



Shire of  
Serpentine  
Jarrahdale

# Special Council Meeting

## Confirmed Minutes

7.00pm

**Monday, 23 November 2020**

**Purpose:** To consider the Responsible Authority Report prepared for the application for an expansion to the existing brickworks facility at Lots 7, 10, 12, 30, 50, 53, and 101 Kiln Road, and Lot 802, South Western Highway, Byford.

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#### In Person

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6 Paterson Street, Mundijong WA 6123  
Open Monday to Friday 8.30am-5pm (closed public holidays)



[www.sjshire.wa.gov.au](http://www.sjshire.wa.gov.au)



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The purpose of this Special Council Meeting is to discuss and, where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting. Persons should be aware that the provisions of the *Local Government Act 1995* (Section 5.25(1)(e)) and *Council's Standing Orders Local Law 2002 (as amended)* – Part 14, Implementing Decisions. No person should rely on the resolutions made by Council until formal advice of the Council resolution is received by that person.

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### Councillor Attendance Register

In accordance with Ordinary Council Meeting, 16 December 2019, Resolution OCM293/12/19, clause 5 – “That Council requests the Chief Executive Officer maintain a Councillor Attendance Register recording Councillor Attendances at Ordinary Council Meetings, Special Council Meetings and Policy Concept Forums”.

#### Council October 2019 -

Date	Type	Cr Rich	Cr Atwell	Cr Byas	Cr Coales	Cr Dagostino	Cr Denholm	Cr McConkey	Cr Strange	Cr Strautins
02/11/20	PCF	A	✓	✓	✓	A	✓	✓	✓	✓
19/10/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
05/10/20	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
21/09/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
07/09/20	PCF	✓	✓	✓	✓	✓	✓	A	✓	✓
24/08/20	PCF	✓	✓	✓	✓	A	A	✓	A	✓
17/08/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
03/08/20	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
27/07/20	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
20/07/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	A
06/07/20	PCF	✓	✓	✓	✓	A	✓	✓	✓	✓
22/06/20	SCM	✓	✓	✓	✓	✓*	✓	✓	✓	✓
15/06/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
18/05/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
23/03/20	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
16/03/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
24/02/20	PCF	✓	✓	✓	A	✓	✓	✓	✓	✓
17/02/20	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
03/02/20	PCF	✓	A	✓	✓	A	✓	✓	✓	✓
03/02/20	SCM	✓	A	✓	✓	A	✓	✓	✓	✓
16/12/19	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
18/11/19	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓



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04/11/19	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
28/10/19	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
21/10/19	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓

\* Councillor Dagostino was an apology for the Special Council Meeting on 22 June 2020, but attended the resumed Special Council Meeting on 29 June 2020 from 7.00pm to 7.05pm, before Declaring an Interest and leaving the meeting.

**A – Apology**

**LOA – Leave of Absence**

**NA – Non Attendance**



Minutes of the Special Council Meeting of the Shire of Serpentine Jarrahdale held on Monday, 23 November 2020 in the Council Chambers, Civic Centre, 6 Paterson Street, Mundijong.

The Shire President, Councillor Rich declared the meeting open at 7.00pm and welcomed Councillors, and Staff, and members of the gallery, and acknowledged that the meeting was being held on the traditional land of the Noongar People and paid her respects to the Traditional Owners, Elders Past, Present and Emerging.

The Shire President, Councillor Rich acknowledged and welcomed Freeman Mr John Kirkpatrick.

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## Minutes

### 1. Attendances and apologies (including leave of absence):

**Councillors:** M Rich.....Presiding Member  
D Atwell  
M Byas  
R Coales  
B Denholm  
K McConkey  
L Strange  
D Strautins

**Officers:** Mr P Martin.....Chief Executive Officer  
Ms H Sarcich.....Deputy CEO / Director Community and  
Organisational Development  
Mr F Sullivan .....Director Corporate Services  
Mr A Trosic .....Director Development Services  
Mr S Harding .....Director Infrastructure Services  
Dr K Parker .....Manager Governance  
Ms A Liersch .....Agendas and Minutes Officer (Minute Taker)

**Apologies:** Councillor M Dagostino

**Observers:** Members of the Public – 16  
Media – 1



## 2. Public question time:

### 2.1 Public questions

#### **Public questions commenced at 7.01pm.**

No Public questions were submitted prior to the meeting.

