.7 - Planning in Bushfire Prone Areas (SPP3.7);
- Environmental Protection Authority Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses (2005);
- State Planning Policy 4.1 - State Industrial Buffer Policy (SPP 4.1).

Local Strategies

- Rural Strategy Review 2013;
- Draft Local Planning Strategy.

Local Policies

- Local Planning Policy 4.3 - Landscape Protection.

Recent legislative change

The Planning and Development Amendment Bill 2020 (WA) received Royal Assent on 7 July 2020, which means that the new provisions in the Planning and Development Act 2005 (WA), to allow the Western Australian Planning Commission (WAPC) to determine development applications for “significant development” proposals, are now law.

New development proposals within the Perth metropolitan area, with an estimated cost of \$20,000,000 or more, are now subject to a new WAPC development approval pathway. This would be in place of the decision making responsibility of the Development Assessment Panel, and also the Shire’s role in preparing the Responsible Authority Report.

Planning Assessment

With the Shire receiving the additional information on day 58 of the 90 day deferral, and the new RAR being required by day 78 (to enable 12 days prior to the MODAP meeting), this provides the Shire 20 days to undertake its statutory responsibilities.

Completion of the RAR involves a number of tasks including:

- Seeking, receiving and collating input from submitters to the original application;
- Seeking, receiving and collating input from referral authorities;
- Seeking, receiving and considering the outcome of the independent environmental consultant’s assessment;
- Undertaking the subsequent objective merits based planning assessment;
- Council consideration of the RAR;
- Provision of the RAR to the MODAP at least 12 days prior to the meeting.

Upon receiving the additional information from the applicant on day 58 of the deferral period, Officers explained to the applicant that this did not leave sufficient time for the Shire to complete its statutory responsibilities as outlined above. To complete these, would take a further 30 days (beyond the 90 day deferral period) considering:

- Seeking, receiving and collating input from submitters and referral authorities; (21 days);
- Seeking, receiving and considering the outcome of the independent environmental consultant's assessment (14 days);
- Undertaking the subsequent objective merits based planning assessment (21 days);
- Report to Council to consider RAR (21 days);
- Provision of RAR to MODAP (1 day);
- MODAP meeting (12 days).

In light of when the additional information was received, and the timeframes outlined above, the Shire requires 30 additional days to be able to complete its statutory responsibilities.

A request for this extension was made to the applicant, noting that the applicant has the authority to agree to an extension. The applicant did not agree to the extension request.

In light of this, the RAR results in the recommendation of a further 30 day deferral being requested of the MODAP. Council may choose to make its own separate position to the MODAP in addition to the RAR.

The deferral will enable the proper, genuine and thorough consideration of the additional information provided by the applicant, and the input to this information of submitters, referral authorities and the independent environmental consultant assessment. The additional information is voluminous and includes the following:

- Health and safety policy statement;
- Updated Water Management Plan;
- Updated Dust Management Plan;
- Additional Information Regarding Air Emissions;
- Environmental Policy;
- Transport Impact Statement;
- Intersection Realignment and Upgrade Design Report;
- Intersection Realignment and Upgrade Drawings;
- New Odour Impact Assessment.

Council Recommendation:

Conclusion:

The timetable given to the Shire is insufficient to enable the Shire to perform its legislative role in giving '*proper, genuine and thorough consideration*' of the application. It is important that the RAR seek an adequate extension of time, and in this regard 30 days is recommended for the reasons explained in this report. Various risks have been carefully considered, and the most significant risk is that associated with the Shire being rushed into a hastened assessment which does not consider all the relevant planning issues, and which potentially result in an ill-informed RAR. The Shire's RAR is recommended for endorsement by Council.