Presiding Member, Councillor Rich asked if there were any questions from the floor.

No questions were asked.

#### **Public questions concluded at 7.02pm.**

## 3. Public statement time:

### **Public statement time commenced at 7.02pm.**

#### **Peter Edmiston, address withheld by request**

I previously raised concerns with the Dust Management Plan and Traffic Management Plans. Largely my concerns were with the quality and accuracy of the plans provided.

I note that the intersection of Kiln Road and South West Highway will be upgraded to meet Mains Road requirements as based on updated traffic movements. I am unsure if the suitability of ingress and egress to Kiln Road and the Plant has been reviewed on updated traffic movements ( including traffic bringing raw material from the South of Kiln Road ).

#### Dust Management Plan

The Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses No.3 June 2005 provided for 300 to 1000 metre separation distance (depending on size) and the updated Draft of September 2015 recommends 500 to 1000 metre separation.

There seems little in the Dust Management Plan that would suggest that the lower end of separation distances could be safely considered. A number of aspects of the Plan seem flawed.

The report strangely reports on soil types occurring naturally on site but ignores the shale/clay imported from a number of sources off site which are likely to be the greatest dust source.

Again, the report spends considerable effort on the stability of undisturbed clay. It is planned for the old clay pit to be used for clay storage.

The report fails to:

- establish the likely volume of dust;
- show analysis of the dust particulate size;
- show analysis of the makeup of the dust, e.g. silica and hazardous material;
- provide climatic information for this site which would affect the dust generation and distribution;
- comprehensively identify all sources of dust on site;



- provide medical evidence on the health and environmental risk including an assessment of the restricted uses of adjoining properties;
- include other particulate generation from the site for risk assessment.

I felt it remarkable that without this basic information the report was able to produce a risk matrix.

#### Management Plan

Requires an assessment of weather condition and action by the Site manager. These weather conditions are to be obtained from the Bureau of Meteorology. This is a strange decision seeing it should be well understood that data from Perth Airport, Jandakot Airport or Karnup are unlikely to be representative of conditions for this site. No professional guidance is given on what weather conditions (wind and temperature) are conducive to dust generation such that operations should be ceased.

Street sweeping on Kiln Road seems inadequate. Processes in place have failed to be effective over the past six years.

I believe that existing operation controls are inadequate. It would be reckless to allow approval of increased production and movement of operations closer to the site boundaries.

#### **Anthony Harrison, 21 Knoop Drive, Byford WA 6122**

My house lies at the southern end of Knoop Drive, about 400m from the Austral Brickworks chimney, which I can see from my front garden.

I have a B.Sc. in Chemistry and Zoology and a D.Sc. in Environmental Science, both from the University of London. I am 77 years old and retired a couple of years ago. I have had experience in preparing reports for bodies like the World Wildlife Fund on things like the Chernobyl reactor disaster and the Exxon Valdez oil spill. More recently, I prepared a confidential report on the closure of the alumina plant at Nhulunbuy (NT) for the Marika and Yunupingu families, which was subsequently jointly approved and agreed to by Rio Tinto and the families.

I would like to draw the Council's attention to the 2018/2019 National Pollutant Inventory for the Austral Bricks Cardup Brickworks site. This discloses the following:

#### Dust Management:

Dust emanating from the Brickworks site consists mainly of two types, viz. Particulate matter of 10-micron size (known as PM10) and particulate matter of 2.5-micron size (known as PM2.5).

In the 2018/2019 National Pollutant Inventory, PM10 emission from the Cardup Brickworks was at 79,000 kg annually. Particulate matter 10 microns in diameter (PM10) are known as "respirable particulate matter". PM10 can result in a number of health impacts ranging from coughing and wheezing to asthma attacks and bronchitis to high blood pressure, heart attack, strokes and premature death. There was an increase of 39,000 kg annually on the 2017/2018 NPI figures. The levels are too high.

For a similar period, PM2.5 emission was 39,000 kg annually. Particle pollution from PM2.5 is very dangerous. They are about 3% of the diameter of a human hair and



penetrate deep into the human lungs. There was an increase of 38,380 kg annually on the 2017/2018 NPI figures. The levels are far too high.

Air Emissions:

Odour Impact Assessment:

These are being dealt with together as they are closely linked. Sulphur dioxide, the oxides of Nitrogen, and Hydrochloric acid are all dangerous air emissions and have their own particular smell. Carbon Monoxide has no smell but a dry mouth and respiratory reaction in humans before causing death.

Carbon Monoxide is a highly poisonous gas, very dangerous to human life. The figure for 2018/2019 gave an annual emission of 110,000 kg.

Fluoride Compounds (mainly Hydrogen Fluoride – HF). The acute effects of hydrogen fluoride inhalation are extreme irritation of the respiratory tract with coughing and choking; upon contact with skin and eyes, the liquid or vapour causes severe irritation that may result in severe burns and prolonged or permanent visual defects. The NPI figure for 2018/2019 was 220,000 kg annually. The acceptable level of HF in the air is 3ppm.

Hydrochloric Acid in the form of an acid gas is very irritating to the lungs and can cause coughing, wheezing, asthma attacks and bronchitis. The annual emission figure for this gas in 2018/2019 was 330,000kg.

Oxides of Nitrogen which eventually in effect is Nitrogen Dioxide (NO<sub>2</sub>) is an acid gas which is also very irritating to the lungs and can cause coughing, wheezing, asthma attacks and bronchitis. The 2018/2019 annual emission was 35,000kg.

Sulphur Dioxide is an acid gas which dissolves in the fluid of the lungs to form sulphurous and sulphuric acids. It is also very irritating to the lungs and can cause coughing, wheezing, asthma attacks and bronchitis. The annual figure for 2018/2019 was 180,000kg.

All of these figures are quoted directly from the National Pollution Inventory for the Austral Bricks (WA) Pty. Ltd. – Cardup site, Byford WA.

I believe that these figures are far too high; especially in view of the fact that existing and future dwelling are within 400m of the discharge site on the Scarp development.

I submit to the Council that much further information and details are needed from Austral Bricks before and possible expansion is approved. This is especially important as a doubling of the production capacity at the site will undoubtedly means much higher emissions being produced.

In particular:

1. Actual daily measurements of the emissions both particulate and gaseous need to be carried out. In my opinion, mere modelling is insufficient and is really only a “guess”. With serious health implications involved accurate actual data needs to be provided.
2. The wind rose data presented by Austral Bricks is laughable. It is using Perth Airport wind data which is not relevant to the Byford Scarp since it is about 35km away in a northerly direction. There are even figures from Jandakot airport which is 30 km away on the Perth plain. This is not at all relevant to Byford Scarp conditions. Accurate and detailed wind weather data including direction and speed needs to be provided to





determine in which direction and how far the emissions will be carried from the Brickworks. They do not even have a windsock, let alone more detailed wind data.

3. You will hear from another submission, that the water and dust management plans submitted from Austral Bricks is seriously flawed and incorrect. This needs to be closely examined by the Council.
4. Austral Bricks environmental report supporting their expansion plans is light on actual data. It is based on “desktop” assessments and flawed modelling which has been referred to above. The risk matrix and the wind rose diagrams look very colourful and impressive but are merely window dressing designed to blind the laymen with science and not very good science at that.
5. If this expansion is allowed to proceed then I have grave fears about the health and well-being of residents on The Scarp development into the future. Most of the families in situ or moving there have young children and they, along with aged residents, are the most susceptible to these emissions. We may well see that in 20- or 30-years’ time a hotspot of health problems including respiratory, heart and lung disease, cancers and even premature deaths which will eventuate as a result of these high levels of toxic emissions from the brickworks.

In conclusion, I urge the Council to refuse permission for the Brickworks’ expansion to occur. Much more accurate information needs to be provided by Austral bricks in support of their application and all of this must be supplied before expansion permission is given.

Thank you for listening to my submission.

Attachments provided to Councillors:

- (a) National Pollutant Inventory Austral Bricks (WA) Cardup Brickworks for the period 2018/2019.
- (b) National Pollutant Inventory Austral Bricks (WA) Cardup Brickworks for the period 2017/2018.
- (c) Comparison of (a) and (b) above in table form.
- (d) Comment on (a) above.a

### **Declan White**

Good evening Councillors,

My name is Declan White. I'm speaking in place of my father, Stephen White, who planned to speak tonight but unfortunately could not.

My father and I are members of the Scarp Residents Association-an organization formed to represent and protect the interests of the 1,800 or so residents of Byford by the Scarp. When my family moved to the Scarp in 2007, we were told the Austral Bricks site was far enough away that it would not affect us.

It's difficult to confirm a causal link, but we-anecdotally-saw strangely high levels of fine particulate dust and saw the paint of two vehicles begin to fade only a few years after we purchased them; so we were very glad when we received a copy of Austral Brick's "Mine Closure Plan" for the site five years later, in 2012.



So, when the initial houses in the Scarp were originally built, the Austral Bricks site was still operating. The developers of the Scarp, appropriately, left a moderate buffer zone. That buffer zone was designed to reduce the amount of airborne pollution falling upon families in the Scarp. Hence, we were told "the site is too far away to affect [us]."

As the Austral Bricks site closed in 2012, there are now another 200 lots being built within that buffer zone. That buffer zone existed for a reason. How is it that Austral Bricks can reopen the site without an appropriate buffer zone in place?

Not only is Austral Bricks planning to reopen the site without an appropriate buffer zone; as per this development application, they are planning to expand their operations. Now, I'm no environmental engineer, but surely that means an even larger buffer zone would be required.

I think my house-as well as the houses of 463 other families in the Scarp-could very well fall within that larger area.

I have no plans to move away from Byford. I hope to one day have children of my own, and it's likely they'll grow up in the Scarp.

Councillors, when the easterly winds blow, will they be breathing pollution from the Austral Bricks site?

This development application and generally Austral Brick's intention to expand the site seem incredibly short-sighted to me. Companies need to be careful about their externalities. The pollution produced by their site could very well afflict the children of the Scarp with chronic health issues. Medical science will progress, and in the next few decades will likely be capable of tracing those health issues back to their source.

The majority of those surveyed by the Scarp Residents Association believe the company should relocate their manufacturing plant to a more suitable locality, such as the West Mundijong Industrial Hub.

If creating jobs in the local community is a deciding factor for you-the councillors-then moving the operations to an alternate location is the better outcome, as the construction of a new site-although more expensive for Austral Bricks-will undoubtedly create more employment opportunities. Opportunities that many locals could use, as we emerge from the uncertain times of the COVID19 pandemic.

Councillors, I strongly urge you all to reject the proposed development application, or at the very minimum, support a delay. A vast amount of technical information has recently been provided by both parties, and a sufficiently long delay would allow time to review this new data.



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**John Kirkpatrick, 77 Mead Street, Byford WA 6122**

I write this as a concerned Ratepayer not as a member of any group with a vested interest.

I am concerned that the wind readings to be taken into consideration for the Austal bricks extension are to be taken at Jandakot and Perth airport.

A number of years ago a group of residents were very concerned at a proposal for Mineral Sand Mining in the Whitby area of the Shire in the area between Norman Road and Keirnan Street East of Soldiers Road and to the East of the highway including the facility known as Leonda.

The State Labour government of the time shared their concerns and made grant funding available to the Ratepayers Group to purchase their own wind monitoring station and it was placed on the Whitby Site with the co-operation of Westralian Sands, the owners of the site. They were surprised by the findings which were not what they expected.

The grant was facilitated through the office of Bob Pearce who was then the MLA for Armadale and my late wife in fact went and picked up the cheque.

The results were vastly different to the readings at Perth Airport which is incidentally monitoring for wind sheer and the conclusion was reached that the pollution from the mining operations were such that it would make living in Mundijong a health hazard.

These readings were taken remarkably close to the Austal Bricks proposal so would give a true reading of what the wind speed and effect may be.

There may well be indications from monitoring close to the site that the effects are different to what may come from Perth Airport. Also taking into consideration that the Byford urban cell is increasing and will for many years to come.

The wind was severe enough in Keirnan Street one night that the reading went off the scale and one house lost its roof completely and it was dumped in the road.

This was supported in the Mining Wardens Court by the Mining warden and the proposal was refused. This was the first time that the Mining Warden had ever supported a community and not the mining company.

The fact that the State Government were concerned enough to make sure that the community had funding to protect the interests of the resident was and is unprecedented.

I am sure that these records are available to the Council if they were to look for them.

Having worked in the mining and construction industries for many years the pollution that goes out of the smokestack still goes out no matter how tall you make the chimney. All it does is spread it further out, so do not put it there to start with.

**Karina Baker, Cardup WA 6123**

As I live in Cardup, I do have great concerns of the Proposed Expansion of Austral Bricks. I have tried to read the attachment reports and as good as information as is needed these reports as Strategen – JBS & G pointed out – should be reviewed by a competent person with experience in environmental investigations. I believe the community becomes complacent due to the overwhelming barrage of information that just about requires university degrees in Environmental, Meteorology, Geology and Traffic Management. Not many of us are Doctors of something and just trying to research the meanings of so many



of these reports is frankly by design to confuse and frustrate many in the community. Let's not forget who hires and pays for these consultancy groups and owns these reports.

Reading through their report and questions raised by the Authorising Officer according to this consultancy company, they seem to accuse the Authorising Officer as misunderstanding a lot.

I would like to refer and read Stategen – JBS& G's paragraph on Reliance on Data

I understand that this is used as a way of not being held responsible for us all dropping like flies from emissions like the Primary Emissions to Air.

Fluoride, Chloride, Oxides of Sulfur and other elements, along with water Vapour and Carbon Dioxide from natural Gas, we are expected to believe that over years of breathing in these toxins they will not cause health problems. The community is diverse in age and physical morbidity, what are the effect to humans and the environment over 5, 10, 20, 50 years of the intake of those emissions on a constant basis. What about constantly breathing in the dust blown at us from wind speeds that you don't require a hair dryer, the dust management is done by the Site Manager to keep any eye on the wind. What he goes and wets his finger and sticks it up in the air to see which way the wind blows. Or just relies on the BOM site? How about a simple thing like a windsock and dust monitoring equipment?

Ground water the report misses this in the first line stating – There is no Aquifers of significance over most of the site, well that's untrue, there's a report by Dr Peter Thorpe that needs to be read, and the report from Coterra looks like they have not investigated the groundwater resources below the Austral Bricks Facility which all of Cardup rely on for water.

And let's look at the Hours of Operations and the amount of Trucks and Vehicle movements daily:

Plant staff – 5am to 4.45

Night staff – 5pm – 5am

So, this will be a 24-hr operation.

Clay Truck Deliveries – 5 days per week 7am – 5pm; Saturday 7am – 12pm – 82 Clay trucks daily.

There is only 25 – 33% of the clay used from the pits at this facility, the rest is transported in from outside of this Shire as a raw material and cannot be secured properly and driving and spilling the contents through our communities. Are we not to be concerned as what is in this like microbes, pests, seeds and has it ever been addressed?

Bridge Truck Deliveries – weekdays 5am – 4pm – 58 Trucks daily

Light Vehicles – 50 daily

In summary, this expansion and its reports must be scrutinised thoroughly as so much of the data relied upon is not from this facility and important investigations have not been done because of this. We have one change to get this right and just piling on conditions only work if someone is willing to monitor and hold them accountable which in the past has not been the case. Thankyou.



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**Alan Clarkson**

I am a concerned citizen living in the Serpentine Shire & President of the Serpentine Jarrahdale Ratepayers Association.

Over 30 years this Shire has never functioned better than when Council, Shire & Community unite against something that we believe threatens our neighbours.

This was very evident when all 8 Councillors voted as a block with the President to work with Shire staff along with Austral Bricks for a solution to re-locate the Company to a more suitable location away from sensitive residential area to an appropriate Industrial Site.

Once again, we see Party Politics & self-interest raising its head. These people without knowledge of the facts should come & meet the people with genuine worries about health for themselves & their families as well as their property values.

Because of the time constraints, volumes of paperwork & information it took Austral Bricks about 60 days to reply to the Shire's request which was ordered by the J.D.A.P. Chair because of Austral's original lack of information.

The Ratepayers Association have engaged a Consultant to Peer Review Austral's updated Report.

The Report states glaring differences between Austral's Groundwater Reports in the area. Austral states potentially contaminated Groundwater doesn't leave the Site.

Dust:

In coming Clay from other Quarry produces huge clouds of dust. The makeup of this dust will not be divulged by the company. We believe it to be very dangerous to human health.

Emissions:

The Emissions from the Stacks is a whole new Scientific story for another day these are potentially the most dangerous of all the contaminates. Spread far & wide by our unusual wind patterns.

Once again misrepresented by Austral Bricks taking wind direction from Perth & Jandakot Airports again very poor & inaccurate Consultancy Report.

One would think regulation & direction would come from State Government Agency's the D.W.E.R. & E.P.A. we should put the Health Department in there as well.

If no one has anything to worry about give us a Public Environment Review.

The positive side is our Councillors & Shire staff have done the right thing to question, so if Austral Bricks Expansion goes ahead the blame will go elsewhere.

**Public statement time concluded at 7.37pm.**



## 4. Petitions and deputations:

### 4.1 – Deputation – David Johnson, General Manager, Austral Bricks WA

Thank you Shire President and Councillors for the opportunity to speak this evening.

My name is David Johnson, and I am General Manager for Austral Bricks WA.

Austral Bricks is disappointed by Serpentine-Jarrahdale Shire's move to call to further delay a decision on more efficient production at its Cardup site.

It is Austral Bricks understanding that a decision should be made on or before 1 December, in accordance with the DAP decision from 1 September.

If the DAP agree with the Shire's request, it would represent a six-month delay to the process and a further delay to the creation of additional jobs that the expansion would create

This initial three-month delay was set to enable Austral Bricks to provide more information on dust and emissions, vegetation, groundwater and traffic which the shire said it required. It should be noted that following our final discussions with the Shire staff (planning, environmental, health and engineering) prior to the preparation of the initial RAR we were of the understanding that there were no further issues to address.

It comes on top of a 12-month process to seek approval for the improvement works, including deferring the due date for the RAR report on several occasions.

Austral Bricks, and its consultants, have worked as quickly as possible to ensure we provided all the additional information as requested. The additional information was promptly provided by Austral on day 58 of the 90-day delay, despite having received a further request for new information on 12th October (day 42 of 90).

Our thoroughness has served us well as some of the additional reports requested by the shire, which are usually required as part of the works approval, can take months to complete. If we had not already done the work it could have led to delays.

It should also be noted that the Shire did not identify a conflict of interest with their Environmental Consultant until 9<sup>th</sup> November (day 70 of 90), despite assurance in the DAP meeting on 1<sup>st</sup> September that the Shire had sufficient technical expertise to assess the supporting information.

Given there is no material change to the application itself, we consider that this provides sufficient time for the Shire to consider the information with the ultimate decision to be made by the JDAP.

#### Conclusion

Austral Bricks has complied at every step of the way with the state and local government processes. At every point where the government agencies or the Council has requested more information we have complied and provided this in a timely manner.

Austral Bricks takes its responsibilities very seriously and believes that further delays are unnecessary.

For these reasons, we disagree with the request for a further deferral of the decision.



## 5. Declaration of Councillors and Officers interest:

Nil.

## 6. Receipt of reports:

### 6.1 Reports

<b>6.1.1 - Proposed Factory Expansion at Lots 7,10,12,30,50,53,101 Kiln Road and Lot 802 South Western Highway, Byford (PA19/1121</b>	
<b>Responsible Officer:</b>	Manager Statutory Planning and Compliance
<b>Senior Officer:</b>	Director Development Services
<b>Disclosure of Officers Interest:</b>	No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

### Authority / Discretion

Quasi-Judicial	When Council determines an application/matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include local planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
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Proponent:	Austral Bricks
Owner:	Bristile Holdings Pty Ltd
Date of Receipt:	29 November 2019
	Lot 7 Kiln Road - 2.95ha
	Lot10 Kiln Road - 2.6ha
	Lot 12 Kiln Road - 3.8ha
	Lot 30 Kiln Road - 1.7ha
Lot Area:	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
Town Planning Scheme No 2 Zoning:	'Special Use'
Metropolitan Region Scheme Zoning:	'Rural' and 'Urban Deferred'

### Report Purpose

The purpose of this report is for Council to consider endorsing the Responsible Authority Report (RAR) prepared for the application for an expansion to the existing brickworks facility at Lots 7, 10, 12, 30, 50, 53, and 101 Kiln Road, and Lot 802 South Western Highway, Byford. The RAR is provided as **attachment 1**.



Council is being requested to consider this RAR as a result of the timetable set by the Metro Outer Development Assessment Panel (“MODAP”) following its decision to defer consideration of the application at its meeting on 1 September 2020.

This report presents the RAR, which recommends MODAP further defer the application for 30 days, to enable the Shire to perform its statutory function to give ‘proper, genuine and thorough consideration’ of the matter.

Council may also resolve to make a separate further submission to the MODAP, apart from the RAR.

### Relevant Previous Decisions of Council

*Ordinary Council Meeting – 17 August 2020 – OCM249/08/20*

*That Council endorse the Responsible Authority Report contained within attachment 1, which recommends that the Metro Outer Joint Assessment Panel 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.*

*Metro Outer Development Assessment Panel – 1 September 2020*

*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.*





## Background

The Shire's first RAR (**attachment 2**) 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.



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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 3**.

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.



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## 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 Firms Road, Serpentine;
- Service Station - 11 Shanley Road, Mundijong;
- Keeping of stock - 97 Bournbrook Avenue, Cardup.



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## Statutory Environment

Legal advice was obtained in respect of options available to the Shire. This is provided as **confidential attachment 4**.

The following legislation and policy documents are specifically relevant to the assessment of this application:

- *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.

The Shire's RAR has been written considering the various risk issues associated with the application. It is important that Council are aware of these risk issues, and what may be done to mitigate such risks. It is also not possible to list every possible risk, but following are considered three of the most relevant:

Risk - That the Shire fails to give 'proper, genuine and thorough consideration' to all mandatory considerations relevant to its statutory function.

Mitigation - This is essentially the basis of the Shire's RAR, to seek a further 30 days to ensure the Shire fulfils its statutory function.

Risk - That the MODAP do not support the RAR, and seeks to make a determination of the application at the meeting.

Mitigation - That Shire Officers attempt to prepare a draft set of without prejudice conditions, noting however that insufficient time has been afforded to complete this task to the normal extent required.

Risk - That the applicant is unwilling to await determination of the application by the MODAP a triggers a deemed refusal and State Administrative Tribunal Process.

Mitigation - Shire Officers are prepared to make submissions to the SAT seeking to register a sufficient interest to be part of the SAT process.

## **Options and Implications**

### Option 1

That Council ENDORSES the Responsible Authority Report contained in attachment 1.

### Option 2

That Council ENDORSES the Responsible Authority Report contained in attachment 1 and resolves to make its own further submission to the MODAP on the application, that identifies an alternative deferral timeframe for the Shire to complete its objective merits based planning assessment of the additional information, and provision of the RAR.

### Option 3

That Council ENDORSES the Responsible Authority Report contained in attachment 1 and resolves to make its own further submission to the MODAP on the application, that recommends refusal of the application due to insufficient time having been afforded to the Shire to complete its objective merits based planning assessment.

Option 1 is recommended.



## 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.

## Attachments (available under separate cover)

- **6.1.1 - attachment 1** - New RAR (E20/12914)
- **6.1.1 – attachment 2** - First RAR (E20/4561)
- **6.1.1 – attachment 3** - Additional information (IN20/28431)
- **6.1.1 – CONFIDENTIAL - attachment 4** - Legal advice (E20/13015)

## Alignment with our Strategic Community Plan

<b>Outcome 3.1</b>	A commercially diverse and prosperous economy
<b>Strategy 3.1.1</b>	Actively support new and existing local businesses within the district.
<b>Outcome 4.2</b>	A strategically focused Council

## Financial Implications

Nil.



## Risk Implications

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	<i>That the responsible authority fails to give 'proper, genuine and thorough consideration' to all mandatory considerations relevant to its statutory function.</i>	<i>Ensure adequate time to perform this function</i>	Organisational Performance	Rate	Major	LOW	Accept Officer Recommendation
2	<i>That the MODAP do not support the RAR, and seek to make a determination of the application at the meeting.</i>	<i>Shire Officers may be asked at short notice to prepare a draft set of without prejudice conditions by the chair of the MODAP</i>	Organisational Performance	Possible	Major	SIGNIFICANT	<i>Shire Officers attempt to prepare a draft set of without prejudice conditions, noting however that insufficient time has been afforded to complete this task</i>
3	<i>That the applicant is unwilling to await determination of the application by the MODAP and triggers a deemed refusal and State Administrative Tribunal Process</i>	<i>The Shire would not be a respondent to the matter. The MODAP will be the respondent in any review sought by a 'deemed refusal'.</i>	Organisational Performance	Possible	Major	SIGNIFICANT	<i>Shire Officers are prepared to make submissions to the SAT seeking to register a sufficient interest in being part of the SAT process.</i>

Any risks with a **SIGNIFICANT** or **HIGH** risk rating will require ongoing reporting to the Audit, Risk and Governance Committee, and any risks with a **HIGH** risk rating will require a specific risk treatment plan to be developed and ongoing reporting to Council.





**Voting Requirements:** Simple Majority

Officer Recommendation

That Council ENDORSES the Responsible Authority Report contained within attachment 1, which recommends that the Metro Outer Joint Assessment Panel DEFER consideration of the application for a period of 30 days, 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.

**SCM377/11/20**

**COUNCIL RESOLUTION**

**Moved Cr Strange, seconded Cr Byas**

**That Council**

- 1. ENDORSES the Responsible Authority Report contained within attachment 1, which recommends that the Metro Outer Joint Assessment Panel DEFER consideration of the application for a period of 30 days, 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;**
- 2. RESOLVES TO MAKE THE FOLLOWING SUBMISSION to the MODAP recommending that the application be REFUSED for the following reasons:**
  - a) The Responsible Authority is unable to be satisfied as to the planning merits of the application, because insufficient time has been permitted for the RAR to fully canvas the planning merits or potential amenity impacts, and specifically the additional information;**
  - b) The application for factory expansion is inconsistent with the current development approval for clay extraction for the use on the land, as that development approval is time limited and expires in December 2022. It is premature to consider how such future application may be determined;**
  - c) The Environmental Protection Authority ‘Separation Distances between Industrial and Sensitive Land Uses’ provides advice on the use of generic separation distances (buffers) between industrial and sensitive land uses to avoid conflicts between incompatible land uses. This application is for an expansion to an existing use, which falls within the category of ‘clay bricks or ceramic/refractory products works’. This requires a general separation distance under the Guidance Statement of between 300m to 1000m. There are sensitive land uses within this buffer range, and in the absence of certainty of acceptable amenity and/or environmental impacts the application should be refused;**



- d) The EPA is yet to determine whether formal environmental impact assessment of the application is required;
- e) The application is not consistent with the seriously entertained planning document, being Local Planning Scheme No. 3. This document is certain, specific and advanced, insomuch that advertising has been completed and Council has adopted the document post advertising with recommended modifications to the responsible Minister to consider. This recommends the subject land remain zoned 'Rural' as advertised, whereby an intended level of Rural amenity is required to be provided. Expansion of a non-conforming 'General Industry' use class is not consistent with this planning document.

**CARRIED UNANIMOUSLY 8/0**

Reason for difference to Officer Recommendation

*To mitigate the risk of a deemed refusal and to provide appropriate grounds for MODAP to consider a refusal.*

**7. Motions of which notice has been given:**

Nil.

**8. Urgent business:**

Nil.

**9. Closure:**

Prior to the closure of the meeting, Mr Dyer and Mrs Plant queried if they would now have the opportunity to present their submissions relating to item 6.1.1 which were provided to the Shire prior to the meeting.

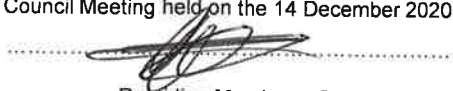
Chief Executive Officer, Mr Martin apologised but advised that as Council had already considered the matter relating to their submissions, it would be highly irregular for the submissions to now be read.

Presiding Member, Councillor Rich apologised to Mr Dyer and Mrs Plant on behalf of the Shire for the situation and advised that a note would be recorded in the Minutes.

Chief Executive Officer, Mr Martin advised Mr Dyer and Mrs Plant that copies of their submissions would be circulated to Councillors under separate cover.

There being no further business, the Presiding Member declared the meeting closed at 7.50pm.

I certify that these minutes were confirmed at the Ordinary Council Meeting held on the 14 December 2020.

  
Presiding Member – Councillor Rich

25/02/2021

Date